

**REGISTERED TRAVELER CONCESSION AGREEMENT BETWEEN  
BROWARD COUNTY AND ALCLEAR, LLC**

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This Concession Agreement ("Agreement") is entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and ALCLEAR, LLC, a limited liability company authorized to transact business in the State of Florida ("Clear") (County and Clear collectively referred to as the "Parties"), and is effective as of the date that it is fully executed by the Parties ("Effective Date").

#### RECITALS:

A. County is the owner and operator of the Fort Lauderdale-Hollywood International Airport ("Airport"). Clear is a Transportation Security Administration ("TSA") approved third-party administrator of a registered traveler program.

B. Under this Agreement, County grants to Clear the nonexclusive right to operate a registered travelers program concession including Clear enrollment stations and designated queue lines with biometric verification equipment leading up to the TSA security checkpoint lane(s) in Terminal 2, along with a pathway to potential entry into Terminal 1 and Terminal 3, subject to the terms and conditions stated herein.

Now, therefore, in consideration of the mutual covenants, terms, conditions, privileges, obligations, and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties mutually undertake, promise, and agree as follows:

#### **ARTICLE I** **DEFINITIONS**

- 1.1 **Affiliate.** An entity controlled by or under common control with another entity, and "control" shall mean ownership of not less than fifty percent (50%) of all the voting stock or equitable interest in such corporation or entity.
- 1.2 **Airport.** Fort Lauderdale-Hollywood International Airport, located in Broward County, Florida.
- 1.3 **Airport Terminals and Terminals.** The Terminal Buildings at the Airport, including Terminals 1, 2, 3, and 4, and the Rental Car Center.
- 1.4 **Annual Gross Revenues.** The aggregate amount of all Gross Revenues of Clear during each Contract Year.
- 1.5 **Applicable Laws.** All "Environmental Laws" and any and all other applicable laws, codes, advisory circulars, rules, regulations, ordinances, and resolutions of any governmental or quasi-governmental entity relating to the Airport, the Assigned Area(s), or activities at the Airport or the Assigned Area(s) that have been or may hereinafter be adopted, including, but not limited to, all applicable federal, state, County, local, and any quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, grant agreements, and the Minimum Standards.

- 1.6 **ASP.** The Fort Lauderdale-Hollywood International Airport Security Program.
- 1.7 **Assigned Area(s).** The area or areas of the Airport Terminals designated by this Agreement and the exhibits thereto as the place or places where the business of Clear may be conducted pursuant to the terms of this Agreement.
- 1.8 **Aviation Department.** The Broward County Aviation Department and its duly authorized representatives.
- 1.9 **Biometric.** Measurable physiological characteristics that are unique to an individual, such as, but not limited to, a fingerprint or iris scan.
- 1.10 **Board.** The Broward County Board of County Commissioners.
- 1.11 **Catchment Area.** The area that is one hundred (100) miles in any direction from the boundaries of the Airport.
- 1.12 **Concession.** The nonexclusive right to operate the Registered Traveler Program concession described by this Agreement.
- 1.13 **Contract Year.** The period beginning on the Effective Date and ending one year from that date, and each twelve-month period thereafter, until the termination of this Agreement.
- 1.14 **Day(s).** Calendar day(s) and not business day(s), unless otherwise specified.
- 1.15 **Designated Queue Line(s).** A queue to the TSA security checkpoint lane with Biometric verification equipment used exclusively for Registered Traveler Participants or as otherwise set forth in an applicable amendment to the ASP.
- 1.16 **Director and Director of Aviation.** The Director of Aviation or the Acting Director of Aviation, or such other person or persons as may from time to time be authorized in writing by the Board, the Broward County Administrator, or the Director of Aviation to act for the Director of Aviation with respect to any or all matters pertaining to this Agreement.
- 1.17 **Environmental Laws.** Any and all applicable federal, state, County, and local statutes, ordinances, regulations, codes, rules, laws, permits, orders, advisory circulars, resolutions, development orders, grant agreements, and directives of any federal, state, or local court, governmental, or quasi-governmental entity with jurisdiction of such matter that have been or may hereinafter be adopted, including, but not limited to, those relating to the generation, use, storage, transportation, or disposal of hazardous materials. Such laws include, but are not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC § 9601, et seq.); the Resources Conservation and Recovery Act of 1976 (42 USC § 6901, et seq.); the Clean Water Act (33 USC § 1251 et seq.); the Safe Drinking Water Act (42 USC § 300 et seq.);

the Hazardous Materials Transportation Act (49 USC § 5101 et seq.); the Toxic Substance Control Act (15 USC § 2601, et seq.); Chapters 373, 376, and 403, Florida Statutes, and rules adopted thereunder; and Chapter 27 of the Broward County Code of Ordinances.

- 1.18 **Equipment.** The enrollment and verification equipment utilized by Clear in the RT Program as depicted on **Exhibit F**.
- 1.19 **Federal Aviation Administration or FAA.** That agency of the United States Government established in 49 U.S.C. § 106, or its successor.
- 1.20 **Gross Revenues and Gross Revenues of Concessionaire.** The aggregate of all sales, charges, or other fees charged by Clear to Airport customers and Clear members who enroll or renew a membership in the RT Program and provide an address within the Catchment Area, regardless of when, where or how, the membership or renewal is sold, whether for cash or credit, without any deduction for credit card discounts or credit card services, whether the same shall be paid or unpaid. Gross Revenues shall also include all monies paid to Clear from all new enrollees who physically enroll in the RT Program at the Airport and do not reside in the Catchment Area, unless Clear demonstrates that such enrollees have an enrollment address within the catchment area of another municipality or airport authority that has a valid contract with Clear for the operation of a registered traveler program at the time they enrolled at the Airport. An enrollment or renewal of membership sale shall be deemed to have been consummated at the time the enrollment or renewal charges are assessed to the RT Program new enrollee or renewed member. "Gross Revenues" shall include all monies paid to Clear and/or any of its sublessees, assignees, contractors, or management companies that are doing business at any portion of the Airport premises. The term shall not include federal, state, or municipal taxes. "Gross Revenues" shall not include: (1) sales tax collection allowance paid by the State of Florida to Clear as compensation for the keeping of prescribed records and the proper accounting and remittance of state sales tax; (2) any charges paid on a reimbursement basis, as mutually agreed upon by the Aviation Department and Clear; (3) any refunds made by Clear to customers; and (4) any taxes imposed by law that are separately stated to and paid by the customer and directly payable by Clear to a taxing authority.
- 1.21 **Improvements.** Any and all construction, alterations, installations, modifications, renovations, replacements, refurbishments, fixtures, permanently affixed equipment, facilities (both above ground and below ground), and any other structures now or hereafter constructed on or removed from the Assigned Areas, and all additions, alterations, modifications, renovations, and replacements thereto. Any structure, furnishing, display, equipment, trade fixture, fixture, or any other improvement that is nailed, bolted, stapled, or otherwise permanently affixed to the Assigned Areas shall be considered permanently installed or affixed and is included within the definition of Improvement. Personalty shall not be included in this definition.

- 1.22 **Minimum Annual Guarantee or MAG.** The minimum amount of money due annually to County from Clear, payable on a monthly basis, as provided in Article VII of this Agreement.
- 1.23 **Minimum Standards.** The Fort Lauderdale-Hollywood International Airport Minimum Standards for Commercial Aeronautical Activities, a/k/a Minimum Standards Policy for General Aviation at Broward County Airports, as may be amended from time to time, and which standards are available upon request from the Aviation Department.
- 1.24 **Monthly Gross Revenues.** The aggregate amount of all Gross Revenues of Clear during the applicable month.
- 1.25 **Percentage Fee.** The sum of money, calculated on a monthly basis, that is due County as a percentage of Gross Revenues of Clear, as provided in Article VII of this Agreement.
- 1.26 **Personalty.** All equipment, furniture, furnishings, trade fixtures, and personalty of Clear, and those operating under it, located at the Assigned Areas, but not permanently affixed thereto. Personalty shall include Equipment.
- 1.27 **Privilege Fee.** The amount of money owed by Clear to County, pursuant to Article VII herein, for the right to operate its concession business at the Airport, which fee shall be the greater of the Minimum Annual Guarantee or the Percentage Fee.
- 1.28 **Registered Traveler (RT) Applicant.** An individual who has voluntarily supplied biographic and biometric data to Clear with the intent of joining the RT Program.
- 1.29 **Registered Traveler (RT) Participant.** An individual who has completed biographic and biometric enrollment in the Clear's RT Program.
- 1.30 **Registered Traveler (RT) Program.** Clear's program conducted at the Airport with RT Entry Points that may be accessed only by RT Participants that are verified with a biometric comparison utilizing Clear's biometric verification technology.
- 1.31 **RT Entry Point(s).** The point(s) through which RT Participants access the TSA screening process.
- 1.32 **Sensitive Security Information (SSI).** Information that, if publicly released, would be detrimental to the transportation security, as defined by Federal regulation 49 C.F.R Part 1520.
- 1.33 **Subcontractor** shall mean any person, entity, or organization Clear contracts with, or proposes to contract with, to fulfill any of Clear's duties or ACDBE requirements under this Agreement.
- 1.34 **Tenant Design Guidelines.** The architectural standards, controls, and instructions promulgated by the Aviation Department, as revised from time to time.

- 1.35 **Terminal Building Lease Agreement (TBLA).** A form lease agreement between County and a lessee for the use of the premises described therein. The term of the TBLA shall be coterminous with the term of this Agreement.
- 1.36 **TSA** shall mean the federal Transportation Security Administration, or any successor agency.

## **ARTICLE II**

### **TERM**

The term of this Agreement ("Term") shall commence on the Effective Date and shall terminate three (3) years from such date ("Termination Date") unless earlier terminated as provided for in this Agreement. The Term may be extended for up to two (2) additional one (1) year periods upon the written approval of the Director of Aviation at least ninety (90) days prior to the expiration date of the then current term.

## **ARTICLE III**

### **PRIVILEGES AND OBLIGATIONS OF CONCESSIONAIRE**

- 3.1 Subject to the terms, provisions, and conditions of this Agreement, Clear shall have the nonexclusive right, privilege, and obligation to operate the Concession within the Airport Terminal(s) according to the terms and conditions of this Agreement. As more specifically set forth in **Exhibit B**, Clear shall operate Designated Queue Lines and place Equipment for the enrollment of RT Applicants in the Assigned Areas depicted on **Exhibit A**. Clear shall obtain the prior written approval of the Aviation Department regarding the types of displays Clear proposes to bring within its Assigned Areas. The Aviation Department shall have sole discretion to approve or disapprove Clear's proposed displays; provided, however, the Aviation Department hereby approves of Clear signage specifically portrayed on **Exhibit F**. All Assigned Areas are subject to the County's right to access and maintain all utilities, infrastructure, and Improvements now or hereafter constructed thereon, including, but not limited to, equipment permanently affixed therein, consisting without limitation of electrical, plumbing, sprinkler, fire protection and fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas and other systems and their pipes, wires, mains, lines, tubes, conduits, equipment, and fixtures.
- 3.2 Clear shall have the nonexclusive right and privilege to operate the RT Program, which shall include the enrollment of RT Applicants, renewal of RT Participants and performance of RT Program services (collectively "Services") described on **Exhibit B**, attached hereto and made a part hereof, subject to the following:
- (a) Clear's Services at the Airport are conditioned on TSA approval of an amendment to the ASP ("ASP Amendment") authorizing the RT Program to be implemented at the Airport. Clear may not commence the RT Program at the Airport until it has received written notice from the Aviation Department indicating that the

ASP Amendment has been approved and the RT Program may be implemented ("Implementation Date"). In the event TSA fails to approve an ASP Amendment within one hundred eighty (180) Days from the Effective Date, this Agreement shall be null and void and of no further effect.

- (b) Clear shall maintain its designation and certification as a Qualified Anti-Terrorism Technology by the U.S. Department of Homeland Security ("DHS") under the Safety Act. If, during any term of this Agreement, Clear's certification is modified, Clear shall provide copies of such written, modified certification to County within twenty four (24) hours of receipt from DHS or any other appropriate governmental agency.
- (c) Clear shall comply with all requirements for the handling and storage of SSI.
- (d) Clear may not offer for sale or use or otherwise provide any materials considered offensive by the Aviation Department. Clear will promptly remove or have wrapped and banded any such material, if so directed by the Aviation Department.
- (e) The Assigned Areas depicted on **Exhibit A** shall be used solely for the purpose of the RT Program as described on **Exhibit B**. Unless otherwise expressly permitted or approved by the Aviation Department or in this Agreement, only the Services identified on **Exhibit B** may be offered in such Assigned Areas. Any revisions to the Services offered in the Assigned Areas are subject to prior written approval by the Director, in the sole discretion of the Director. Should a conflict arise regarding the scope of the concession privileges authorized hereunder, the Director will serve as arbitrator and any decision of the Director shall be final.
- (f) During the Term, Clear shall, upon request, provide the Aviation Department with a current list of prices for Services offered at the Assigned Areas. Clear may adjust the pricing for the Services, provided that the adjusted prices are not greater than ten percent (10%) more than the price for the same or similar items sold within Broward, Miami-Dade, or Palm Beach counties, or at other locations as designated by the Aviation Department. Any other revision to the pricing of items offered for sale in the Assigned Areas is subject to prior written approval by the Director, in the sole discretion of the Director.
- (g) Clear is prohibited from having or operating in the Assigned Areas any dispensing or vending machines, including, without limitation, pay telephones, video games, or pay televisions, without the prior written approval of the Aviation Department.
- (h) The Director is authorized to approve modifications to **Exhibit A** and **Exhibit B**, and upon written approval by the Director of any such modification, the applicable exhibit shall be deemed automatically amended and the amended

exhibit automatically incorporated herein.

- (i) Clear shall not install any wireless devices or transmitters on or in the Airport without the prior written consent of County and subject to any and all conditions included in such consent. Clear specifically grants to County the authority to regulate and control the use of any unlicensed frequency bands (including, but not limited to, FCC Part 15 Subpart C, FCC Part 15 Subpart D [both asynchronous and isochronous], IEEE 802.11 and Bluetooth [ISM], and FCC UNII 1 and UNII 2 [IEEE 802.11a]).
- (j) Future Rights. The Parties anticipate that during the Term of this Agreement the Aviation Department may, from time to time and at its sole discretion, make additional Terminals (other than Terminals 1, 2, and 3) available to Clear in the Airport for Clear's Services. In the event that Clear requests additional Assigned Areas in a Terminal other than Terminals 1, 2, or 3 ("Additional Terminal Space"), Clear shall send a written request to Director that includes the following:
  - 1. Size and location of additional Assigned Areas(s); and
  - 2. Clear's proposed Percentage Fee.

Within thirty (30) days after receiving the request from Clear, the Director will notify Clear if it accepts or rejects the request for Additional Terminal Space. If the Director fails to respond in thirty (30) Days, the request shall be deemed to have been denied. If the request for additional Assigned Areas is accepted, the actual number and location of Additional Terminal Space shall be in the Aviation Department's sole discretion, subject to TSA approval. Clear may not commence services in Additional Terminal Space until it has received written notice from the Aviation Department that County and TSA have concurred upon the location of Additional Terminal Space. Additional Terminal Space, approved by the Director shall be reflected on **Exhibit A** which shall be amended and the amended **Exhibit A** incorporated herein.

