

AGENDA ITEM SUMMARY

Submitted For:

1. WiFi Advertising Agreement (3)

Approved By:  6/26/22
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(\$5000)</u>	<u>(\$25,000)</u>	_____	_____	_____
External Revenues (Grants)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>(\$5000)</u></u>	<u><u>(\$25000)</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:

This Agreement provides for payment based upon advertising revenues with a minimum required payment of \$2,500 per month.

C. Departmental Fiscal Review: Chris Sumner

III. REVIEW COMMENTS

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

[Signature] 6/13/11
 OFMB VA 6/13/11

[Signature] 6/20/11
 Contract Dev. and Control

B. Legal Sufficiency:

[Signature] 6/21/11
 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

 Department Director

WIFI ADVERTISING CONCESSION AGREEMENT

This WiFi Advertising Concession Agreement ("Agreement") is made and entered into this _____ by and between Cloud 9 Wireless, Inc., a California corporation with offices at 520 Waller Street in San Francisco, CA 94177 ("C9W"), and Palm Beach County, a political subdivision of the State of Florida, with offices at 846 Palm Beach International Airport, West Palm Beach, Florida 33406 ("Provider") (each a "Party" and together, the "Parties").

Recitals

WHEREAS, C9W manages location-based online advertising campaigns ("Advertising") for one or more online advertisers ("Advertising Clients"); and

WHEREAS, Provider is the owner and operator of the Palm Beach International Airport (the "Participating Location" or "Airport"); and

WHEREAS, Provider provides high-speed Internet access to guests at the Participating Location; and

WHEREAS, Provider has the ability to display one or more web pages (collectively called the "Portal") to users who access the Internet at the Participating Location; and

WHEREAS, Provider seeks to earn revenue from C9W by displaying advertising provided by C9W ("Advertising") on the Portal at the Participating Location; and

WHEREAS, C9W seeks to earn revenue from its Advertising clients ("Clients") by arranging for the Advertising to be sold for display at the Participating Location (the "Advertising Services"); and

WHEREAS, C9W has developed a proprietary software solution for displaying the Advertising at the Participating Location serviced by its Portal and measuring user metrics and interactions with the Advertising (the "Advertising System").

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the Parties agree as follows:

1. **License Grant.** Subject to the terms and conditions of this Agreement, C9W grants Provider a non-sublicensable, non-exclusive, non-transferable license, for the term of this Agreement only, to use the object code and related materials constituting the Advertising System to the minimum extent, and only to the extent, necessary to display the Advertising on the Portal at the Participating Location. C9W will provide telephone and email support to Provider during normal business hours in the Pacific Time Zone, in order for Provider to accurately deploy and configure the Advertising System.
2. **Intellectual Property Rights; Ownership.** Provider agrees and acknowledges that C9W retains all proprietary rights in and to the intellectual property and related rights, including but not limited to patents, copyrights, trademarks, trade secrets, and other tangible and intangible rights and any and all applications and registrations or similar rights associated with and/or comprising the Advertising System and all software, source code, and any derivative works, modifications, improvements and enhancements thereto (all such rights, "IP Rights"). C9W shall also have the non-exclusive right to all information derived from Provider's use of the Advertising Services and Advertising System including, without limitation, C9W-delivered cookies, click-stream information and other relevant audience measurement information. C9W retains all IP and other rights and ownership in and to the Advertising System and all source and object code therefor, and any and all other materials related thereto. Provider retains all applicable rights and ownership of the Portal, except for the rights granted to C9W above.
3. **Participating Locations.** The Participating Location will be configured by Provider to display Advertising using the C9W Advertising System. In the event that the Advertising System cannot be configured to both Parties' satisfaction prior to any Advertising being displayed, then this Agreement will become null and void.

