

## AGENDA ITEM SUMMARY

☒ Consent      ☐ Regular

**Submitted By: Department of Airports**

**Motion and Title:** Staff recommends motion to approve: Airport Baggage Cart Concession Agreement (Agreement) with Smarte Carte, Inc., at the Palm Beach International Airport (PBI) commencing October 1, 2022 and expiring September 30, 2025, with one 2-year renewal option, for payment of annual concession fees of \$3,000.00.

**Background and Justification:** Request for Submittals (RFS) No. PB 22-6 for Airport Baggage Cart Concession Agreement at PBI was issued on June 21, 2022. Smarte Carte submitted a response on July 15, 2022 and was the sole respondent. Smarte Carte currently operates the baggage cart concession at PBI.

1. Agreement (3)
2. ACDBE schedules

**Recommended By:**

Department Director

8. 18-22

Date \_\_\_\_\_

**Approved By:**

**County Administrator**

8/30/22

Date \_\_\_\_\_

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Capital Expenditures					
Operating Costs					
Operating Revenues	\$-0-	(\$3,187)	(\$3,187)	(\$3,187)	
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	\$-0-	(\$3,187)	(\$3,187)	(\$3,187)	
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Proposed Budget?    Yes   X      No       

Does this item include the use of federal funds? Yes ☐ No ☒

Budget Account No: Fund 4100 Department 120 Unit 8430 RSource 4469  
Reporting Category \_\_\_\_\_

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


The fiscal impact is payment of concession fees in the amount of \$3,000 throughout the 3-year initial term, plus reimbursement of utility costs (\$15.60 per month, or \$187.20 per year). There is an additional 2-year renewal term that is not included above.

### C. Departmental Fiscal Review:

### III. REVIEW COMMENTS

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

ASDell 8/19/22  
OFMB QA 8/18  
JR 8/18

  
Contract Dev. and Control

### B. Legal Sufficiency:

James J. Delaney 8/31/22  
Assistant County Attorney

**C. Other Department Review:**

**Department Director**

REVISÉD 11/17

**(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)**

**C E R T I F I C A T E**  
(Corporation)

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

1. That Greg Schultz is the Secretary of Smarte Carte, Inc., a corporation organized and existing in good standing under the laws of the State of Minnesota, 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 9th day of August, 2022 in accordance with the laws of the State of MN, the Articles of Incorporation and the By-laws of the Corporation:

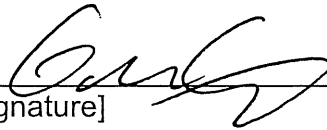
RESOLVED, that the Corporation shall enter into that certain Airport Baggage Cart Concession Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that Greg Schultz, the Chief Legal Officer 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.

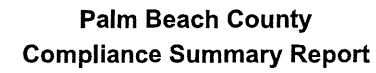
2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

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 9th day of August, 2022.

  
[Signature]  
Greg Schultz, Secretary

Seal



**Risk Profile :** Standard - General Services  
**Required Additional Insured :** Palm Beach County Board of County Commissioners  
**Ownership Entity :**



SOMPO  
INTERNATIONAL

**CONTINUATION CERTIFICATE**

BOND NUMBER: 1156984

In consideration of the premium charged Lexon Insurance Company hereby continues in force  
(Surety)  
the bond originally executed/issued on October 01, 2018 with the bond amount of  
Five Thousand Dollars (\$ 5,000.00)

Principal: Smarte Carte Inc  
(Name & Address) 4455 White Bear Pkwy  
Saint Paul MN 55110

Obligee: Palm Beach County Department of Airports  
(Name & Address) 1000 Turnage Blvd  
West Palm Beach FL 33406

for the period beginning September 30, 2021 and ending September 30, 2022 subject to  
all terms, provisions, conditions and limitations of said bond;

PROVIDED that the liability of Lexon Insurance Company shall not exceed in the  
(Surety)  
aggregated amount above written, whether the loss shall have occurred during the term of said bond  
or during any continuation or continuations thereof, or partly during said term and partly during any continuation  
or continuations thereof.

SIGNED AND SEALED

THIS 17 DAY OF September, 2021

Smarte Carte Inc

(Principal)

BY: Scott Warren

SCOTT WARREN, CFO  
(Name & Title)

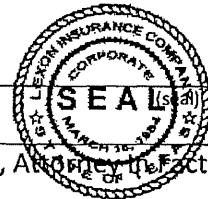
Lexon Insurance Company

(Surety)

BY: Kristi Davis

Kristi Davis

(Name)



Edition 2019.02.22

12890 Lebanon Road Mount Juliet TN 37122 U.S. • Phone: 615.553.9500 • Fax: 615.553.9502

**FAITHFUL PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, Smarte Carte, Inc., 4455 White Bear Parkway, St Paul, MN 55110, as Principal, and Lexon Insurance Company, 12890 Lebanon Rd, Mt Juliet TN 37122, a corporation, duly organized and existing under and by virtue of the laws of the State of Texas, as Surety, are held and firmly bound unto the Palm Beach County Department of Airports, as Oblige, in the sum of Five Thousand and no/100 Dollars (\$5,000.00), lawful money of the United States of America, to be paid to the obligee for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally, firmly by these presents.

**THE CONDITION OF THE FOREGOING OBLIGATION** is such that:

**WHEREAS**, said Principal is an air carrier or other business conducting commercial operations into out of or on Palm Beach International Airport and is required by the Oblige, to give this bond in connection with certain fees and charges incurred in or by such operations of Baggage Cart Concession.

