

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	<u>(\$42,000)</u>	<u>(\$42,000)</u>	<u>(\$42,000)</u>	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	<u><u>(\$42,000)</u></u>	<u><u>(\$42,000)</u></u>	<u><u>(\$42,000)</u></u>	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Proposed Budget? Yes X No _____
 Budget Account No: Fund 4100 Department 120 Unit 8430 Rsource 4469
 Reporting Category _____

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

ZoomSystems will be obligated to pay the greater of the \$500 minimum monthly guarantee per machine or the percentage of gross revenues applicable to the machine, whichever is greater. The fiscal impact analysis assumes payment of the minimum monthly guarantee for seven machines.

C. Departmental Fiscal Review: *cm Simmer*

III. REVIEW COMMENTS

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

Susan Neary 8/14/14
 5/0 AMOFMB
 8/13 8/13

Ann J. Jacobson 8/18/14
 Contract Dev. and Control
 8 18 14 B. Wheeler

B. Legal Sufficiency:

Anne Delgant 8/19/14
 Assistant County Attorney

C. Other Department Review:

 Department Director

AUTOMATED RETAIL VENDING CONCESSION AGREEMENT

This Automated Retail Vending Concession Agreement (this "Agreement") is made and entered into this _____, 2014 by and between **Palm Beach County**, a political subdivision of the State of Florida ("County"), and **NewZoom, Inc.**, ("Concessionaire"), a California corporation, having its office and principal place of business at 22 Fourth Street, Floor 16, San Francisco, CA 94103.

WITNESSETH:

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

WHEREAS, Concessionaire submitted a response to County's Request for Proposals for Automated Retail Vending Concession, RFP No. PB-14-4 issued on April 28, 2014 ("RFP"); 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

The following words, terms, and phrases wherever used in this Agreement shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

- 2.01 "ADA" means Americans with Disabilities Act.
- 2.02 "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.
- 2.03 "Airport" means the Palm Beach International Airport located in Palm Beach County, Florida.

- 2.04 “Airport Concession Disadvantaged Business Enterprise” or “ACDBE” 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.
- 2.05 “Airport Director” means the Director or Acting Director of the Palm Beach County Department of Airports.
- 2.06 “Assignment” has the meaning provided in Article 16 to this Agreement.
- 2.07 “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.
- 2.08 “Commencement Date” has the meaning provided in Section 3.02.
- 2.09 “Concession” means the Automated Retail Vending Concession operated by Concessionaire pursuant to this Agreement.
- 2.10 “Concession Fee” has the meaning provided in Section 5.01.
- 2.11 “Contract Year” means the twelve (12) month period, beginning on October 1, 2014 and ending on September 30, 2015, and each twelve (12) month period thereafter, until the termination or earlier expiration of this Agreement.
- 2.12 “County” has the meaning provided in the preamble to this Agreement.
- 2.13 “Day” means a calendar day of twenty four (24) hours measured from midnight to the next midnight.
- 2.14 “Department” means the Palm Beach County Department of Airports.
- 2.15 “Effective Date” has the meaning provided in Section 3.01.
- 2.16 “FAA” means the Federal Aviation Administration.
- 2.17 “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: (1) 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; (2) 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; (3) returns to manufacturers; or (4) refunds to customers (but only to the extent the original sale to that customer was included in Gross Revenues). 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.

- 2.18 "Initial Term" has the meaning provided in Section 3.02.
- 2.19 "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.
- 2.20 "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.
- 2.21 "Monthly Transaction Report" has the meaning provided in Section 5.08.
- 2.22 "Ordinance" has the meaning provided in Section 11.02.
- 2.23 "Privilege Fee" means six and one-half percent (6.5%) of monthly Gross Revenues earned from Stores primarily selling consumer electronics and related devices such as headphones and electric charging devices, and ten percent (10%) of monthly Gross Revenues earned from Stores primarily selling products and merchandise other than consumer electronics. For purposes of this definition, the term "primarily" means seventy five percent (75%) or more of the products or merchandise sold from the Store(s).
- 2.24 "Public Areas" has the meaning provided in Section 4.02(A).
- 2.25 "RFP" has the meaning set forth in the Recitals to this Agreement.
- 2.26 "Relocation Notice" has the meaning provided in Section 7.07.
- 2.27 "Renewal Term" has the meaning provided in Section 3.03.
- 2.28 "Response" means the proposal, including attachments and exhibits, submitted by Concessionaire in response to the RFP.
- 2.29 "Store" means automated retail vending machines installed, operated and maintained pursuant to this Agreement for the sale of upscale products such as electronics and other specialty items.