9/ Attachment 1

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9/

4. **Portal.** Provider will supply C9W with a detailed description of, the web pages that comprise the Portal, including the Portal ID (unique identifier for Portal variation) and screen shots and general descriptions of the pages to be displayed before and after advertising. The purpose of this description is to enable C9W to accurately describe the Portal to Advertisers and understand what format of Advertising may be shown at Participating Locations. Provider agrees to provide thirty (30) days notice in the event that it decides to make changes to the Portal, such as i) as adding new web pages to the Portal, ii) adding additional authentication steps such as a login to the Portal.
5. **Ownership of Portal.** Provider represents and warrants that: i) Provider owns and/or has the right to use any content and materials on the Portal not supplied by C9W, ii) to the best of Provider's knowledge no aspect of the Portal design not under direct control of C9W will or does infringe or violate any third party intellectual property, moral or other proprietary right including, without limitation, patents, copyrights, trademarks, publicity, or privacy rights; iii) Provider is not violating any existing agreements by displaying advertising on the Portal. NOTWITHSTANDING THE FOREGOING, PROVIDER AGREES THAT ONCE IT EXECUTES A SPECIFIC INSERTION ORDER, IT MAY NOT CHANGE, MODIFY, REMOVE OR IN ANY WAY TAMPER WITH THE ADVERTISING CODE PROVIDED FOR ITS PORTAL BY C9W.
6. **Advertising Services.** C9W will be solely responsible for the following Advertising Services under this Agreement.
- a. Assisting the Provider in correctly configuring the Advertising System.
 - b. Measuring and reporting on campaign statistics such as unique visitors, WiFi sessions, Pageviews, clicks and conversions.
 - c. Activating and de-activating specific Advertising campaigns according to a pre-defined schedule, of which Provider shall receive advance notice by C9W.
 - d. Testing multiple Advertising creatives to optimize performance, ensure cross-browser compatibility and respond to user feedback and/or complaints regarding creatives.
 - e. Targeting Advertising campaigns according to the targeting criteria and frequency caps supplied by Advertisers.
 - f. Managing impression volume to ensure the Advertising stays within the budgetary guidelines provided by Advertisers.
7. **Advertising Approval.** As part of this Agreement, Provider hereby approves the specific advertising creatives and payment terms described in Exhibit A "Make Google my Homepage Insertion Order."
- C9W may submit additional advertising campaigns to Provider for approval on an ongoing basis. Provider may elect to participate in these additional campaigns by approving a separate Insertion Order, prepared by C9W, specific to the campaign, and labeled C-1, C-2, etc. Any such campaign shall continue to be governed by the terms of this Agreement, except as modified in a subsequent exhibit signed by both parties. Participation in additional campaigns is optional and at the sole discretion of Provider.
8. **Advertising Solicitation.** Provider authorizes C9W to employ the following sales and marketing tactics to promote the availability of advertising inventory at the Participating Location as part of the C9W WiFi Advertising Network and secure additional paid Advertising eligible to run at the Participating Locations: i) using the Airport's name the C9W website to identify the Provider as a member of the C9W network, ii) supplying potential advertisers with basic information about the Participating Location such as the estimated monthly connection volume, and (iii) any other similar, related or reasonable related tactics adopted by C9W for this purpose. Provider may revoke this authorization at any time with thirty (30) days written notice to C9W.