**NOW THEREFORE**, the condition of this obligation is such that if the Principal shall faithfully pay all fees and charges levied by the Oblige; as a result of Principal's operation(s) at Palm Beach International Airport, then this obligation shall be null and void, otherwise to remain in full force and effect, and shall be effective from October 1, 2018 to September 30, 2019, unless extended by a continuation certificate issued by the Surety. However, neither the Surety's decision not to issue a continuation certificate, nor the failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its right to not renew this Bond, shall itself constitute a loss to the Oblige recoverable under this Bond or any extension thereof.

**SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:**

The liability of the Surety under this bond shall not be cumulative.

The Surety shall have the right to terminate its liability under this bond, except as any liability already incurred or accrued, it being understood, however, that cancellation or material change of the bond shall not become effective until thirty (30) days from receipt by certified or registered mail of a written notice to the obligee.

Signed, sealed and dated this 4th day of October, 2018.

Note: ALL SIGNATURES MUST BE NOTARIZED AND THE SURETY MUST AFFIX A POWER OF ATTORNEY FOR THE ATTORNEY-IN-FACT.

Lexon Insurance Company  
(Surety)  
Michele Keeler  
(Signature)  
Michele Keeler, Attorney In Fact  
(Name/Title)  
  
(SEAL)

Smarte Carte, Inc.  
(Principal)  
James W. McFar, CEO  
(Signature)  
JAMES W. MCFAR, CEO  
(Name/Title)  
  
(SEAL)

**AIRPORT BAGGAGE CART CONCESSION AGREEMENT  
PALM BEACH INTERNATIONAL AIRPORT**

**THIS AIRPORT BAGGAGE CART CONCESSION AGREEMENT** is made and entered into this \_\_\_\_\_, 20\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Smarte Carte, Inc., a Minnesota corporation, having its office and principal place of business at 4455 White Bear Parkway, St. Paul, MN 55110 ("Concessionaire").

**WITNESSETH:**

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

**WHEREAS**, Concessionaire submitted a response to County's Request for Submittals No. PB-22-6 issued on June 21, 2022; and

**WHEREAS**, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, operate and manage an Airport Baggage Cart Concession in accordance with the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the promises and 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 terms, when used in this Agreement, shall have the meanings set forth below:

- 2.01 "Additional Insured" has the meaning ascribed to it in Section 10.04.
- 2.02 "Agreement" means this Agreement and all exhibits hereto, which are incorporated herein by this reference. 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.
- 2.04 "Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning ascribed to it in Title 49, Part 23 of the Code of Federal Regulations as now or hereafter amended or any successor regulation.
- 2.05 "Assigned Premises" has the meaning ascribed to it in Section 4.01.
- 2.06 "Baggage Cart System" means the equipment to be provided by Concessionaire to perform the baggage cart concession services required hereunder, which consists of baggage carts and self-service Dispensing Units.
- 2.07 "Bond" has the meaning ascribed to it in Section 5.09.
- 2.08 "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.
- 2.09 "Business Day" means any day other than a Saturday, Sunday or County holiday. Use of the word "day" as opposed to Business Day means a calendar day.
- 2.10 "Commencement Date" has the meaning ascribed to it in Section 3.02.
- 2.11 "Concession" means the concession operated by Concessionaire pursuant to the terms and conditions of this Agreement.
- 2.12 "Concession Fee" has the meaning ascribed to it in Section 5.01.
- 2.13 "Contract Year" means a twelve (12) month period, commencing on October 1, 2022 and ending on September 30, 2023 and each twelve (12) month period thereafter throughout the Term of this Agreement.
- 2.14 "Department" means the Palm Beach County Department of Airports.
- 2.15 "Dispensing Unit" means the equipment to be provided by Concessionaire to dispense baggage carts for use by its customers.
- 2.16 "Effective Date" has the meaning ascribed to it in Section 3.01.
- 2.17 "Equipment" means the equipment installed by Concessionaire at the Airport, including Dispensing Units.



- 2.18 "FAA" means the Federal Aviation Administration or any successor agency.
- 2.19 "Gross Revenues" means all monies paid or payable for all baggage cart services in, on, from or about the Airport pursuant to this Agreement and any other monies collected or received on account of or derived from the business conducted by Concessionaire, its agents and contractors at the Airport pursuant to this Agreement, whether for cash or credit.
- 2.20 "Initial Term" has the meaning ascribed to it in Section 3.02.
- 2.21 "Letter of Credit" has the meaning ascribed to it in Section 5.09.
- 2.22 "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access, which are not leased, assigned or under the contractual control of a third party.
- 2.23 "Renewal Term" has the meaning ascribed to in Section 3.02.
- 2.24 "Security Deposit" has the meaning ascribed to it in Section 5.09.
- 2.25 "Statement of Gross Revenues" has the meaning ascribed to it in Section 5.06.
- 2.26 "Term" has the meaning ascribed to it in Section 3.02.
- 2.27 "Terminal" means the passenger terminal building located at the Airport, including any renovations or expansions.
- 2.28 "TSA" means the Transportation Security Administration or any successor agency thereto.