- (k) Solely for the purpose of the operation of the RT program, office space shall be leased to Clear through a TBLA, subject to all terms and conditions included therein.

### 3.3 Implementation.

- (a) On the Implementation Date, Clear's Services at the Airport shall be limited to Assigned Areas in Terminal 2. Clear may, no earlier than ninety (90) Days following the Implementation Date, request in writing additional Assigned Areas in Terminal 1 to perform Services ("Terminal 1 Space"). In the event that Clear requests Terminal 1 Space, the Director shall authorize Terminal 1 Space, upon a determination that Clear has successfully implemented its Services in Terminal 2.



The Director's determination of successful implementation shall be based upon the following considerations:

- i. Clear has been compliant in all material respects with all aspects of the ASP, which review shall include, but not be limited to, a determination that there have not been any material security incidents;
  - ii. Clear is in compliance with all terms and conditions of this Agreement; and
  - iii. Clear has timely and appropriately responded to any complaints regarding Service.
- (b) Within five (5) business days after receiving the request from Clear for Terminal 1 Space, the Director will use best efforts to notify Clear in writing of the determination ("Written Determination"). In the event that the Director has not provided a Written Determination to Clear within five (5) business days, Clear may, within five (5) business days thereafter, request a meeting with the Aviation Department to discuss its request for additional Assigned Areas in Terminal 1 ("Meeting Request"). Following the receipt of Clear's Meeting Request, the Director and Clear shall meet at a time and place which is mutually agreeable (the "Meeting"). The Director shall provide Clear with its Written Determination within five (5) business days following the Meeting. The Director's failure to provide a Written Determination within eleven (11) business days of Clear's written request for Terminal 1 Space if Clear did not provide a Meeting Request or within five (5) business days following the Meeting shall be deemed a denial of Clear's request.
- (c) In the event the Director authorizes Terminal 1 Space, the actual number and location of Terminal 1 Space shall be in the Aviation Department's sole discretion, subject to TSA approval. Clear may not commence Services in Terminal 1 Space until it has received written notice from the Aviation Department that County and TSA have agreed upon the location of Terminal 1 Space. Terminal 1 Space, if approved by the Director, shall be reflected on **Exhibit A**, which shall be amended and the amended **Exhibit A** incorporated herein.
- (d) In the event that the Director determines that Clear has not successfully implemented its Services in Terminal 2 or otherwise denies Clear's request, Clear's Services shall remain limited to Terminal 2. Clear may, no earlier than ninety (90) Days following the Director's denial, submit another request in writing, for additional Assigned Areas in Terminal 1 to perform Services. The Director's review and approval process shall follow the process in Section 3.3(a), (b), and (c) herein.

- (e) No earlier than Three Hundred Sixty Five (365) Days from the Implementation Date (or an earlier date as authorized in writing by the Aviation Department in its sole discretion) and following a final written determination by Aviation Department on the future configuration of TSA security check point(s) in Terminal 3, Clear may request, in writing, additional Assigned Areas in Terminal 3 to perform Services ("Terminal 3 Space"). In the event that Clear requests Terminal 3 Space, the Director shall determine whether Clear has successfully implemented its Services in Terminal 1 and Terminal 2, utilizing the criteria set forth in Section 3.3(a) above, and shall evaluate the space in Terminal 3 to determine whether there is sufficient space available, or when such space may be available, to accommodate Designated Queue Line(s) and Equipment for the enrollment of RT Applicants.
  - (f) Following a request from Clear for Terminal 3 Space, the procedures set forth in Section 3.3(b) herein shall be utilized to determine whether Clear has successfully implemented its Services in Terminal 1 and Terminal 2. In addition, the Director's Written Determination may include a timetable for Clear's entry into Terminal 3 based upon the Aviation Department's conclusion relating to the sufficiency of space to accommodate Designated Queue Line(s) and Equipment for the Enrollment of RT Applicants.
  - (g) In the event County authorizes Terminal 3 Space, the actual number and location of Terminal 3 Space shall be in the Aviation Department's sole discretion, subject to TSA approval, and conditioned on the Aviation Department's determination of sufficient space availability to accommodate Designated Queue Line(s) and Equipment for the Enrollment of RT Applicants. Clear may not commence Services in Terminal 3 Space until it has received written notice from the Aviation Department that County and TSA have agreed upon the location of Terminal 3 Space, which may be delayed pending the Aviation Department's determination related to the sufficiency of space. Terminal 3 Space, if approved by the Director, shall be reflected on **Exhibit A** which shall be amended and the amended **Exhibit A** incorporated herein.
  - (h) In the event that the Director determines that Clear has not successfully implemented its Services in Terminal 2 and Terminal 1 or otherwise denies Clear's request, Clear's Services shall remain limited to Terminal 2 and Terminal 1. Clear may, no earlier than ninety (90) Days following the Director's denial, submit another request in writing, for additional Assigned Areas in Terminal 3 to perform Services. The County's review and approval process shall follow the process in Section 3.3(a), (b), and (c) herein.
- 3.4 County, while providing parking facilities to Clear's employees in common with employees of other concessionaires and users of the Airport, retains the right, at the sole election of County, to impose a reasonable charge, as set forth in Chapter 39 of the

Broward County Administrative Code, for the privilege of utilizing these parking facilities.

- 3.5 It is understood and agreed between County and Clear that County maintains and operates the Airport as a public facility. In order to render proper airport services to the public, it is required that Clear provide and make available to the public at the Airport, the Services set forth herein. A failure of Clear to provide these Services shall constitute a breach of this Agreement, entitling County to immediately terminate the Agreement. Clear agrees that it shall provide and make available to the public the Services.
- 3.6 Clear, its employees, agents, and independent contractors shall have ingress to and egress from the Airport premises over Airport public roadways, subject to all laws, ordinances, rules, and regulations which have been established or shall be established in the future by the Airport, County, or the State of Florida. County may, from time to time, substitute other means of ingress and egress. County may at any time, temporarily or permanently, close, or consent to, or request the closing of, any entrance, roadway, or any other area at the Airport presently or hereafter used as a roadway. Clear hereby releases and discharges County, its successors, and assigns, from any and all claims, demands, or causes of action which Clear may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, or other area used as such, whether within or outside the Airport.
- 3.7 In the event County deems it desirable to have Clear operate at different location(s) than reflected in **Exhibit A**, as may be revised from time to time, Clear shall be required to use such reassigned location(s) without additional expense to County and without any abatement of any of the sums payable by Clear to County hereunder. In the event of any reassignment of Assigned Areas location(s) as provided hereunder, **Exhibit A** will be amended automatically to reflect the location(s) as reassigned by County. Within (30) days of the relocation notice, Clear may request, in writing, to meet with County and discuss any significant negative business impact Clear believes it will suffer as a result of the relocation. After meeting with Clear, the Director of Aviation, in the Director's sole discretion, will determine whether any adjustment decreasing or increasing the Privilege Fee is warranted. In the event the Director of Aviation determines that an adjustment is warranted, an amendment to this Agreement reflecting the proposed change shall be submitted to the Board for its consideration.
- 3.8 During installation and/or removal of any Personalty or Improvements, Clear shall maintain the public areas surrounding the Assigned Areas in the same state of cleanliness as provided by County in other public areas.
- 3.9 County makes no representations or warranties whatsoever as to: (i) the condition of the Assigned Areas or any Improvements or personal property in the Assigned Areas, including without limitation all Improvements currently installed at such locations and all future Improvements to be installed thereto; (ii) whether the Assigned Areas or any

Improvements or personal property in the Assigned Areas are in compliance with applicable federal, state, County, or local laws, ordinances, rules, or regulations; or (iii) the fitness of the Assigned Areas or any Improvements or personal property to be installed in the Assigned Areas for any particular purpose. Clear specifically obligates itself to conduct its own due diligent investigation as to the suitability of the Assigned Areas and any such Improvements for Clear's purposes. The Assigned Areas and all Improvements therein are provided for Clear's use in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" Clear shall not be entitled to any adjustment of any Privilege Fee or other payments hereunder on account of the condition of any Improvements, any failure of any Improvements to be in working order, any necessity of Clear to repair or take corrective actions with respect to any Improvements, or the inability to obtain or any delay in obtaining any required approvals from any governmental body having jurisdiction, including, but not limited to, County agencies. Furthermore, Clear hereby releases County from any and all claims and liabilities whatsoever arising or relating to the condition of the Assigned Areas, any failure of any of the component parts to be in working order, or any necessity of Clear to repair or take corrective actions with respect to any part thereof, or any necessity or inability to obtain any development approvals from any governmental body, including, without limitation, County agencies. In the event of any conflict between this section and any other provision of this Agreement, the provisions of this section shall control.

- 3.10 Clear agrees that before commencing any work or construction permitted under this Agreement, Clear shall require the contractors performing any such work to maintain, at all times, a valid payment bond and a valid performance bond (collectively, "Bond"). Each Bond shall be in the amount of one hundred percent (100%) of the contact price for such work. The payment bond and performance bond shall guarantee the completion and performance of any work performed by contractors under this Agreement, as well as full payment of all suppliers, material providers, laborers, or subcontractors employed for such work.

#### **ARTICLE IV**

#### **PRODUCT/SERVICES STANDARDS**

- 4.1 Clear agrees to use the Assigned Area solely for the purpose of providing the Services as specified on **Exhibit B**.
- 4.2 Clear's products shall conform as to the specifications and prices (price conformance meaning that Clear's prices are no greater than ten percent (10%) more than the price for the same or similar items) with the same or similar items sold in Broward, Miami-Dade, and Palm Beach counties. Clear agrees to abide by the decision of the Aviation Department as to any necessary price adjustments to comply with this section.
- 4.3 Clear agrees to sell only the items and provide only the Services listed in **Exhibit B**. Unless otherwise expressly permitted in this Agreement, Services and prices may be only changed upon prior written approval by the Aviation Department. The addition of

new Services offered for sale by Clear may be undertaken only upon prior written approval by the Aviation Department.

- 4.4 Should a conflict arise regarding the scope of the concession privileges authorized hereunder, the Aviation Department will serve as arbitrator and any decision of the Aviation Department shall be final.
- 4.5 At the Aviation Department's request, Clear shall meet with the Aviation Department to review any complaints or concerns, and Clear will promptly correct any deficiencies. The Aviation Department's determination as to quality of operation or service shall be conclusive, and curative measures shall be implemented by Clear as expeditiously as possible.
- 4.6 All items purchased for Clear's operation must come from reliable sources. All products and other items used in Clear's operation of the Concession shall be of first quality and shall conform in all respects to federal, state, and local laws, orders, rules, and regulations. Failure on the part of Clear to promptly correct, modify, or rectify any deficiency in the quality or quantity of materials used by Clear within fifteen (15) calendar days following written notice from the Aviation Department shall, at the option of County, be cause for termination of this Agreement by County. In addition, the Aviation Department may require the addition of certain items to Clear's product line related to Services that are in public demand.
- 4.7 Should a conflict arise between Clear and other concession operators at the Airport regarding the scope of concession privileges, the Aviation Department's decision on the matter shall be final and conclusive. Clear agrees to abide by the Aviation Department's decision.

## **ARTICLE V IMPROVEMENTS BY COUNTY**

- 5.1 County will provide the following for the Assigned Area:
  - (a) Exterior walls, all structural roof construction, all structural floor construction, and all exterior window walls designed about the perimeter and ceiling, finishes, and common walls as are presently in place at the Assigned Area or may be installed by County to any new Assigned Area.
  - (b) Subject to the provisions of Section 7.15, Heating, air conditioning service, electrical service, data and water Trunk lines, as are presently brought to the Assigned Area. Clear, at its cost, with the prior written consent of the Aviation Department, may connect to any nearest utility location for any new Assigned Area.
- 5.2 All leasehold Improvements now existing and any additions, alterations, or

Improvements made to the Assigned Areas by Clear (except Personalty not permanently affixed to the Assigned Areas) shall become County's property upon construction or installation, and shall be surrendered with and remain at the Assigned Areas upon termination of this Agreement, free and clear of any liens, claims, or encumbrances whatsoever. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Assigned Areas and is not readily removable is a leasehold Improvement and shall remain at the Assigned Areas upon termination of this Agreement. All utilities conduits installed at the Assigned Areas, including, without limitation, cable, electric, and telecommunications, shall be deemed leasehold Improvements, and ownership thereof shall be vested in County upon installation. All such conduits shall be free of all liens, claims, and encumbrances, including, without limitation, any claims of any utilities provider.

## **ARTICLE VI**

### **IMPROVEMENTS BY CONCESSIONAIRE**

- 6.1 Clear shall install, at Clear's sole cost, all furnishings, Equipment, and Improvements necessary for the customary operation of Clear locations and support areas.
- 6.2 No Improvements may be constructed on the Assigned Areas unless Clear first obtains the prior written approval of the Aviation Department.
- 6.3 Prior to the commencement of construction or refurbishment of any facilities on the Assigned Areas, Clear shall submit an application for a tenant improvement project ("TIP") to the plan review committee ("PRC") of the Aviation Department for its written approval, including the following: a site plan, schematic rendering, and complete construction drawings and plans and specifications of the contemplated construction. Clear shall ensure that the plans and specifications are certified by an architect or engineer licensed to practice in the State of Florida and include: (a) working drawings; (b) technical specifications; (c) bid documents, if applicable; (d) schedule for accomplishing Improvements; (e) schedule of finishes and graphics; (f) list of furnishings, fixtures, and equipment; (g) certified estimate of the design, development, and construction costs; and (h) such other information as may be required by the Aviation Department. All construction, Improvements, signs, equipment, and landscaping must be made in accordance with the requirements set forth in this Agreement and must conform to the standard requirements of the Aviation Department applicable to concessionaires of the Airport. All of the plans and specifications shall be in such detail as may reasonably permit the Aviation Department to make a determination as to whether the facilities will be consistent with the provisions of this Agreement and the standards of the Aviation Department. The plans and specifications for the facilities that have received the Aviation Department's written approval, and any amendments and changes thereto that have received the Aviation Department's prior written approval, are hereinafter referred to, collectively, as the "Approved Plans." No work may be performed on the Assigned Areas except pursuant to Approved Plans. At the direction

of the Aviation Department, Clear, at its sole cost, shall remove any work that is started or completed without Approved Plans, and the Assigned Areas shall be restored to the previous condition.

- 6.4 All plans and specifications, including, without limitation, "as-built" plans, shall not identify any conduit ducts for cable, telecommunications, electric service, and the like by any specific company name, and such plans shall identify the purpose of such conduits by generic reference only, including, without limitation, "phone conduit," "telecommunications conduit," or "power conduit." No material changes shall be made to any Approved Plans without the prior written approval of the Aviation Department, which approval shall not be unreasonably withheld or delayed. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.
- 6.5 Any and all construction shall be performed in such a manner to ensure:
  - 6.5.1 The facilities are structurally sound, safe for human occupancy, and free from any hazards; and
  - 6.5.2 Sufficient clearance for taxiways, runways, and aprons, construction activities shall not intrude into any aeronautical surfaces or exceed any height limitations, and shall not interfere with the operations of arriving and departing aircraft at the Airport; and
  - 6.5.3 The facilities are high quality, safe, fire resistant, and attractive in appearance; and
  - 6.5.4 The construction complies with the provisions of the deed under which County acquired its title to the Airport from the United States of America, and the provisions of any grant agreements or other agreements between County and the United States Government or the State of Florida that are applicable to the Assigned Areas; and
  - 6.5.5 All construction and development undertaken shall, to the extent possible and commercially practicable, be completed in an environmentally conscientious manner; and
  - 6.5.6 All construction and development complies with the terms and provisions of this Agreement.