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9. **Exclusivity.** Provider agrees that during the term of the Agreement, it shall not permit other persons or entities other than C9W to sell or display online advertising on the Portal at the Participating Location. Notwithstanding the foregoing, during the term of the Agreement, C9W agrees that Provider may solicit proposals or bids from other persons or entities for Advertising Services for the period after the term of the Agreement.
10. **Press Release.** Provider agrees to issue a joint press release with C9W announcing Provider's entry into the C9W WiFi Advertising network within forty-five (45) days of the Effective Date subject to mutual agreement by both Parties as to the details of the release.
11. **Privacy.** The parties agree to comply with all applicable data protection and privacy laws. Provider further agrees to make available on its website a privacy policy that identifies the nature and scope of the collection and use of information gathered by Provider at the Participating Location. A link to C9W's privacy policy shall satisfy Provider's disclosure requirement pursuant to this Section 11 with respect to the collection and use of information gathered with respect to all data collected by C9W's ad-serving activities (as more fully described in Section 2 above), as well as the procedure for opting out of C9W's collection and use of such information.
12. **Confidentiality.** Except as otherwise required by law or a court of competent jurisdiction, Provider will use good faith efforts not to disclose any records provided by C9W hereunder that are confidential and exempt under Florida Public Records Law to third parties; provided that C9W has prominently identified the confidential and exempt information contained in such records, including the specific statutory exemptions relied upon by C9W.
13. **Term and Termination.**
- a. **Term.** The term of this Agreement shall commence on August 1, 2011 and expire on July 31, 2012.
- b. **Termination with Notice.** Either party may terminate this Agreement for convenience and without liability for such termination at any time with thirty (30) days written notice to the other party.
- c. **Termination for Breach.** In the event of a material breach of this Agreement, the non-breaching party may give written notice of such breach to the breaching party and if the breaching party fails to cure such breach within seven (7) days of receipt of such notice, the non-breaching party may terminate this Agreement.
- d. **Termination for Certain Changes.** This Agreement may be terminated at any time by either party, effective immediately upon written notice, if any of the following events occur: (a) the other party ceases to operate for a period in excess of twenty (20) business days; (b) the other party is adjudged insolvent or bankrupt; (c) institution of any proceeding by the other party seeking relief, reorganization or arrangement under any laws relating to insolvency; (d) institution of any proceeding against the other party seeking relief, reorganization or arrangement under laws relating to insolvency that is not dismissed within sixty (60) days; (e) the making of, by the other party, any assignment for the benefit of creditors; (f) the appointment of a receiver, liquidator or trustee of any of the other party's property or assets, or upon liquidation, dissolution or winding up of the other party's business; and/or (g) the sale of Provider or assets of Provider, if required by acquiring company as long as existing advertising deals are honored and C9W is given thirty (30) days prior written notice.
- e. **Post-Termination Survival.** The following Sections of this Agreement and any causes of action arising in relation to this Agreement prior to termination or expiration, shall survive termination or expiration of this Agreement: 2 (Ownership; Intellectual Property Rights); 5 (Ownership of Portal); 12 (Confidentiality); 14 (Revenue and Payment); 16 (Indemnification); 17 (Disclaimers; Limitation of Liability); and 19 (General Provisions).

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14. Revenue and Payment.

- a. **Revenue Calculation.** The amount of revenue earned by Provider in exchange for displaying Advertising will be determined a per campaign basis ("Advertising Revenue") according to specifications laid out in the relevant Insertion Order. The first such campaign is described in Exhibit A "Make Google my Homepage Insertion Order."
 - b. **Revenue Statements.** On or before the 20th day of each month, C9W will submit a written statement detailing the amount of Advertising Revenue earned by Provider in the previous month ("Monthly Advertising Revenue") in a form and detail reasonably satisfactory to Provider. Provider may require the form to be submitted electronically.
 - c. **Minimum Monthly Guarantee.** C9W shall pay to Provider the greater of Two Thousand Five Hundred Dollars (\$2,500) per calendar month ("Minimum Monthly Guarantee") or the Monthly Advertising Revenue, subject to the proration of revenue for any partial month. Under no circumstances shall C9W guarantee any revenues to Provider in excess of the Minimum Monthly Guarantee. C9W shall remit payment on or before the 20th day of each month for the previous month concurrent with submission of the written revenue statement.
 - d. **Place of Payment.** C9W shall make all payments by check made payable to "Palm Beach County," and shall be delivered 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.
 - e. **Traffic Measurements** C9W shall have the sole responsibility for traffic measurements relevant to payment hereunder including, without limitation, the calculation and reporting of all statistics. C9W agrees to adhere to the Internet Advertising Bureau's 2004 "Ad Impression Measurement Guidelines" in calculating campaign statistics wherever possible. Provider must submit any dispute as to C9W's traffic measurements within thirty (30) days following the end of the month in which such inaccuracy is believed to have occurred. C9W will make commercially reasonable efforts to resolve purported inaccuracies fairly.
 - f. **Audit.** C9W shall keep, throughout the term of this Agreement, all books of accounts and records related to this Agreement, which are customarily used in this type of operation, 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 for three (3) years from the end of this Agreement. Provider shall have the right to audit and examine during normal business hours all such books of accounts and records relating to C9W's operations under this Agreement. If the books of accounts and records are kept at locations other than the Airport, C9W shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for Provider in order for Provider to conduct the audits and inspections as set forth in this Section. The requirements of this Section shall survive the expiration or earlier termination of this Agreement.
15. **Representations and Warranties.** Each party represents and warrants to the other that it has the right and full power and authority to enter into this Agreement, to grant the rights herein granted and fully to perform its obligations hereunder. Provider agrees that it will not:
- a. Alter, copy, modify, take, sell, or re-use, in any manner any Advertising; use auto-spamming browsers, forced clicks or in any way induce persons to click on Ads based upon incentives not intended to be associated with an advertisement; or
 - b. Permit any other party, to generate or engage in any fraudulent traffic generating methods including, without limitation, robots, spiders, auto-spawning browsers, auto reloading, or meta refreshes.

