

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2010

COUNCIL BILL NO. \_\_\_\_\_  
COMMITTEE OF REFERENCE:  
4 BUSINESS, WORKFORCE, &  
5 SUSTAINABILITY

6 A BILL

7 For an ordinance approving a proposed Third Amendatory Agreement between the City  
8 and County of Denver and Simat Helliesen & Eichner, Inc. concerning professional and  
9 technical services at Denver International Airport.

10  
11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

12 **Section 1.** The proposed Third Amendatory Agreement between the City and County of  
13 Denver and Simat Helliesen & Eichner, Inc., in the words and figures contained and set forth in that  
14 form of the Third Amendatory Agreement, filed in the office of the Clerk and Recorder, Ex-Officio Clerk  
15 of the City and County of Denver, on the 5th day of August, 2010, City Clerk's Filing  
16 No. 06-256-C is hereby approved.

17  
18 COMMITTEE APPROVAL DATE: July 30, 2010

19 MAYOR-COUNCIL DATE: August 3, 2010

20 PASSED BY THE COUNCIL \_\_\_\_\_ 2010

21 \_\_\_\_\_ - PRESIDENT

22 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2010

23 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
24 EX-OFFICIO CLERK OF THE  
25 CITY AND COUNTY OF DENVER  
26

27 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2010 \_\_\_\_\_ 2010

28 PREPARED BY: Lee Marable;  DATE: August 5, 2010

29 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
30 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
31 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6  
32 of the Charter.  
33

34 David R. Fine, City Attorney

35 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney

36 DATE: August 5, 2010



**THIRD AMENDATORY AGREEMENT**

**THIS THIRD AMENDATORY AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **SIMAT HELLIESEN & EICHNER, INC.**, a Massachusetts corporation authorized to do business in Colorado, whose address is One Main Street, Fifth Floor, Cambridge, Massachusetts 02142 (the "Consultant").

06-256-C

**WITNESSETH :**

**WHEREAS**, the City and the Consultant entered into an Agreement dated March 21, 2006, which was amended by a First Amendatory Agreement dated October 30, 2007, and a Second Amendatory Agreement dated August 18, 2009, (the "Existing Agreement"), in which Consultant agreed to perform for the City certain professional services for the development of domestic and international air travel through and to Denver International Airport; and

**WHEREAS**, pursuant to the Second Amendatory Agreement, the Consultant has developed an Aviation Marketing Platform (AMP); and

**WHEREAS**, the Consultant now desires to provide AMP Services; including the provisioning, implementation and operation of the AMP; hosting and maintenance of the AMP; and other professional and technical services; and

**WHEREAS**, the City and the Consultant desire to further amend the Existing Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in the Existing Agreement and this amendment, the parties agree as follows:

1. Paragraph a) of Task Four – Marketing Support – Revenue generation and premarketing projects, of the Consultant’s “SH & E Scope of Work” attached to the Second Amendatory Agreement as Exhibit A-2 is supplemented by the attached AMP TERMS AND CONDITIONS (AMPTAC).
2. Notwithstanding Section 6.2, Right to Delegate, in the attached AMPTAC, Consultant acknowledges and agrees to use Sapient Nitro to provide for the hosting and maintenance of the AMP, as more specifically provided for in Section 3 of the attached AMPTAC.

3. Section 6 of the Existing Agreement, entitled "MAXIMUM CONTRACT LIABILITY," is amended and restated to read as follows:

Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of the sum of Two Million Nine Hundred Fifteen Thousand Dollars (\$2,915,000.00, unless this Agreement is amended to increase such amount.

4. Section 7 of the Existing Agreement, entitled "TERM," is amended and restated to read as follows:

The term of this Agreement shall commence on January 1, 2006, and shall terminate on December 31, 2015, unless this Agreement is terminated sooner in accordance with the terms of this Agreement.

5. The following shall apply to provisioning, implementation and operation of the AMP; hosting and maintenance of the AMP; and any ancillary related professional and technical services:

- **Annual Statement.** Not later than February 28 of each and every year during the Term hereof, Consultant shall furnish to City a true and accurate statement of the total of all Gross Revenues for the preceding calendar year ("Annual Certified Statements" or "Annual Statements") listing the authorized deductions or exclusions in computing the amount of such Gross Revenues and including a breakdown of Gross Revenues on a month-by-month basis.
- **Certification of Annual Statements.** Annual Statements may be prepared and certified by either (i) the chief financial officer or the chief executive officer of Consultant (stating that the Gross Revenues reported by Consultant during the preceding year was properly reported and calculated, that the monthly Revenue Reports were free of material misstatement and that payment was made in accordance with the terms of this Agreement), or (ii) an independent certified public accountant ("CPA"), who has audited the Gross Revenues in accordance with generally accepted accounting principles for special reports ("Audited Gross Revenue Statement").
- **Form of the Annual Statement.** The Annual Statement shall be in a form acceptable to the Manager's Authorized Representative, and shall contain a complete, itemized statement of Consultant's: (a) annual total Gross Revenues broken out monthly, as shown on the

books and records of Consultant, detailed as used to compute any Gross Revenues during the period covered by the Annual Statement; (b) the total Gross Revenues due under each category; and (c) the total Gross Revenues paid. Such statement shall be furnished for every calendar year in which business was transacted under this Agreement during the whole or any part of the year.

- ***Bi-Annual Statements.*** If Consultant elects to have its chief financial officer or chief executive officer certify its Annual Statements, then not later than May 31<sup>st</sup> of every other year during the Term hereof commencing in the year following the first complete calendar year of the term, Consultant shall have a CPA prepare and furnish to the City a true and accurate statement (“Bi-Annual Statement”) of the total of Gross Revenues for the preceding calendar year along with a letter in substantial conformity with the form applying agreed upon procedures.
- ***Late Statements.*** If Consultant elects to have its chief financial officer or chief executive officer certify its Annual Statement and is late with its Annual Statement or if Consultant’s Bi-annual Statement is late, then Consultant shall submit an Audited Gross Revenue Statement to the City, except that the Manager’s authorized representative may modify or waive this requirement in writing upon good cause shown by Consultant. Said Audited Gross Revenue Statement shall be due no later than 90 days from the due date of the late Annual Statement or the late Bi-Annual Statement.
- ***Manager’s Discretion.*** The above requirements for Annual and Bi-Annual Statements may be modified in the sole discretion of the Manager, if such modification is in the best interest of the City.
- ***Bookkeeping System.*** Consultant agrees to establish and maintain a cost accounting system of bookkeeping satisfactory to the City’s Auditor. Such system shall be kept in a manner as to allow each location of the Consultant’s operations hereunder to be distinguished from all other locations or operations of Consultant. Consultant shall prepare financial statements in conformity with generally accepted accounting principles, applying certain estimates and informed judgments, as required.
- ***Financial Accountability.*** Consultant shall keep and make available upon request true and complete records and accounts of all Gross Revenues and business transacted, including daily bank deposits. Consultant agrees that the City’s duly authorized representatives

(including but not limited to the Manager, the City's Auditor, and their authorized representatives) shall have access to and the right to audit, examine and copy during normal business hours any directly pertinent books, documents, papers and records of the Consultant related to revenue derived or generated under this Agreement. Consultant shall keep and preserve for at least three (3) years after expiration or termination of this Agreement, or until sooner audited by the City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period.

- ***Audit of Records.*** The City's Auditor, the Manager, and their respective authorized representatives shall have the right at any time to inspect, copy, examine or audit all of the books of account, bank statements, documents, records, returns, papers and files of Consultant relating to the Gross Revenues and business transacted to verify compliance with this Agreement. The City may use its own staff to perform audits under this Section, or may engage a duly authorized representative to perform the audit.
- ***Audit Request.*** Consultant, upon written request, shall make all such documents available for examination within the Denver metropolitan area; or shall pay in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Consultant as appropriate. Such documents shall be available to the City representative within 14 calendar days of the date of the written request.
- ***Audit Delay.*** The Parties agree that, after execution of this Agreement, any delay in furnishing such records to the City will cause damages to the City, which the Parties agree are liquidated in the amount of \$350.00 per day for each day the records are unavailable beyond the date of the City's request.
- ***Understated Revenues.*** If City determines after an audit for any year that the Gross Revenues and business transacted shown by Consultant's statement for such year were understated, Consultant shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If an audit reveals that Consultant has understated its Gross Revenues by more than 1% in two of any six months of an audited period (a period of no more than twelve months prior to the

date of the audit), the entire expense of the audit shall be borne by Consultant; Consultant shall pay the Past Due Amount to City, plus interest at the Past Due Interest Rate, plus the cost of the audit all within 30 calendar days of the City's invoice. In addition, for the most current year in which gross revenues were understated, Consultant shall have a CPA prepare and submit an Audited Gross Revenue Statement to the City.

- ***Time for Performing an Audit.*** Books and records shall be kept for a period of three (3) years after expiration or termination of this Agreement. The City's right to perform an audit shall expire three years after Consultant's statement for that year has been delivered to the City.
- ***City's Sales Taxes.*** Consultant agrees that the Manager, the Auditor, and their authorized representatives, may inspect any documents, returns, data or reports filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Consultant with the City's Manager of Revenue and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any investigation or audit of Consultant by the City's Department of Revenue. Consultant authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager, the Auditor and their authorized representatives, and, further, waives any claim of confidentiality that it may have in connection with such inspection of documents, returns, data, reports and information.

## 6. **COLORADO OPEN RECORDS ACT:**

The Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.*, and the Consultant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which the Consultant asserts is confidential and exempt from disclosure. Any other provision of the Existing Agreement notwithstanding, including exhibits, attachments and other documents incorporated into the Existing Agreement by reference, all materials, records and information provided by the Consultant to the City shall be considered confidential by the City only to the extent provided in the Open Records

Act, and the Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

**7. INDEMNIFICATION:**

Notwithstanding anything to the contrary in the attached AMPTAC, the indemnification provisions set forth in Section 9., INDEMNIFICATION, of the Existing Agreement, shall set forth the indemnity provisions between the Consultant and the City.

**8. INCONSISTENCY:**

Any inconsistency between the attached AMPTAC and the terms of the Existing Agreement shall be construed in favor of the provisions of the Existing Agreement.

**9.** Except as modified and amended herein, the Existing Agreement, and each and every term, provision, and condition of the Existing Agreement shall remain in full force and effect as if fully set forth here, and each and every term, provision, and condition is hereby ratified and reaffirmed.

**10.** This Third Amendatory Agreement shall not be effective or binding upon the City until approved and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGE FOLLOWS]



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

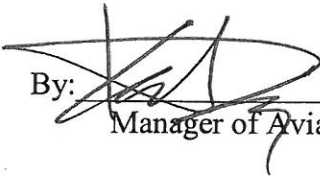
**CITY AND COUNTY OF DENVER**

**ATTEST:**

\_\_\_\_\_  
STEPHANIE O'MALLEY,  
Clerk and Recorder, Ex-Officio Clerk of  
the City and County of Denver

By: \_\_\_\_\_  
MAYOR

**RECOMMENDED AND APPROVED:**

By:  \_\_\_\_\_  
Manager of Aviation

**APPROVED AS TO FORM**  
DAVID R. FINE, Attorney for  
the City and County of Denver

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Assistant City Attorney

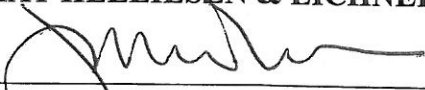
By: \_\_\_\_\_  
Manager of Finance  
Contract Control Nos. AR 05006  
and CE64022 (3)

By: \_\_\_\_\_  
Auditor

**"CITY"**

**SIMAT HELLIESEN & EICHNER, INC.**

**ATTEST:**

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

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

Title: Sr. Contracts Mgr.