- 6.6 All development within the Airport shall be consistent with the Airport's Tenant Design Guidelines, as it may be updated, revised, or amended from time to time. The Aviation Department may, in its sole discretion, allow a variation from the required standards in the Tenant Design Guidelines.
- 6.7 The Aviation Department may refuse to grant approval of any design, materials, improvements, or construction contained in a TIP application if, in its opinion, Clear has not satisfied the requirements set forth above, or any other provisions of this Agreement, or for any other reason whatsoever, in the sole discretion of the Director.
- 6.8 All Improvements, equipment, and interior design and decor constructed or installed by Clear or Clear's agents, including the plans and specifications relating to same, shall conform to all applicable laws and regulations. The approval by County of the Approved Plans shall not constitute a representation or warranty as to such conformity, and the responsibility for compliance shall at all times remain with Clear.
- 6.9 Upon approval of plans, specifications, and schedules by the Aviation Department, Clear shall obtain all necessary governmental approvals. Clear shall immediately begin construction, installation, or refurbishment, as applicable, of the approved facilities pursuant to the Approved Plans, and shall pursue the same to completion by the date agreed to between Clear and the Aviation Department with respect to such improvements. Any work impacting portions of the Airport other than the Assigned Areas shall be performed within schedules approved by the Aviation Department.
- 6.10 If requested by the Aviation Department, Clear and its architect/engineer and contractor shall meet with the Aviation Department in periodically scheduled meetings to assess the current status of completion.
- 6.11 All fixtures, structures, facilities, and other Improvements existing on the Effective Date, along with any future additions and alterations made to the Assigned Areas by Clear (except trade fixtures not permanently affixed to the Assigned Areas, equipment not permanently affixed to the Assigned Areas, and any other Personalty of Clear and or its subconcessionaires), shall become the property of County upon construction or installation. All such Improvements shall be surrendered with and remain at the Assigned Areas upon termination of this Agreement and be free and clear of any liens, claims or encumbrances whatsoever. Any addition, including, but not limited to fixtures or other Improvements that are nailed, bolted, stapled, or otherwise affixed to the Assigned Areas and are not readily removable are considered Improvements and shall remain at the Assigned Areas upon termination of this Agreement. If any Personalty, including without limitation, furnishings, trade fixtures, or equipment, is removed by Clear or its subconcessionaires, Clear shall correct any damage to the Assigned Areas. All utility conduits shall be installed by Clear or its subconcessionaires, at their expense, including, without limitation, cable, electric, and telecommunications, and shall be deemed Improvements, and ownership thereof shall be vested in County upon installation. All such conduits shall be free of all liens, claims and encumbrances,



including without limitation, any claims of any utilities provider.

- 6.12 Within one hundred eighty (180) calendar days after PRC approval is obtained with respect to any improvements, Clear shall provide to the Aviation Department: (a) a certified statement from the general contractor stating that the Improvements are free and clear of all liens, claims, or encumbrances by any material suppliers, subcontractors, or laborers; and (b) that the Improvements have been constructed in accordance with the Approved Plans and in compliance with all applicable laws and regulations. Clear shall provide, upon request, such back-up documentation and release of liens as may be required by County. County, at its option, may conduct an audit of such expenditures, or may engage a duly licensed, certified public accounting firm to conduct such audit.
- 6.13 Clear hereby represents, warrants, and covenants to County that the Assigned Areas and all Improvements now and hereafter constructed or placed thereon shall be at all times free and clear of all liens, claims, and encumbrances. If any lien or notice of lien shall be filed against the Assigned Areas or any Improvements, Clear shall, within thirty (30) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. The provisions hereof shall not apply to any purchase money security interest in any movable trade fixtures installed on the Assigned Areas.
- 6.14 Within one hundred eighty (180) calendar days after PRC approval is obtained with respect to any Improvements, Clear shall, at its expense, provide the Aviation Department with a complete set of "as-built" plans and specifications, including Mylar reproducible "record drawings," and one set of machine readable disks containing electronic data in an AUTOCAD format that meets the Aviation Department's graphic standards of the "as-constructed" or "record" plans for such Improvements.
- 6.15 In addition to the Aviation Department's approval, Clear shall obtain all required approvals from all other agencies having jurisdiction over any Improvements, including, but not limited to, departments, divisions, or offices of County and local governments, the State of Florida, and the federal government.
- 6.16 If applicable or necessary, Improvements must be coordinated with the FAA, including the filing of required forms and the provision of any documentation the FAA may request.
- 6.17 All Improvements hereafter made to the Assigned Areas shall be in conformity and consistent with all applicable provisions of the Americans with Disabilities Act of 1990, as same may be amended from time to time.
- 6.18 Clear shall not make any additions, alterations, or modifications to any Improvements at the Assigned Areas unless Clear shall first have submitted to the Aviation Department, for its written approval, complete plans and specifications for same in accordance with this Article VI. All additions, alterations, and modifications shall comply with all

provisions of this Agreement, including without limitation, this Article VI. In the event any addition, alteration, or modification is made without Aviation Department approval pursuant to this Article VI, then, upon notice in writing so to do, Clear shall remove the same or at the option of the Aviation Department cause the same to be changed to the satisfaction of the Aviation Department. In the case of any failure on the part of Clear to comply with such notice, the Aviation Department may affect the removal or change, and Clear shall pay the cost thereof to County plus permissible fees pursuant to the Broward County Administrative Code.

- 6.19 Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Clear as a result of this Agreement, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to such construction work. In such event, Clear shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibits D and E.**

## **ARTICLE VII**

### **PRIVILEGE FEE, CHARGES, AND ACCOUNTABILITY**

- 7.1 Privilege Fee. For the privilege of operating a nonexclusive Concession at the Airport, Clear agrees to pay to County the Privilege Fee as described below. During the Term of this Agreement, the monthly Privilege Fee payment shall be due and payable monthly, on the fifteenth (15<sup>th</sup>) calendar day of each calendar month; the Privilege Fee attributable to the final month of the Term of this Agreement shall be due within fifteen (15) calendar days after the conclusion of the Term and must be paid by Clear in full prior to release of the Security Deposit by County.
- 7.2 The Privilege Fee shall be the greater of the Percentage Fee calculated pursuant to this Article VII, or the MAG as established pursuant to this Article VII.
- 7.2.1 Percentage Fee. The Percentage Fee due for any month shall be equal to ten percent (10%) of Monthly Gross Revenues from the preceding month.
- 7.2.2 The Minimum Annual Guarantee ("MAG") shall be calculated as follows:
- 7.2.2.1 The MAG shall be One Hundred Twenty Thousand Dollars (\$120,000.00) annually. The MAG shall be payable in monthly installments in the amount of Ten Thousand Dollars (\$10,000.00) ("Monthly MAG") subject to the adjustments stated below.
- 7.2.2.2 Annual Adjustment of the MAG: Fifteen (15) days after the first anniversary of the Effective Date, and fifteen (15) days after each subsequent anniversary of the Effective Date thereafter, the annual MAG shall be adjusted to equal the greater of the following:

- (i) Eighty five (85%) of the annual Privilege Fee due from Clear to County under this Agreement for the preceding Contract year; or
- (ii) Previous Contract Year's MAG.

7.2.2.3 The adjusted annual MAG during the Term of this Agreement shall never be less than the initial annual MAG specified in subsection 7.2.2.1.

- 7.3 In no event shall the aggregate amount of Privilege Fee payable under this Article VII in any Contract Year exceed the greater of: (a) the MAG for such year; or (b) the total Percentage Fee for the Gross Revenues for such year. Within thirty (30) days of the end of each Contract Year, the parties will meet and review the Privilege Fee paid for that Contract Year and the Gross Revenues for that Contract Year. Any overpayment shall be applied as credits toward the Privilege Fee due in the succeeding year. Any overpayment in the last year of the Term shall be refunded within thirty (30) calendar days following receipt of an invoice for such overpayment. If the total Privilege Fee actually paid by Clear during any Contract Year shall be less than the Privilege Fee due and owing for such Contract Year, then Clear shall immediately pay the difference to County with interest thereon, at eighteen percent (18%) per annum from the date such additional Privilege Fee amount was due, without further demand. County shall have the right, upon reasonable notice to Clear, to audit Clear's books and records relating to Clear's operations pursuant to this Agreement in order to determine the correctness of the Privilege Fee owed from Clear and paid by Clear to County for any Contract Year.
- 7.4 On or before the 15<sup>th</sup> calendar day of each month, Clear shall submit a report of Monthly Gross Revenues for the preceding calendar month, and payment of the Privilege Fee attributable to the preceding month. The report shall be on a form supplied by County and signed by an officer, a partner, or other person authorized to sign on behalf of Clear. For the last month of the Term of this Agreement, the report of Monthly Gross Revenues shall be due within fifteen (15) days after the conclusion of the Term, and payment of the Privilege Fee for the last month must be delivered by Clear to County prior to County release of the Security Deposit and prior to County accepting the surrender of the Assigned Areas pursuant to Article 15 herein.
- 7.5 Clear shall insure that all cash registers maintain a tamper-proof cumulative total and daily totals by category, including separate totals for all services, merchandise and sales tax, and that each cash register maintains a double tape. Furthermore, Clear agrees to retain all register tapes for at least three (3) years.
- 7.6 Clear shall keep and maintain copies of all invoices, cash receipts, financial records, supporting records, supporting documents, statistical records, and all other documents pertinent to this Agreement (collectively, "books and records"). The books and records of Clear shall, among other things, show all sales made for cash, or credit, or otherwise, without regard to whether paid or not, all labor, overhead and all sales taxes collected,

and also, the Gross Revenues of said business, and the aggregate amount of all sales and services and orders of all Clear's business done upon or within the premises of, or in connection with, this Agreement and the Airport. Clear further agrees to keep its books and records in accordance with generally accepted accounting principles and agrees to maintain such other books and records as County may request. Clear shall keep separate books and records for its Airport operations

- (a) Clear's books and records shall be kept and maintained during the Retention Period (as hereinafter defined). The "Retention Period" is defined as the greater of: (i) the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable; (ii) the period of time covering the term of this Agreement and any extensions thereof and for a period of three (3) years after the expiration of this Agreement; or (iii) if any audit has been initiated and audit findings have not been resolved at the end of the three years, the books and records shall be retained until resolution of the audit findings. If the State of Florida public records act is determined by County to be applicable to Clear's records, Clear shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Clear. Clear shall make all books and records required to be maintained hereunder available to County at the Airport, or at the corporate headquarters of Clear, as may be directed by County.
- (b) County shall have the right, upon reasonable notice to Clear, at any time during the Retention Period, to review, inspect, and/or audit Clear's books and records relating to Clear's operations at FLL pursuant to this Agreement. In the event that any audit reflects that the total Privilege Fee actually paid by Clear during such year exceeds the Privilege Fee due and owing for such year, then a refund or credit (as determined by the Aviation Department) will be made by County to Clear of the amount of such difference. In the event that any audit reflects that the total Privilege Fee actually paid by Clear during such year shall be less than the Privilege Fee due and owing for such year, then Clear shall immediately pay the difference to County with interest thereon at eighteen percent (18%) per annum from the date such additional Privilege Fee were due.
- (c) If, as a result of any audit, it is established that Clear has understated the Gross Revenues received by it from all operations at the Airport or related to the Catchment Area covered by this Agreement by three percent (3%) or more (after any deductions and exclusions provided for herein) during the period covered by the audit, the entire expense of said audit shall be borne by Clear. The provisions of this Section 7.6 shall survive the expiration or termination of this Agreement.
- (d) Any material submitted to County that Clear contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public

records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Clear must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Clear as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Clear. Clear shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

7.7 Annually, Clear shall provide to County a special audit report on all Gross Revenues from operations related to this Agreement and at the Airport and from the operations of related or affiliated companies involved in providing services covered by this Agreement. The special audit report shall be prepared by an independent certified public accountant in accordance with generally accepted auditing standards published by American Institute of Certified Public Accountants. The special audit report shall be filed with County within ninety (90) calendar days after the end of each year covered by this Agreement and shall include the following:

- (a) Schedule of all revenues by category by month;
- (b) Schedule of revenues by category upon which the monthly payments to County are computed and a list of the payments to County for the period; and
- (c) A calculation to determine that the total annual Privilege Fee has been paid in accordance with this Agreement.

The special audit report shall include an opinion on the schedule of all revenues by category and by month, the schedule of payments to County, and the calculation of Privilege Fee. The procedures for the preparation of the special audit report are defined in the Aviation Department's numbered procedures manual.

7.8 Licenses, Fees and Taxes. Clear shall pay, on or before their respective due dates, all federal, state, County, and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon any premises used by Clear or the estate hereby granted, or upon Clear, or upon the business conducted by Clear, or upon any of Clear's property used in connection therewith, or upon any sums payable hereunder, including, but not limited to, any ad valorem, tangible property or intangible property taxes, and sales or excise taxes on any sums payable hereunder. Clear shall

maintain in current status all federal, state, County, and local licenses, business tax receipts, and permits required for the operation of the business conducted by Clear. In addition, Clear shall be responsible for any and all other taxes which are due, or which may become due, pursuant to Chapter 212, Florida Statutes, as it may be amended from time to time, and any implementing regulations.

- 7.9 No Set Off. Clear acknowledges that, through the Effective Date, it has no claims against County with respect to any of the operations of Clear at the Airport, or any of the matters covered by this Agreement or any other agreement it may have with County, and it has no right of set off or counterclaims against any of the amounts payable by Clear to County under this Agreement or any other agreement it may have with County.
- 7.10 Late Payments - Interest. County shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid on any amounts that are past due under this Agreement. The right of County to require payment of such interest and the obligation of Clear to pay same shall be in addition to and not in lieu of the right of County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.
- 7.11 Other Fees and Charges. Clear acknowledges that County has or will establish, from time to time, various fees and charges for the use of various facilities, equipment, and services provided by County and not leased to or specifically provided to Clear hereunder, and the procedures relating to payment of same. Clear shall pay for its use of such facilities, equipment, and services at the rates and in the manner prescribed by County.
- 7.12 Additional Fees and Charges. If County is required or elects to pay any sum(s) or incur any obligations or expense by reason of the failure, neglect, or refusal of Clear to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement, or as a result of any act or omission of Clear contrary to said conditions, covenants, or agreements, Clear agrees to pay the sum or sums so paid by County or the expense so incurred by County, including all interest, costs, damages, and penalties, and the same may be added to any installment payment thereafter due hereunder. Each and every part of any such sum(s), obligations or expenses shall be and become additional fees recoverable by County in the same manner and with like remedies as if it were originally a part of the Privilege Fee payable under this Agreement. All such sums of money shall be paid by Clear within thirty (30) calendar days after written demand thereof.
- 7.13 Dishonored Check or Draft. In the event Clear delivers a dishonored check or draft to the Aviation Department in payment of any obligation arising under this Agreement, Clear shall incur and pay a service charge in the amount established by the Aviation Department from time to time, along with interest thereon at eighteen percent (18%) per annum from the original due date of such dishonored check or draft without further demand. In such event, the Aviation Department may require that future payments be

made by cashier's check or other means acceptable to the Aviation Department.