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 - b. Permit any other party, to generate or engage in any fraudulent traffic generating methods including, without limitation, robots, spiders, auto-spawning browsers, auto reloading, or meta refreshes.

16. Indemnification.

- a. C9W shall indemnify, defend and hold harmless Provider and its officers and employees ("Indemnatee") from and against any loss, cost, expense, claim, injury or damage (including, without limitation, reasonable attorneys' fees and expenses at trial and on appeal), whether incurred due to third party claims or otherwise, arising or resulting from or caused by (a) any negligent act or omission or willful misconduct of C9W or any of its or their officers, managers, members, employees, or agents; (b) any material breach or default by C9W in the performance of any of its obligations under this Agreement; or (c) any material breach of any representation, warranty, covenant or agreement by C9W. C9W shall promptly notify Provider of all claims and proceedings of which C9W becomes aware.
- b. Indemnatee shall promptly notify C9W of any claim, demand, action or other proceeding for which the Indemnatee intends to claim such indemnification, and C9W shall have the right to participate in, and, to the extent C9W so desires, to assume sole control of the defense thereof with counsel selected by C9W; provided, however, that the Indemnatee shall have the absolute right to retain its own counsel, with the fees and expenses to be paid by the Indemnatee. The indemnity obligations under this Agreement shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the consent of the C9W, which consent shall not be unreasonably withheld or delayed. Provider shall cooperate fully with the C9W and its legal representatives in the investigation of any action, claim or liability covered by an indemnification from C9W.

17. Disclaimers; Limitation of Liability.

EXCEPT AS SET FORTH IN THIS AGREEMENT, C9W EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, ADVERTISING OR DATA SUPPLIED INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. C9W DOES NOT GUARANTEE, REPRESENT OR WARRANT THAT IT WILL FILL ALL OF PROVIDER'S AVAILABLE ADVERTISING INVENTORY WITH PAID ADVERTISEMENTS. C9W SHALL NOT BE LIABLE FOR THE CONTENT OF ANY ADVERTISING, ANY UNAVAILABILITY OF THE SERVICES OR THE INTERNET, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION.

IN NO EVENT SHALL C9W BE LIABLE TO PROVIDER OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUES OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SALES AND/OR SERVICES PROVIDED HEREUNDER, OR C9W'S FULFILLMENT OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OF NOT C9W HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 18. Insurance.** C9W 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 Section 18 nor Provider's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by C9W under this Agreement.

- a. C9W shall maintain Commercial General Liability insurance with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) Each Occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability.
- b. C9W shall maintain Professional Liability Insurance with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) Each Occurrence. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of products, services and licensed programs, as well as cyber risk under this Agreement. Such insurance shall also include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of

16. Indemnification.

- a. C9W shall indemnify, defend and hold harmless Provider and its officers and employees ("Indemnatee") from and against any loss, cost, expense, claim, injury or damage (including, without limitation, reasonable attorneys' fees and expenses at trial and on appeal), whether incurred due to third party claims or otherwise, arising or resulting from or caused by (a) any negligent act or omission or willful misconduct of C9W or any of its or their officers, managers, members, employees, or agents; (b) any material breach or default by C9W in the performance of any of its obligations under this Agreement; or (c) any material breach of any representation, warranty, covenant or agreement by C9W. C9W shall promptly notify Provider of all claims and proceedings of which C9W becomes aware.
- b. Indemnatee shall promptly notify C9W of any claim, demand, action or other proceeding for which the Indemnatee intends to claim such indemnification, and C9W shall have the right to participate in, and, to the extent C9W so desires, to assume sole control of the defense thereof with counsel selected by C9W; provided, however, that the Indemnatee shall have the absolute right to retain its own counsel, with the fees and expenses to be paid by the Indemnatee. The indemnity obligations under this Agreement shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the consent of the C9W, which consent shall not be unreasonably withheld or delayed. Provider shall cooperate fully with the C9W and its legal representatives in the investigation of any action, claim or liability covered by an indemnification from C9W.