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

- 3.01 Effective Date. This Agreement shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").
- 3.02 Term. The term of this Agreement shall commence on October 1, 2022 (the "Commencement Date") and terminate on September 30, 2025, unless sooner terminated as provided herein ("Initial Term"). Upon the expiration of the initial term, County shall have the option to renew this Agreement for one (1) additional terms of two (2) years ("Renewal Term"), which shall be upon the same terms and conditions as set forth herein, subject to consent of Concessionaire. In the event County desires to

renew this Agreement, County shall provide written notice to Concessionaire of its desire to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term. The Airport Director shall have the authority to provide such notice on behalf of County. County shall have the absolute right, in its sole discretion, to elect not to renew this Agreement. In the event County elects not to renew this Agreement at the end of the initial term, this Agreement shall terminate at the end of the initial term and Concessionaire shall have no further rights hereunder. For purposes of this Agreement, "Term" shall mean the Initial Term and any Renewal Term.

#### **ARTICLE 4**

#### **PRIVILEGES AND PREMISES**

- 4.01 Description of Specific Privileges, Uses and Rights. Concessionaire shall have the nonexclusive right, privilege and obligation to install, operate and maintain, at its sole cost and expense, a Baggage Cart System within the Terminal locations identified in the listing attached as Exhibit "A", as may be modified from time to time as hereinafter provided ("Assigned Premises"). Prior to installing, adding, removing, relocating or otherwise altering any Equipment on the Airport, Concessionaire shall provide the Department with a list identifying the proposed locations of the Equipment for prior written approval by the Department. Concessionaire shall not install Equipment at any Airport location that has not been approved in writing by the Department in advance. The Department's written approval of a change to location(s) of the Equipment shall constitute a change to the Assigned Premises, effective on the date specified in such written approval, without formal amendment to this Agreement.
- 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 and its employees, contractors, customers, suppliers of service and agents in connection with its operations hereunder. 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 appropriate 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 and its employees, contractors, customers, suppliers of service and agents, in connection with its operations hereunder.

Nothing contained in this Agreement shall be construed as granting Concessionaire or its employees, contractors, customers, suppliers of service and agents, if any, the right to use or occupy any space or area at the Airport improved or unimproved that: (a) is leased to, assigned to, or under the contractual control of a third party; or (b) has not been assigned for use by Concessionaire 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 License. County hereby grants Concessionaire a revocable license to use the Assigned Premises for the sole purpose of providing the concession services required by this Agreement. The parties agree that this Agreement is an agreement for services and nothing in this Agreement shall be construed as granting Concessionaire any title, interest or estate in the Assigned Premises. Concessionaire acknowledges and agrees that the Department may require Concessionaire to relocate any Equipment from time to time. In the event the Department determines that it is necessary or desirable for Concessionaire to relocate its Equipment, the Department shall provide thirty (30) days prior written notice to Concessionaire of the required relocation. Concessionaire shall relocate to location(s) on the Airport designated by the Department for its Equipment upon the date set forth in the Department's written notice; provided, however, County shall be responsible for providing any necessary electrical or telephone connections necessary for such relocation.
- 4.04 Restrictions of Privileges, Uses and Rights. Concessionaire covenants and agrees that the Assigned Premises shall be used solely for the uses permitted in Sections 4.01 and 4.02 and for no other purpose whatsoever.
- 4.05 Condition of the Assigned Premises and Airport. Concessionaire expressly acknowledges that it has inspected the Assigned Premises and Airport and accepts the same "As Is, Where Is" in the condition existing as of the Effective Date, together with all defects latent and patent, if any. Concessionaire further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Airport or the Assigned Premises, including, but not limited to, the physical and/or environmental condition of the Assigned Premises, or any improvements located thereon, or the value of the Assigned Premises or improvements, or the suitability of the Assigned Premises, or any improvements, or Concessionaire's legal ability to use the Assigned Premises for Concessionaire's intended use thereof.

**ARTICLE 5**  
**PRIVILEGE FEES, FACILITY RENTAL AND ACCOUNTABILITY**

- 5.01 Concession Fee. Concessionaire shall pay to County an annual concession fee in the amounts listed below for each Contract Year ("Concession Fee"):

<b>Initial Term</b>	<b>Annual Concession Fee</b>
1 <sup>st</sup> Contract Year	\$3,000.00
2 <sup>nd</sup> Contract Year	\$3,000.00
3 <sup>rd</sup> Contract Year	\$3,000.00
<b>Renewal Term</b>	<b>Annual Concession Fee</b>
4 <sup>th</sup> Contract Year	\$3,000.00
5 <sup>th</sup> Contract Year	\$3,000.00

The Concession Fee shall be paid to County in equal monthly installments on or before the first (1<sup>st</sup>) day of each and every month, without demand, deduction or setoff, throughout the Term of this Agreement.

- 5.02 Late Payments - Interest. Concessionaire may be required pay to County interest at the rate established from time to time by the Board of County Commissioners (but not in excess of one and one-half percent (1½ %) per month not to exceed eighteen percent (18%) per annum) on any late payments commencing thirty (30) days after the amounts are due, which shall be determined at the discretion of the Department. Concessionaire agrees that acceptance of late payments by County shall not constitute a waiver of Concessionaire's default by County with respect to such overdue amount, nor prevent County from terminating this Agreement for default beyond applicable cure periods in the payment of rentals, fees or charges due to County pursuant to this Agreement or from enforcing any other provisions, rights, or remedies granted herein, or conferred by law.
- 5.03 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 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 County may accept such check or payment without prejudice to County's right to recover the balance of said amount due or pursue any other remedy available under this Agreement.
- 5.04 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.