- 7.14 Place of Payments. All payments required to be made by Clear under this Agreement shall be made payable to "Broward County," and shall be paid to the Finance Division, Broward County Aviation Department, or to such other office or address as may be substituted therefore.
- 7.15 Utilities. Clear must pay for all utilities consumed at the Assigned Areas. In the event that Clear wishes to install any utility other than that provided by County, Clear must obtain prior written approval from County. If Clear installs additional utilities, at the discretion of County, a consumption audit will be undertaken at Clear's expense for utilities consumed at the Assigned Areas. After the preliminary consumption audit, consumption audits may be undertaken by County no more frequently than annually, with all costs borne by Clear. Utility charges that are invoiced by County must be paid within ten (10) calendar days after receipt of invoice by Clear, or said charges will be subject to interest at the rate of eighteen percent (18%) per annum from the date due until paid in full.

#### **ARTICLE VIII OPERATIONAL STANDARDS**

- 8.1 Clear agrees that it shall provide and make available at the Assigned Areas the Services required by this Agreement. The Services Clear must provide shall include, but not be limited to, all the Services listed on **Exhibit B**, except such Services as have been disapproved or modified by County. Clear shall not change, remove, or modify any Services provided hereunder without the prior written consent of the Aviation Department.
- 8.2 Clear shall respond to all complaints regarding the Services hereunder, whether verbal or written, on a timely basis. Questions or complaints regarding the quality of Service or rates, whether raised by customers' complaints or on the Aviation Department's own initiative or otherwise, may be submitted to Clear for response. Such response will be provided by Clear within seven (7) calendar days following submission.
- 8.3 At the Aviation Department's request, Clear shall meet with the Aviation Department to review any complaints or concerns and to promptly correct any deficiencies. The Aviation Department's determination as to quality of operation, or Services, shall be conclusive, and curative measures shall be implemented by Clear as expeditiously as possible.
- 8.4 Clear will conduct its operations at the Assigned Area during hours such that passengers of any and all flights arriving at or departing from any Airport Terminal where Clear is operating from will be offered the benefits of the RT Program and will be accommodated, unless otherwise permitted by written consent from the Aviation

Department. The Aviation Department reserves the right to order changes in the hours of operation to ensure that such Services are available.

- 8.5 Clear shall ensure that the management, maintenance, and operation of the Assigned Area shall at all times be under the supervision and direction of an active, qualified, competent manager ("Manager") who shall at all times be subject to the direction and control of Clear.
- 8.6 The Manager shall be assigned a duty station in the Assigned Area where he/she shall be available during normal business hours. Clear further agrees to assign a qualified subordinate, subject to the direction and control of Clear, to be in charge of the Assigned Area and the products and facilities offered under this Agreement, and to be available in the absence of the Manager.
- 8.7 Clear agrees to develop a policy outlining the rules, regulations, and operating procedures which apply to its employees and to submit same for approval of the Aviation Department within sixty (60) calendar days after execution of this Agreement for approval by the Aviation Department. Clear shall not modify or deviate from this policy without the prior written approval of the Aviation Department. A failure of Clear to comply with the policy approved by the Aviation Department shall be a default under this Agreement, entitling County to exercise any and all remedies available hereunder. Clear agrees to demonstrate compliance with the rules, regulations, and operating procedures contained within the policy. Clear agrees to comply with all Federal, State and local laws, ordinances, rules, and regulations, including but not limited to those rules published by the Aviation Department with respect to the Airport.
- 8.8 The operations of Clear, its employees, invitees, suppliers, and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb or be offensive to others. All employees of Clear must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations and policies developed by Clear and approved by the Aviation Department.
- 8.9 Clear agrees that its employees shall be of sufficient number so as to properly conduct Clear's operations. Clear shall provide its employees with uniforms which shall be distinctive and which may be subject to approval by the Aviation Department, which approval of the uniforms shall be at the option of the Aviation Department. All employees shall be required to wear the appropriate approved uniform at all times when on duty. Clear agrees to ensure that the employees and their uniforms are clean and neat.
- 8.10 Clear, while distributing purchased items to passengers at the holdrooms, shall not impede the flow of other passengers traveling through the sterile corridor.
- 8.11 Clear shall at all times retain qualified, competent, and experienced employees at the Airport to conduct its operations. Clear's employees shall be clean, courteous, efficient,



and neat in appearance. Clear shall not employ any person or persons in or about the premises who shall use improper language, or act in a loud, boisterous, or otherwise improper manner. The Aviation Department shall be the sole judge on the question as to whether the conduct of Clear's representatives is objectionable, and if so judged, Clear shall take all steps necessary to eliminate the conditions which have occasioned such judgment. Clear shall maintain a friendly and cooperative relationship with other tenants on the premises of the Airport, and shall not engage in open or public disputes, disagreements, or conflicts, tending to deteriorate the quality of the services offered at the Airport, or be incompatible to the best interest of the public or the Airport.

- 8.12 Clear agrees that its employees shall not engage in soliciting business from any area of the Airport, including any area in front of the Assigned Area, other than the normal conducting of business as contemplated hereunder from the Assigned Area.
- 8.13 Clear shall operate and maintain a standard of service and quality at least equal to that high standard provided at comparable international airports, while at the same time operating in a commercially reasonable and legally required manner. County's determination as to quality of service that is required shall be conclusive and shall be accepted and performed by Clear.
- 8.14 The Aviation Department or its agent will conduct regular performance audits to evaluate Clear's performance on operating standards including cleanliness, in-stock condition, signage, etc. Performance below minimum standards will subject Clear to the imposition of a Disincentive Fee.
- 8.15 The following table sets forth a schedule of Disincentive Fees for violations of operating standards or failure to adhere to contractual requirements. Written notice of any violation shall be given by the Aviation Department to Clear. If the violation requires the payment of a Disincentive Fee, said fee shall be paid by Clear within ten (10) calendar days of written notice of the violation. Each infraction in a given category is considered a violation, and a subsequent infraction within that same category is considered a 2nd or 3rd, etc. violation. Clear acknowledges and agrees that the damages that would be incurred by County upon Clear's nonperformance are difficult to quantify and not readily ascertainable. Clear acknowledges and agrees that the Disincentive Fees are fair and reasonable. Clear waives any and all challenges and legal defenses to the validity of any Disincentive Fee amounts, including that the Disincentive Fees are void as penalties. The imposition of a Disincentive Fee shall not operate to limit or otherwise affect County's rights under this Agreement, or at law or in equity, for Clear's breach of this Agreement, or as a limit on County's damages for any breach except for those enumerated below.

<b><u>Infraction</u></b>	<b><u>1<sup>st</sup> Violation</u></b>	<b><u>2<sup>nd</sup> Violation</u></b>	<b><u>3<sup>rd</sup> (or further) Violation</u></b>
Concession location is closed during posted operating hours, or in violation of contractual obligation	Written Warning	\$100/incident	\$250/incident
Prices charged are different from those displayed on signs	Written Warning	\$250/incident	\$500/incident
Failure to respond to a customer complaint as required by this Agreement	Written Warning	\$250/incident	\$500/incident
Failure to submit quarterly ACDBE report as required by Article XX herein	Written Warning	\$250/day	\$500/day
Use of any space at the Airport not included in <b>Exhibit A</b> , or which has not been approved in writing by the Aviation Department	Written Warning	\$100/day	\$200/day
Failure to comply with any reporting requirements as referenced in this Agreement.	Written Warning	\$250/incident	\$500/incident
Commence construction of Improvements without the prior written approval of the Aviation Department.	\$1,000 per incident	\$2,500 per incident	\$5,000 per incident
Failure to deliver required post-construction documentation within 180 days of completion.	Written Warning	\$100 per day and document per location	\$100 per day and document per location

- 8.16 Clear shall be responsible to ensure that all Assigned Areas are maintained in a clean and orderly manner and free of debris and trash.
- 8.17 Clear shall inform each of its employees of the pertinent rules and regulations of the Airport and the applicable provisions of this Agreement, and instruct such employees as to the methods and procedures used at the Airport. Clear shall not discriminate against any person or group of persons in any manner prohibited by Federal, State, or local laws, rules, or regulations.
- 8.18 Clear and its Subcontractors agree that no solicitations for private business shall be carried on at the Airport premises, except as may be specifically allowed hereunder. No other type or kind of business, except that provided herein, shall be conducted at the Airport by Clear or its subcontractors.

- 8.19 Clear shall provide the Aviation Department with emergency telephone numbers at which Clear's Manager may be reached on a 24-hour basis.
- 8.20 Upon request by the Aviation Department, Clear shall provide the Aviation Department with emergency evacuation and hurricane plans consistent with County's plans for the Airport. These plans shall be detailed procedures of actions to be taken by Clear, if an evacuation need or hurricane alert warning is present. Hurricane plans are to be annually updated if requested by the Aviation Department.
- 8.21 Should a conflict arise between Clear and other concession operators at the Airport regarding the scope of concession privileges, the Aviation Department's decision on the matter shall be final and conclusive. Clear agrees to abide by the Aviation Department's decision.
- 8.22 Clear shall assume all financial responsibility for dishonored credit cards, fraudulent calls and loss of funds or non-collected funds in connection with the operation of this Concession. None of the foregoing costs shall permit or entitle Clear to any deductions from or credits against the Privilege Fee payable to County.
- 8.23 Prior to changing any of its Subcontractors providing the Services, Clear shall provide the Aviation Department with such information as necessary to determine the suitability of the proposed new Subcontractor(s). The Aviation Department will be reasonable in evaluating the qualifications of any proposed Subcontractor(s). The Subcontractor(s) will not be changed, removed, or replaced by Clear without the prior written approval of the Aviation Department.

**ARTICLE IX**  
**MAINTENANCE**

- 9.1 Clear is responsible for all maintenance and repairs of any nature of the Assigned Area except:
  - (a) Cleaning exterior unit Terminal windows.
  - (b) Structural repairs to the roof, floor and exterior walls and windows of the Airport Terminals.
  - (c) All HVAC supply mains, and electrical power supply stubbed up to Clear's Assigned Area.
- 9.2 County shall not be liable to Clear for any damage to merchandise, trade fixtures, Personalty, or personal property of Clear in the Assigned Areas caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment. Further, County shall not be liable to Clear for any damage to persons or property of any kind caused by any other damage or disrepair to the structural or permanent portions of any Assigned Area or of the Terminals, unless (i) County has had reasonable opportunity

to perform repairs after being notified in writing of the need for same by Clear, and (ii) any such damage or disrepair shall not have been due to any actions or negligence of Clear or any of its contractors, agents, employees, representatives, or invitees.

- 9.3 Clear shall provide at its own expense such janitor, toilet, and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Area. Clear also agrees to keep and maintain the interior of its Assigned Area in a clean, neat and sanitary condition, and attractive in appearance, at its sole cost and expense.
- 9.4 Clear shall maintain and make necessary repairs, structural or otherwise, to the interior of its Assigned Area and the fixtures and equipment therein and appurtenances thereto, including, without limitation, the interior windows, doors and entrances, both interior and exterior of storefronts, signs, show cases, floor covering, interior walls, and ceiling, the interior surface, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by Clear, and partitions and lighting within the Assigned Area and serving Clear. This maintenance shall be such that the original theme will be maintained in accordance with the Approved Plans for the Assigned Area.
- 9.5 Clear shall keep and maintain in good condition all service lines and electrical equipment and fixtures located at or in its Assigned Area.
- 9.6 All repairs done by Clear or on its behalf shall be of first class quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state, and local authorities having jurisdiction over the work.
- 9.7 County, its employees, and its representatives, shall have the right to enter Clear's Assigned Area to:
- (a) Inspect the Assigned Area during Clear's regular business hours or at any time in case of emergency to determine whether Clear has complied with and is complying with the terms and conditions of this Agreement and other enumerated health/operational standards; or
  - (b) Perform any and all things which Clear is obligated to perform and has failed after reasonable notice to perform, including, but not limited to, maintenance, repairs, and replacements to Clear's Assigned Area or lack of immediate reaction to emergency conditions. The cost of all labor and materials required to complete the work will be paid by Clear to County within thirty (30) calendar days following demand for said payment at County's standard rates, plus any overhead; or
  - (c) Exercise County's police power.

Notwithstanding the above, and consistent with the requirements of the ASP amendment, in the event of an emergency condition, the representatives of County shall have the right to enter Clear's Assigned Area to perform maintenance, repair and/or replacement. The cost of all labor and materials required to complete the emergency work will be paid by Clear to County within thirty (30) calendar days following demand for said payment at County's standard rates, plus any overhead.

- 9.8 If Clear refuses or neglects to undertake any maintenance, repair, or replacements requested by the Aviation Department or other representatives of County, or if County is required to make any repairs necessitated by the negligent acts or omissions of Clear, its employees, agents, servants, contractors, or licensees, County shall have the right to make such repairs on behalf of and for Clear. Such work shall be paid for by Clear within thirty (30) calendar days following demand for said payment at County's standard rates, plus any overhead.
- 9.9 In a timely manner, Clear will provide for the adequate sanitary handling and removal of all trash, garbage, and other refuse caused as a result of Clear's operations. Clear agrees to provide and use suitable covered receptacles for all garbage, trash, and other refuse in its Assigned Area. Piling of boxes, cartons, barrels, or similar items shall not be permitted in a public area. Clear shall maintain the Assigned Area in a neat, orderly, and clean condition, and there shall be no food, papers, or rubbish visible at any time.
- 9.10 All merchandise deliveries will be made in a manner, location, and at times established by the Aviation Department. All vendors traveling on the apron must be escorted by an employee or agent of Clear and Clear and all its vendors must comply with the requirements of the TSA and with the Airport security plan.
- 9.11 Clear agrees to provide adequate control of rodents, insects, and other pests in its Assigned Area. In the event that Clear's rodent, insect, and pest control program is not acceptable or sufficient, the Aviation Department may seek to control such rodents, insects, and pests by other means. Clear agrees to reimburse County no later than thirty (30) calendar days following demand for any expenses incurred by County due to conditions within Clear's Assigned Area.

#### **ARTICLE X** **COMPLIANCE**

- 10.1 Clear, its officers, agents, servants, employees, contractors, licensees, and any other person who Clear controls, or has the right to control, and all employees, shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the United States of America, the State of Florida, Broward County, and all municipalities, and their respective agencies, departments, authorities, and commissions which pertain to the provision of concession services at the Airports or which may affect Clear or its operations at, or in connection with, the Airport, including, without limitation, the Americans with Disabilities Act of 1990, and any and all

regulations promulgated thereunder and all the provisions of the Broward County Code of Ordinances, prescribing the policies for engaging in the business of providing passenger services to the public for compensation.

- 10.2 Clear shall pay wages that are not less than the minimum wages required by federal and state statutes and local ordinances, to persons employed in its operations hereunder.
- 10.3 Clear shall, at its own expense, provide and maintain in full force and affect any and all federal, state, county and municipal certificates, licenses, and permits required for the operation of all aspects of Clear's business.
- 10.4 The obligation of Clear to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property.
- 10.5 Clear agrees to permit entry, inspection, and testing of all Assigned Areas used by Clear, at all reasonable times, by inspectors of any federal, state, or County agency having jurisdiction under any law, rule, regulation, or order applicable to the Airport premises or the operations of Clear. This right of entry, inspection and testing shall impose no duty on County to take any such action and shall impart no liability on County should it not take any such action.