17. Disclaimers; Limitation of Liability.

EXCEPT AS SET FORTH IN THIS AGREEMENT, C9W EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, ADVERTISING OR DATA SUPPLIED INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. C9W DOES NOT GUARANTEE, REPRESENT OR WARRANT THAT IT WILL FILL ALL OF PROVIDER'S AVAILABLE ADVERTISING INVENTORY WITH PAID ADVERTISEMENTS. C9W SHALL NOT BE LIABLE FOR THE CONTENT OF ANY ADVERTISING, ANY UNAVAILABILITY OF THE SERVICES OR THE INTERNET, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION.

IN NO EVENT SHALL C9W BE LIABLE TO PROVIDER OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUES OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SALES AND/OR SERVICES PROVIDED HEREUNDER, OR C9W'S FULFILLMENT OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OF NOT C9W HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 18. Insurance.** C9W 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 Section 18 nor Provider's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by C9W under this Agreement.

- a. C9W shall maintain Commercial General Liability insurance with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) Each Occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability.
- b. C9W shall maintain Professional Liability Insurance with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) Each Occurrence. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of products, services and licensed programs, as well as cyber risk under this Agreement. Such insurance shall also include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of

privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement. The Professional Liability Insurance retroactive coverage date shall be no later than the Effective Date. C9W shall maintain an extended reporting period providing that claims first made and reported to the insurance company within two (2) years after termination of the Agreement will be deemed to have been made during the policy period.

- c. C9W shall maintain Worker's Compensation & Employer's Liability in accordance with Chapter 440 Florida Statutes and applicable federal laws.
- d. C9W shall endorse Provider as an Additional Insured on each policy required to be maintained by C9W, except for Worker's Compensation & Employer's Liability. 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". C9W shall provide Provider with evidence of required minimum insurance coverages and endorsements prior to the Effective Date.
- e. C9W 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 the policy.
- f. Provider'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 Section 18 from time to time throughout the term and any extension hereof. Provider may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Provider shall provide C9W a written notice of rejection, and C9W shall comply within thirty (30) days of receipt of the notice.
- g. C9W acknowledges the limits, coverages and endorsements required by this Section 18 are intended to minimize liability for Provider. C9W agrees that it will not rely upon the requirements of this Section 18 when assessing the extent or determining appropriate types or limits of insurance coverage to protect C9W against any loss exposures, whether as a result of this Agreement or otherwise.

19. General Provisions.

- a. **Independent Contractor Status.** Each party shall be and act as an independent contractor and not as partner, joint venturer or agent of the other. Each party shall bear all its own expenses under this Agreement except as specifically provided above.
- b. **Entire Agreement; Amendment.** This Agreement is intended by the parties as a final expression of their agreement and intended to be complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes and terminates all prior agreements and understandings between the parties with respect to such subject matter. This Agreement may be changed only by mutual agreement of the parties in writing.
- c. **Successors and Assigns; Third Party Beneficiaries.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. This Agreement and the rights hereunder are not transferable without the prior written consent of the non-assigning party, which may be withheld in the latter's sole discretion; provided, however, that C9W may, without the necessity of such consent, assign this Agreement and its rights and obligations hereunder to a purchaser of substantially all of C9W's ownership interests or business by sale, merger or otherwise.
- d. **Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Florida, without regard to the principles of conflicts or choice of law of any jurisdiction.

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Jurisdiction and venue for any dispute hereunder shall lie only in the state and federal courts located in Palm Beach County, Florida.