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

**"CONSULTANT"**

# AMPTAC

## AMP TERMS AND CONDITIONS

### 1. Definitions.

“**Access Points**” means each and every kiosk, terminal or device that a User may access to utilize AMP within or otherwise connected to Customer’s airport, facility or system;

“**Agreement**” means, collectively, these AMP Terms and Conditions and all exhibits and schedules attached hereto;

“**AMP Service**” means the services to be provided by SH&E to Customer hereunder, including without limitation: (i) the provisioning, implementation and operation of the Aviation Marketing Platform or AMP; (ii) the hosting and maintenance of AMP, as described in Section 5 hereof; and (iii) the professional and client services provided by SH&E, as described in Section 3 hereof.

“**AMP IP Rights**” means any patent, copyright, trade secret, trademark or other Intellectual Property right embodied in or related to AMP and/or the AMP Service.

“**AMP Marks**” refers to each of the trademarks, service marks and logos set forth in Exhibit A attached hereto, which SH&E reserves the right to update and modify (i.e., add to or remove) from time to time during the Term.

“**Authorized Personnel**” means those Customer’s employees, consultants, contractors or agents who are authorized and tasked to use, support and manage Customer’s use of the AMP Service, and who have been supplied user identifications and passwords by Customer (or by SH&E at Customer’s request).

“**Aviation Marketing Platform**” or “**AMP**” shall refer to a proprietary multi-user software application, marketed under the brand name Ionos™ or other brands, which is capable of hosting, supporting, powering and/or being integrated with mobile-enabled websites, web and mobile applications, content management systems, web content display applications, kiosks, digital signage, and digital marketing campaigns.

“**Effective Date**” shall refer to the commencement date specified on the cover page of this Agreement.

“**Errors**” means any failure of the AMP Service to conform to the Specifications.

“**Intellectual Property**” means all worldwide intellectual property rights of any kind, whether arising under statute, common law, treaty, convention or otherwise, and whether or not vested or inchoate, including, without limitation: (i) any and all patents, utility models, rights in inventions, patent applications, ideas, concepts, know-how and improvements, (ii) all rights associated with works of authorship, including copyrights and moral rights, (iii) all Trademarks and rights in designs and logos, (iv) all rights relating to the protection of trade secrets and confidential information, and (v) any other proprietary rights relating to intellectual property and/or industrial property.

“**Operating Manual**” means the written material, including AMP instructions and manuals, that SH&E provides to its customers and users of the AMP Service, which materials may be updated and modified from time to time.

“**Order Forms**” means, collectively, the SH&E ordering documentation labeled “Contract” and/or “Order”, representing the initial commercial terms agreed to by the parties as well as any subsequent orders which the parties may consummate from time to time. All Order Forms shall require the signature of an authorized representative of both SH&E and Customer before the same is binding upon the parties.

“**Personal Data**” means any and all User Data and other information constituting “personal data” under the Directive.

“**Gross Revenue**” or “**Revenue**” means all billings and receipts from sales of advertising whether for cash or credit, regardless of collection in the case of the latter. It shall include all transactions, whether placed by telephone, in person or

## AMPTAC

by mail, and regardless of place or time of actual payment. It shall exclude reimbursements to the advertiser, applicable federal, state or municipal taxes separately stated and collected from advertisers, and customary allowances or discounts actually made by SH&E to its advertising customers. There shall not be allowed any reduction for bad debts, loss from theft or any deduction except as outlined above.

**“Severity Level 1 Error”** means any Error that renders the AMP Service or any material portion thereof inoperative, or materially impairs Customer’s or SH&E’s use of the AMP Service. Examples of Severity Level 1 Errors include, without limitation, situations in which the AMP Service is inoperable and causing Users to experience a total loss of service, continuous or frequent instabilities, a loss of connectivity or inability to communicate as intended, or there is an inability to process transactions, a failure of the AMP Service to comply with any applicable law, the creation of a hazard or emergency, or the inability to use a primary feature or function of the AMP Service.

**“Severity Level 2 Error”** means any Error that substantially impairs Customer or SH&E’s use of one or more features or functions of the AMP Service, which constitute less than a material portion thereof. Examples of Severity Level 2 Errors include, without limitation, situations in which an Error is causing intermittent impact to the Users, loss of redundancy, loss of routine administrative or diagnostic capability, or inability to use a secondary feature or function of the AMP Service.

**“Severity Level 3 Error”** means any Error that has a minimal impact on the performance or operation of the AMP Service. Examples of Severity Level 3 Errors include, without limitation, an Error having only a minimal impact on Users.

**“Severity Level 4 Error”** means any Error that has no impact on the performance, operation, or use of the AMP Service by Users.

**“Specifications”** means (i) the descriptions and performance and operational characteristics of the AMP Service contained in (A) the Documentation for the AMP Service, and (B) written materials relating to the AMP Service provided to Customer by SH&E as of the effective date hereof and with each Update; and (ii) with respect to any AMP Change, any specifications and requirements set forth in an SOW or developed in accordance with an SOW and approved by Customer.

**“Term”** shall have the meaning ascribed to it in Section 13 hereof.

**“User”** means each individual user of the AMP.

**“User Data”** means all electronic data or information submitted by Users of the AMP, including without limitation, their Personal Data.

All other defined terms set forth elsewhere in this Agreement shall have the definitions and meanings ascribed to them hereunder.

## 2. **License; Services.**

2.1 **License Grant.** In accordance with the terms and subject to the conditions set forth in this Agreement, SH&E hereby grants to Customer a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicensable right and license to access and use the AMP Service, as described herein and in any Documentation made available to Customer by SH&E from time to time during the Term. Customer hereby acknowledges that it is entering into this Agreement solely on the basis of the provisions expressly set forth herein, and its agreement hereto is not subject to SH&E’s delivery of any future functionality or features, nor is it dependent upon any oral or written statement made by SH&E with respect to future features and functionality associated with the AMP Service, unless and except to the extent expressly set forth in this Agreement.

## AMPTAC

2.2 **Restrictions.** Except as expressly permitted by this Agreement, Customer shall not: (i) modify, copy or create derivative works of the AMP and/or the AMP Service, (ii) disassemble, reverse engineer or decompile the AMP and/or the AMP Service, (iii) access or use the AMP Service in any manner not expressly permitted by this Agreement, including without limitation: (A) to build a competitive platform, product or service, or (B) to build a product or service using similar ideas, features, functions and/or Intellectual Property as those contained, whether in whole or in part, in the AMP Service.

2.3 **Bridgetrack Services.** The AMP Service contemplated hereunder includes *BridgeTrack*, a third-party proprietary application and system developed and owned by Sapient Corporation, that is integrated into AMP and provides users of AMP the ability to manage and analyze their digital campaigns (the "**BridgeTrack System**"). Customer's use of the BridgeTrack System shall be governed by the BridgeTrack Services Terms and Conditions which are attached hereto as Exhibit E.

2.4 **SH&E Approval.** Customer acknowledges that, subject to the terms and conditions set forth hereunder, each consultant, independent contractor or third party developer that is engaged by Customer to support, update and maintain the AMP on its behalf, whether the foregoing constitute Authorized Personnel or otherwise: (i) must be bound to the terms of this Agreement, and (ii) must execute a confidentiality agreement in a form to be approved by SH&E (or its designee) that requires such party to maintain the confidentiality of the AMP Properties (as defined below) and any other Confidential Information with which such party comes into contact from time to time. Customer shall be responsible for ensuring that its consultants and developers comply with the terms of this Agreement at all times.

### 3. Changes to Platform and/or Service.

3.1 **Change Requests.** From time to time during the Term of this Agreement, Customer may request that SH&E make certain changes to the AMP Service (the "**AMP Changes**") for its specific benefit and use. The AMP Changes may include, without limitation, functional changes to AMP. Customer shall be required to provide SH&E with a written detailed summary of the specific AMP Changes that it is requesting, including the specifications Customer requires and the requested delivery date, if applicable. Customer acknowledges that SH&E's refusal to make such AMP Changes and/or SH&E's decision to defer such changes for a later date when the same (whether in whole or in part) may be incorporated into a subsequent version of the AMP shall not constitute a breach of SH&E's duties and obligations hereunder. Except with respect to Customer-requested changes that are exclusively for Customer's benefit and will not be made available to other SH&E customers, ("Customer-Specific AMP Changes"), SH&E reserves the right to incorporate any and all AMP Changes requested by Customer into the overall AMP offering/product that SH&E makes available to its other customers and users and may determine the timeframe within which it will develop and release such AMP Changes into AMP. Customer acknowledges that, solely with respect to AMP Changes: (i) SH&E may decide to defer and/or delay the development of the requested AMP Changes and integrate the same into a subsequent version of AMP and (ii) to the extent any of Customer's AMP Changes are incorporated into AMP and thereafter made generally available to SH&E's other customers and users, no consideration shall be due and owing to Customer therefor. For Customer-Specific AMP Changes, Customer will be obligated to pay for such changes pursuant to a mutually agreed upon and executed SOW (as defined in Section 3.2 below).

3.2 **Statement of Work.** Prior to SH&E (and/or its designee) commencing the development services contemplated above in Section 3.1 required to carry out any Customer-Specific AMP Changes, the parties shall enter into a statement of work ("**SOW**"), which SOW shall contain the following, as applicable: (i) a detailed description of the services to be performed by SH&E (or its designee), (ii) a complete listing and description of the AMP Changes and/or other deliverables, if any, to be developed by SH&E, (iii) commencement date of the work and completion date, (iv) a fee schedule, (iv) appropriate project milestones and dates, if required, and (v) any other information pertinent to the work covered by and contemplated within the SOW. The parties acknowledge that this Agreement shall be incorporated into each SOW, and no SOW shall be binding upon the parties unless and until it is executed by each of them. In addition to the foregoing:

3.2.1 SH&E will submit monthly (or such other period as set forth on the SOW) written reports to Customer on or before the last day of each month describing its then-current activities, identifying problems and actions

## AMPTAC

taken to resolve them, resources used and costs incurred since the last report and any other information reasonably required to effectively monitor and manage the progress of the services covered under the SOW;

3.2.2 Customer may, from time to time, by written notice to SH&E (or its designee), request changes to any SOW entered into by the parties (each a "**Change Request**"). If such Change Request causes an increase or decrease in the cost of, or time required for, performance of the services contemplated in the applicable SOW, the parties shall negotiate equitable adjustments to the fees and performance deadlines set forth therein, and the SOW shall be modified, in writing, accordingly. If SH&E declines to undertake the Change Request and/or if the parties fail to agree on equitable adjustments to the SOW, then the existing specifications and terms set forth in a binding and effective SOW shall remain in full force and effect, and SH&E shall have no further obligations with respect to the applicable Change Request; and

3.3 **Customer Permitted Changes.** Upon delivery of the AMP Service to Customer by SH&E (or its designee), Customer shall be permitted to make certain changes to the AMP itself, but solely to the extent expressly set forth in the Operating Manual accompanying AMP (the "**Customer-Permitted Changes**"). Customer acknowledges and agrees that it shall be solely responsible for any such changes that are made to the AMP by any of its Authorized Personnel. Any changes that Customer desires which are not Customer-Permitted Changes shall constitute AMP Changes and be submitted to SH&E pursuant to Section 3.1 above. Without limiting the generality of the provisions of this Section 3.3, under no circumstances shall Customer be permitted to access, configure or modify the underlying source or object code of AMP.

3.4 **Project Managers.** SH&E and Customer shall each appoint a qualified staff member to act as project manager (each a "**Project Manager**") for the work undertaken pursuant to each SOW. Each such Project Manager shall (i) act as the principal contact between the parties, and (ii) ensure that SH&E's personnel coordinate with Customer's personnel. SH&E shall be responsible for supervision of the work by its employees, contractors or agents in accordance with the reasonable directions of Customer's Project Manager.