#### **ARTICLE XI** **ASSIGNMENT**

- 11.1 Clear shall not sell, transfer, assign, sublet, pledge, mortgage, or otherwise encumber this Agreement or any portion of the Assigned Areas, or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise or contract for the performance of any of the services to be provided by Clear under this Agreement (any such action being called an "assignment") without the prior written consent, if granted, of County, which consent may be conditioned upon such additional terms and conditions as may be imposed in the reasonable discretion of County, or the Aviation Department, acting on behalf of County. Clear's request for consent to an assignment shall include copies of all documentation pertaining to the assignment. In addition, Clear shall provide the Aviation Department with such additional information and documentation, as may be reasonably requested. The factors upon which the decision on whether to grant such consent, are based, shall include, but not be limited to (a) an assessment of whether the proposed assignee meets standards of creditworthiness; (b) whether the assigned space will only be used for the purposes described herein; and (c) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement. In the event of any assignment, Clear shall not be released of any liability hereunder. In the event Clear shall seek County's consent to an assignment to an Affiliate of Clear, then as a condition of such assignment, Clear (or those persons or entities that have majority ownership of Clear, directly or indirectly) may be required to execute an irrevocable Guaranty of Payment and Performance of this Agreement which

shall be in form and substance satisfactory to the Aviation Department, and the Broward County Attorney's Office.

- 11.2 In no case will an assignment be permitted if a default shall have occurred hereunder and remain uncured.
- 11.3 An "assignment" shall include any transfer of this Agreement by merger, consolidation or liquidation or by operation of law, or if Clear is a corporation, any change in control of or ownership of or power to vote a majority of the outstanding voting stock of Clear or of any parent corporation of Clear from the owners of such stock or those controlling the power to vote such stock on the date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions), or if Clear is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture (or a transfer of an interest in a corporate general partner or corporate joint venturer) which results in a change in control (either directly or indirectly) of such partnership or joint venture from those controlling such partnership or joint venture on the date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions). Notwithstanding the foregoing, a transfer of stock among current stockholders or among current stockholders and their immediate families, any transfer of stock resulting from the death of a stockholder, a transfer of partnership or joint venture interests among existing partners or among existing partners or joint venturers and their immediate families, or any transfer of such an interest resulting from the death of a partner or joint venturer, shall not be deemed an assignment for purposes of this section. Notwithstanding the foregoing, the provisions of this section shall not apply to any public trades of registered stock of Clear that occurs on a national stock exchange.
- 11.4 In the event any action specified hereunder shall be taken without the prior written consent of County, then any such assignment or other action shall be null and void and of no force or effect and in addition to all other available remedies, County shall be entitled to immediately terminate this Agreement. Any written consent or approval required hereunder shall not be effective unless evidenced by a written document signed by the authorized representative of County.
- 11.5 Clear shall be liable for the acts and omissions by any licensee, assignee, sublessee, transferee, purchaser, agent, contractor, Subcontractor, or any other party in privity with Clear.

**ARTICLE XII**  
**INSURANCE AND INDEMNIFICATION;**  
**PERFORMANCE BONDS; SECURITY DEPOSIT**

- 12.1 Clear shall at all times hereafter indemnify, hold harmless, and defend County and all of County's current, former and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action,

demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of Clear, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, Clear shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Aviation Department and the County Attorney, any sums due Clear under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

12.2 Clear shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in **Exhibit G**, in accordance with the terms and conditions required by this Article. Such policy or policies shall be issued by companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida.

12.2.1 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective insurance services office policy. Clear shall specifically protect County by naming Broward County as an additional insured/loss payee, under the primary and non-contributory general liability policy, business automobile liability, excess liability, and any property or environmental insurance policies. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation.

12.2.2 All policies of insurance required herein, shall be endorsed to provide County with thirty (30) days' prior written notice of cancellation and/or non-renewal and/or restriction, and shall be evidenced by a certificate of insurance. County reserves the right to obtain a copy of any policy required by this Article within fourteen (14) days of a written request to Clear, either by a personal inspection of the policy at Clear's office at the Airport or by receiving a copy of the policy. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination of this contract. Commercial general liability Insurance shall be written on an "occurrence" basis only.



- 12.2.3 Review by County: The aforesaid insurance coverage shall be reviewed from time to time by the County risk management division and may be adjusted if the risk management division determines that such adjustments are necessary to protect County's interest. When such policies or certificates have been delivered by Clear to County as aforesaid and at any time or times thereafter, County may notify Clear in writing that the insurance represented thereby does not conform to the provisions of this Article due to the amount of coverage, the insurance company, or for any other reason, and Clear shall have five (5) days in which to cure any such defect. Compliance with the requirements of this Article as to the carrying of insurance shall not relieve Clear of its liability under any other provision of this Agreement.
- 12.2.4 Subrogation. Notwithstanding anything to the contrary herein, Clear waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by Clear's insurance hereunder. Clear shall obtain from its insurers, a waiver of subrogation in favor of County in connection with any loss or damage covered by Clear 's insurance.
- 12.2.5 Any contractor or subcontractor performing work for Clear on the Airport premises shall have Broward County listed as a certificate holder for all coverages. Clear and or contractor shall require all appropriate and necessary insurance coverage in their respective agreements.
- 12.3 Clear shall post a security deposit ("Security Deposit") with County in the amount equal to one half (½) of the MAG during the Term of this Agreement. The Security Deposit for the first Contract Year shall be Sixty Thousand Dollars (\$60,000.00). The Security Deposit shall be revised yearly and posted with County to meet the requirements of the current year's MAG. The Security Deposit shall serve as security for the payment of all monies due to County, and shall also secure the performance of all obligations of Clear to County. The Security Deposit shall be either in the form of cash, an irrevocable letter of credit ("Letter of Credit") in form and substance satisfactory to County, or a Payment and Performance Bond ("Payment and Performance Bond"), in form and substance satisfactory to County. No interest shall be paid on said Security Deposit. The Security Deposit shall be submitted to County simultaneously with the execution of this Agreement by Clear. In the event of any failure by Clear to pay when due any fees or other charges hereunder or upon any other failure to perform its obligations hereunder or upon any other default hereunder, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down up to the full amount of the Security Deposit and apply same to all amounts owed by Clear to County. Upon notice of any such draw, Clear shall immediately replace the Security Deposit with a new Letter of Credit or Payment and Performance Bond or cash in the full amount of the Security Deposit required hereunder. The Aviation Department, upon fourteen (14) calendar days' notice to Clear, may require an increase in the amount of the Security Deposit to reflect any increases in the monies payable hereunder. In

addition, the Aviation Department, upon fourteen (14) calendar days' notice to Clear, may require an increase in the amount of the Security Deposit equal to up to four (4) additional months of monthly MAG installments because of increased obligations hereunder, or if upon a review of Clear's payment or performance history at the Airport, the Aviation Department determines an increase should be required.

12.3.1 The Security Deposit shall be kept in full force and effect throughout the term of this Agreement and for a period of six (6) months thereafter. Not less than one hundred twenty (120) calendar days prior to any expiration date of a Letter of Credit or Payment or Performance Bond, Clear shall submit evidence in form satisfactory to County that said security instrument has been renewed. A failure to renew a Letter of Credit or Payment or Performance Bond, or to increase the amount of the Security Deposit, if required pursuant hereto, shall (i) entitle County to draw down the full amount of such Security Deposit, and (ii) be a default of this Agreement entitling County to all available remedies. The Security Deposit shall not be returned to Clear until all obligations under this Agreement are performed and satisfied.

12.3.2 Each Letter of Credit provided hereunder or under any other section or provision of this Agreement shall be provided by a financial institution of recognized standing authorized to do business in the State of Florida. The financial institution that has issued the Letter of Credit must have been in business with a record of successful continuous operation for at least five (5) years. Each letter of credit shall be in form and substance satisfactory to County.

12.3.3 Each bond provided hereunder or under any other article, section or provision of this Agreement shall be executed by a surety company of recognized standing and having been in business with a record of successful continuous operation for at least five (5) years. Each bond shall be in form and substance satisfactory to County. Furthermore, such surety company must have at least an "A-" minimum rating in the latest revision of Best's Insurance Report.

12.4 In addition to the Security Deposit, Clear agrees that before commencing any work or construction in its Assigned Area, it shall provide County with a construction bond and a labor and materials bond, in form and substance satisfactory to County for any construction or capital improvements undertaken by Clear during the Term of this Agreement in a sum equal to the full amount of the construction contract.

### **ARTICLE XIII**

#### **DEFAULT BY CONCESSIONAIRE**

13.1 If any one or more of the following events shall occur, same shall be an event of default under this Agreement. In addition to all other remedies available to County, this Agreement, at the option of County, shall be subject to immediate termination should any one or more of the following events of default occur:

- 13.1.1 By or pursuant to or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Clear, and such possession or control shall continue in effect for a period of thirty (30) calendar days; or
- 13.1.2 Any lien, claim or other encumbrance which is filed against any Airport property is not removed, or if County is not adequately secured by bond or otherwise, within thirty (30) calendar days after Clear has received notice thereof; or
- 13.1.3 If Clear fails to pay any Percentage Fee or Privilege Fee required hereunder within ten (10) calendar days after written notice thereof; or
- 13.1.4 If Clear fails to pay any other monetary obligation required hereunder within ten (10) calendar days after written notice thereof; or
- 13.1.5 If Clear fails to maintain or meet any insurance obligation including but not limited to the types of coverages and in the amounts as specified in this Agreement and fails to cure same within two (2) business days after notice by phone, email or fax, thereof; or
- 13.1.6 If Clear should make any assignment, without the prior written consent of County; or
- 13.1.7 If Clear fails to keep, perform, and observe each and every other non-monetary promise, covenant, and provision set forth in this Agreement on its part to be kept, performed, or observed within thirty (30) calendar days after receipt of notice of default thereunder (except where fulfillment of its obligation requires activity over a greater period of time and Clear shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without interruption); or
- 13.1.8 Clear voluntarily abandons, deserts, or vacates any of the Assigned Areas, or discontinues its operation at the Airport for a period of two (2) consecutive calendar days, unless said abandonment is the result of a cause beyond control of Clear; or
- 13.1.9 If Clear purposefully misstates or inaccurately reports sales or revenues from its operation, including reporting estimated sales; or
- 13.1.10 If Clear fails to make the Minimum Capital Expenditure as required in this Agreement.
- 13.1.11 If Clear fails to maintain its designation and certification under the Support

Anti-terrorism by Fostering Effective Technologies Act of 2002, Public Law 107-296, Title VIII G ("SAFETY ACT"), County may immediately terminate this Agreement.

- 13.2 Upon the occurrence of any event set forth above, or at any time thereafter, County may, at its option, terminate this Agreement, and all rights of Clear hereunder, unless a cure period is required pursuant to Section 13.1 above, by giving written notice thereof to Clear, which termination shall be effective upon the date specified in such notice and/or County may exercise any and all other remedies available to County hereunder or at law or in equity. In the event of any such termination, Clear shall immediately quit and surrender the Assigned Areas to County pursuant to the provisions of this Agreement, and shall cease operations at the Airport. Any such termination shall be without prejudice to any remedy for arrears of payments due hereunder, breach of covenant, or damages for the balance of all fees payable hereunder through the full Term of this Agreement, or any other damages or remedies whatsoever, including without limitation, all direct, indirect, consequential, and all other damages whatsoever. Upon any termination pursuant to this Article XIII Clear shall have no right to any reimbursements from County.
- 13.3 Upon termination of this Agreement, County shall have the right to engage another concessionaire to provide the services Clear is authorized to provide hereunder for such period or periods (which may extend beyond the Term of this Agreement) and at such fees and upon such other terms and conditions as County may, in good faith, deem advisable. County shall not be liable and Clear's liability shall not be affected or diminished in any way whatsoever by the failure of County to obtain another concessionaire or by the failure of County to collect any fees or other sums due from any such other concessionaire.
- 13.4 If this Agreement shall terminate for any reason (including expiration of its Term or a default hereunder), Clear, and those holding under Clear, shall forthwith remove their Personalty from the Airport. If Clear or any such claimant shall fail to affect such removal within fourteen (14) calendar days following termination of this Agreement, then, at County's option: title to same shall vest in County, at no cost to County; or County may remove such property to a public warehouse for storage on behalf of County. In the alternative, County may retain such Personalty in its own possession and sell the same at public auction, the proceeds of which shall be applied: first, to the expenses of removal, storage, and sale; secondly, to any sums owed by Clear to County; with any balance remaining, if any, to be paid to Clear. If the expenses of such removal, storage, and sale shall exceed the proceeds of sale, Clear shall pay such excess to County upon demand. In addition to the foregoing, County may dispose of any such property in any other manner provided by law.
- 13.5 Clear shall be responsible for all costs of removal, storage, and sale, and County shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or

incurred by County. If any surplus sale proceeds shall remain after such reimbursement, County may deduct from such surplus any other sum due to County hereunder and shall pay over to Clear any remaining balance of such surplus sale proceeds.

- 13.6 If proceedings shall, at any time, be commenced against Clear by County under this Agreement, and compromise or settlement shall be affected either before or after judgment whereby Clear shall be permitted to continue to operate under this Agreement, then such proceedings shall not constitute a waiver of any condition or agreement contained herein or of any subsequent event of default.
- 13.7 Any amount paid or expense or liability incurred by County for the account of Clear shall, at the option of County, be deemed to be additional Privilege Fee due hereunder, and the same may, at the option of County, be added to any Privilege Fee then due or thereafter falling due hereunder.
- 13.8 Clear hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of any termination of this Agreement. The rights given to County herein are in addition to any rights that may be given to County by statute or otherwise.
- 13.9 In the event of any termination of this Agreement upon the occurrence of an event of default hereunder, Clear shall have no further rights hereunder and shall cease forthwith all operations upon the Airport premises and shall pay in full the balance of all Privilege Fee and other charges as set forth in this Agreement for the full term hereof. Clear's Security Deposit may be applied by County to any sums due to County under this Agreement.
- 13.10 Notwithstanding the foregoing, in the event that Clear has frequently, regularly, or repetitively defaulted in the performance of or breached any of the terms, covenants, and conditions required herein to be kept and performed by Clear, and regardless of whether Clear has cured each individual condition of breach or default, Clear may be determined by the Aviation Department to be an "habitual violator." At the time that such determination is made, the Aviation Department shall issue to Clear a written notice advising of such determination and citing the circumstances. Such notice shall also advise Clear that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may terminate this Agreement upon the giving of written notice of termination to Clear, such termination to be effective upon delivery of the notice to Clear.