- 5.05 Place of Payments. All payments required to be made by Concessionaire under this Agreement shall be made payable to "Palm Beach County," and shall be paid to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be designated by the Department.
- 5.06 Statement of Gross Revenues. On or before the twentieth (20<sup>th</sup>) day of each and every month, Concessionaire shall submit to the Department, in a form and detail satisfactory to the Department, a monthly report that details the total number of transactions and Gross Revenues by Dispensing Unit for the preceding month. The Department may require the monthly report to be submitted electronically.
- 5.07 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 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 relating to Concessionaire's operations hereunder. 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.
- 5.08 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. 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.

- 5.09 Security for Payment. Concessionaire shall post a security deposit ("Security Deposit") with County in an amount equal to three (3) monthly payments of concession fees. The Security Deposit shall serve as security for the payment of all sums due to County and shall also secure the performance of all obligations of Concessionaire hereunder. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to County. In the event of any failure by Concessionaire to pay any fees, sums or charges to County when due or upon any other failure to perform any of its obligations or other default under this Agreement, then, in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. A Security Deposit shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months after the termination of this Agreement. Not less than thirty (30) calendar days prior to any expiration date of a Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section shall: (a) entitle County to draw down the full amount of such Security Deposit; and (b) 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.
- 5.10 Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Sections 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, Sections 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**ARTICLE 6**  
**OBLIGATIONS OF CONCESSIONAIRE**

6.01 Concession Service Standards.

- A. Concessionaire shall operate and maintain the Equipment for the use and benefit of the traveling public and shall conform in all respects to all applicable federal, state and local laws.
- B. Concessionaire shall provide and maintain a high standard of service, quality and value. Concessionaire shall at all times maintain the Equipment at the highest standard of cleanliness, safety and orderliness and shall keep the area around the Equipment free from any waste or debris which may detract from the appearance of or accessibility to the Equipment.
- C. Concessionaire recognizes that from time to time the Department may cause quality assurance reviews of Concessionaire's operations hereunder. Concessionaire agrees to cooperate fully in these reviews and to immediately take whatever steps are necessary to correct any deficiencies discovered as a result of the reviews.

6.02 Operational Standards and Equipment Requirements.

- A. All Equipment installed by Concessionaire at the Airport shall meet all applicable federal, state and local laws, including, but not limited to, ADA regulations.
- B. All Equipment shall be available for use twenty-four (24) hours a day, seven (7) days a week.
- C. Equipment shall be in new or "like new" condition with the latest technology and features. Equipment shall be capable of withstanding moderate levels of vandalism and abuse.
- D. Concessionaire agrees to furnish its service on a fair, equal, and non-discriminatory basis to all customers and to charge fair, reasonable and non-discriminatory rates.
- E. Concessionaire agrees that all Equipment shall be maintained in good operational order and available for use at all times.

- F. Concessionaire agrees that any modifications to the fees charged to its customers at the Airport for the concession services provided pursuant to this Agreement shall be subject to prior written approval by the Department. As of the Commencement Date, the parties acknowledge that the approved baggage cart rental fee is seven Dollars (\$7.00).
- G. Concessionaire shall not relocate or remove from service any Dispensing Units or increase or decrease the number of baggage carts in service without the prior written approval of the Department.
- H. Concessionaire shall remove from service any Equipment determined by the Department to be unacceptable in its reasonable discretion.
- I. Concessionaire shall cause its employees to conduct themselves at all times in a courteous manner toward the public. Concessionaire's employees are to be neat, clean and appropriately dressed. Concessionaire shall provide its employees with identifiable shirts which are to include Concessionaire's name and/or logo and shall require that such shirts be worn by all employees while on duty.
- J. Concessionaire agrees to employ a sufficient number of employees to:
  - 1. maintain, collect and return baggage carts to the Dispensing Units;
  - 2. properly maintain and keep all Equipment in good operating condition; and
  - 3. provide the administrative and supervisory support necessary to properly operate and maintain the Concession.
- K. Concessionaire, its agents, employees, or suppliers shall not block any areas used for ingress and egress by Airport traffic and shall not interfere with the activities of County, its agents or employees, or any Airport tenant.
- L. Prior to the Commencement Date, Concessionaire shall designate in writing to the Department the name, address and telephone number of the manager who at all times shall be the authorized representative of Concessionaire for all matters relating to the Concession. Concessionaire shall provide written notice to the Department of any change in its manager within three (3) days of the change and shall include any change of address or telephone number.



- M. Concessionaire shall provide Dispensing Units in each location approved by the Department in accordance with this Agreement. Concessionaire shall maintain an adequate number of baggage carts in each Dispensing Unit to meet customer demand. The total number of Dispensing Units may be increased or decreased depending on the availability of space and upon the mutual consent of Concessionaire and the Department. The Department may also require Concessionaire to relocate existing Dispensing Units from time to time in accordance with the procedures set forth in Section 4.03.
- N. Concessionaire agrees that the baggage carts to be provided for use at the Airport shall be equipped with non-marring wheels and bumpers or other such devices which will provide maximum protection against damage to the wall surfaces within the Terminal, which shall be incorporated into the baggage carts' overall design in an aesthetically pleasing manner.
- O. Baggage carts shall be durable and not easily removed from the Airport. Baggage carts must be lightweight in design, easily maneuvered, stable when in use and free from sharp edges and any features which may be considered an unreasonable exposure to injury and liability.
- P. All Dispensing Units shall be equipped with non-resetable counters, which are clearly visible and readable.
- Q. Dispensing Units shall accept a minimum of three major credit cards, including MasterCard and Visa. Dispensing Units must also accept One Dollar (\$1.00) and Five (\$5.00) Dollar denominations of U.S. currency and have the capability to provide change as appropriate. Requirements of this Section may be waived on a per unit basis depending on sales and traffic at the individual Dispensing Unit location. Any such waiver must be approved in writing by the Department.
- R. Dispensing Units shall prominently display all written directions necessary to instruct customers in the operation of the Dispensing Units and clearly identify all fees charged.
- S. Dispensing Units shall provide instructions in the English language at a minimum. The Department may require instructions in Spanish and/or Creole in its discretion.