3.5 **SH&E Updates.** In addition to those AMP Changes requested by Customer pursuant to this Section 3, SH&E (or its designee) may develop and make available to its customers periodic updates to AMP (the "**Updates**"). Subject to the provisions of this Section 3.5, the Updates will be provided to Customer and all other similarly situated customers of AMP free of charge. Unless determined otherwise by SH&E in its sole discretion, the Updates will only be available for the then-current version of the AMP, and SH&E shall not be obligated to provide such Updates to any prior versions or instances of the AMP. If Customer requests that SH&E configure a particular update for any version of the AMP which is not the then-most current version thereof and SH&E agrees to do so, SH&E reserves the right to charge Customer for such services. SH&E shall deliver all Updates to Customer in electronic form, and SH&E shall provide reasonable maintenance and support services for such Updates provided pursuant to this Agreement.

3.6 **Reimbursement of Expenses.** Cost of materials and incidental expenses incurred in performing services under an SOW for a Customer-Specific AMP Change shall be reimbursed by Customer at SH&E's actual cost. SH&E shall separately itemize such costs and expenses on each invoice submitted. Customer shall also reimburse Vendor for reasonable and necessary travel and lodging expenses (exclusive of normal commutation) incurred by personnel (including independent contractors) of SH&E in connection with professional services rendered.

#### 4. **Delivery and Implementation of AMP.**

4.1 **Platform Account.** SH&E shall deliver and make available to Customer access to the then most current version of AMP Service for Customer's use. Among the various features and functionality that will be made available to Customer, Customer shall be provided with a client application that will reside within Customer's network through which Customer shall access AMP and manage its use thereof (the "**AMP Account**"). Notwithstanding the foregoing, SH&E shall have the ability and right to monitor Customer's use of the AMP Service at all times during and after the Term of this Agreement to assess user patterns, including without limitation frequency of log-ins per user and frequency of log-ins as a whole.

## AMPTAC

4.2 **Approval.** Upon SH&E's completion of all installation and configuration of the AMP Service for Customer, and, if applicable, SH&E's completion of its services under each SOW (if any), Customer shall test the AMP Service, as the case may be, to confirm it conforms with the Specifications and is otherwise free of Severity Level 1 Errors and Severity Level 2 Errors (together, "Critical Errors"). During and upon completion of such testing, Customer shall provide written notice to SH&E of any Critical Errors it may have discovered. SH&E shall, at no additional charge, devote sufficient resources to correct any Critical Error as soon as reasonably possible. In the event Customer fails to notify SH&E of any Critical Error within ten (10) days from the deployment, or in the event that Customer deploys the AMP Service into a "live" environment, it shall be deemed accepted by Customer.

4.3 **Acknowledgement of Implementation/Log-ins.** As part of the set-up services described in this Section 4, Customer shall be provided with the number of Authorized Personnel passwords and log-in IDs, as specified in the Order Form. Thereafter, Authorized Personnel passwords and log-in IDs shall be provided to Customer in a number mutually agreed upon by the parties. SH&E shall suspend or terminate a password or log-in ID immediately upon Customer's written request. The parties agree that each month Customer shall provide SH&E with an updated list of Authorized Personnel. SH&E shall be entitled to suspend or terminate any Authorized Personnel password or log-in ID if SH&E believes (acting reasonably) that such password or log-in ID is being used in a manner which is outside the scope of the permissions granted to Customer under this Agreement. SH&E shall provide notice of such termination as soon as is reasonably practical.

### 5. Customer's Responsibilities.

5.1 **General.** Customer is responsible for all activities that occur within its AMP Account by Authorized Personnel, Users or others with access under Customer's control or for whom Customer has provided access (collectively, the "Customer-Related AMP Users"). Customer shall: (i) have sole responsibility for the accuracy, quality, legality, reliability, and appropriateness of all User Data; (ii) use commercially reasonable efforts to prevent unauthorized control or tampering or any other unauthorized access to, or use of, the AMP Service, and notify SH&E promptly of any such unauthorized use in writing; (iii) comply with all applicable local, state, federal, and foreign laws (including laws regarding privacy and protection of consumer information) in using the AMP Service and, if using the AMP Service from outside of the United State, not use the same in a manner that would violate any federal or state laws of the United States if conducted therein; (iv) comply with all applicable rules of card associations (including American Express, MasterCard and Visa), if applicable; and (v) obtain and maintain all computer hardware, software and communications equipment, facilities and connections needed to access, use and offer the AMP Service, and continually pay all access charges (e.g., ISP) arising therefrom. To the extent deemed necessary by Customer, Customer shall implement security procedures necessary to limit access to the Service to Customer's Users; provided that Customer shall not be liable for unauthorized access to the AMP by third parties other than Customer-Related AMP Users. Customer shall notify SH&E in writing within 6 business hours of discovery of a security breach or unauthorized use of the AMP Service, and assist SH&E in taking all measures required to address, mitigate and/or resolve such breach as soon as practicable. In addition to SH&E's remote monitoring capabilities, Customer shall permit SH&E to review and audit Customer's use of the AMP Service on at least two (2) days prior written notice, which review/audit will occur at Customer's principal place of business or at such other place where Customer's Authorized Personnel are regularly situated during regular business hours.

5.2 **Use Guidelines.** Unless otherwise provided for herein, Customer shall use the AMP Service solely for its business purposes as contemplated by this Agreement and in the manner in which it was intended to be used by SH&E (or its designee) as described in the Operating Manual that is made available to Customer. Customer shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the AMP Service available to any third party other than Users who have affirmatively agreed to and comply with the EULA (as defined in Section 5.6 below), or as otherwise expressly permitted in this Agreement, the Operating Manual or by SH&E in writing; (ii) send spam or otherwise duplicative or unsolicited messages (email, SMS or otherwise) in violation of applicable laws from the AMP or otherwise; (iii) use the AMP Service and the AMP to send or store infringing, obscene, threatening, libelous, or otherwise unlawful, unsafe, malicious, abusive or tortious material, including material harmful to children or violative of third party privacy rights; (iv) use the AMP Service and the AMP to intentionally or

## AMPTAC

recklessly send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (v) intentionally or recklessly interfere with or disrupt the integrity or performance of the AMP Service or any of the data contained therein; or (vi) attempt to gain unauthorized access to any portion of the AMP Service that is otherwise not permitted to Customer. This section 5.2 notwithstanding, Customer is expressly permitted to allow direct links to the Customer's website by its affiliates, including, without limitation, the City of Denver, the State of Colorado, the County of Denver and related state, city and county tourism offices. In addition, Customer warrants, agrees and undertakes that, except as otherwise provide herein, it will comply with all applicable laws regarding age verification and restrictions under local law, and if applicable, shall institute sufficient age verification measures within the AMP to comply with this requirement.

**5.3 Customer Content.** Customer acknowledges that to the extent it (or its SH&E-approved Authorized Personnel) contributes, posts and/or runs content (the "**Customer Content**") on the AMP, it is solely responsible for obtaining all necessary releases, licenses, permits and other authorizations for use of such content including, without limitation, rights to use names, voices, likeness, photographs, copyrighted materials, artwork or any other property either created by or for Customer, or belonging to any third party. SH&E's (or its designee's) approval of any Customer Content shall not (i) release Customer of any of its rights and obligations under this Section 5.3, (ii) impose any liability on SH&E for Customer Content that is determined to be unauthorized and/or infringing of another's rights, or (iii) mitigate any of Customer's liability, damages or obligations arising from its breach of this Section 5.3. To the extent an issue or concern arises with respect to the Customer Content or if any limitations are imposed upon the same, Customer will keep SH&E fully informed thereof in writing. SH&E will provide Customer with written notice regarding Customer Content that SH&E deems to be objectionable. Customer further agrees that upon receipt of notice from SH&E (or its designee) to remove or modify objectionable Customer Content from the AMP, it will do so as soon as practicable and in no event later than twenty-four (24) hours from receipt of such instructions. If Customer disagrees with SH&E's characterization of Customer Content as objectionable, Customer will have 2 business days from receipt of such written notice to refute such characterization in writing. SH&E and Customer will enter into negotiations in good faith to conclusively determine whether such Customer Content is objectionable. Should the parties determine that the Customer Content is objectionable, such content will remain removed from the AMP. However, should the parties determine that such Customer Content is not objectionable, the content shall be immediately returned to the Customer's site without penalty to either SH&E or Customer.

**5.4 Personnel.** Customer shall designate Authorized Personnel to carry out, monitor and enforce Customer's obligations in this Section 5 at all times during the Term. The Authorized Personnel shall have an appropriate level of technical skills and experience to carry out the foregoing in a professional and workmanlike manner.

**5.5 Advertising Guidelines.** Customer acknowledges that all advertisements which run across the AMP Service at all times and in all formats shall be those either sold or otherwise arranged by SH&E (or its designee) in accordance with the advertising guidelines set forth in **Exhibit B** attached hereto (the "**Advertising Guidelines**"). Unless SH&E expressly agrees otherwise in writing, Customer shall not be permitted to sell advertisements on the AMP Service. SH&E reserves the right, after notice to and written agreement with Customer after negotiations held in good faith, to modify the Advertising Guidelines from time to time during the Term hereof, which shall include policies regarding obscenities, indecency and other content-related editorial policies instituted by SH&E and/or its designee. Customer's breach of this Section 5.5 and/or the Advertising Guidelines shall constitute a material breach of its duties and obligations herein. In addition to the foregoing, SH&E acknowledges that in the event of any conflicts between two or more customers (i.e., airports) over the nature, availability or streaming of advertising content on AMP, Customer shall receive favored customer status. Customer acknowledges that in the event of any conflicts between SH&E and Customer over the nature, availability or streaming of advertising content on AMP, after good faith negotiations with Customer, SH&E's (or its designee's) decision with respect thereto shall be final and binding upon the parties.

**5.6 Website Terms of Use and Privacy Policy.** Customer agrees that any Customer website ("Customer Websites") that uses the AMP Service will incorporate the website terms of use ("Terms of Use") and privacy policy ("Privacy Policy") substantially as set forth in **Exhibits D** and **E**, respectively, attached hereto. To the extent Customer desires to amend and make changes, from time to time during the Term, to the Terms of Use and/or Privacy Policy, Customer shall provide SH&E and/or its designee with copies of such changes and modifications, and the same may not

## AMPTAC

be incorporated into the Terms of Use / Privacy Policy and/or be posted on the Customer Websites without SH&E's prior written approval (which approval shall not be unreasonably withheld). Notwithstanding the foregoing, Customer expressly acknowledges and agrees that foregoing does not constitute SH&E's provisioning of legal services and SH&E makes no representation that the foregoing satisfies all laws, regulations and requirements, including privacy and data protection laws, applicable to Customer's operation and maintenance of the Customer Websites (the "Legal Requirements"). Customer is solely responsible for ensuring that the Customer Websites comply with such Legal Requirements.

5.7 **Audit and Review Rights.** In addition to SH&E's (and/or its designee's) remote monitoring capabilities, Customer will allow SH&E (and/or its designee) to conduct a review and inspection of Customer's use of AMP at all times during the Term. If SH&E (and/or its designees) elects to carry out the review and inspection on Customer's actual premises, the review will occur during regular business hours. The review and inspection shall comprise, among other elements, of Customer's compliance with the provisions set forth in this Agreement as well as its compliance with local and other applicable legal requirements relating to its use of AMP. SH&E agrees to provide Customer with as much advance written notice of its forthcoming review and inspection as is practicable and reasonably appropriate under the circumstances necessitating the review and inspection. If SH&E (or its designee) finds unacceptable practices and/or any violation of the terms of this Agreement, SH&E will provide its findings in writing to Customer. Corrective actions must be taken within the timeframe set forth in Section 13 hereof by Customer and to the satisfaction of SH&E. SH&E retains the right to re-review and inspect Customer's conduct to confirm the corrective action has been implemented and sustained.