- e. **Notices.** All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, telecopier, courier service or personal delivery, to the address and contact information set forth above, or to such other address or attention of such other Person as such party shall advise the other party in writing. All such notices and communications shall be deemed to have been duly given when delivered by hand, if personally delivered; when delivered by courier, if delivered by commercial courier service; five (5) business days after being deposited in the mail, postage prepared, if mailed; and when receipt is mechanically acknowledged, if sent by telecopy.
- f. **Waiver/ Severability.** The waiver by either party of a breach or right under this Agreement will not constitute a waiver of any other or subsequent breach or right. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from the remainder of this Agreement, which will remain in full force and effect.
- g. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one document.
- h. **Force Majeure.** No failure or omission by the parties hereto in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement nor create any liability if the same shall arise from any cause or causes either resulting from the conduct of the other party or beyond the control of the parties, including but not limited to the following which, for the purposes of this Agreement, shall be regarded as beyond the control of the party in question: acts of God, acts or omissions of any government or any rules, regulations or orders of any governmental authority or any officer, department, agency or instrument thereof; fire, storm, flood, earthquake, accident, acts of the public enemy, war, rebellion, Internet brown out, insurrection, riot, invasion, strikes, or lockouts, and in such event, the affected party's time for performance shall be adjusted by the amount of the delay caused thereby.
- i. **No Jury Trial.** EACH PARTY HERETO WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION 19(i) HAS BEEN DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS SHALL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER REPRESENTS AND WARRANTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS TO (OR ASSIGNMENTS OF) THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL (WITHOUT A JURY) BY THE COURT.
- j. **Incorporation by References.** All exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- k. **Consent or Action.** Wherever this Agreement requires the Provider's consent or approval or permits the Provider to act, such consent, approval or action may be given or performed by the Airport Director or his designee.
- l. **Inspector General.** Pursuant to Ordinance No. 2009-049, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions,

Jurisdiction and venue for any dispute hereunder shall lie only in the state and federal courts located in Palm Beach County, Florida.

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accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

m. **Effective Date.** This Agreement shall become effective when signed by Parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

{Remainder of page intentionally left blank.}

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{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly made effective as of the day and year first above written.

ATTEST:
SHARON R. BOCK
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

Deputy Clerk

Karen T. Marcus, Chair

(Seal)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

Director, Department of Airports

Signed, sealed & delivered in the presence of two witnesses:

Signature

Lauren Oliver

Print Name

Signature

Andrew Metcalf

Print Name

CLOUD 9 WIRELESS,
a California Corporation

By: _____
Signature

Sebastian Torkin

Print Name

President

Title

(Corporate Seal)

CLOUD 9
SEAL

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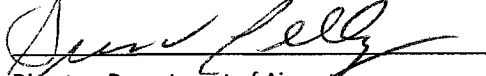
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APPROVED AS TO TERMS AND CONDITIONS:



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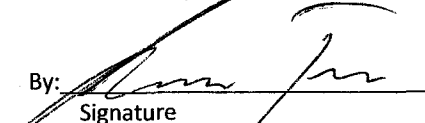


Signature

Andrew Metcalf

Print Name

CLOUD 9 WIRELESS,
a California Corporation

By: 

Signature

Sebastian Torkin

Print Name

President

Title

(Corporate Seal)

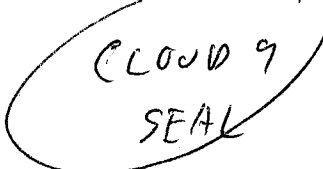


Exhibit A

Make Google My Homepage Campaign Brief

ADVERTISER INFORMATION	
Company Legal Name	Google, Inc.
Address	1600 Amphitheatre Parkway
Address 2	
City	Mountain View
State / Province	CA
Zip / Postal Code	94043
Country / Region	USA

CAMPAIGN INFORMATION	
Campaign Name	Make Google My Homepage
Product/Service	Google Search
Earliest Scheduled Start Date (if different than Effective Date)	August 1, 2011
Scheduled End Date	None specified
Format Type	Direct Response <input checked="" type="checkbox"/> Video <input type="checkbox"/> LeadGen <input type="checkbox"/>
Payment Type	Cost Per Action <input checked="" type="checkbox"/> Flat Rate <input type="checkbox"/> Cost Per Session <input type="checkbox"/>
Destination Page	Included <input type="checkbox"/> Not-Included <input checked="" type="checkbox"/> Depends on Location <input type="checkbox"/>
Branching	Required <input type="checkbox"/> Not-Required <input checked="" type="checkbox"/>

TARGETED GROUPS AND RATES				
Group	Targeting Criteria	CPA	CPS	Flat Rate
Group 1	Internet Explorer users only	\$1.055 per homepage set	n/a	n/a
Group 2	Firefox Users	\$1.055 per homepage set	n/a	n/a