- T. In the event that it is determined by the Department, in its sole discretion, that the Equipment does not satisfy the requirements of this Agreement, the Department shall notify Concessionaire of the deficiency and Concessionaire shall immediately take such action as necessary to correct the deficiency to the satisfaction of the Department. If Concessionaire fails to undertake such corrective action within thirty (30) days of the Department's notice thereof or fail to pursue same in a manner satisfactory to the Department, in its sole discretion, then this Agreement may immediately be cancelled by County and Concessionaire shall have no further rights hereunder. Concessionaire further waives any claim against County for damages or compensation should this Agreement be terminated for failure to undertake corrective action.

## **ARTICLE 7**

### **CONSTRUCTION OF IMPROVEMENTS**

- 7.01 Alterations, Improvements or Additions. Concessionaire shall make no alterations, additions or improvements to the Assigned Premises, without the prior written approval of the Department.
- 7.02 Construction Requirements. All improvements, alterations and additions made by Concessionaire to the Assigned Premises shall be of high quality and meet all applicable federal, state and local laws, regulations, rules and requirements. Prior to the commencement of construction, one (1) full and complete set of plans and specifications for all improvements, alterations and/or additions shall be submitted to the Department for approval. All improvements shall be completed in accordance with construction standards established by the Department and the plans and specifications approved by the Department.
- 7.03 Construction Bonds. Concessionaire shall ensure that all improvements are constructed to completion in accordance with the approved plans and specifications and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Prior to the commencement of any improvements 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, 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.

- 7.04 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 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, additions or improvements approved pursuant to this Agreement in such amount(s) as County's Risk Management Department reasonably determines to be necessary.
- 7.05 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Official Records of Palm Beach County, Florida stating that the 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 Assigned Premises 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 ten (10) days. In the event that Concessionaire fails to satisfy or transfer such claim within the ten (10) 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, but not limited to, attorneys' fees.

## **ARTICLE 8**

### **TITLE TO IMPROVEMENTS**

All fixtures and improvements that are constructed or placed upon the Assigned Premises, excluding furnishings, trade fixtures and Equipment, shall become the absolute property of County upon termination or expiration of this Agreement and County shall have every right, title, and interest therein, free and clear of any liens, mortgages and other encumbrances. Notwithstanding the foregoing, County may require Concessionaire, at Concessionaire's sole cost and expense, to remove all, or a portion of, the improvements installed pursuant to this Agreement and to restore the Assigned Premises to its original condition, reasonable wear and tear excepted. County acknowledges that title to all trade fixtures and

Equipment installed hereunder, such as baggage carts and Dispensing Units shall remain with Concessionaire.

**ARTICLE 9**  
**MAINTENANCE AND REPAIR/UTILITIES/SECURITY**

- 9.01 Maintenance and Repair of Equipment. Concessionaire shall, at its sole cost and expense, be responsible for the installation, servicing and maintenance of the Equipment and shall furnish all manpower, parts and supplies necessary for the care, servicing and maintenance of the Equipment. Installation of the Equipment shall be subject to supervision by the County. The Equipment shall at all times be maintained in a safe and presentable condition consistent with good business practices, industry standards, and in accordance with all applicable federal, state and local laws, regulations and rules. Concessionaire shall maintain and repair all Equipment in service at the Airport and County shall not be liable to Concessionaire for any maintenance, repair or damage to same. Concessionaire shall refurbish the Equipment or any portion thereof as may be deemed necessary in the reasonable discretion of the Department. Concessionaire hereby agrees that it shall abide by the decision of Department with respect to any and all such maintenance, repair or refurbishing. The Department shall reasonably judge Concessionaire's performance under this paragraph as to the quality of maintenance, repair and refurbishing. Upon written notice by the Department to Concessionaire, Concessionaire shall perform the required maintenance, repair or refurbishing in accordance with the Department's decision. If Concessionaire has not made a good faith effort, as determined by the Department, to begin to perform the required maintenance, repair or refurbishing within ten (10) days after receipt of the Department's written notice and to diligently pursue the same to completion, Concessionaire shall be in material default of this Agreement.
- 9.02 Maintenance of Assigned Premises. Concessionaire shall, at its sole cost and expense, maintain the Assigned Premises and improvements and appurtenances thereto, in a safe and presentable condition consistent with good business practices, industry standards and in accordance with all applicable federal, state and local laws, regulations and rules. Concessionaire shall repair all damages to the Assigned Premises caused by its employees, patrons, invitees, suppliers of service, or furnishers of material, or any other person whomsoever, and all damages caused by or resulting from or in any way arising out of Concessionaire's operations thereon or Concessionaire's use of the Assigned Premises. Concessionaire shall maintain and repair all Equipment thereon. The Department may inspect the Assigned Premises to identify items in need of maintenance or repair and report in writing to the Concessionaire those items in need of maintenance and repair. Concessionaire agrees that it

shall abide by the decision of the Department with respect to any and all such maintenance or repair. The Department shall reasonably judge Concessionaire's performance under this paragraph as to the quality of maintenance and repair. Upon written notice by the Department to Concessionaire, Concessionaire shall perform the required maintenance or repair in accordance with the Department's decision. If Concessionaire has not made a good faith effort, as determined by the Department, to begin to perform the maintenance or repair within ten (10) days after receipt of the Department's written notice and to diligently pursue the same to completion, County shall have the right to enter the Assigned Premises and perform the necessary maintenance or repair, and Concessionaire hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs thereof, plus twenty-five percent (25%) for administrative overhead. Such maintenance or repair cost, plus the administrative cost, shall be due and payable within thirty (30) days of the date of the Department's billing.