## 6. Maintenance and Hosting.

6.1 **Maintenance Services.** Throughout the Term of this Agreement, SH&E shall carry out the hosting, maintenance and support services set forth in Exhibit C attached hereto in connection with its hosting, support and maintenance of the AMP Service. SH&E reserves the right to modify the maintenance services provided herein, from time to time, in its sole discretion.

6.2 **Right to Delegate.** SH&E hereby reserves the right to delegate any portion of its duties and obligations under this Agreement to any third party consultant or subcontractor of its choosing in order to effectively and efficiently carry out the intent and purpose of this agreement. The foregoing notwithstanding, SH&E acknowledges that it shall continue to be primarily responsible to satisfy its obligations under this Agreement.

6.3 **Right of Conversion to Self-Hosted/Maintained AMP Service Model.** At any time on or after the one (1) year anniversary of the date on which Customer begins using the AMP Service, Customer may elect to host, operate and maintain the AMP itself and provide AMP Services for its own benefit, subject to the following:

(a) Customer and SH&E shall enter into a mutually agreeable terms and conditions governing the Customer's self-hosted/maintained license of the AMP and use of the AMP Service, including the licensed components described below in this Section 6.3.

(b) Customer shall be required to satisfy the minimum hosting specifications to be mutually agreed upon.

(c) Customer shall be required to obtain a non-exclusive, non-transferable, non-sublicensable perpetual license to certain AMP components required to operate the AMP on a website (the "AMP Website Software Components"), which include the AMP's Web Content Distribution Layer; Data Integration Service Layer; and Platform Content Schema Design. The one-time license fee for Customer's license of the AMP Website Software Components shall be \$250,000. Customer, at its election, may purchase annual technical support services ("Annual Maintenance")



## AMPTAC

from SH&E, which will include the right to receive Updates, on terms mutually agreeable to the parties; provided, however, that the initial annual fee for the Annual Maintenance services shall be \$50,000.

(d) Customer may, at its election, obtain a non-exclusive, non-transferable, non-sublicensable perpetual license to the AMP's advertising Campaign Manager and Campaign Fulfillment components for a one-time license fee of \$300,000. Should Customer terminate for convenience pursuant to section 13.2.b., and Customer wishes to retain the Website, Customer shall pay SH&E a migration fee of \$250,000. If Customer wishes to retain the advertising platform, Customer shall pay SH&E a license fee for such platform of \$300,000.

(e) At Customer's request, SH&E or its designee will provide AMP installation and configuration services on the Customer's hardware/software environment on terms mutually agreeable to the parties; provided that the fee for such services shall be no less than \$75,000.

(f) Customer must procure a software license from SDL Tridion, the third party supplier of the web content management system software on which the AMP relies, for the use of such SDL Tridion software, on terms to be agreed between Customer and SDL Tridion. The costs associated with such SDL Tridion software license shall be in addition to the license fees described above in this Section 6.3

(g) Customer's continued future use of any part of the mobile application services available on the AMP subsequent to termination of this Agreement will be subject to separate terms and conditions, and associated fees, to be agreed upon by the parties and condensed to writing signed by both parties after good faith negotiations.

### 7. Fees and Payments.

7.1 **Fees; Invoicing.** Customer shall pay all fees specified on all Order Forms duly executed by the parties. Except as otherwise provided, all fees are quoted in United States dollars. Fees will be calculated in accordance with the pricing schedule that accompanies the Order Form. Except as otherwise provided, fees are non-refundable. SH&E will invoice Customer according to the prices indicated on each of their Order Forms. Unless otherwise stated on an Order Form, all fees and charges are due and payable in full by Customer in United States currency on net 30 day terms from the invoice date. In addition, under no circumstances shall Customer reduce or offset any amounts owed to SH&E against any claims, counterclaims, deductions and demands against SH&E which arise from this Agreement or any other to which both Customer and SH&E are parties.

7.2 **Interest; Suspension of Service.** Any undisputed payment not received from Customer by the due date shall accrue late charges at the rate of one and one half (1.5%) percent of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. In addition, Customer will reimburse SH&E for all reasonable costs and expenses incurred (including reasonable legal fees) in collecting any overdue amounts. Customer must dispute the validity of any invoice in writing within fourteen (14) days of receipt, and specify the amount of and reason for the adjustment or credit requested, or Customer forfeits any right it may have to challenge such invoice. This provision does not apply to clerical errors in billing or instances of incorrect billing resulting in payments to which SH&E is not entitled. Notwithstanding the foregoing, and in addition to any other rights available to SH&E under this Agreement or at law or equity, if Customer fails to pay undisputed fees invoiced by SH&E within thirty (30) days following the payment due date, SH&E shall have the right to terminate this Agreement upon (10) days' written notice to Customer in accordance with Section 13 hereof.

7.3 **Taxes.** Unless otherwise stated on an Order Form, SH&E's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on SH&E's income. If SH&E has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 7.3, the appropriate amount shall be invoiced to and paid by Customer to SH&E unless Customer provides SH&E with a valid tax exemption certificate authorized by the appropriate taxing authority.

### 8. Confidential Information.

## AMPTAC

8.1 **Scope of Confidential Information.** The term “**Confidential Information**” shall mean any information disclosed, directly or indirectly, in writing, orally, or by any other means, to a party to this Agreement (the “**Receiving Party**”) by the other party to this Agreement (the “**Disclosing Party**”) either prior to, on, or after the Effective Date. Such Confidential Information includes, but is not limited to, Customer and/or User Data, SOW deliverables, development proposals, technological processes, forecasts, future projects and product developments (including AMP-related enhancements, updates or improvements), trade secrets, pre-publication patent applications, product designs, pricing information and rate cards, software designs, hardware or system designs, technology specifications, source code, object code, graphic designs, customer data, financial information and projections, systems architecture, and systems functionalities. Confidential Information shall also include all copies, summaries and extracts of any of the foregoing. In addition and unless otherwise agreed to in writing, this Agreement and its terms and conditions shall be considered Confidential Information by the parties. Notwithstanding the foregoing, Confidential Information shall not include any information which the Receiving Party can document: (i) is in the public domain and is readily available at the time of disclosure or which thereafter enters the public domain and is readily available, through no improper action or inaction by the Receiving Party or any employee or independent contractor thereof; (ii) was in the possession of the Receiving Party or known by it prior to receipt from the Disclosing Party; (iii) was rightfully disclosed to the Receiving Party by a third party without restriction; (iv) is independently developed by the Receiving Party without access to such Confidential Information; (v) is disclosed with the Disclosing Party’s prior written consent; or (vi) is required by judicial or administrative order or subpoena to be disclosed, provided that (save in respect of any disclosure of personal data as required by law) the Receiving Party gives the Disclosing Party prompt written notice of such order or subpoena in order to allow the Disclosing Party sufficient time to obtain a protective order. [this last section adequately deals with CORA]

8.2 **Use of Confidential Information.** The Receiving Party agrees: (i) to use the Confidential Information only in connection with this Agreement; (ii) to retain the Confidential Information in confidence; (iii) to take all reasonably necessary actions to protect such Confidential Information, including, without limitation all actions that the Receiving Party employs with respect to its own confidential materials of a similar nature; (iv) not to disclose, directly or indirectly, any Confidential Information, any evaluation of the Confidential Information, or any information derived therefrom to any third party; and (v) not to copy, reverse engineer, reverse compile, nor attempt to derive the composition or underlying information of any Confidential Information.

8.3 **Disclosure to Employees.** Confidential Information shall only be disclosed to the Receiving Party’s employees, independent contractors, and financial and legal professionals acting under a legal duty not to disclose the Confidential information, and only to the extent such employees, independent contractors, and financial and legal professionals have a specific need to know Confidential Information to carry out the purposes and intent of this Agreement. The Receiving Party will ensure that its employees and independent contractors who have access to the Confidential Information shall be under obligation, as a condition of employment, engagement or otherwise, that ensures the use, title and nondisclosure obligations of such Confidential Information as set forth herein.

8.4 **Ownership of Confidential Information.** Subject to Section 9, the Disclosing Party shall at all times retain title to, ownership of and all rights and control over the Confidential Information. Except as expressly provided herein to the contrary, no right or license to the Confidential Information is granted under this Agreement. The Receiving Party shall, upon termination or expiration of this Agreement pursuant to Section 13, and at any other time upon the written request of the Disclosing Party, promptly return to the Disclosing Party or destroy all Confidential Information in its possession or under its control. Neither party shall make copies of any Confidential Information of the other party except as necessary to perform its obligations under this Agreement.

8.5 **Equitable Relief.** Each party acknowledges that the Disclosing Party asserts that the Confidential Information is unique and valuable and that any unauthorized disclosure in breach of this Agreement may result in irreparable injury to the Disclosing Party for which monetary damages alone would not be an appropriate remedy. Accordingly, the parties agree that in the event of a breach or threatened breach of this Section 8, the Disclosing Party shall be entitled to injunctive or other equitable relief as a remedy for any such breach or anticipated breach without being required to post a bond or other security. Any such relief shall be in addition to and not in lieu of any appropriate relief by monetary damages.

## AMPTAC

8.6 **Privacy and Data Protection.** Customer hereby warrants, represents, covenants and undertakes to SH&E that it shall:

(a) comply with all laws and regulations concerning the collection and use of Personal Data (including without limitation European Directive 95/46/EC regarding the processing of personal data (the "**Directive**") and Directive 02/58/EC regarding privacy and electronic communications), which apply in connection with the provision of the AMP Service by SH&E to Customer or the collection of any Personal Data provided to SH&E by Customer, including, where applicable, the laws of any jurisdiction in which: (i) Personal Data is collected from individuals or processed; and (ii) an individual from whom Personal Data is collected is resident (the "**Relevant Laws**");

(b) maintain the necessary data protection mechanisms in all relevant jurisdictions in accordance with the Relevant Laws to enable Customer to use and make available the AMP, the BridgeTrack System which is integrated therein and any Personal Data collected in connection therewith. Without limiting the generality of the foregoing, Customer shall implement and maintain a comprehensive written information security program ("**Information Security Program**") which shall include all necessary measures, including the establishment and maintenance of policies and procedures, and technical, physical, and administrative safeguards, to (i) ensure the security and confidentiality of the Personal Data, (ii) protect against any foreseeable threats or hazards to the security or integrity of Personal Data, (iii) protect against unauthorized access to or use of such data and information, (iv) comply with Section 8.6(c) below, and (v) ensure appropriate disposal of the Personal Data. The Information Security Program shall provide for (Z) continual assessment and re-assessment of the risks to the security of Personal Data acquired or maintained by Customer and its agents and contractors in connection with its use and provisioning of the AMP to Users, including but not limited to: (A) identification of internal and external threats that could result in unauthorized disclosure, alteration or destruction of Personal Data and systems used by Customer and its agents and contractors, (B) assessment of the likelihood and potential damage of such threats, taking into account the sensitivity of such Personal Data, and (C) assessment of the sufficiency of policies, procedures, information systems of Customer and its agents and contractors, and other arrangements in place, to control risks; and (Y) implement appropriate protections against such risks. Customer shall, and shall require its Authorized Personnel to, regularly test key controls, systems and procedures relating to the Information Security Program. The frequency and nature of such tests shall be determined by Customer's risk assessment, in consultation with SH&E. Customer shall provide SH&E with the results of all such tests and any other audit, review or examination relating to its Information Security Program. Customer certifies that its Information Security Program is and shall be in compliance with Title 201 of the Code of Massachusetts Regulations, Section 17.01 et seq., and other applicable laws, rules, regulations and orders. Customer shall deliver separate certifications of such compliance upon SH&E's reasonable request;

(c) only disclose and provide to SH&E the particular Personal Data which the parties have agreed in advance, in writing, to exchange and share between them and solely in the format jointly agreed upon in writing. Customer acknowledges that any Personal Data which is disclosed to SH&E pursuant to this Section 8.6(c) shall constitute the minimum necessary for SH&E (or its designee) to provision, maintain and support the AMP Service;

(d) shall notify SH&E immediately of any known or suspected unauthorized use, disclosure, acquisition, modification, or destruction of Personal Information, unauthorized access to Personal Data, or loss of Personal Data (each, a "**Security Breach**"). Customer shall provide SH&E with a detailed written statement describing the circumstances surrounding any Security Breach, and shall provide and promptly implement a remediation plan, acceptable to SH&E, to address the Security Breach and prevent any further incidents. The Customer will at its expense take all necessary or customary measures to mitigate any harmful effect of any such Security Breach, including without limitation notifications to affected individuals if requested by Client; and

(e) promptly notify SH&E in writing in the event of its non-compliance of this Section 8 or any other security breaches associated with the Personal Data.