**ARTICLE XIV**  
**SECURITY**

- 14.1 Airport Security Program and Aviation Regulations. Clear agrees to observe all security requirements and other requirements of the Federal aviation regulations applicable to Clear, including without limitation, all regulations of the United States Department of Transportation ("USDOT"), the FAA, and the TSA, and Clear agrees to comply with the County's airport security program ("Airport Security Program"), the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and with such other rules and regulations as may be reasonably prescribed by County, including any regulations pertaining to emergency response training, and to comply with such other rules and regulations as may be reasonably prescribed by County, and to take such steps as may be necessary or directed by County to insure that subcontractors, employees, invitees, and guests observe these requirements. If required by the Aviation Department, Clear shall conduct background checks of its employees in accordance with applicable federal regulations. If as a result of the acts or omissions of Clear, its subcontractors, employees, invitees, or guests, County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the USDOT, the FAA, or the TSA, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of County, and/or any expense in enforcing the County's Airport Security Program, then Clear agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorney's fees, and all costs incurred by County in enforcing this provision. Clear further agrees to rectify any security deficiency or other deficiency as may be determined as such by County, USDOT, FAA, TSA, or any other federal agency with jurisdiction. In the event Clear fails to remedy any such deficiency, County may do so at the sole cost and expense of Clear. County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.
- 14.2 Access to Security Identification Display Areas and Identification Media. Clear shall be responsible for requesting the Aviation Department to issue airport issued identification media ("Airport Issued Identification Media") to all employees who are authorized access to security identification display areas ("SIDA") on the Airport, as designated in the Airport Security Program. In addition, Clear shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the immediate return of the Airport Issued Identification Media of Clear's personnel transferred from the Airport, or terminated from the employ of Clear, or upon termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, Clear shall comply with the requirements of applicable federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. Clear shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not returned to the Aviation Department in accordance

with these provisions. The Aviation Department shall have the right to require Clear to conduct background investigations and to furnish certain data on such employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

- 14.3 Operation of Vehicles on the AOA. Before Clear shall permit any employee of Clear or of any subconsultant/subcontractor to operate a motor vehicle of any kind or type on the AOA, Clear shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor vehicles and equipment of Clear or of any subconsultant/subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department, unless escorted by an Aviation Department approved escort.
- 14.4 Consent to Search/Inspection. Clear agrees that its vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. Clear further agrees on behalf of itself and its subconsultant/subcontractors, that it shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. Clear acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, Clear agrees that persons not executing such consent-to-search/inspection form shall not be employed by Clear or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Clear or by any subconsultant/subcontractors.
- 14.5 The provisions of this Article XIV shall survive the expiration or any other termination of this Agreement.

**ARTICLE XV**  
**SURRENDER, ACCEPTANCE OF SURRENDER,**  
**REMOVAL OF PROPERTY, AND HOLDOVER**

- 15.1 Upon the expiration or earlier termination of the Term of this Agreement, as provided for herein, Clear agrees to yield and deliver peaceably and promptly to County, possession of the Assigned Areas. Clear shall surrender the Assigned Areas in the condition required under Article IX, Maintenance. All maintenance and repairs shall be completed prior to surrender. Clear shall deliver to County all keys to the Assigned Areas upon surrender. Clear shall, at its expense, take all actions required by all applicable laws and regulations to remove from the Assigned Areas any hazardous substances or other materials, whether stored in drums, or found in vats, containers, distribution pipelines, drains, or the like, or discharged into the ground. All such

substances shall be removed by Clear in a manner that complies with all applicable laws and regulations and the provisions of Article XVIII shall be applicable.

- 15.2 No agreement of surrender or to accept a surrender of this Agreement shall be valid unless and until same shall have been reduced to writing and signed by the duly authorized representatives of County and of Clear. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of County shall be deemed an acceptance of a surrender of letting under this Agreement.
- 15.3 If Clear shall fail to remove its inventories, trade fixtures, and personal property by the termination or expiration of this Agreement, then Clear shall be considered to be holding over and subject to charges under Section 15.4, hereof, and after fourteen (14) calendar days following said termination or expiration, at County's option: (a) title to same shall vest in County, at no cost to County; (b) County may remove such property to a public warehouse for storage on behalf of County; (c) County may retain same in its own possession and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale, and second, to any sums owed by Clear to County; or (d) County may dispose of such property in any manner permitted by law. If the expenses of such removal, storage, and sale shall exceed the proceeds of sale, Clear shall pay such excess to County upon demand.
- 15.4 Holdover. It is agreed and understood that any holding over of Clear after the termination of this Agreement shall not renew and extend same, but shall operate and be construed as a tenancy at sufferance, pursuant to Section 83.04, Florida Statutes, as it may be amended from time to time. County reserves the right to pursue all remedies available to it under applicable law and regulations as a result of Clear's holdover. It is expressly agreed that acceptance of fees or any other payments by County in the event Clear fails or refuses to surrender possession shall not operate as County's consent to Clear 's continued possession nor shall it constitute a waiver by County of its right to immediate possession of the Assigned Areas. At the sole option of County, upon written notice to Clear by the Aviation Department, Clear shall be required to pay to County during any holdover period monthly fees, which shall be equal to double the amount of the monthly Privilege Fee due and payable to County for the month immediately preceding the Termination Date of this Agreement. If County exercises this option, a tenancy at will lasting from month to month shall be created, and such tenancy shall be subject to all other provisions contained in this Agreement.
- 15.5 Clear shall be responsible for vacating all Subcontractors, holdovers, or other occupants, legal or otherwise, from the Assigned Areas upon any expiration or earlier termination of this Agreement, as provided for herein. In the event any occupants have not vacated the Assigned Areas upon the termination or expiration of the Agreement, as set forth herein, then Clear shall revert to a concessionaire at sufferance, as prescribed in this



Article XV, and shall be subject to double fees and any other legal or equitable remedies available to County hereunder and at law and in equity.

- 15.6 In the event Clear fails to surrender the property in the above required condition or has failed to complete any of the obligations due under this Agreement or any future amendments thereto, County shall not be obligated to accept Clear's surrender of the Assigned Areas until same have been satisfied. During the period of time from the date of the termination or expiration of this Agreement and until County is satisfied, in its sole discretion, with Clear 's surrender of the Assigned Areas and County reduces its acceptance of surrender to writing, Clear shall be considered a holdover concessionaire under the terms set forth in herein.
- 15.7 A final exit walkthrough inspection shall be conducted by Clear and the Aviation Department to determine compliance with this provision and the Aviation Department's acceptance of the condition of the Assigned Areas. In the event Clear fails to comply with the provisions of this Article XV, County reserves the right to perform all necessary work to bring the Assigned Areas to its original condition prior to Clear's occupancy, normal wear and tear excepted, and Clear shall reimburse County for all expenses incurred.
- 15.8 The provisions of this Article XV shall survive the expiration or termination of this Agreement.

#### **ARTICLE XVI**

#### **FIRE AND OTHER DAMAGE**

- 16.1 In the event that structural or permanent portions of the Assigned Area shall be partially damaged by fire or other casualty, Clear shall give immediate notice thereof to County, and the same shall be repaired at the expense of County without unreasonable delay unless County determines that the damage is so extensive that the repair or rebuilding is not feasible. From the date of such casualty until said portion of the Assigned Area is so repaired, the monthly installments of the MAG hereunder shall abate in such proportion as the part of the area thus destroyed or rendered untenable bears to the Assigned Area, provided, however, that if any area shall be so slightly injured in any such casualty as not to be rendered unfit for occupancy, such installment payments shall not cease or be abated during any repair period. In the event that the damage to the Assigned Area should be so extensive as to render it untenable, the monthly installments of the MAG for the Assigned Area shall be abated until such time it shall again be put in repair, but in the event of the area being damaged by fire or other casualty to such an extent as to render it necessary in the exclusive judgment of County not to rebuild the same, then, at the option of County and upon notice to Clear, this Agreement shall cease and come to an end. In the event of any abatement of installments of the MAG with respect to the Assigned Area or any portion of the Assigned Area, Clear shall be required to pay to County the Percentage Fee described in Article VII, hereof.

- 16.2 County's obligations to rebuild or repair under this Article shall in any event be limited to restoring only the structural or permanent portions of the building in which the Assigned Area is located to substantially the condition that existed prior to the casualty, and shall further be limited to the extent of the insurance proceeds available to County for such restoration. Clear agrees that if County elects to repair or rebuild as provided in this Article, then Clear will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixtures, furnishings, equipment, Improvements, and other items provided or installed by Clear, in or about the Assigned Area in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

#### **ARTICLE XVII RELATIONSHIP OF PARTIES**

- 17.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto.
- 17.2 Independent Contractor. Clear is an independent contractor under this Agreement.
- 17.3 Third-Party Beneficiary. Neither Clear nor County intend to directly or substantially benefit or create any rights or obligations in any third party under any of the provisions of this Agreement. No third party shall be entitled to assert a claim against any party hereto based on this Agreement.

#### **ARTICLE XVIII ENVIRONMENTAL COMPLIANCE, ENVIRONMENTAL CONTAINMENT, AND REMOVAL**

- 18.1 Clear shall provide the Aviation Department, if requested at any time, with a list of all pollutants, hydrocarbon contaminates, hazardous materials, or other contaminants or regulated materials (collectively, "Materials") stored, used, generated, or disposed of on Airport property by Concessionaire, its agents, and contractors.
- 18.2 Clear agrees to comply with all existing and future federal, state, local, and County environmental laws, ordinances, and regulations, and the requirements of any development order covering the Airport, including, without limitation, those addressing the following:
- 18.2.1 Proper use, storage, treatment, and disposal of Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials;
- 18.2.2 Proper use, disposal, and treatment of storm water runoff, including the

construction and installation of adequate pre-treatment devices or mechanisms, if applicable;

- 18.2.3 Adequate inspection, licensing, insurance, and registration of existing and future storage tanks, storage systems, and ancillary facilities to meet all County, local, state, and federal standards, including the installation and operation of adequate monitoring devices and leak detection systems;
  - 18.2.4 Adequate facilities for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper disposal thereof; and
  - 18.2.5 Compliance with reporting requirements of Title III of the Superfund Amendment and Chapter 27 of the Broward County Code of Ordinances, as applicable and as amended from time to time.
- 18.3 The release of any Materials on Airport or at the Assigned Areas as a result of Concessionaire's operations at the Airport, that is in an amount that is in violation of any federal, state, County, or local law, rule, or regulation, or in violation of an order or directive of any federal, state, local court, or governmental authority, by Concessionaire or Concessionaire's agents, whether committed prior to or subsequent to the date of execution of this Agreement, shall be remedied at Concessionaire's expense and, upon demand of County or any of its agencies or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of applicable environmental laws, rules, and regulations. If Concessionaire does not take action immediately to have such Materials contained, removed, and abated, County or any of its agencies may, upon reasonable notice to Concessionaire (which notice shall be written unless an emergency condition exists), undertake the removal of the Materials; however, any such action by County or any of its agencies shall not relieve Concessionaire of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either Concessionaire or County to contain or remove Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release. As used in this Agreement, "Concessionaire's operations" and "Concessionaire's actions" and words of similar import shall include all actions and inaction by Concessionaire or Concessionaire's agents.
- 18.4 Concessionaire shall provide the Aviation Department with notice of release of Materials occurring on account of Concessionaire's operations at the Airport in accordance with the requirements of the Aviation Department's policies and procedures manual. Concessionaire shall maintain a log of all such notices to the Aviation Department and shall also maintain all records required by all applicable laws and regulations and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all applicable laws and regulations.

- 18.5 As required by law, Concessionaire shall provide the federal, state, County, and local regulatory agencies with notice of spills, release, leaks, or discharges (collectively, "release") of Materials on the Airport property which exceeds an amount required to be reported to any local, County, state, or federal regulatory agency under applicable environmental laws, rules, and regulations, which notice shall be in accordance with applicable environmental laws, rules, and regulations. Concessionaire shall further provide the Aviation Department and County Environmental Protection and Growth Management Department (or successor agency) with written notice within one (1) calendar day following commencement of same, of the curative measures, remediation efforts, and/or monitoring activities to be affected. Concessionaire shall have an updated contingency plan in effect relating to such release, which provides minimum standards and procedures for storage of regulated Materials and other Materials, prevention and containment of spills and release, and transfer and disposal of regulated Materials and other Materials. The contingency plan shall describe design features, response actions, and procedures to be followed in case of release or other accidents involving hazardous Materials, bio-hazardous Materials, or petroleum products or other Materials. Concessionaire agrees to permit entry of any Assigned Areas it occupies at the Airport at all reasonable times by inspectors of County Department of Environmental Protection and Growth Management or successor agency and of other regulatory authorities with jurisdiction.
- 18.6 The Aviation Department, upon reasonable written notice to Concessionaire, shall have the right to inspect all documents relating to the environmental condition of the Assigned Areas used by Concessionaire at the Airport, including without limitation, the release of any Materials, or any curative, remediation, or monitoring efforts, and any documents required to be maintained under applicable environmental laws, rules, and regulations or any development order issued to County, including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental site assessments, and sampling and test results. Concessionaire agrees to allow inspection of the Assigned Areas, by appropriate federal, state, County, and local agency personnel in accordance with applicable environmental laws, rules, and regulations and as required by any development order issued to County.
- 18.7 If County arranges for the removal of any Materials at the Airport that were released by Concessionaire or Concessionaire's agents, all costs of such removal incurred by County shall be paid by Concessionaire to County within ten (10) calendar days after County's written demand, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.
- 18.8 Nothing herein shall relieve Concessionaire of its general duty to cooperate with County in ascertaining the source and containing, removing, and abating any Materials at the Airport. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Concessionaire, and the federal, state, local, and other County agencies, and their employees, contractors, and agents, at times in accordance

with all applicable laws and regulations, shall have the right to enter any Assigned Areas used by Concessionaire at the Airport for the purposes of the foregoing activities and conducting such environmental assessments (testing or sampling), inspections, and audits as it deems appropriate.

- 18.9 The provisions of this Article XVIII shall survive the expiration or other termination of this Agreement.

**ARTICLE XIX**  
**NOTICES**

- 19.1 In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery. The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

County:

Broward County Aviation Department  
Director of Aviation  
Fort Lauderdale-Hollywood International Airport  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, FL 33312  
Email address: mgale@broward.org

with a copy to:

County Administrator  
Governmental Center  
115 S. Andrews Avenue  
Fort Lauderdale, FL 33301  
Email address: bhenry@broward.org

Clear:

Alclear, LLC  
650 Fifth Ave, 12<sup>th</sup> Floor  
New York, NY 10019  
Attn: President  
Email address: ken@clearme.com

with a copy to:  
Alclear, LLC  
650 Fifth Ave, 12<sup>th</sup> Floor  
New York, NY 10019  
Attn: General Counsel  
Email address: matt@clearme.com

**ARTICLE XX**  
**NONDISCRIMINATION, EQUAL OPPORTUNITY EMPLOYMENT,**  
**AND AMERICANS WITH DISABILITIES ACT**  
**DISADVANTAGED BUSINESS ENTERPRISE**

20.1 Nondiscrimination Requirements. To the extent applicable, Clear agrees to comply with the nondiscrimination requirements set forth on **Exhibit C**.

20.1.1 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, and 49 CFR Part 26. Clear agrees that it will not discriminate against any business owner because of the owner's race, gender, color, national origin, religion, sexual orientation, marital status, political affiliation, age, or physical or mental disability in connection with the award or performance of this Agreement, which is covered by 49 CFR, Part 23 and 49 CFR Part 26. Clear agrees to include the above statements in any subsequent agreements that it enters into for services under this Agreement and shall cause those businesses to similarly include the statements in further agreements.