- 9.03 Utilities. Except as otherwise provided for herein, Concessionaire shall be responsible for connecting into all utilities necessary for the operation of the Equipment located on the Airport, including electricity, at its sole cost and expense, in accordance with the Department's utility standards. Pursuant to Section 3.2.7 of the Request for Submittal, Concessionaire shall be responsible for payment of all utilities used or consumed by the Equipment installed by Concessionaire at the Airport and shall pay County Fifteen Dollars and Sixty Cents (\$15.60) per month, based on eight (8) vending units at Thirteen Cents (\$0.13) per KWhr. Concessionaire shall remit the payment for electricity monthly with the Privilege Fee, without demand, deduction or setoff throughout the Term of this Agreement.
- 9.04 Cleanliness of Premises. The Assigned Premises and all Equipment and materials used by Concessionaire shall at all times be clean, sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt and other offensive or unclean materials. Concessionaire shall remove or cause to be removed, at its sole cost and expense, all waste, garbage, rubbish, and/or refuse within the Assigned Premises. The Department shall reasonably determine whether Concessionaire is in compliance with the obligations as provided for herein and shall provide Concessionaire with written notice of any violations of Concessionaire's obligations. Immediately upon Concessionaire's receipt of Department's written notice of violation, Concessionaire shall commence such corrective action as required by Department or as may be necessary to remedy such non-compliance to satisfaction of receipt of Department. If corrective action is not initiated within ten (10) days of receipt of Department's written notice and pursued to completion in a diligent manner, the Department may cause the same to be accomplished and Concessionaire hereby expressly agrees that Concessionaire shall assume and be liable to County for

payment of all such costs, plus twenty-five percent (25%) for administrative overhead. Such costs, plus the administrative cost, shall be due and payable within thirty (30) days from the date of the Department's billing.

- 9.05 Security. Concessionaire acknowledges and accepts full responsibility for the security and protection of the Assigned Premises and any and all Equipment and other personal property now existing or hereafter placed on or installed within the Assigned Premises. Concessionaire agrees to comply with all rules and regulations of County and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. Concessionaire fully understands that the police security protection provided by County is limited to that provided by the Palm Beach County Sheriff's Office to any other business situated at the Airport, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Assigned Premises shall be the sole responsibility of Concessionaire and shall involve no cost to County.
- 9.06 Airport Security Program. Concessionaire shall observe all federal, state and local laws, rules and security requirements applicable to Concessionaire's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations, and the Palm Beach County Criminal History Record Check Ordinance (R-2003-030). 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 or the Department, and to take such steps as may be necessary or directed by County or the Department to ensure that subtenants, employees, invitees and guests observe these requirements. If required by the Department, Concessionaire shall conduct background checks of its employees in accordance with applicable federal, state or local laws. 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 or its 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 any administrative proceedings, court costs, and attorneys' fees and 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.

## **ARTICLE 10** **INSURANCE**

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term, the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 10 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.

- 10.01 Commercial General Liability. Concessionaire shall maintain Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate, bodily injury and property damage liability coverage; and shall include, but not be limited to, Premises and Operations, Personal Injury, Products and Completed Operations, Contractual Liability. Additional Insured Endorsement: The Commercial General Liability policy shall be endorsed to include, "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, employees, and Agents" as an Additional Insured. A copy of the endorsement shall be provided to County upon request.
- 10.02 Business Auto Liability. Concessionaire shall maintain Business Automobile Liability Insurance covering all Owned, Hired, and Non Owned Vehicles used in an amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Each Occurrence for Bodily Injury (including death) and Property Damage Liability.
- 10.03 Workers' Compensation & Employer's Liability. Concessionaire shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes.
- 10.04 Umbrella or Excess Liability. Umbrella or Excess Liability policy may be used to satisfy the minimum requirements. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability policy; however, the Annual Aggregate limit shall not be less than the highest "each occurrence" limit for either Commercial General Liability or Business Auto Liability. Concessionaire shall endorse County as an "Additional Insured" on the Umbrella or Excess Liability policy; unless, the policy provides coverage on a "Follow-Form" basis.

- 10.05 Certificate of Insurance. On execution of this Agreement, renewal, within forty-eight (48) hours of a request by County, and upon expiration of any of the required coverage throughout the term of this Agreement, Concessionaire shall deliver to the County or County's designated representative a signed Certificate(s) of Insurance evidencing that all types and minimum limits of insurance coverage required by this Agreement have been obtained and are in force and effect. Certificates shall be issued to:

Palm Beach County Board of County Commissioners  
c/o Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, FL 33406-1470  
E-Mail: [properties@pbia.org](mailto:properties@pbia.org)

- 10.06 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 Lease. 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.
- 10.07 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 the policy.
- 10.08 Right to Review or Reject Insurance. County, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements.
- 10.09 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 11**  
**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 for the acts or omissions of Concessionaire.