- 2.30 "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.
- 2.31 "Term" means the Initial Term and any Renewal Term.
- 2.32 "Terminal" means the commercial passenger terminal building located at Airport.
- 2.33 "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, 2014 ("Commencement Date") and terminating on September 30, 2017 ("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 one (1) additional term of two (2) years ("Renewal Term"). The Renewal Term shall be upon the same terms and conditions as set forth herein. In the event County desires to renew this Agreement, County shall provide written notice to Concessionaire no less than sixty (60) day prior to the expiration of the Initial Term. 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, this Agreement shall terminate at the end of the Initial 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" 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 of 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 this Section, County has not designated for Concessionaire's use pursuant to this Agreement. The general privileges, uses and rights granted in this Section 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 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 monthly Concession Fees equal to the greater of the Minimum Monthly Guarantee or the Privilege Fee applicable to each Store ("Concession Fee").
- 5.02 **Minimum Monthly Guarantee.**
- A. The Minimum Monthly Guarantee shall be Five Hundred Dollars (\$500.00) per Store per month. In the event a Store is installed or removed on a day other than the first (1st) day of the month, the Minimum Monthly Guarantee for such Store shall be pro-rated on a per diem basis based on the actual number of days in the month.
 - B. Commencing on the Commencement Date and on the first (1st) day of each and every month thereafter, Concessionaire shall pay to the County the Minimum Monthly Guarantee per Store, without demand, deduction, holdback or setoff.
- 5.03 **Privilege Fee.** In the event the Privilege Fee applicable to a Store is greater than the Minimum Monthly 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 (20th) 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 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.
- 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 shall be deemed to be a material breach of this Agreement. The obligations arising under this Section 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. 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 Store and month.
- C. Calculation of Concession Fee payable to County for the preceding Contract Year by Store.
- D. The audit report shall include an opinion on the schedules and calculations required by this Section.

Failure to deliver an audit report in accordance with the requirements of this Section shall be deemed to be a material breach of this Agreement. If the audit report indicates that the Concession Fees (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 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 Ten Thousand Dollars (\$10,000). 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 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, or a cash deposit. In the event the Security Deposit is in the form of cash, it shall be held by County, without the obligation to pay or earn interest thereon, and may be commingled with other County funds. 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 or provide a cash deposit in the full amount of the Security Deposit required hereunder. A Security Deposit in the form of a Letter of Credit or Bond 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 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. The obligations arising under this Section 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 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, the 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.

- C. Stores shall accept a minimum of three (3) major credit cards, including MasterCard and Visa.
- D. Stores shall provide transaction receipts if desired by the customer.
- E. 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.
- F. Stores shall have the capability of providing instructions in English and Spanish.
- G. 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.
- H. 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.
- I. 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, Concessionaire shall provide County with a written summary identifying the products to be sold from each Store and the proposed pricing for each item. Concessionaire shall provide County with an updated pricing summary upon request.
- B. Any modifications to the prices charged by Concessionaire for its products shall be subject to 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 three (3) retail outlets 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 seven (7) days a week, from 8:30 a.m. to 10:30 p.m., 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 regarding 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 only install Stores at locations approved by County.
- 7.02 Installation of Improvements or Equipment. All 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, including the Stores, 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 shall be removed or reconstructed in accordance with the requirements of this Article at Concessionaire's sole cost and expense.
- 7.03 Title to Improvements. Except as otherwise provided for herein, all fixtures and improvements, excluding the Stores and other trade fixtures installed at the Airport by

Concessionaire, 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 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 at the Airport upon the expiration or earlier termination of this Agreement.