20.1.2 Clear shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of the funds or any portion of the funds in fulfilling its obligations under this Agreement. Clear shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Clear shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

20.1.3 Clear's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

20.1.4 Clear shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

- 20.2 Clear shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, gender, color, familial status, national origin, religion, sexual orientation, marital status, political affiliation, age, or physical or mental disability during employment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employee, training (including apprenticeship), and accessibility.

Clear shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex, national origin, sexual orientation (including but not limited to Broward County Code, Chapter 16½), marital status, political affiliation, or physical or mental disability if qualified. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation; and selection of training, including apprenticeship. Clear agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

20.2.1 County shall also require that any contractor selected to perform work on a County project include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CFR Parts 23 and 26, as amended. Subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause. Failure to comply with above requirements is a material breach of the Agreement, and may result in the termination of this Agreement or such other remedy as County deems appropriate.

20.2.2 By execution of this Agreement, Clear represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle Aviation Department to terminate this Agreement and may result in debarment from County's competitive procurement activities.

- 20.3 Airport Concession Disadvantaged Business Enterprise. The Airport Concession Disadvantaged Business Enterprise ("ACDBE") regulations (49 CFR Part 23) establish requirements for setting an overall goal for ACDBE participation in all concessions activities. This rule requires recipients of Federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal the recipient would expect ACDBE's to achieve in the absence of discrimination. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, and 49 CFR Part 26. Clear agrees that it will not discriminate against any business owner because of the owner's race, gender, color, national origin,

religion, sexual orientation, marital status, political affiliation, age or physical or mental disability in connection with the award or performance of this Agreement, which is covered by 49 CFR, Part 23 and 49 CFR Part 26. Clear agrees to include the above statements in any subsequent agreements that it enters into for services under this Agreement and shall cause those businesses to similarly include the statements in further agreements.

20.3.1 Broward County has FAA approved nondiscriminatory management agreements and corresponding County policy governing ACDBE participation in County contracts and other selected activities, which includes management contracts. Broward County has established a policy relating to Disadvantaged Business Enterprise ("DBE") participation in all County contracts and other selected activities, which includes concessions under an ACDBE program. In order for the concession to be considered an ACDBE under the Federal Requirement, firms must be certified ACDBE.

20.3.2 Although no ACDBE goal has been set for this Agreement, County encourages Clear to give full consideration to the use of ACDBE firms to perform work under this Agreement. It is the policy of Broward County to ensure that ACDBEs, as defined in 49 CFR Part 23, can compete fairly for opportunities on all contracts awarded by County to ensure a level playing field.

20.4 Contract Assurances Clauses. The following clauses pertaining to compliance with 49 CFR Part 23 shall become a part of this Agreement and are hereby incorporated into the terms of this Agreement as well as Clear's subcontracts, material supply contracts, and purchase orders. In the event the following clauses conflict with any other terms or provisions of this Agreement, the clauses set forth in the ACDBE regulations shall control:

20.4.1 Nondiscrimination and Remedies. Clear or subconcessionaire shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Clear shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of USDOT-assisted contracts. Failure by Clear to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

20.4.2 Participation by ACDBEs. It is the policy of Broward County that ACDBE firms, as defined herein, can compete fairly for opportunities on all contracts awarded by County to ensure a level playing field and other contracts funded in whole or in part by the FAA, Federal Highway Administration, or Federal Department of Transportation. Clear hereby agrees to take all necessary and reasonable steps, including compliance with the matters set forth in the ACDBE section, in accordance with 49 CFR Part 23, as amended, to ensure that the ACDBE firms have fair opportunity to compete for and perform on contracts.



- 20.4.3 Prompt Payment. Clear hereby agrees to pay its subcontractors and suppliers within thirty (30) calendar days following receipt of invoices. A finding of nonpayment to subcontractors and suppliers is a material breach of this Agreement. Clear shall include the foregoing prompt payment language in all of its contracts with subconcessionaires who participate on federally funded County projects and concessions. Designated staff of the OESBD will conduct meetings with parties involved in prompt payment disputes to facilitate an amicable resolution.

## **ARTICLE XXI GENERAL PROVISIONS**

- 21.1 Subordination of Agreement. This Agreement, and all provisions hereof, is subject and subordinate to the terms and conditions of the instruments and documents under which County acquired the Airport from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in such instruments and documents and any existing or subsequent amendments thereto. This Agreement and all provisions hereof, is subject and subordinate to any ordinances, rules, or regulations which have been, or may hereafter be, adopted by County pertaining to the Airport. This Agreement, and all provisions hereof, is subject and subordinate to the provisions of any agreement heretofore or hereafter made between County and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to County for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport, including, without limitation, the expenditure of federal funds for the development of the Airport under the provisions of the Federal Aviation Act of 1958, as codified in the United States Code, Title 49, as amended. In addition, this Agreement is subordinate and subject to the provisions of all resolutions heretofore and hereafter adopted by County in connection with any revenue bonds issued by County with respect to the operations of the Airport, or any improvements to the Airport or any of its facilities, and to the provisions of all documents executed in connection with any such bonds, including, without limitation, any pledge, transfer, hypothecation, or assignment made at any time by County to secure any such bonds.
- 21.2 Cooperation with County. Clear acknowledges that County, from time to time, will be seeking regulatory approvals (collectively "Regulatory Approvals") in connection with Airport projects, which may include the following: (i) amendment of development agreements and orders; (ii) agreements with the state of Florida and other agencies; (iii) land use and zoning amendments; (iv) preparation of environmental assessments and environmental impact statements; (v) such permitting as may be required by federal, state, County, or local regulations; and (vi) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of Airport projects. Clear agrees to cooperate with

County in connection with County's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, Clear covenants and agrees to support County's efforts to obtain the Regulatory Approvals and to execute any documents or instruments reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Clear shall not be required to bear any expense in connection therewith and Clear shall not be deemed an agent of County.

From and after the date of execution of this Agreement, Clear covenants and agrees (a) to support County's efforts to obtain the Regulatory Approvals, and (b) to execute any documents or instruments reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Clear shall not be required to bear any expense in connection therewith and Clear shall not be deemed an agent of County.

- 21.3 Right to Amend. In the event that the United States Government, the State of Florida, or any agency or department thereof, requires modifications in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Clear agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be required, and upon any failure of Clear to agree to any such amendments, modifications, revisions, supplements, or deletions, County shall be entitled to terminate this Agreement upon thirty (30) calendar days' notice to Clear.
- 21.4 Police/Regulatory Powers. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Assigned Areas, any Improvements thereon, or any operations at the Assigned Areas, or at any other areas of the Airport. Nothing in this Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.
- 21.5 Public Entity Crimes Act. Clear represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to County, may not submit a bid on a contract with County for the construction or repair of a public building or public work, may not submit bids on leases of real property to County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with County, and may not transact any business with County in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being

placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from County's competitive procurement activities. In addition to the foregoing, Clear further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Clear has been placed on the convicted vendor list.

- 21.6 Right of Flight. County reserves unto itself, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Assigned Areas and Terminals and other adjacent County property together with the right to cause in said airspace such noise and other intrusions as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for aircraft landing on, taking off from, or operating at the Airport.
- 21.7 Compliance with FAR Part 77. All Improvements, equipment, objects of natural growth, and other obstructions on the Assigned Areas or Airport Terminals or any County property shall be restricted to a height in order to comply with all applicable Federal Aviation Regulations, including but not limited to Part 77. Notwithstanding the foregoing, Clear shall make no above grade Improvements.
- 21.8 No Hazards. Clear expressly agrees, for itself, its successors and assigns, to prevent any use of the Assigned Areas, which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute a hazard.
- 21.9 No Exclusive Rights. Nothing herein contained shall be deemed to grant Clear any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in Title 49 USC Section 40103, et seq., for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Clear shall have the right to use the Assigned Areas pursuant to the provisions of this Agreement. It is expressly understood and agreed that the rights granted under this Agreement are nonexclusive.
- 21.10 Right to Develop. County reserves the right to further develop and improve County-owned property, as it sees fit, regardless of the desires or views of Clear, and without interference or hindrance, consistent with applicable laws and regulations.
- 21.11 Protection of Air Space. Nothing contained in this Agreement shall grant to Clear any rights whatsoever in the air space above County property. In that regard, County reserves the right to take any action whatsoever that it considers necessary to protect the aerial approaches of the Airport against obstruction, including, but not limited to demolition or removal of structures upon the Assigned Areas, together with the right to prevent Clear from erecting or permitting to be erected any Improvement which, in the opinion of County, would limit the usefulness of or interfere with the operations at the

Airport, or constitute a hazard to aircraft.

- 21.12 Drug Free Workplace. Clear shall assure compliance with County's drug free work place policy for all personnel employed by or contracted by Clear who operate, maintain, and repair the Assigned Areas.
- 21.13 Contingency Fee. Clear warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Clear, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Clear, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, County shall have the right to terminate this Agreement without liability at its discretion, and to recover the full amount of such fee, commission, percentage, gift, or consideration.
- 21.14 Waiver of Breach and Materiality. Failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the provisions of this Agreement. County and Clear agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
- 21.15 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.
- 21.16 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement, as amended, shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CLEAR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

- 21.17 Joint Preparation. Preparation of this Agreement has been a joint effort of County and Clear and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- 21.18 Non-Liability of Government Representatives. No commissioner, director, officer, agent, or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement or of any supplement, modification, or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.
- 21.19 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference, and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles I through XXI of this Agreement shall prevail and be given effect.
- 21.20 Amendments. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by County and Clear.
- 21.21 Utility Easements. County reserves the right to maintain such utility easements and/or licenses on Assigned Areas as may now or in the future be determined to be necessary to serve the needs of the Airport, and Clear agrees to take this Agreement subject to said easement and/or license requirements. Such easements and/or licenses will be used for, but not limited to, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting, and power poles.
- 21.22 Agent for Service of Process. If Clear is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of the State of Florida, or is a foreign corporation, then Clear must be registered with the Secretary of State of the State of Florida and designate the Florida Secretary of State as its agent for service of process in any court action between Clear and County arising out of or based upon this Agreement, and the service will be made as provided by the laws of the State of Florida for service upon a non-resident, who has designated the Florida Secretary of State as agent for service. If for any reason, service of such process is not possible, and as an alternative method of service of process, Clear waives personal service and agrees Clear may be served with process out of the State of Florida by certified mailing to Clear at the address set forth herein. Any such service out of the State of Florida will constitute valid service upon Clear as of the mailing date. Clear consents and agrees to the process so served, submits to the jurisdiction of Florida, and waives any and all objections and protest with respect to such service. If Clear fails to register with the Secretary of State of the State of Florida and contests this waiver of personal service, Clear shall pay Broward County's reasonable attorneys' fees and costs if Broward County

successfully enforces this waiver of personal service.

- 21.23 Waiver of Claims. Clear hereby waives any claim against Broward County and its officers, commissioners and employees for any consequential damages, including without limitation any loss of anticipated profits, caused by (a) any failure of County to comply with any obligations hereunder; (b) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof; or (c) by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same or any part thereof, from being carried out; or (d) any change in the operation or configuration of, or any change in procedures, governing the use of the Airport.
- 21.24 Damage to Airport Facilities. Clear shall be responsible for all damage to the Airport caused by the negligence of Clear or Clear's agents, including, but not limited to, damage to the Terminal areas, roadways, and all areas where any activities are performed by Clear.
- 21.25 Survival. Upon termination or expiration of this Agreement, Clear shall remain liable for all obligations and liabilities that have accrued prior to the Termination Date. Notwithstanding any provision of this Agreement to the contrary, no obligation, which accrued but has not been satisfied under the Prior Agreement, shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.
- 21.26 No Recordation of Agreement. Clear shall not record this Agreement or any memorandum thereof in the Official Records of Broward County, Florida, and a violation of this paragraph by Clear shall automatically void those provisions and portions of this Agreement that run to the benefit of Clear.
- 21.27 It is understood and agreed that this Agreement and the TBLA ("Agreements") contain the entire agreement between the parties hereto. It is further understood and agreed by Clear that County and County's agents have made no representations or promises with respect to the Agreements or the making or entry into the Agreements, except as is expressly set forth in the Agreements, and that no claim or liability or cause for termination shall be asserted by Clear against County for, and County shall not be liable by reason of, the breach of any representations or promises not expressly stated in the Agreements, any other written or oral agreement with County being expressly waived by Clear.
- 21.28 If County incurs any expense in enforcing the provisions of this Agreement, whether suit be brought or not, Clear agrees to pay all such County out-of-pocket costs and expenses including, but not limited to court costs, interest, and reasonable attorney's fees and costs, through all trial, appellate, post-judgment, and bankruptcy proceedings.
- 21.29 Interpretation. The titles and headings contained in this Agreement are for reference



purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

- 21.30 Visual Artists Rights Act. With respect to construction or installation of any Improvements on Airport Assigned Areas and regarding the requirements of the federal Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113, as it may be amended from time to time (the "Act"), Clear agrees that it shall not (a) hire any artist or permit any agent, contractor, or other party, to hire any artist for the purpose of installing or incorporating any work of art into or at any Airport Assigned Areas, or (b) permit the installation or incorporation of any work of art into or at any Airport Assigned Areas without the prior written approval of County Clear shall provide such documentation as County may request in connection with any such approval, which approval may be withheld by County for any reason. Any approval of County may be conditioned upon the execution by the artist of a waiver of the provisions of the Act, in form and substance acceptable to County.
- 21.31 Radon Gas. 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 your County public health unit.
- 21.32 Execution. Execution of this Agreement by Clear shall constitute execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of the Agreement are accurate, complete, and current at the time of contracting. The original Agreement price and any additions thereto shall be adjusted to exclude any significant sums by which County determines the Agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such Agreement adjustments shall be made within one (1) year following the end of this Agreement.
- 21.33 No Remedy Exclusive. No remedy conferred in this Agreement upon or reserved to County or Lessee is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this Agreement or now or hereafter existing at law or in equity.

- 21.34 Reports. Any and all reports and other data and documents provided to County by Clear in connection with this Agreement are and shall remain the property of County.
- 21.35 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.
- 21.36 Incorporation of Required Provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.
- 21.37 Binding Document. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement. This Agreement is binding as of the Effective Date. The individuals executing this Agreement on behalf of Clear personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.
- 21.38 Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and ALCLEAR, LLC, signing by and through its duly authorized representatives.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor or Vice Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Aviation Office  
2200 SW 45<sup>th</sup> Street, Suite 101  
Dania Beach, Florida 33312  
Telephone: (954) 359-6100  
Telecopier: (954) 359-1292

By \_\_\_\_\_  
Tracy Meyer, Esq. (Date)  
Risk Insurance and Contracts Manager

By \_\_\_\_\_  
Sharon V. Thorsen (Date)  
Senior Assistant County Attorney

SVT/ch  
AIClear Conc. Agmt  
05/29/18  
80071.0028

REGISTERED TRAVELER CONCESSION AGREEMENT BETWEEN BROWARD COUNTY AND  
ALCLEAR, LLC

**CONCESSIONAIRE**

ALCLEAR, LLC

By: \_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by  
Kenneth Cornick, as President for Alclear, LLC who is personally known to me.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Commission # \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name



**EXHIBIT A**  
**ASSIGNED AREAS**

The location of the Designated Queue Line(s) and Equipment for the enrollment of RT Applicants shall be determined following approval by TSA of an ASP Amendment authorizing the RT Program to be implemented at the Airport in Terminal 2. Clear and County shall consult regarding the location of the Designated Queue Line(s) and Equipment for the enrollment of RT Applicants in Terminal 2; provided, however, the final location and placement shall be in County's sole discretion, consistent with the ASP Amendment. This Exhibit A shall be revised and updated to reflect the specific location(s) of Designated Queue Line(s) and Equipment for the enrollment of RT Applicants.