**ARTICLE 12**  
**INDEMNIFICATION**

Concessionaire agrees to 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 or Concessionaire's use or occupancy of the Assigned Premises, 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 Assigned Premises 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 termination of this Agreement.

**ARTICLE 13**  
**DAMAGE OR DESTRUCTION OF PREMISES/IMPROVEMENTS**

- 13.01 Concessionaire's Obligations. Concessionaire hereby assumes full responsibility for the condition of the Assigned Premises and character, acts and conduct of all persons admitted to the Assigned Premises by or with the actual or constructive consent of Concessionaire or by or with the consent of any person acting for or on behalf of Concessionaire. If the Assigned Premises, improvements, or any part thereof, are damaged in any way whatsoever, by the act, default or negligence of Concessionaire, or of Concessionaire's members, agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Assigned Premises by Concessionaire or otherwise, Concessionaire shall, at its sole cost and expense, restore the Assigned Premises to the condition existing prior to such damage. Concessionaire shall commence such restoration within thirty (30) days and shall diligently pursue such restoration to completion. Such repairs, replacements or rebuilding shall be made by Concessionaire in accordance with the construction requirements contained herein and as established by the Department. If Concessionaire fails to restore the Assigned Premises as required above, County shall have the right to enter the Assigned Premises and perform the necessary restoration to the Assigned Premises, and Concessionaire hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs incurred by County, plus twenty-five percent (25%) for administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of the Department's billing.
- 13.02 Insurance Proceeds. Upon receipt by Concessionaire of the proceeds of the insurance policy or policies, the proceeds shall be deposited in an escrow account approved by the Department so as to be available to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Concessionaire shall pay any additional sums required into the escrow account. If the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be remitted to Concessionaire.
- 13.03 Termination upon Destruction or Other Casualty. In the event the Assigned Premises, or any part thereof, shall be destroyed or damaged in whole or in part by fire, water or any other cause, or if unforeseen occurrence shall likewise render the fulfillment of this Agreement by County impossible, then County, at its sole option, may terminate this Agreement. Concessionaire shall pay all fees, rental, and costs and

satisfy all of its obligations hereunder arising prior to the time of such termination, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations hereunder other than those which expressly survive expiration or termination of this Agreement. Concessionaire hereby waives any claim for damages or compensation should this Agreement be so terminated.

**ARTICLE 14**  
**TERMINATION OF AGREEMENT, DEFAULT, AND REMEDIES**

- 14.01 Termination. This Agreement shall automatically terminate at the end of the Initial Term unless renewed in accordance with Section 3.02.
- 14.02 Termination for Convenience. County shall have the right to terminate this Agreement for convenience upon ninety (90) 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.
- 14.03 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 vacating or abandonment of the Assigned Premises by Concessionaire.
  - B. The failure by Concessionaire to make payment of Privilege Fees or any other payment required to be made by Concessionaire hereunder, as and when due, where such failure continues for a period of three (3) days after written notice thereof from County to Concessionaire.
  - C. 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 where such failure shall continue for a period of thirty (30) days after written notice from County to Concessionaire (except in those instances where a different cure period is expressly provided for herein for such failure); 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.

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

14.04 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 under this Agreement, at law or in equity, including the right, at County's option, to immediately terminate this Agreement, by giving written notice to that effect. Upon such termination, Concessionaire shall immediately surrender the Assigned Premises to County and shall cease its operations at the Airport. Such termination shall be without prejudice to County to any remedy for arrearages or payments due hereunder 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.

14.05 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, 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.

14.06 Surrender of Assigned Premises. Concessionaire expressly agrees that upon termination or cancellation of this Agreement it shall immediately surrender the Assigned Premises to County free and clear of all Equipment and personal property of Concessionaire. All repairs and obligations for which Concessionaire is responsible shall be completed by the earliest practical date prior to surrender. Any Equipment or personal property of Concessionaire not removed in accordance with this provision may be removed and placed in storage by the Department at the sole cost of Concessionaire. Failure on the part of Concessionaire to reclaim same, as provided by law, shall constitute a gratuitous transfer of title to County for whatever disposition is deemed to be in the best interest of County.

## **ARTICLE 15**

### **ASSIGNMENT AND TRANSFER**

Concessionaire shall not, in any manner, assign, transfer or otherwise convey an interest in any of its rights under this Agreement. Concessionaire acknowledges and agrees that this Agreement is an agreement for services and does not constitute a lease of the Assigned Premises, and Concessionaire shall have no right whatsoever to lease, assign or sublease the Assigned Premises or any portion thereof.

**ARTICLE 16**  
**SIGNS**

No signs, posters, or similar devices shall be erected, displayed, or maintained by Concessionaire in view of the general public in, on, or about the Assigned Premises or elsewhere on the Airport. Any signs that are not approved by the Department shall be immediately removed at the sole cost and expense of Concessionaire. All signs approved for Concessionaire's operations at the Airport shall be at the cost of the Concessionaire.