EXCLUDED GROUPS	
Group	Description

ST

Exhibit A

Make Google My Homepage Campaign Brief

ADVERTISER INFORMATION	
Company Legal Name	Google, Inc.
Address	1600 Amphitheatre Parkway
Address 2	
City	Mountain View
State / Province	CA
Zip / Postal Code	94043
Country / Region	USA

CAMPAIGN INFORMATION	
Campaign Name	Make Google My Homepage
Product/Service	Google Search
Earliest Scheduled Start Date (if different than Effective Date)	August 1, 2011
Scheduled End Date	None specified
Format Type	Direct Response <input checked="" type="checkbox"/> Video <input type="checkbox"/> LeadGen <input type="checkbox"/>
Payment Type	Cost Per Action <input checked="" type="checkbox"/> Flat Rate <input type="checkbox"/> Cost Per Session <input type="checkbox"/>
Destination Page	Included <input type="checkbox"/> Not-Included <input checked="" type="checkbox"/> Depends on Location <input type="checkbox"/>
Branching	Required <input type="checkbox"/> Not-Required <input checked="" type="checkbox"/>

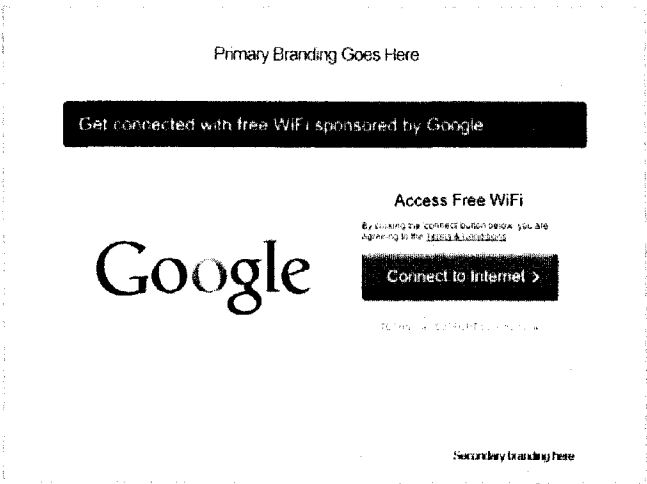
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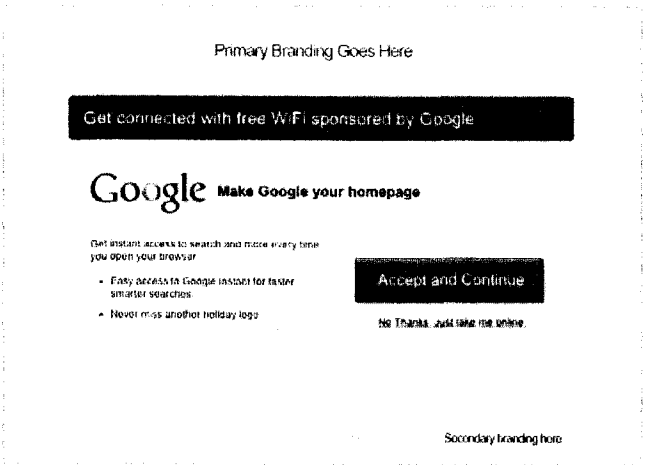
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Page 1