**EXHIBIT B**  
**SERVICES**

**CLEAR RT PROGRAM**

Clear will establish and operate, manage and maintain the Assigned Areas depicted in **Exhibit A** subject to TSA approval, a RT Program at the Airport. Clear's technology will automate the travel document checker function at the Airport's security checkpoints. The TSA travel document check line, which will continue for non-enrolled passengers and physical TSA screening will still be required. Clear shall furnish, install, maintain, and integrate Equipment verification stations in in Assigned Areas for expediting passenger screening and furnish, install, and maintain enrollment Equipment for RT Applicants. Clear will be responsible for furnishing, installing, constructing as necessary, and integrating such stations in accordance with TSA permissions and approvals.

Clear shall comply with the Airport approved protocols and all protocols set forth in the ASP Amendment, which at a minimum, shall consist of the following verifications and procedures:

- i. Boarding pass checked for special markings that impact the process;
- ii. All travel document validations required;
- iii. The identity is verified in the Designated Queue Line via biometric match;
- iv. The passenger who positively completes this process is then guided to the TSA security screening area.

Clear shall conduct its operations in strict compliance with the ASP Amendment authorizing the RT Program.

**EXHIBIT C**  
**NONDISCRIMINATION REQUIREMENTS**

I. During the performance of this Agreement, the Contractor for itself, its personal representatives, assigns and successors in interest (hereinafter referred to collectively as the "Contractor") agrees as follows:

(a) Compliance With Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally Assisted Programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(b) Nondiscrimination. The Contractor shall not discriminate on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitation for Subcontracts, Including Procurement of Materials and Equipment. In all solicitation either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation.

(d) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by County or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to County or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, County shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: (1) withholding of payments under the contract until there is compliance, and/or (2) cancellation, termination, or suspension of the contract, in whole or in part.

In the event of cancellation or termination of the contract (if such contract is a lease), County shall have the right to re-enter the premises as if said lease had never been made or issued. These provisions shall not be effective until the procedures of Title 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

(f) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs (a) through (e), above, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as County or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request County to enter into such litigation to protect the interests of County and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(g) The Contractor, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this contract, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.

(h) The Contractor, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall 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 the premises and the furnishing of services thereon, no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

II. During the performance of this contract, the Contractor, for itself, its assignees and successors in interest agrees as follows:

The Contractor agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. The Contractor agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The Contractor agrees that it will require its covered suborganizations to provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

The Contractor agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, and by any federal, state, County or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. The Contractor agrees that state or County affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR 152.409. The Contractor agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR Part 152, Subpart E.

If required by 14 CFR Part 152, Contractor shall prepare and keep on file for review by the FAA Office of Civil Rights an affirmative action plan developed in accordance with the standards in Part 152. The Contractor shall similarly require each of its covered suborganizations (if required under Part 152) to prepare and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in Part 152.

If Contractor is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity under Part 152, then Contractor shall nevertheless make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Contractor shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

Contractor shall keep on file, for the period set forth in Part 152, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and Contractor shall require its covered suborganizations to keep similar records as applicable.



Contractor shall, if required by Part 152, annually submit to County the reports required by Section 152.415 and Contractor shall cause each of its covered suborganizations that are covered by Part 152 to annually submit the reports required by Section 152.415 to the Contractor who shall, in turn, submit same to County for transmittal to the FAA.

III. The Contractor, for itself, its assignees and successors in interest agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participating in any activity conducted with or benefiting from Federal assistance. This "Provision" obligates the Contractor or its transferee, for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

IV. Contractors shall not discriminate on the basis of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.

**EXHIBIT D**  
**PREVAILING WAGE RATES**

Prevailing Wage Rates: On November 17, 1983, the Broward County Board of County Commissioners enacted Ordinance No. 83-72 providing that, in all non-federally funded construction procurement activity of \$250,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

1. Prevailing Wage Rate Ordinance. This Project is not federally funded. If the construction cost is in excess of \$250,000, the following sections shall apply:
  - 1.1 The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
  - 1.2 All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. CONSULTANT shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
  - 1.3 If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.
  - 1.4 In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by CONSULTANT, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may: (1) by written notice to CONSULTANT terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, CONSULTANT and its sureties shall be liable to COUNTY for any excess costs occasioned to COUNTY thereby.
  - 1.5 Sections 1.1 through 1.4 above shall apply to this Contract to the extent that it is: (1) a prime Contract subject to the ordinance; or (2) a subcontract also subject to the ordinance under such prime Contract.
  - 1.6 CONSULTANT shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the

work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

- 1.7 CONSULTANT shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as **Exhibit E**.
- 1.8 The Contract Administrator may withhold or cause to be withheld from CONSULTANT so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by CONSULTANT or any subcontractor on the work, the full amount of wages required by this Agreement.
- 1.9 If CONSULTANT or any subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Contract Administrator may, after written notice to CONSULTANT, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

Exhibit E  
Page 1 of 1

**EXHIBIT F  
EQUIPMENT AND SIGNAGE**

EXHIBIT F

**Pods**



Back

EXHIBIT F

# Pods

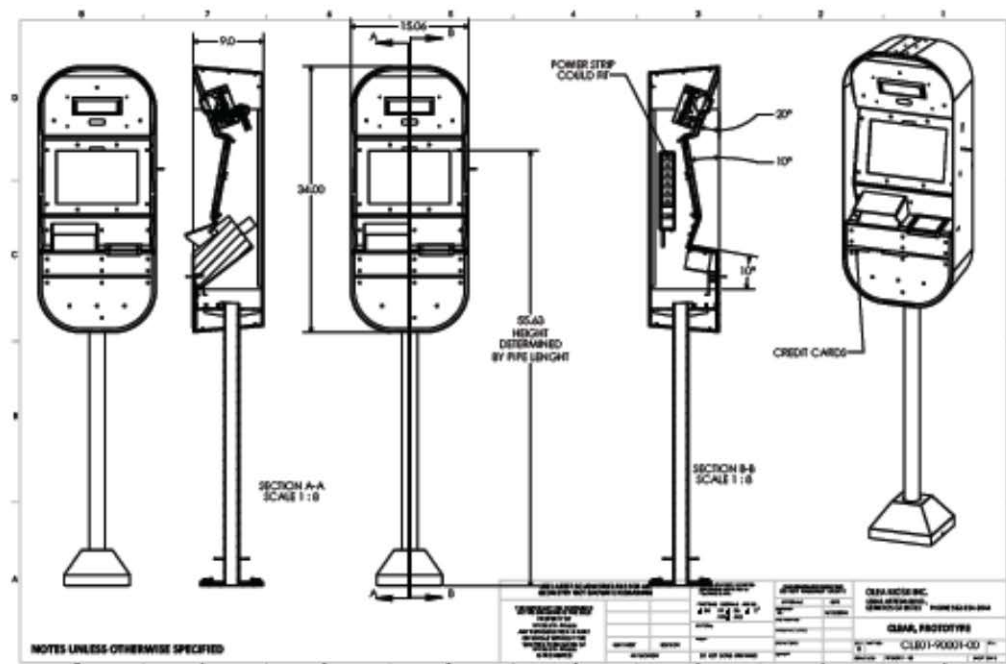


EXHIBIT F

## Lane

Lane panels are  
46.5" x 24.5"

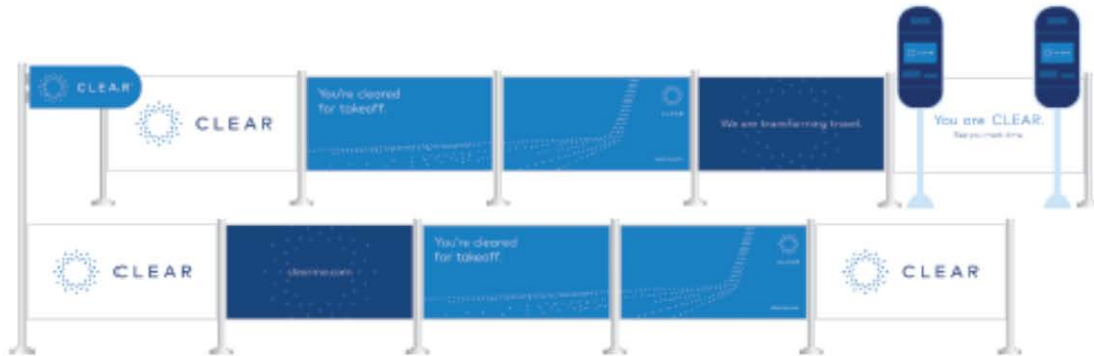


EXHIBIT F

## Lane Flag

The sign is 30" wide x 12" tall.

The pole/post the sign is attached to is 8' tall.





EXHIBIT F

## Signage

Pull-up banners are  
24" x 72"

Ultraboard signage  
is 36" x 96"

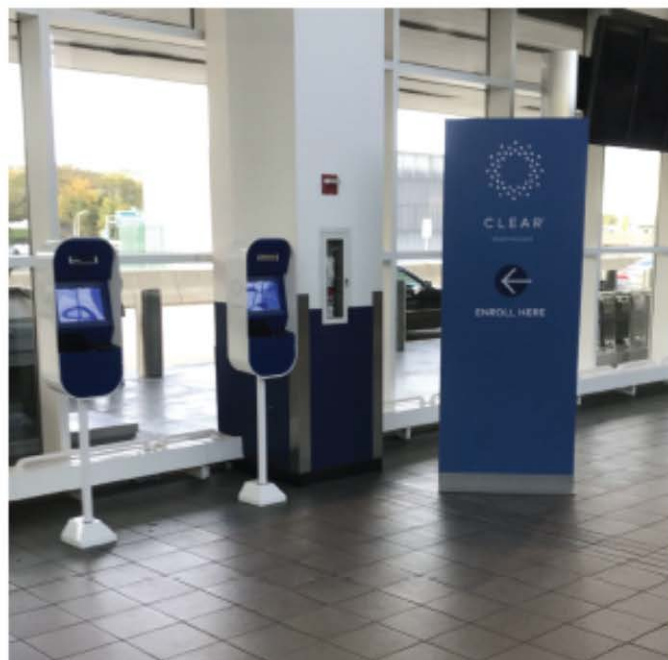
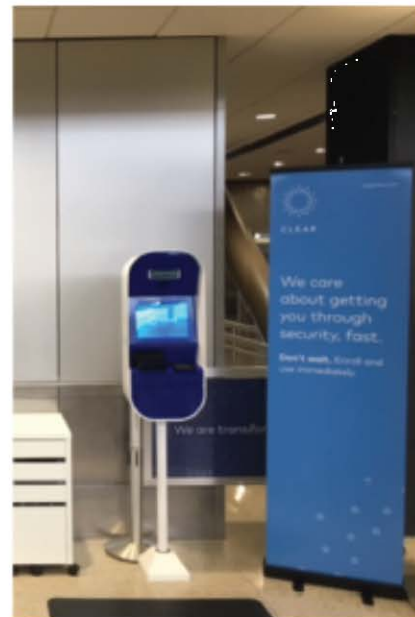


EXHIBIT F

## Stanchion Toppers

Toppers are 14" x 11"



## EXHIBIT G INSURANCE REQUIREMENTS

### Insurance Requirements for sole Source Biometric Identification Verification

The following coverages are deemed appropriate for minimum insurance requirements for this project and will be required of the selected firm and identified in the negotiated agreement. Any deviation or change during the contract negotiation period shall be approved by Risk Management.

TYPE OF INSURANCE	Limits on Liability in Thousands of Dollars		
		Each Occurrence	Aggregate
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> Explosion & Collapse Hazard <input type="checkbox"/> Underground Hazard <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> mobile equipment	Bodily Injury		
	Property Damage		
	Bodily Injury and Property Damage Combined	\$1 mil	\$1 mil
	Personal Injury		
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto If applicable	Bodily Injury (each person)		Broward County reserves the right to review and revise any insurance requirements at the time of contract renewal, not limited to the limits, coverages and endorsements based on insurance market conditions and/or changes in the scope of services.
	Bodily Injury (each accident)		
	Property Damage		
	Bodily Injury and Property Damage Combined	\$300 k non airside \$5 mil airside	
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY (NOTE *)</b> Chapter 440 FS	<input checked="" type="checkbox"/> STATUTORY		
		(each accident) \$500 k minimum	
<input checked="" type="checkbox"/> <b>PROFESSIONAL LIABILITY ~ E&amp;O</b>	Max. Ded. \$10k	\$5 mil	\$5 mil
<input checked="" type="checkbox"/> <b>Cyber Breach Response Coverage</b> (see page 2 attached sublimits)	Maximum Deductible	\$ 20K	Replacement value
	Each Claim	Vendor Responsible for Deductible	\$5 mil
Contractor responsible for all tools, materials, equipment, machinery, etc., until completion and acceptance by County.			
Description of Operations/Locations/Vehicles: Certificate must show on general liability and excess liability Additional Insured: Broward County. Also when applicable certificate should show B.C. as a named insured for property and builders risk and as a loss payee for installation floater when coverage's are required. Certificate Must be Signed and All applicable Deductibles shown. <b>CONTRACTOR RESPONSIBLE FOR ALL DEDUCTIBLES UNLESS OTHERWISE STATED.</b> Indicate bid number, RLI/RFP, and project manager on COI.			

**NOTE \*** - If the Company is exempt from Workers' Compensation Coverage, please provide a letter on company letterhead or a copy of the State's exemption which documents this status and attaché to the Certificate of Insurance for approval. If any operations are to be undertaken on or about navigable waters, coverage must be included for U.S. Longshoremen & Harbor Workers' Act/ & Jones Act  
**CANCELLATION:** Thirty (30) Day written notice of cancellation required to the Certificate Holder:

Name & Address of Certificate Holder  
 Broward County  
 2200 Southwest 45<sup>th</sup> Street, Suite 101  
 Dania Beach, Florida 33312  
 RE: (Security)

**Tracy Meyer**  
 Aviation Department  
 Risk Manager

Digitally signed by Tracy Meyer  
 DN: dc=local, dc=fl-airport,  
 ou=FLLUSERS, cn=Tracy Meyer  
 Date: 2017.10.04 11:32:59 -04'00'

Exhibit page 2

Biometric Identification Verification System

Cyber Breach Response Coverage Sub limits

Limits of Liability (inclusive of claim expenses):

- (a) \$ 5,000,000 Each Claim
- (b) \$5,000,000 Policy Aggregate subject to the following aggregate sub limits;
  - a. \$4,000,000 for all privacy notification costs
  - b. \$5,000,000 for all regulatory fines and claim expenses for Privacy Liability
  - c. \$5,000,000 for all extortion damages for extortion threat
  - d. \$4,000,000 for all crisis management expenses
  - e. \$1,000,000 for all reduction in business income caused by Business interruption

Tracy Meyer

Digitally signed by Tracy Meyer  
DN: dc=local, dc=fll-airport,  
ou=FLLUSERS, cn=Tracy Meyer  
Date: 2017.10.04 11:33:30 -04'00'