8.7 **Applicability of Directive.** If the Directive is applicable, each party hereto acknowledges that: (i) Customer is the "data controller" in respect of the Personal Data of any Users that is processed in connection with the AMP Service; and (ii) SH&E is the "data processor" in respect of such Personal Data, as each such term is defined in the Directive.

## AMPTAC

8.8 **SH&E's Use of Customer Data and Personal Data.** The parties hereby agree that the User Data and Personal Data collected via the AMP will not be used for any purpose, including aggregation of User Data and Personal Data with other data of a confidential nature by either party, except as set forth herein, and except as may be otherwise agreed upon by the parties in writing. Save where either party is permitted to do so pursuant to this Agreement or as is otherwise required by law, such party shall not divulge the User Data or Personal Data, whether directly or indirectly, to any persons, firm or company, without the express written consent of the other party.

8.9 **Press Release.** Both SH&E and Customer shall have the right to mention the existence of this Agreement (but not its terms) after the effective date hereof solely while the Agreement remains in force, in their respective marketing materials or as a reference for future customers and clients. This right is given on the condition that: (i) any such marketing materials accurately reflect the nature of the business relationship created by this Agreement, and (ii) any such marketing materials do not disclose any Confidential Information pursuant to the terms set forth in this Section 8. Notwithstanding, any press releases or public statements by either party shall require the mutual consent of both parties, which shall not be unreasonably withheld or delayed.

8.10 **Non-Solicitation.** During the Term of this Agreement and for the period of twelve (12) months thereafter, Customer shall not, either directly or indirectly, solicit, induce, recruit, hire, offer employment or encourage any employee of SH&E and/or any of its affiliates or licensors (e.g., Sapient Corporation) to leave his/her employment either for itself or for any other person or entity.

### 9. Proprietary Rights.

9.1 **Ownership; Reservation of Rights.** As between SH&E and Customer, SH&E owns all rights, title and interest in and to, or is an authorized licensee of with the right to sublicense, AMP, the AMP Service, Operating Manual, Bridgetrack System, the AMP Marks and other AMP IP Rights (collectively, the "**AMP Properties**"). Customer's use of the AMP Properties as authorized herein shall not create in Customer's favor any right, title or interest therein. Customer hereby assigns to SH&E, for no additional consideration aside from that which is provided hereunder all of its rights, title and interest, if any, in and to any and all concepts, ideas, elements and deliverables created, developed or reduced to practice by or on behalf of Customer in connection with any aspect of the AMP Properties. Other than as expressly set forth in this Agreement, no license or other rights in or to the AMP Properties are granted to Customer, and all such licenses and rights are hereby expressly reserved.

9.2 **No Contest.** In order to promote the value and goodwill of the AMP Properties, Customer agrees that under no circumstances during the Term hereof and thereafter shall it assert or contest any ownership rights in and to the AMP Properties in any action or proceeding of whatever kind or nature, nor shall Customer take any action that may prejudice or adversely affect SH&E and/or its licensor's rights in the AMP Properties. Upon termination of this Agreement pursuant to Section 13 below, the rights and licenses granted hereinabove to Customer shall terminate and all rights shall revert to SH&E without the taking of action on the part of either party.

9.3 **Customer Property.** As between SH&E and Customer, all User Data is and shall be owned exclusively by Customer. Pursuant to Section 8 hereof, User Data shall be considered the Confidential Information of Customer, and thereby entitled to the rights provided herein. The parties further acknowledge and agree that (i) all rights, title and interest in and to Customer's trademarks, service marks and logos which are utilized by SH&E (or its designee) to brand and produce the AMP shall remain the sole and exclusive property of Customer, and (ii) any content that is developed by or at the direction of Customer for the AMP that Customer makes available to its Users, excluding that which is created by SH&E (or its designee) under an SOW, shall be Customer's sole and exclusive property.

9.4 **Customer Content Rights Management.** Pursuant to Section 5.3 hereof, Customer hereby represents, warrants and covenants to SH&E that all Customer Content uploaded, integrated and streamed within the AMP Service by Customer will be original, or that Customer have obtained all rights necessary for the unrestricted use of such content by Customer, SH&E and the Users in any manner and over any period of time. Accordingly, Customer agrees to secure and maintain all third-party consents, releases and contracts necessary to evidence Customer's rights in and to the Customer Content.

## AMPTAC

9.5 **License to use AMP Marks.** In addition to the license set forth in Section 2 of this Agreement, SH&E hereby grants to Customer a personal, non-exclusive, non-transferable, royalty-free non-sub-licensable right and license to use the AMP Marks in connection with its rights and obligations under this Agreement, including without limitation, making available the AMP to its Users and developing collateral materials to promote and/or support the AMP. Customer covenants to SH&E that its use of the AMP Marks shall be in a manner consistent with SH&E / Sapient Corporation's image and reputation in the marketplace. Customer may not modify or alter the AMP Marks in any manner without SH&E's prior written approval. SH&E reserves the right to implement AMP Mark Usage Guidelines to govern Customer's use of the AMP Marks, and if/when the same is instituted, Customer agrees to comply therewith, provided such AMP Mark Usage Guidelines are subject to good faith discussion between Customer and SH&E and provided such compliance does not impose any material undue burden on Customer or adversely impact Customer's use of the AMP Marks. Customer agrees that the AMP Marks possess special, unique, and extraordinary characteristics, which make difficult the assessment of the monetary damage that SH&E and/or its licensor would sustain by unauthorized or disparaging use of the AMP Marks and that SH&E and/or its licensors may suffer irreparable injury by such unauthorized use. Customer agrees that injunctive and other equitable relief may be appropriate in the event of its breach of this Agreement; provided, however, that such relief shall not exclude other legal remedies otherwise available. The parties agree that in any such action, neither SH&E nor the licensor of the AMP Marks shall be required to post a bond.

9.6 **Reservation of Rights.** Any and all rights in and to the AMP Properties which are not licensed hereunder to Customer are expressly reserved by SH&E and may be fully exploited, used and licensed by SH&E without limitation (including licensing the same or similar to other third-party licensees of the AMP Service). In addition, Customer's use of the AMP Service shall inure to SH&E's and/or its licensor's, as applicable, sole benefit.

9.7 **Further Assurances.** Customer will execute such documents, render such assistance, and take such other actions as reasonably requested by SH&E to apply for, register, perfect, confirm and protect all or any portion of the AMP Properties.

## 10. Warranties & Disclaimers.

10.1 **Warranties.** For the Term of this Agreement and as long as Customer has paid all applicable fees due SH&E hereunder, SH&E represents and warrants that the AMP Service will include substantially the capabilities set forth in this Agreement and/or as set forth in any Operating Manual that is provided by SH&E to Customer. Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

### 10.2 **Disclaimer.**

(a) EXCEPT AS EXPRESSLY PROVIDED HEREIN, SH&E MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. SH&E HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

(b) WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMER IN SECTION 10.2(A) ABOVE, SH&E DOES NOT REPRESENT OR WARRANT THAT: (I) AMP SERVICE WILL MEET CUSTOMER'S BUSINESS REQUIREMENTS NOT CONTEMPLATED BY THE PARTIES AT THE TIME OF THIS AGREEMENT; (II) THE AMP SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE RESULTS OBTAINED FROM ITS USE WILL BE ACCURATE OR RELIABLE; OR (III) ALL ERRORS AND OTHER DEFICIENCIES IN THE AMP SERVICE CAN BE FOUND OR CORRECTED. SH&E WILL NOT BE RESPONSIBLE FOR: (A) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CUSTOMER OR ANY USER; (B) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS OR EQUIPMENT; (C) INABILITY OF CUSTOMER TO ACCESS OR INTERACT WITH ANY OTHER SERVICE PROVIDER THROUGH THE INTERNET, OTHER NETWORKS THAT COMPRISE THE INTERNET OR THE INFORMATIONAL OR COMPUTING RESOURCES AVAILABLE THROUGH THE INTERNET; (D) SERVICE PROVIDED BY OTHER SERVICE PROVIDERS; OR (E) PERFORMANCE IMPAIRMENTS CAUSED ELSEWHERE ON THE INTERNET.

## AMPTAC

### 11. Assistance with Defense of Claims; Insurance.

11.1 **SH&E's Duty to Defend.** SH&E will defend and settle at its own expense any action or proceeding brought against Customer by a third party alleging that the AMP Properties infringe any valid patent, copyright or trade secret of a third party. Notwithstanding the foregoing, SH&E will have no liability or obligation under this Section 11.1 with respect to a claim based on: (i) any unauthorized use or other exploitation by Customer of all or any portion of the AMP Properties; (ii) the combination, operation or use of the AMP Properties by Customer with other products, hardware, software or materials that result in the third party claim being asserted; (iii) use or operation of the AMP Properties after receipt by Customer of written notice from SH&E that it should cease use of the same due to the threat of an infringement claim; (iv) Customer's unauthorized and/or infringing use of any Customer Content; or (v) use or operation of the AMP Properties after the termination or expiration of this Agreement.

11.2 **Injunctions.** If Customer's use of the AMP Properties under the terms of this Agreement is, or in SH&E's opinion is likely to be, enjoined, then SH&E may, at its sole discretion and expense: (i) procure for Customer continued access to and ability to use the AMP Properties in accordance with the terms of this Agreement; (ii) if the AMP Properties are alleged to infringe the Intellectual Property Rights of a third party, replace or modify the allegedly infringing elements of the AMP Properties to avoid the alleged infringement, or (iii) terminate this Agreement and Customer's rights herein, including without limitation, the right to use the AMP Properties and issue to Customer a refund equal to the fees paid by Customer to SH&E for use of AMP during the previous six (6) month period, or if such lesser time period has elapsed since Customer began using AMP, the actual fees paid to SH&E through the effective termination date. Notwithstanding anything to the contrary in this Agreement, the provisions set forth in Section 11.1 and 11.2 provide for SH&E's entire liability and Customer's exclusive remedy for any occurrences of infringement by the AMP Service of another's Intellectual Property Rights.

11.3 **Customer's Duty to Assist and Inform.** To the extent permitted by law, Customer shall share in and assist SH&E with the defense, against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits or proceedings (collectively, the "Claims") made or brought against SH&E by a third party to the extent that such Claims are based upon or arise out of Customer's use of any of the AMP Properties or any other acts or omissions of Customer arising from or related to this Agreement and the matters contemplated herein. Upon the occurrence of an event giving rise to Customer's obligations to assist hereunder, SH&E agrees to (i) promptly give written notice of the Claim to Customer; and (ii) give Customer partial control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim, without SH&E's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases SH&E of all liability)..