- 7.04 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 shall survive the expiration or earlier termination of this Agreement.
- 7.05 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.

- 7.06 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.
- 7.07 Relocation of Equipment. Concessionaire acknowledges that airports are a dynamic environment; therefore, it may be necessary to relocate or remove Stores at the Airport from time to time. 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 thirty (30) 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.
- 7.08 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 brand(s) 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 establish a maintenance plan prior to commencement of services, which shall be provided to County upon request. The maintenance plan should include: (1) preventative maintenance activities and schedules; and (2) a schedule of periodic tests and inspections.

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.
- 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 the installation of all utility connections necessary for the operation of the Stores. County may elect to invoice Concessionaire monthly for electrical usage based on the estimated consumption for the Stores. Rates for electrical usage will be based on the 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 Palm Beach County Criminal History Record Check Ordinance (Chapter 2, Article IX, Palm Beach County Code) ("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. 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, 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". County may modify the Additional Insured endorsement upon written notice to Concessionaire.
- 12.05 Certificate of Insurance. Concessionaire shall provide County or its designated contractor 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 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 are intended to minimize liability for County. Concessionaire agrees that it will not rely upon the requirements of this Article 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 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. In the event this Agreement is renewed, this Agreement shall automatically terminate and expire at the end of the Renewal Term.
- 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, 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 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 RFP 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 (90) consecutive 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: Legal Department
NewZoom, Inc.
22 Fourth Street, Floor 16
San Francisco, CA 94103

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 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 in County Contracts. Concessionaire acknowledges that County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Concessionaire is prohibited from discriminating against any employee, applicant, or client because of race, color, creed, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.
- 21.02 Federal Non-Discrimination Covenants.
- (A) Concessionaire, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
- (1) In the event facilities are constructed, maintained or otherwise operated on the Store Locations for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended.

- (2) No person, on the grounds of race, color or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in Concessionaire's personnel policies and practices or in the use or operation of Concessionaire's services or facilities.
 - (3) Concessionaire agrees that in the construction of any improvements on, over, or under Airport land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 - (4) Concessionaire shall use the Store Locations in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended.
 - (5) In the event of a breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Agreement as if this Agreement had never been made or issued. This Agreement shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.
- (B) Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded in participating in any activity conducted with or benefitting from Federal assistance.
- (C) Concessionaire assures that, in performance of its obligations hereunder, it will fully comply with the requirements of 14 CFR Part 152, as now or hereafter amended, to the extent applicable to Concessionaire, to ensure that no person will be excluded from participation in any employment, contracting or leasing activities covered by such regulations on the grounds of race, creed, color, national origin or sex. Concessionaire, if required, will provide assurances to County that Concessionaire will undertake an affirmative action program or steps for equal employment opportunity and will require the same of its subcontractors.

21.03 Airport Concession Disadvantaged Business Enterprises ("ACDBE"). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any

concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

21.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.

- (A) Concessionaire agrees that the ACDBE participation in this Agreement shall be at least equal to five percent (5%) throughout the Term, or Concessionaire shall clearly demonstrate to the Department its good faith efforts to do so in a manner acceptable to the Department.
- (B) "Good faith efforts" are those efforts that could reasonably be expected to result in ACDBE participation. Concessionaire shall actively seek to obtain ACDBE participation in this Agreement and shall document those efforts. Efforts that are merely "pro forma" are not considered good faith efforts in meeting the ACDBE goal. In determining whether or not a Concessionaire has made such good faith efforts, the Department will refer to the description of good faith efforts as provided in 49 CFR Parts 23 and 26.
- (C) For the purpose of verifying Concessionaire's good faith efforts, Concessionaire shall keep and maintain such books of account and records as necessary to document compliance with 49 CFR Part 23, as now or hereafter amended or any successor regulation, and this Section. County and its representatives shall have the right to inspect and audit such books of account and records upon reasonable notice to Concessionaire at a location convenient for County and its representatives.
- (D) Concessionaire shall provide written quarterly reports on or before the twentieth (20th) day of each reporting month (January, April, July and October of each Contract Year) to the Department, in a form and detail satisfactory to the Department, as to the participation of ACDBE's in this Agreement. The quarterly reports shall detail ACDBE participation for each quarter, as well as the cumulative "to date" participation for the entire Contract Year. Quarterly reports shall be certified by an officer of Concessionaire as being true and accurate. If requested by the Department, the quarterly reports shall include certification of receipt payment from the ACDBE firms participating in this Agreement, in a form and detail satisfactory to the Department. In the event the ACDBE participation level drops below the established ACDBE participation goal, Concessionaire shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal. Concessionaire shall document its good faith efforts to achieve the ACDBE participation goal and provide written reports to the Department documenting such good faith efforts. The Department may require the reports required hereunder to be submitted electronically.