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

17.01 General.

- A. Concessionaire agrees that throughout the Term, 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 agrees that it 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 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 Assigned Premises 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 Assigned Premises 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 agrees that it 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 Assigned Premises. Concessionaire shall procure and maintain such fire prevention and extinguishing devices as required by County and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Airport, as same may now exist or hereafter come into being. 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 interest in the Assigned Premises, its improvements and 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, the 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 ASSIGNED PREMISES, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED 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 OR ANY OTHER DAMAGE RELATED TO THE ASSIGNMENT OF THE ASSIGNED PREMISES TO CONCESSIONAIRE PURSUANT TO THIS AGREEMENT. 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 5:00 p.m. on a business day and on the next business day if transmitted after 5:00 p.m. 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:



If to County:

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

With copies to:

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

If to Concessionaire:

Smarte Carte, Inc.  
4455 White Bear Parkway  
St. Paul, MN 55110-7641  
ATTN: Michael J. Multer, Vice President  
Phone: (651) 308-0049

Either party may change the address(es) 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 the portion thereof wherein the Assigned Premises are located, for public purposes for a period in excess of ninety (90) days, either party may terminate this Agreement by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This Section 20.01 shall not act or be construed as a waiver of any rights Concessionaire may have against the United States as a result of such taking.
- 20.02 Federal Review. Concessionaire acknowledges this Agreement may be subject to review or inspection by the FAA to determine satisfactory compliance with Federal law or grant assurances and agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided,

however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Agreement which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.

- 20.03 County Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of the 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 Assigned Premises, 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 Assigned Premises 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 Assigned Premises 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 Nondiscrimination in County Contracts. County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, Concessionaire warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of this Agreement.

21.02 Federal Nondiscrimination Covenants. Concessionaire shall comply with all applicable requirements of the Federal Nondiscrimination Requirements set forth in Exhibit "B".

21.03 Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation Goal.

- A. Concessionaire agrees that the ACDBE participation in this Agreement shall be at least equal to ten percent (10%) of the purchase of goods and services under this Agreement, throughout the Term of this Agreement and any extension thereof, 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 (20<sup>th</sup>) 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 of 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 for the substitution of an ACDBE.
- F. Concessionaire shall provide the Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Agreement upon request.

## **ARTICLE 22**

### **MISCELLANEOUS**

- 22.01 County Not Liable. County shall not be responsible or liable to Concessionaire for: (a) any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from cessation for any reason of air carrier operations at the Airport Terminal or diversion of passenger traffic to any other facility; (b) 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; or (c) any losses or expenses incurred resulting from lost funds, theft, vandalism, or from the repair or replacement of defective or damaged baggage carts, Dispensing Units, 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.
- 22.02 Authorized Uses Only. Notwithstanding anything to the contrary herein, Concessionaire shall not use or permit the use of the Assigned Premises or the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Airport for County or Concessionaire.
- 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 subordinate 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 ensure compliance by Concessionaire and County with the terms and provisions of this Agreement and the Bond Resolution.
- 22.05 Subordination to Federal 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 and the United States of America, or any of its 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. 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 County's governmental functions, including, without limitation, County's right to lawfully exercise its regulatory authority over the development of the Assigned Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.
- 22.07 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.

- 22.08 Scrutinized Companies. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Concessionaire is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the COUNTY. When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria. If the County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.
- 22.09 Rights Reserved to County. All rights not specifically granted to Concessionaire by this Agreement are reserved to County.
- 22.10 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.
- 22.11 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 22.12 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 22.13 Inspections. The authorized employees and representatives of County and any applicable federal, state, and local governmental entity having

jurisdiction hereof shall have the right of access to the Assigned Premises at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws.

- 22.14 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.
- 22.15 Paragraph Headings. The headings of the various articles and sections of this Agreement 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.
- 22.16 Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions against assignment.
- 22.17 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.
- 22.18 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.
- 22.19 Incorporation by References. 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.

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

ATTEST:

JOE ABRUZZO, Clerk of  
the Circuit Court & Comptroller

PALM BEACH COUNTY, a political  
subdivision of the State of Florida,  
by its Board of County Commissioners

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

By: \_\_\_\_\_  
Robert S. Weinroth, Mayor

(SEAL)

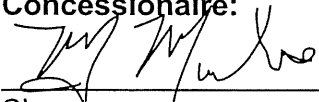
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

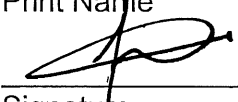
By: \_\_\_\_\_  
County Attorney

By:   
Director, Department of Airports

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

  
Signature

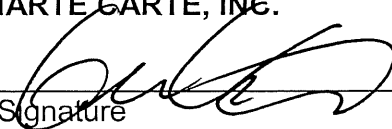
Michael Multer  
\_\_\_\_\_  
Print Name

  
Signature

Patima Adam  
Print Name

CONCESSIONAIRE:

SMARTE CARTE, INC.

By:   
Signature

Gregory Schultz  
\_\_\_\_\_  
Print Name  
Chief Legal Officer

\_\_\_\_\_  
Title

(Seal)



- 22.21 No recording. Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 22.22 Construction. Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.
- 22.23 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.
- 22.24 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.
- 22.25 Survival. Notwithstanding any early termination of this Agreement, Concessionaire shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Concessionaire hereunder arising prior to the date of such termination.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**EXHIBIT “A”  
ASSIGNED PREMISES**

Listing of Locations of baggage carts and self-service Dispensing Units in the Terminal, comprising the “Baggage Cart System”:

- 1.
- 2.
- 3.
- 4.
- 5.

## EXHIBIT “B”

### FEDERAL NONDISCRIMINATION REQUIREMENTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees as follows:

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

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities, as may be amended, including but not limited to:

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

which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

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

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Concessionaire for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Concessionaire will use assigned premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Contract and to enter or re-enter and repossess any assigned premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

Concessionaire for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be 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.

F. General Civil Rights Provision.

Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as Concessionaire. This provision obligates Concessionaire for the period during which the property is owned, used or possessed by Concessionaire and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.