11.4 **Insurance.** Each of SH&E and Customer shall, at its sole cost and expense, obtain and maintain throughout the Term of this Agreement and for a period of two (2) years thereafter:

(a) commercial general liability insurance coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence, protecting SH&E from claims for personal injury (including bodily injury and death) and property damage which may arise from or in connection with Customer's use of the AMP Service;

(b) workers compensation as mandated or allowed by the laws of the state in which the services are being performed, including, without limitation, employer's liability coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence;

(c) commercial umbrella liability insurance with minimum limits of five million (\$5,000,000) per occurrence, with the liability insurance required under clauses (a) and (b) above scheduled as underlying; and

(d) errors and omissions coverage in place with a five million (\$5,000,000) dollar occurrence/aggregate limit.

All insurance required hereunder by Customer and SH&E shall be written by reputable insurers accorded a rating by A.M. Best Company, Inc. of B+:VII or higher at the time of issuance of any policy, pertaining to such insurance. In addition,

## AMPTAC

each policy shall contain an endorsement which requires that notice be given to the other party at least thirty (30) days prior to cancellation, termination, lapse, material modification, or expiration of the policy. Insurance policies shall not contain cross-claim, cross-suit, or other such exclusion clauses which would preclude additional insured parties from instituting causes of action against other insureds under the policy or which would otherwise limit coverage of additional insureds. The parties will review the amounts and types of insurance coverages on an annual basis and they will continue to provide adequate protection, but in no event shall the coverages under this Section 11.4 be decreased without the mutual agreement of the parties and Sapient Corporation. Upon request and at any time, each party shall promptly furnish the other a copy of its insurance policies. In addition to the foregoing, each of Customer's and SH&E's policies shall name the other party as well as Sapient Corporation (and its designees from time to time), and their respective affiliates, officers, employees and agents, as additional insured parties on such policies with an endorsement that both additional insureds shall be given not less than thirty (30) days prior written notice before any cancellation, termination, lapse, material modification or expiration of such policy goes into effect.

### 12. Limitation of Liability.

12.1 **Limitation of Liability.** EXCEPT FOR LIABILITY ARISING FROM CUSTOMER'S OBLIGATIONS SET FORTH IN SECTION 11.3 OR LIABILITY ARISING FROM A BREACH BY EITHER PARTY OF SECTION 8 HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE.

12.2 **Exclusion of Consequential and Related Damages.** EXCEPT FOR LIABILITY ARISING FROM EITHER PARTY'S OBLIGATIONS UNDER SECTION 11 OF THIS AGREEMENT, A BREACH BY EITHER PARTY OF SECTION 8 HEREOF OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY OR ANY THIRD PARTY PROVIDER/LICENSOR HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

### 13. Term and Termination.

13.1 **Term.** This Agreement will commence on the Effective Date and will continue for a period of five (5) years ("**Initial Term**"), unless otherwise terminated as provided under this Section 13. Upon expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms of one (1) year each (each a "**Renewal Term**"). At the beginning of each twelve (12) month period following the Effective Date (each an "Anniversary Date"), the fees specified on each Order Form executed by the parties shall be increased by at least five percent (5%) over the fees applicable to the immediately preceding twelve months or such other amount as mutually agreed by the parties. Either party may serve upon the other notice of non-renewal of this Agreement by serving written notice no later than ninety (90) days prior to the commencement of any Renewal Term.

13.2 **Termination.** This Agreement may be terminated:

(a) by SH&E (i) if Customer fails to make any payment when due or any interest payment thereon to SH&E under this Agreement and fails to cure such default within ten (10) days of receiving notice in writing from SH&E to do so (whether or not SH&E avails itself of its right to suspend the Service pursuant to Section 7.2 hereof); or (ii) immediately, without notice or liability to SH&E, in the event of a breach by Customer of Section 8 hereof;

(b) by either party for convenience; provided, that, written notice of such termination is delivered to the other party not less than six (6) months in advance of the intended termination date. During the interim period and

## AMPTAC

until the effective date of termination hereof, the parties agree to comply with and carry out the provisions of this Agreement in the ordinary course, and neither party shall do anything in breach of this Agreement, and Customer does not deploy with any competing mobile or web application during the 6 month notice period;

(c) by either party in the event the other party materially breaches any of its duties, obligations or responsibilities under this Agreement, and fails to cure such breach or provide the other party with an acceptable plan for curing such breach within thirty (30) days after receipt by the breaching party of written notice specifying the breach;

(d) by Customer in the event in the event that the SH&E/Sapient relationship changes materially

(e) by SH&E immediately upon notice to Customer if, subsequent to the commencement of this Agreement, Customer is restricted by a third party from placing advertisements across the AMP Service and, as a result of such restriction, the advertising Revenue that SH&E and/or its designee earns during any thirty (30) day period thereafter decreases by twenty percent (20%) or greater as compared to the average monthly advertising Revenue that SH&E and/or its designee earns during the immediately preceding three (3) month period;

(f) by SH&E where an SOW entered into by the parties sets forth (i) certain assumptions concerning Customer's requirements, technical specifications or other aspects related to its use of AMP and/or (ii) obligations which Customer is required to carry out, and either such assumptions are determined to be materially incorrect or misleading, or Customer fails to carry out its obligations under the SOW after 5 business days of receipt of written notice by SH&E detailing such defect or failure; or

(g) by either party in the event: (i) a receiver, trustee, administrator, or administrative receiver is appointed for or by the other party or its property; (ii) the other party makes an assignment for the benefit of creditors; (iii) any proceedings should be commenced by either party filing a petition or having a petition filed against it under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within sixty (60) days from the date of commencement thereof; (iv) the other party is liquidated or dissolved; or (v) either party becomes insolvent or ceases to carry on business in the ordinary course.

**13.3 Effects of Termination.** Upon any termination or expiration of this Agreement: (i) unless agreed otherwise by the parties, Customer's access to the AMP Service under this Agreement will automatically terminate and Customer shall cease using the AMP Service immediately; (ii) Customer will, within five (5) days of termination, at its expense, delete all copies of the AMP client application from Customer's system, and disable or eliminate the AMP Service from all Access Points which are under its control throughout its facility; and (iii) immediately distribute both an electronic and written notice (which notice shall be approved in advance by SH&E) to its Users of the discontinuation of the AMP Service. If Customer does not remove and/or cease to use or make available the AMP Service in accordance with this Section 13, Customer will be liable for all applicable fees for the ongoing and continual provision of AMP Service in accordance with Sections 7 and 6.3(d) (including any associated legal fees and collection expenses) and any continued use of the Services in violation of this Section 13 will be subject to liability and other remedies available at law or in equity. Termination of this Agreement shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, which a party may have under this Agreement or which may arise out of or in connection with such termination or expiration.

**13.4 Outstanding Fees.** Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to SH&E prior to the effective date of termination.

**13.5 Return of Customer Data.** Upon request by Customer made within ninety (90) days of the effective date of termination of this Agreement, SH&E will make available to Customer a facility for exporting its User Data. After such period, SH&E shall have no obligation to maintain or provide any User Data and shall thereafter undertake commercially reasonable efforts to delete the User Data on its systems or otherwise in its possession or under its control.



## AMPTAC

13.6 **Surviving Provisions.** The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 3.3, 3.6, 5.1, 5.2, 5.3, 5.5, 5.6, 5.7, 5.8, 7, 8, 9, 10, 11, 12, 13 and 15.

Section 14. **Most Favored Customer.** SH&E agrees to treat Customer as its Most Favored Customer, which shall entitle Customer to receive advantageous business (non-legal) terms as against all other customers located in the United States with whom SH&E contracts for identical services only. Customer will be guaranteed one seat on the product advisory committee, regardless of its size in relation to other customers. The four remaining product advisory committee seats available will be assigned to the largest airport customers by region.

Section 15. **Miscellaneous.**

15.1 **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between SH&E and Customer will be considered an independent contractor when performing any services hereunder.

15.2 **No Benefit to Others.** Aside from Sapient Corporation, there are no intended third party beneficiaries of this Agreement. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

15.3 **Notices.** All notices under this Agreement shall be in writing and shall be delivered to the addresses first set forth on the Order Form. Notice shall be deemed to have been given upon receipt. Notices to SH&E shall be addressed to the attention of its Chief Financial Officer. Either party may change its address for notice by giving notice of such address change in the manner provided herein.

15.4 **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

15.5 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

15.6 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets related to this Agreement not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section (an "Unauthorized Assignment") shall be void and of no effect. Should SH&E materially fail to perform its obligations under this Agreement following an Unauthorized Assignment, Customer may terminate this Agreement subject to the terms of Section 13.2(c). Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The parties shall use all reasonable efforts to amicably resolve any dispute or controversy arising directly out of this Agreement. In the event of a dispute which cannot be resolved by the between the parties, the parties irrevocably consent to, and agrees that each is subject to, the exclusive jurisdiction of the state and federal courts of the State of Colorado with respect to any actions for enforcement of or breach of this Agreement. The prevailing party to any proceeding brought pursuant hereto shall be entitled to an award of reasonable attorneys' fees and costs.

## AMPTAC

15.8 **Export Control Laws.** Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.

15.9 **Force Majeure.** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

15.10 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto, along with all Order Forms executed hereunder, constitute the entire agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. To the extent conflicts may arise, from time to time, between this Agreement and any other agreements consummated between SH&E and Customer, the provisions set forth in this Agreement shall govern the relationship of the parties in respect of the matters contemplated herein, and these provisions shall only be superseded if expressly set forth to the contrary in such other agreement(s). In addition, this Agreement will not be modified or amended by any other agreements consummated between SH&E and Customer, unless expressly set forth to the contrary in such other agreements. The foregoing notwithstanding, in the event of any conflict between the provisions in this Agreement and any exhibit, addendum or SOW entered into by the parties hereto which arise from this Agreement, the terms of such exhibit, addendum or SOW shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

15.11 **Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

15.12 **Construction.** The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) references to one gender include all genders, (iii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iv) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (v) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

**AMPTAC**

**EXHIBIT A**

**AMP MARKS**

**The AMP Marks consist of the following:**

**1. Ionos Name:**

***Ionos™***

**2. Ionos Logo:**



**3. goHow Name:**

***goHow™***

**4. goHow Logo:**

***gohow™***

# AMPTAC

## EXHIBIT B

### ADVERTISING GUIDELINES AND REVENUE SHARE CALCULATION

#### 1. Definitions.

“Paid Advertising” means advertisements in any form provided by a third party (the “Advertiser”) to SH&E or its designee (collectively “SH&E”) under an agreement in which, in consideration of advertising fees paid to SH&E by the Advertiser, SH&E agrees to deliver, service or otherwise run Advertiser advertisements on an AMP channel, such as the AMP website or mobile channel (collectively, the “Channels”).

“Baseline Advertising Profile” means an advertising plan under which certain advertising impressions that run on Channels are provided to Airport concessionaires and other Airport-designated advertisers (collectively, “Concessionaires”) at no cost to the Concessionaires.

#### 2. Exclusivity.

2.1 During the term of this Agreement, SH&E shall have the exclusive right to market and sell Paid Advertising, and to run Advertisers advertisements, on Channels.

#### 3. Advertiser Approvals.

3.1 Customer shall have the right to approve each new Advertiser before such Advertiser’s advertisements are run on a Channel.

#### 4. Guidelines.

4.1 Upon the execution of this Agreement, and from time to time thereafter but in any event not less than once per year, Customer and SH&E shall, in writing, mutually develop and agree upon guidelines for the placement of advertisements on Channels. The guidelines shall consist of the following:

(a) a determination of the number and type of advertising slots, and tactics employed (e.g., the manner and order in, and frequency with, which advertisements are run) for the website Channel and the content and content assets for all Channels the Customer will utilize under this Agreement.

(b) a determination of the maximum aggregate number and percentage of advertising units to be made available on a Channel to Concessionaires pursuant to a Baseline Advertising Profile

(c) specific criteria as to the types of Advertisers that will be permitted to run Paid Advertising on Channels and the number and percentage of advertising units permitted for each type or Advertiser.