- (E) Concessionaire shall use good faith efforts to replace any ACDBE that is terminated or has otherwise failed to complete its agreement or subcontract with another ACDBE. Concessionaire shall notify the Department of any ACDBE's inability or unwillingness to perform and shall provide reasonable documentation. Concessionaire shall obtain prior approval from the Department of the substitution an ACDBE.
- (F) Concessionaire shall provide the Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Lease upon request.

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 RFP or Concessionaire's Response, the order-of-precedence shall be (1) this Agreement; (2) the RFP; 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 RFP, 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 Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Concessionaire, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- 22.23 No Third Party Beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of County and/or Concessionaire.
- 22.24 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.
- 22.25 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.
- 22.26 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 duly executed this Agreement as of the day and year first above written.

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

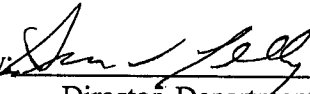
By: _____
Priscilla A. Taylor, Mayor

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

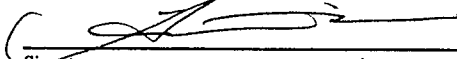
**APPROVED AS TO TERMS
AND CONDITIONS**

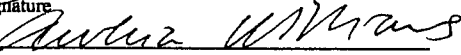
By: _____
County Attorney

By:  _____
Director, Department of Airports

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


**CONCESSIONAIRE:
NewZoom, Inc.**



Signature


Name (typed or printed)

By:  _____
Signature



Signature
Erin Phillips

Name (typed or printed)

Russ Yoshinaka
SVP Corporate Development

Title: _____

(Seal)