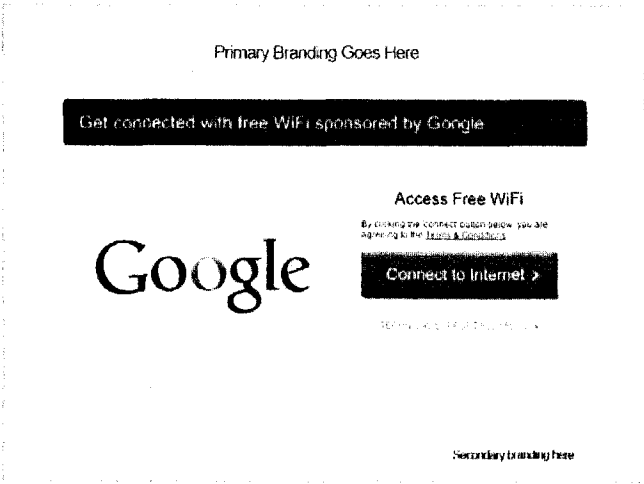
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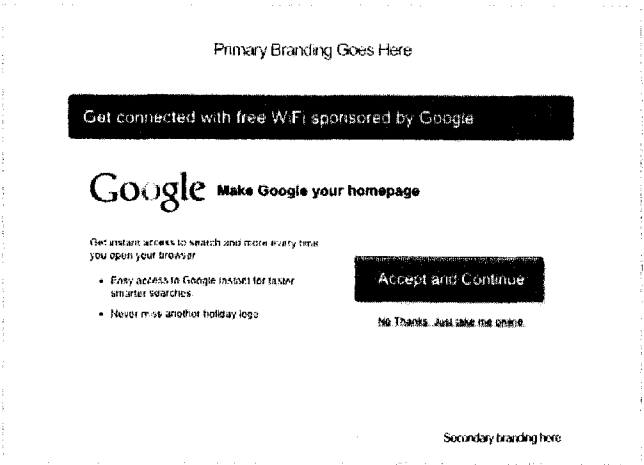
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Page 1



Page 2



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CERTIFICATE OF LIABILITY INSURANCE

OP ID: MF

DATE (MM/DD/YYYY)
06/17/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. 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).

PRODUCER Sweet & Baker Ins. Brokers Inc 44 Second Street San Francisco, CA 94105-3440 Forrest Wittenmeier 512-2104	415-512-2100 415-512-1115	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: CLOUD-2	FAX (A/C, No):
INSURED Cloud 9 Wireless, Inc. Attn: Sebastian Tonkin PO Box 422032 San Francisco, CA 94142	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : The Hartford		
	INSURER B : AXIS Surplus Insurance Company		
	INSURER C : Lloyds Underwriters		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		57SBADO7692	06/22/11	06/22/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			57SBADO7692	06/22/11	06/22/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB EXCESS LIAB DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	57WECZX8259	06/22/11	06/22/12	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Errors & Omission Each Wrongful Act			ECN000067541001 PRIMARY POLICY	07/21/10	07/21/11	Limit: 1,000,000 Ded: 5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Palm Beach Cnty Board of Cnty Commisioners, a Political Subdivision of the state of Florida, its officers, employees and agents c/o Dept. of Airports, 846 Palm Beach Intl Airport, West Palm Beach, Florida 33406 is added as additional insured as respects to work performed by the named insd.10 days notice of canc. will apply for non-payment of prem.

CERTIFICATE HOLDER	CANCELLATION
Palm Beach County Board c/oDept of Airports 846 Palm Beach Intl Airport West Palm Beach Florida, FL 33406	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Marta Fleming



CERTIFICATE OF LIABILITY INSURANCE

OP ID: MF

DATE (MM/DD/YYYY)
06/17/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. 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).

PRODUCER Sweet & Baker Ins. Brokers Inc 44 Second Street San Francisco, CA 94105-3440 Forrest Wittenmeier 512-2104	415-512-2100 415-512-1115	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: CLOUD-2
INSURED Cloud 9 Wireless, Inc. Attn: Sebastian Tonkin PO Box 422032 San Francisco, CA 94142	INSURER(S) AFFORDING COVERAGE INSURER A : The Hartford INSURER B : AXIS Surplus Insurance Company INSURER C : Lloyds Underwriters INSURER D : INSURER E : INSURER F :	NAIC #

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		57SBADO7692	06/22/11	06/22/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			57SBADO7692	06/22/11	06/22/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB EXCESS LIAB DEDUCTIBLE RETENTION \$	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	57WECZX8259	06/22/11	06/22/12	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Errors & Omission Each Wrongful Act			ECN000067541001 PRIMARY POLICY	07/21/10	07/21/11	Limit: 1,000,000 Ded: 5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Palm Beach Cnty Board of Cnty Commisioners, a Political Subdivision of the state of Florida, its officers, employees and agents c/o Dept. of Airports, 846 Palm Beach Intl Airport, West Palm Beach, Florida 33406 is added as additional insured as respects to work performed by the named insd.10 days notice of canc. will apply for non-payment of prem.

CERTIFICATE HOLDER Palm Beach County Board c/oDept of Airports 846 Palm Beach Intl Airport West Palm Beach Florida, FL 33406	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Marta Fleming
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