(d) standards for the content, imagery, messaging and decency of advertisements run on a Channel (applicable to both Paid Advertising and Baseline Advertising Profile advertisements)

(e) a determination of the maximum percentage of Customer-generated advertising impressions (the “Customer Ad Impressions Percentage”) -- among all possible advertising impressions available on a Channel -- that will be reserved exclusively for Customer’s usage (e.g., Customer-generated public service announcements). For purposes of clarity, these Customer-generated advertisements are not part of either Paid Advertising or a Baseline Advertising Profile

## AMPTAC

advertisements. The parties agree that the maximum Customer Ad Impressions Percentage target is 20% of all advertising impressions run on a Channel.

(f) SH&E will provide reporting to both Customer and Advertisers that indicate actual served impressions and clicks for ad units that are displayed through Channels. Reporting will be distributed at least monthly. Reporting will indicate impressions and clicks for both paid and free Ad units.

Customer will receive agreed advertising Revenue share when an Ad unit not purchased by the Customer is served or clicked:

- 1) on Customer website or Customer digital signage Channels
- 2) on pages within the mobile application Channel where Ad unit appears on page about:
  - a. Customer or facility
  - b. portion of flight that departs or arrives from Customer
  - c. any entity (e.g. operator, concession, tenant) directly associated with Customer and excluding Ad units pertaining to entities or events in the broader metropolitan area outside (i.e. a downtown restaurant).

**5. Revenue Share Calculation for Paid Advertisements:** Year one: SH&E is to receive 70% of the Revenue share and DIA is to receive 30% of the Revenue share; Year two: SH&E is to receive 60% of the Revenue share and DIA is to receive 40% of the Revenue share; Year three: SH&E is to receive 50% of the Revenue share and DIA is to receive 50% of the Revenue share; Year four: SH&E is to receive 30% of the Revenue share and DIA is to receive 70% of the Revenue share; Year five: SH&E is to receive 30% of the Revenue share and DIA is to receive 70% of the Revenue share.

# AMPTAC

## EXHIBIT C

### HOSTING, MAINTENANCE & SUPPORT SERVICES AND RELATED FEES

1. **Definitions.** Capitalized terms used but not defined in this Exhibit C shall have the meanings ascribed to such terms in the Agreement to which this Exhibit is attached.

2. **Services; Scope of License.**

2.1 During the Term, SH&E or its designee (for purposes of this Exhibit C, SH&E and its designee shall be collectively referred to as "SH&E," and any references to SH&E shall be intended to apply to SH&E's designee as well) hereby agrees to perform and provide the application hosting services in connection with the AMP Service, as described more particularly in Section 2.3 below (the "SH&E Hosting Service") and/or such other hosting-related services as may be specified in subsequent exhibits into which the parties may enter from time to time during the Term.

2.2 SH&E and Customer acknowledge and agree that the license set forth in Section 2.1 of the Agreement includes the right by Customer to use the AMP Service via the SH&E Hosting Service. In addition, the SH&E Hosting Service shall entitle Customer limited remote access and use of the AMP Service in the manner contemplated in the Agreement.

2.3 SH&E will provide and maintain all computer hardware and software necessary to provide, carry out and sustain the hosting of the AMP Service as contemplated in the Agreement. In addition, SH&E reserves the right to replace, add to, upgrade or reconfigure the AMP Service and/or the SH&E Hosting Service as SH&E, in its sole discretion, deems reasonably necessary and appropriate.

2.4 SH&E will maintain a disaster recovery plan that is updated annually. SH&E will generally keep available selected redundant hardware to minimize downtime experienced during hardware failures. The foregoing notwithstanding, and despite the use of redundant power systems, there may be numerous single points of failure within the SH&E Hosting Service. Customer understands and accepts that the SH&E Hosting Service is not tolerant of all potential faults and assumes any associated risks in terms of data integrity and system availability. The primary resolution for such faults will be for SH&E to repair the SH&E Hosting Service using replacement equipment and/or last "known-good" system backups as soon as practicable from the occurrence of the event giving rise to the fault.

2.5 SH&E will provide commercially reasonable security provisions in compliance with industry standards. SH&E cannot guarantee that the SH&E Hosting Service or any system associated therewith is impenetrable by unauthorized persons and therefore claims no liability for security breaches other than those caused by SH&E's own material breach or gross negligence.

2.6 The parties acknowledge that SH&E's duties and obligations set forth this Exhibit C, including the SH&E Hosting Service, may be carried out, in whole or in part, directly or indirectly, by SH&E or through a third party sub-contractor that is engaged by SH&E. No prior written approval of Customer shall be required before SH&E is permitted to engage such sub-contractor and/or to change sub-contractors at any point during the Term and from time to time.

2.7 The parties further acknowledge that SH&E shall have the duties and perform the obligations set forth in this Exhibit C only with respect to Customer that elects to have SH&E host the AMP Service, as indicated on the Order Form.

3. **Maintenance.**

3.1 From time to time, SH&E shall designate time periods, which may be modified by SH&E, during which it reserves the right to limit or suspend the availability of the SH&E Hosting Service and the operability of the AMP Service to perform necessary maintenance or upgrades (each, a "Scheduled Maintenance Window"). If SH&E believes

## AMPTAC

that planned maintenance during a Scheduled Maintenance Window is reasonably likely to make the AMP Service inoperable and/or inaccessible to the Internet, SH&E will provide prior notice to Customer of the planned use of such Scheduled Maintenance Window. SH&E will take all commercially reasonable measures to ensure that any limitation or suspension of the availability of the AMP Service during any Scheduled Maintenance Window occurs after regular business hours. As of the commencement date of this Agreement, the anticipated Scheduled Maintenance Windows are as follows:

**(a) Application Deployment.** “Application Deployment” refers to *software deployment* for any future releases of Flydenver.com. This deployment does not include the AMP Infrastructure Maintenance window (described below). During this interval, the AMP Services will not be available and a notification of the AMP Services outage and associated system upgrade will be displayed on Customer’s website. Production releases may be deployed at the following times:

- Interval 1(Primary) – Midnight Monday / Early Morning Tuesday  
Start Time: 3:01 AM EST (1:01 AM MT)  
End Time: Early Morning 6:00 AM EST (4:00 AM MT)
- Interval 2 (Optional) – Midnight Friday / Early Morning Saturday  
Start Time: 3:01 AM EST (1:01 AM MT)  
End Time: Early Morning 6:00 AM EST (4:00 AM MT)

**(b) AMP Infrastructure Maintenance.** “AMP Infrastructure Maintenance” refers to the *planned infrastructure maintenance* window. This would mean coordinated effort between SH&E and/or its designee and Customer IT teams to update the DNS server at DIA to point to a different IP address during the maintenance window. There should not be any application downtime during this period:

- Late Thursday Night/Early Friday Morning between the hours of 12:01 AM EST and 6:00 AM EST (10:01 PM MT and 4:00 AM MT)
- Late Saturday Night/Early Sunday Morning between the hours of 12:01 AM EST and 6:00 AM EST (10:01 PM MT and 4:00 AM MT)

3.2 The provisions of Section 3.1 notwithstanding, SH&E reserves the right to perform any required emergency maintenance work (“Emergency Maintenance”) notwithstanding that such work may limit or suspend the availability and operability of the AMP Service outside of any Scheduled Maintenance Window provided that SH&E provides Customer with prior written notice to the extent possible. The suspension of the availability of the AMP Service for required emergency maintenance work pursuant to this Section will not be deemed to be a violation or breach by SH&E of any of its obligations under this Exhibit C or the Agreement. SH&E shall, however, provide to Customer’s designated technical contacts (whom may or may not be Customer’s Project Manager) written notice following the occurrence with a reasonably detailed explanation of the reason for the suspension, and if appropriate, an interim plan-of-service or plan to resume service with dates by which resumption of the SH&E Hosting Service and availability of the AMP Service is scheduled to be resumed.

3.3 SH&E may develop enhancements, patches and upgrades (collectively, the “Enhancements”) for the AMP Service from time to time. SH&E will provide advance notice as commercially reasonable about the nature of Enhancements including a written listing and explanation of any Enhancements. Further, SH&E will provide information as reasonably known by SH&E at the time of notification about anticipated changes that will be required by Customer to technically refactor or otherwise alter how it is using AMP Service functionality that is affected by the Enhancements. Customer shall have up to seven (7) business days to review the Enhancements (the “Enhancement Review Period”). If, during such Enhancement Review Period, Customer identifies any Severity Level 1 Errors or Severity Level 2 Errors in a non-production environment, SH&E will correct such errors and resubmit the corrected Enhancements to Customer for an additional Enhancement Review Period. If no such Severity Level 1 Errors or Severity Level 2 Errors are identified

## AMPTAC

during an Enhancement Review Period, SH&E will deploy the Enhancements onto all the AMP Service environments (including but not limited to, development, staging, production and other testing environments), during a Scheduled Maintenance Window. Enhancements will be implemented across all AMP Service licensees without exception during the single Maintenance Window, as determined solely by SH&E. Unless required by applicable law, regulation or to make the AMP Service non-infringing of any third party rights, Enhancements will not materially reduce or degrade the functionality of the AMP Service.

3.4 SH&E will notify Customer in writing of any Error, question or difficulty in use of the AMP Service after becoming aware of the Error. SH&E will use commercially reasonable efforts to resolve the Error(s) and will provide to Customer as soon as practicable a plan to fix the Error(s) according to the procedures set forth in the Operating Manual.

3.5 In the event of an unscheduled SH&E Hosting Service outage, SH&E shall notify Customer's designated technical support contact in writing as promptly as possible and will be available at Customer's request to discuss the underlying issues and expected resolution.

3.6 SH&E shall back up all AMP Service onto magnetic tape or other machine-readable storage medium, and shall store all such backups in an offsite, secure environment.

3.7 Subject to SH&E's right to perform emergency maintenance work pursuant to Section 3.2, SH&E and Customer agree to define mutually agreeable "code freeze" procedures and windows in which SH&E will be prohibited from implementing Enhancements or other AMP Service changes that will impact Customer's website or other Customer systems.

3.8 SH&E will dedicate the equivalent of one full-time equivalent consultant (40 hours per week, excluding weekends and US holidays) who will be responsible for providing any Customer-required support relating to Enhancements; provided, however, that Customer understands and agrees that in the event that any Severity Level 1 Errors or Severity Level 2 Errors arise with respect to the AMP Service, the consultant will be deployed to resolve those errors and will be unavailable for Enhancements support pending the resolution of such errors.

3.9 From time to time, SH&E will need to perform maintenance on components of redundant network routing equipment (e.g. load balancers, routers, etc.) that direct network traffic to and from the AMP Service ("AMP Infrastructure Maintenance"). The AMP Service will continue to be available during this time. In the event that SH&E plans to conduct maintenance during a particular time, Customer will be notified via e-mail not later than two (2) days prior to the start of the Scheduled Maintenance Window. Customer acknowledges that Customer will be required to make changes as directed by SH&E to its Domain Name Servers ("DNS") controlling Customer Websites and/or other related domains or sub-domains to preserve access to the AMP Service during the Scheduled Maintenance Window. SH&E will provide notice via e-mail to Customer once a Scheduled Maintenance Window is complete.

#### 4. Restrictions.

4.1 Unless agreed otherwise by SH&E in writing, the AMP Service may only be hosted by SH&E within the SH&E Hosting Service under the terms of this Hosting Addendum, which SH&E may modify from time to time.

4.2 To the extent Customer is given a user ID and passwords to access the AMP Service and/or certain elements of the SH&E Hosting Service, Customer shall not disclose, share or publish its user ID and passwords, except to authorized representatives of SH&E.