EXHIBIT "A"
INVENTORY LIST

C. Product and Pricing Plan

3 FLOZ

Product	Price	Product	Price	Product	Price	Product	Price
3froz - Behind Closed Doors	\$35.00	Big Sexy - Weatherproof Spray	\$19.00	Dr Dennis Gross - Glow Pads	\$32.00	Klorane - Shampoo/Conditioner	\$15.00
3froz - Hair Essentials	\$62.00	Blow - Body by Blow Mousse	\$9.50	H2O - Sea Salt Must Haves	\$25.00	Malin + Goetz - Deodorant	\$18.00
3froz - In A Clutch	\$54.00	Blow - Dry Shampoo	\$20.00	Help Remedies - Blister & Cut Myself	\$9.00	Malin + Goetz - Essentials Kit	\$30.00
3froz - Jet Lag Kit	\$60.00	Blow - Hairspray + Texturizing Mist	\$17.50	Help Remedies - Tired & Cant Sleep	\$9.00	Malin + Goetz - Men's Kit	\$34.00
3froz - Men's Essentials	\$62.00	Blow - Textstyle	\$9.50	Herban Essentials - Lavender Towelettes	\$16.00	Murad - Acne Moisturizer	\$47.00
3froz - Travel Essentials	\$36.00	Blowfish - Hangover Tablets	\$12.00	Herban Essentials - Mixed Towelettes	\$16.00	Murad - Aging Skin Solution	\$40.00
Air Repair - 2pc Pack	\$22.00	Burts Bees - Wipes	\$7.50	Jack Black - 2pc kit	\$38.00	Murad - Clarifying Cleanser	\$10.50
Air Repair - 5pc Kit	\$42.00	CO Bigelow - Razor	\$49.00	Jack Black - All Over Wash	\$9.50	Murad - Essential C Night Moisture	\$60.00
Air Repair - Complexion Boost Moisturizer	\$20.00	David Kirsch - B12	\$21.00	Jack Black - Daily Face Wash	\$12.00	Murad - Skin Radiance Kit	\$45.00
Anthony For Men - After Shave Balm	\$20.00	David Kirsch - Calming Bubbles	\$41.00	Jack Black - Face Buff	\$18.00	Murad - Wipes 2 pack	\$26.00
Anthony For Men - Deodorant	\$15.00	David Kirsch - Energy Bubbles	\$41.00	Jack Black - Pit Boss Deodorant	\$16.00	Murad - Youthful Renewal	\$45.00
Anthony For Men - Essential Traveler Kit	\$48.00	David Kirsch - Flight Pack	\$30.00	Jack Black - Supreme Cream	\$13.00	Ole Henriksen - Foaming Cleanser	\$9.00
Anthony For Men - Glycolic Cleanser	\$9.00	David Kirsch - Thermo Bubbles	\$42.00	Jack Black - Turbo Wash	\$10.00	Ole Henriksen - Gel Eye Contour	\$38.00
Anthony For Men - Moisturizer	\$27.00	David Kirsch - Vitamin 10 Pack	\$15.00	Kate Somerville - Daily Deflector SPF 50	\$48.00	Supergoop - Everyday Sunscreen	\$15.00
Big Sexy - Powder Play	\$17.00	Dermalogica - Precleanse Wipes	\$18.00	Kate Somerville - Derna Quench Liquid Lift	\$95.00	Supergoop - SPF 30+ Mist	\$13.00
Big Sexy - Root Pump	\$7.00	Dermalogica -Meet Dermalogica kit	\$30.00	Kate Somerville - Eradikate	\$22.00	Supergoop - SPF 50+ Mist	\$13.00
Big Sexy - Spray Play/Root Pump	\$14.00	Deva Curl - Hairspray	\$9.00	Kate Somerville - Exfolikate	\$85.00	Supersmile - Toothbrush and Toothpaste	\$22.00
Big Sexy - Volumizing Dry Shampoo	\$18.00	Deva Curl - Shampoo/Conditioner	\$19.00	Klorane - Dry Shampoo	\$9.00	The Laundress - Crease Release	\$8.00
Big Sexy - Volumizing Shampoo/Conditioner	\$10.00	Deva Curl -Light Defining Gel	\$8.00	Klorane - Eye Patches	\$18.00	Vbeaute IT Kit	\$99.00

Amazon

Product	Price
Kindle E-reader	\$ 69.00
Kindle Fire HD 7 inch Tablet 8GB	\$ 139.00
Kindle Fire HD Origami Basic Cover, Black	\$ 44.99
Kindle Fire HDX 7 inch Tablet 16GB	\$ 229.00
Kindle Fire HDX 8.9 inch Tablet 16GB	\$ 379.00
Kindle Paperwhite	\$ 119.00
Kindle PaperWhite Leather Cover, Onyx Black	\$ 39.99
Kindle PowerFast	\$ 19.99

Benefit

Product	Price	Product	Price
Agent Zero Shine	\$ 30.00	Hello Flawless Oxygen Wow Honey	\$ 36.00
B.Right 6-Pack	\$ 24.00	Hello Flawless Powder Beige	\$ 34.00
Badgal Liner Black	\$ 20.00	Hello Flawless Powder Champagne	\$ 34.00
BadGal Mascara	\$ 19.00	Hello Flawless Powder Honey	\$ 34.00
Beauty Score	\$ 36.00	Hervana	\$ 28.00
Benetint	\$ 30.00	High Beam	\$ 26.00
Big Beautiful Eyes	\$ 32.00	Hoola	\$ 28.00
Big Easy 2	\$ 38.00	Hydra-smooth Lip Color Dare Me	\$ 19.00
Big Easy 3	\$ 38.00	Hydra-smooth Lip Color Fling Thing	\$ 19.00
Big Easy 4	\$ 38.00	Hydra-smooth Lip Color Nice n' Teasy	\$ 19.00
Boi-ing 1	\$ 20.00	Instant Brow Light	\$ 20.00
Boi-ing 2	\$ 20.00	Instant Brow Medium	\$ 20.00
Boi-ing 3	\$ 20.00	Lollitint	\$ 30.00
Brow Zings	\$ 30.00	Ooh La Lift	\$ 22.00
Dandelion	\$ 28.00	Poreprofessional	\$ 30.00
Dr. Feelgood	\$ 30.00	POREfessional Mini	\$ 10.00
eye BRIGHT	\$ 20.00	Posietint	\$ 30.00
Fake up 1	\$ 24.00	Rockateur	\$ 28.00
Fake up 2	\$ 24.00	Smokin' Eyes	\$ 36.00
Fake up 3	\$ 24.00	That Gal	\$ 26.00
First Class Glosses	\$ 24.00	They're Real!	\$ 23.00
Flawless	\$ 32.00	They're Real! Mini	\$ 10.00
Gettin' Cheeky!	\$ 17.00	Ultra'mate Sexy Six	\$ 24.00
Gimme Brow LightMedium	\$ 22.00	Ultra Plush Lip Gloss A-lister	\$ 16.00
Gimme Brow MediumDeep	\$ 22.00	Ultra Plush Lip Gloss Fauxmance	\$ 16.00
Hello Flawless Oxygen Wow Beige	\$ 36.00	Ultra Plush Lip Gloss Kiss You	\$ 16.00
Hello Flawless Oxygen Wow Champagne	\$ 36.00	Watt's Up	\$ 29.00

Best Buy Express

Product	Price	Product	Price
Apple EarPods w/ Remote and Mic	\$ 29.99	JBL Flip Speaker	\$ 99.99
Apple iPad Mini	\$ 329.99	JVC HAEBX85-Z Sport Clip Earphones Black	\$ 19.99
Apple iPod Nano 16GB Blue 7th Gen	\$ 149.99	JVC HAFX34-B Marshmallow w Mic Black	\$ 20.99
Apple iPod Nano 16GB Space Gray 7th Gen	\$ 149.99	Mophie black mini	\$ 59.99
Apple iPod Touch 16 GB Silver 5th Gen	\$ 229.99	Mophie Juice Pack Air iPhone 5 - Red	\$ 99.99
Apple iPod Touch 32 GB Silver 5th Gen	\$ 299.99	Mophie Juice Pack Air Plus iPhone 5 - Black	\$ 119.99
Beats Executive Over-the-Ear Headphones - Black	\$ 299.99	MyCharge Hub 6000	\$ 99.99
Beats Solo Over-the-Ear Headphones - White	\$ 199.99	Oloclip 4-in-1 Photo Lense for Apple iPhone 5	\$ 69.99
Beats Studio - Blue	\$ 299.99	Pebble	\$ 149.99
Beats Tour 2.0 - Black	\$ 149.99	Prepango Mobile Phone Kit w sim	\$ 44.99
Belkin Dual Wall/Car Lightning - Black	\$ 49.99	Rocketfish Lightning Charge/Sync Cable	\$ 14.99
Belkin Micro AC/DC Power Kit for iPhone/iPod	\$ 39.99	Rocketfish Wall Charger for Micro USB	\$ 29.99
Belkin Rockstar Headphone Splitter	\$ 16.99	Samsung Galaxy Tab 3 - White	\$ 199.99
Bose IE2 Audio Headphones	\$ 99.99	SanDisk 16GB Cruzer Glide	\$ 27.99
Bose MIE2i Mobile Headset	\$ 129.99	SanDisk 16GB Micro SD Ultra	\$ 39.99
Bose QC20i	\$ 299.99	Skullcandy Fix In-Ear with Mic White	\$ 49.99
Bose QuietComfort 3 Acoustic Noise Cancelling Headphones Silver	\$ 349.99	Skullcandy Ink'd - Black	\$ 19.99
Bose SIE2i Green	\$ 149.99	Skullcandy Skullcrusher	\$ 99.99
Bose - QuietComfort® 15 Acoustic Noise Cancelling® Headphones	\$ 299.99	Skullcandy Titan Stereo Earbud Black/Red w mic	\$ 39.99
Canon SX510	\$ 249.99	Sol Jax - White	\$ 39.99
Dynex Converter Adapter Set	\$ 39.99	Sony MDR-NC13 Noise Cancelling Earbuds	\$ 69.99
FitBit force	\$ 129.99	Sony MDR-NC8 Noise Cancelling Headphones Black	\$ 49.99
GoPro - Black	\$ 399.99	Targus laptop charger	\$ 59.99
HDS Sandisk	\$ 24.99	Urbeats in-ear	\$ 99.99
Jam Wireless PLUS Bluetooth Speaker - Grey	\$ 59.99		

Straight Talk

Product	Price
Blackberry Curve	\$ 49.99
BYOP Activation Kit	\$ 14.99
Galaxy Centura	\$ 99.99
Galaxy S III Blue	\$ 399.99
Galaxy S III white	\$ 399.99
Huawei H883G	\$ 199.99
LG 236C	\$ 49.99
LG L38	\$ 79.99

CERTIFICATE
(Corporation)

The undersigned hereby certifies that the following are true and correct statements:

1. That Russ Yoshinaka as the Secretary of New Zoom Inc., a corporation organized and existing in good standing under the laws of the State of CA, hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as of the 1st day of August, 2014, in accordance with the laws of the State of CA, the Articles of Incorporation and the By-laws of the Corporation:

RESOLVED, that the Corporation shall enter into that certain Vending Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that Russ Yoshinaka the SECRETARY of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 5th day of August, 2014.


[Signature]

Corporate Seal

Russ Yoshinaka, Secretary
NEW ZOOM, INC.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/10/2014

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 ABD Insurance & Financial Services 755 Sansome Street, #450 San Francisco, CA 94111	CONTACT NAME:	Certificate Request	
	PHONE (A/C, No, Ext):	415-483-7770	FAX (A/C, No): 415-483-7769
www.theabdteam.com	E-MAIL ADDRESS:	CertRequest@theabdteam.com	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED NewZoom, Inc. dba ZoomSystems 22 Fourth Street, 16th Floor San Francisco CA 94103	INSURER A:	Federal Insurance Company	20281
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES CERTIFICATE NUMBER: 20473719 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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$0 deductible/SIR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	35944027	7/15/2013	2/1/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			73562636	7/15/2013	2/1/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

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 to General Liability.

CERTIFICATE HOLDER Palm Beach County Board of County Commissioners c/o Department of Airports 846 Palm Beach International Airport West Palm Beach, 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 Rod Sockolov

ACORD 25 (2014/01)

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/07/14

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 Aon Risk Services, Inc of Florida 1001 Brickell Bay Drive, Suite #1100 Miami, FL 33131-4937	CONTACT NAME: Aon Risk Services, Inc of Florida	
	PHONE (A/C, No, Ext): 800-743-8130 FAX (A/C, No): 800-522-7514 EMAIL: ADP.COI.Center@Aon.com ADDRESS: ADP.COI.Center@Aon.com	
INSURED ADP TotalSource FL XVI, Inc. 10200 Sunset Drive Miami, FL 33173 L/C/F NewZoom, Inc. DBA Zoom Systems 22 4th Street 16th Floor San Francisco, CA 94103	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : National Union Fire Ins Co of Pittsburgh	19445
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	

COVERAGES **CERTIFICATE NUMBER:** 906326 **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. LIMITS SHOWN ARE AS REQUESTED.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEC RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC 094182725 CA	07/01/14	07/01/15	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
All worksite employees working for the above named client company, paid under ADP TOTAL SOURCE, INC's payroll, are covered under the above stated policy. COVERAGE INCLUDES ALL STATES EXCEPT THOSE THAT ARE MONOPOLISTIC (OH, ND, WY and WA).

CERTIFICATE HOLDER

Palm Beach County Board of County Commissioners
 C/O Department of Airports
 846 Palm Beach International
 West Palm Beach, 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

Aon Risk Services, Inc of Florida

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