4.3 Customer acknowledges and agrees that it is responsible for providing and maintaining its own Internet access and all necessary telecommunications equipment, software and other materials at its own location necessary for accessing and making available the AMP Service. Within the Operating Manual that SH&E shall provide to Customer regarding the AMP Service, SH&E shall identify the equipment with minimum technical specifications that will be required to make available and provision the AMP Service.



## AMPTAC

4.4 Customer acknowledges that it is responsible to comply with this Exhibit C and the terms and conditions set forth in the Agreement. Customer shall abide by, and shall require that each of its Users comply with, all applicable local, state, national and foreign laws, treaties and regulations in connection with the provision and use of the AMP Service, including those related to data privacy, international communications and transmission of technical or personal data. Customer shall notify SH&E in writing of any unauthorized use of any password or account on the AMP Service or any other known or suspected breach of security promptly after becoming aware of such use or breach.

### 5. Service Level Agreement.

5.1 Subject to the provisions herein, SH&E warrants and commits that the SH&E Hosting Service shall meet the hosting performance guidelines of the service level agreement ("SLA") set forth in Schedule A attached hereto.

5.2 The parties hereby represent that the SLA is achievable and enforceable only insofar as (i) Customer complies with its obligations under this Exhibit C and the Agreement, and (ii) the AMP Service utilization estimates for Customer as set forth in Schedule B attached hereto are consistent with actual usage. SH&E acknowledges that neither Customer nor it is capable of accurately predicting Customer's real-world usage or the unforeseen impacts of certain system-intensive transactions, AMP Service modifications and/or new versions of the AMP Service. Accordingly, the parties agree to jointly review the utilization estimates on a quarterly basis during the Term or sooner. SH&E reserves the right to charge additional AMP Service Hosting Fees if and when Customer exceeds the standard allocated amounts of page views set forth in Schedule B. Such additional AMP Service Hosting Fees shall be set forth in a mutually agreed amendment to this Agreement. Should the utilization estimates materially increase and the parties are unable to agree upon additional AMP Service Hosting Fees to account for such increased utilization, SH&E may terminate this Agreement in accordance with Section 13.2(d).

5.3 The parties agree to review and, as they mutually deem appropriate, revise, the SLA at least on an annual basis.

### 6. Demonstration Services.

6.1 During the Term, as reasonably requested by Customer, SH&E will provide Customer with a separate demonstration site for the then current version of the AMP Service primarily for sales and marketing purposes. Such demonstration site shall be updated and enhanced when the AMP Service is updated and enhanced. To the extent Customer shall request any enhancements or alterations to the demonstration site made available by SH&E, the parties shall prepare an SOW pursuant to Section 3 of the Agreement, and unless agreed otherwise by the parties in such SOW, SH&E shall be responsible for the costs and expenses associated with such enhancements or alterations.

### 7. Termination.

7.1 This Exhibit and the services provided hereunder are subject to the terms and conditions of Section 13 of the Agreement and, except as otherwise provided in this Exhibit C, shall terminate immediately upon the termination of the Agreement or upon the termination of any SOW between SH&E and Customer under which SH&E is providing such services, as applicable.

### 8. Data Ownership.

8.1 Subject to the terms and conditions of the Agreement, the parties acknowledge that SH&E shall have an irrevocable, perpetual right and license to use any and all of Customer's data as long as that data resides on the SH&E Hosting Service. SH&E may use such data to make Enhancements to the AMP Service, to help market and promote the AMP Service and for any other purpose that does not violate the rights of Customer under the Agreement and/or applicable law.

## AMPTAC

### 9. Export; United States Government.

9.1 SH&E and Customer each agree to comply with all relevant export laws and regulations of the United States and, to the extent applicable, export and import regulations in other countries or territories ("Export Laws") to ensure that the AMP Service and the SH&E Hosting Service contemplated herein is not used to export, directly or indirectly, any item or data in violation of applicable Export Laws.

9.2 In the event Customer is a unit or agency of the United States Government or if Customer intends to use the AMP Service specifically for the benefit of a unit or an agency of the United States Government, the parties agree to the following:

The AMP Service comprises "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and is provided to the Government subject to the restrictions set forth in this Agreement (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-4.

### 10. Fees

10.1 Hosting and maintenance fees are payable to SH&E by DIA based on each year from the date of execution of the agreement as per the following schedule:

Year 1: \$350,000, payable in quarterly installments of \$87,500 per quarter. The first two quarters are payable upon invoice. The second two quarters are payable by commensurate reduction of gross advertising Revenues due DIA with DIA to be responsible for payment of any gross advertising Revenue shortfall up to the \$175,000 threshold for quarters 3 and 4.

Year 2: \$250,000, payable to SH&E by commensurate reduction of gross advertising Revenue due DIA with DIA to be responsible for payment of any gross advertising Revenue shortfall up to the \$250,000 threshold.

Years 3-5: SH&E is to retain 100% of gross advertising Revenues up to \$250,000,

After thresholds are met gross Revenues will be split according to the advertising Revenue sharing calculation set forth in Exhibit B, paragraph 5.

### 11. Warranties.

11.1 EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, SH&E DOES NOT MAKE ANY REPRESENTATIONS AND EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ITS HOSTING SERVICES PROVIDED UNDER THIS EXHIBIT, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION TO THE FOREGOING, SH&E DOES NOT WARRANT THAT THE SH&E HOSTING SERVICE AND/OR RELATED HOSTING SERVICES WILL MEET CUSTOMER'S BUSINESS REQUIREMENTS OR NEEDS. THE SH&E HOSTING SERVICE IS BEING MADE AVAILABLE AS IS, AND SH&E DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE ERROR FREE OR VIRUS FREE, OR THAT THE AMP SERVICE WILL FUNCTION WITHOUT INTERRUPTION. CUSTOMER FURTHER ACKNOWLEDGES THAT SH&E CANNOT WARRANT OR GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED THROUGH, OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET, WHICH INCLUDES WITHOUT LIMITATION THE AMP SERVICE.

# AMPTAC

## SCHEDULE A TO EXHIBIT C

This **Schedule A** describes the hosting, maintenance and support services that SH&E shall carry out as part of the AMP Service:

1. **DEFINITIONS.** In this Schedule, the following terms have the meanings set forth in this Section 1. Any capitalized terms used but not defined in this Schedule will have the meanings ascribed thereto in Exhibit C and/or in the Agreement.
  - 1.1 "Business Day" means every day except Saturday, Sunday and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
  - 1.2 "New Product" means any new software program or service that in no way includes, derives from, enhances or combines any substantial part of AMP.
  - 1.3 "Normal Business Hours" means the hours between 9:00 a.m. and 5:00 p.m., U.S. Eastern Standard Time, on any day that is a Business Day.
  - 1.4 "Permanent Correction" means a resolution of an Error that completely and permanently remedies such Error without any degradation of performance or loss of functionality.
  - 1.5 "Service" means the SH&E Hosting Service.
  - 1.6 "Work Around" means a resolution, fix, or procedural change with respect to an Error that (i) remedies or circumvents such Error on a temporary basis pending a Permanent Correction, (ii) causes the AMP Service to operate without any loss of functionality or material degradation of performance and (iii) is reasonably acceptable to SH&E. Without limitation, a Work Around may consist of specific administrative steps, alternative programming or a temporary patch to the AMP Service.
2. **HOSTING.** SH&E shall ensure that the AMP Service shall be hosted and operated in a secure fashion. Network infrastructure connectivity to the AMP Service will, excluding service unavailability during Scheduled Maintenance Windows and periods of Emergency Maintenance, shall be available no less than:
  - 2.1 From initial site launch to day 60 of production operations: 99.5% based on a rolling monthly average
  - 2.2 From day 61 of production operations and the remaining duration of the Agreement: 99.99% based on a rolling monthly average.
  - 2.3 SH&E will refund to Customer 5 percent of the monthly hosting cost of \$6,000 per month for each 1 percent of the month (excluding Scheduled or Emergency Maintenance) that Connectivity to the AMP Service is unavailable. The maximum monthly penalty shall be capped at \$6,000. SH&E will issue a report to Customer that identifies monthly performance, and this report will be used as the basis for determining applicable penalties, if any.
3. **MAINTENANCE AND SUPPORT SERVICES.** SH&E shall provide Customer the following maintenance and support services:
  - 3.1 **Error Notification and Classification.** When reporting an Error to SH&E, Customer shall identify the Error as a Severity Level 1, 2, 3 or 4 Error based on Customer's initial evaluation of the Error. If Customer becomes aware of a Severity Level 1 or 2 Error, Customer shall promptly, but in no event to exceed the Initial Response timeframe set forth in Section 3.2 of this Schedule, notify SH&E, and such notice shall identify the Error as a Severity Level 1 or 2 Error based on Customer's initial evaluation of the Error. SH&E and Customer shall cooperate in good faith to jointly determine whether an Error is a

## AMPTAC

Severity Level 1, 2, 3 or 4 Error; provided, however, that in the event that SH&E and Customer cannot come to such joint determination despite such good faith cooperation, SH&E's determination shall control. Customer may report to SH&E any Severity Level 1 or 2 Error 24 hours per day, 7 days per week, and any Severity Level 3 or 4 Error during Normal Business Hours.

- 3.2 Error Response and Resolution.** Upon notification by Customer of an Error, SH&E shall commence and diligently pursue correction of such Error, at all times employing at least the level of effort ("Level of Effort") designated in the chart set forth below in this Section 3.2 (the "Maintenance Chart") and in all instances providing an initial response (the "Initial Response"), Work Around Resolution and Permanent Resolution to Customer within the timeframes set forth in the Maintenance Chart, as measured from the earlier of the time that Customer notifies SH&E or SH&E first becomes aware of an Error. The Initial Response from SH&E shall include, as applicable, (i) SH&E's acknowledgment or notification to Customer of such Error, (ii) the classification of such Error as either a Severity Level 1, 2, 3 or 4 Error in accordance with Section 3.1 of this Schedule, and (iii) SH&E's specific action plan for addressing and resolving the Error, including a good faith estimate on how long it will take SH&E to provide a Work Around and the Permanent Correction. Moreover, SH&E shall provide Customer with updates to the status of SH&E's efforts (the "Status Updates") by telephone, email or such other means as may be reasonably designated by SH&E from time to time, no less frequently than the timeframes identified in the Maintenance Chart immediately below. The parties acknowledge and agree that time is of the essence in the performance of each party's respective obligations under this Schedule.

Severity Level	Effort	Initial Response	Work Around Resolution	Percent Attainment	Permanent Resolution	Percent Attainment	Status
1	Continuous best efforts, 24 hours per day, 7 days per week	< 30 minutes	4 hours	90%	3 calendar days	100% Catastrophic failure*: 90%	Every hour prior to initial resolution and every calendar day until permanent resolution
2	Continuous best efforts, 24 hours per day, 7 days per week	< 1 hour	24 hours	90%	5 calendar days	100%	Every 6 hours prior to initial resolution and every calendar day until permanent resolution
3	Commercially reasonable efforts, during Normal Bus. Hours	3 business hours	Next possible production deployment window	90%	10 business days	100%	Every business day prior to a work around and every 3 business days thereafter
4	Commercially reasonable efforts, during Normal Bus. Hours	3 business hours	N/A	N/A	Next mutually agreed to production deployment window	100%	Every 5 business days

- (a) **Technical Support.** SH&E shall establish, sufficiently staff and maintain the organization and processes necessary to provide telephone, email and facsimile based technical support, troubleshooting, Error identification, isolation and remediation, and other assistance directly to Customer and its Users to support the use and validation of the AMP Service every Business Day from 6:00 a.m. to 10:00 p.m. Eastern Standard Time, and after normal business hours and on holidays, as necessary to support SH&E's obligations under this Schedule. SH&E will provide support via telephone and email via phone numbers and email addresses to be mutually agreed by the parties.
  - (b) **Security Patches.** Operating System Security Patches that address critical vulnerabilities will be installed within the later of (a) seven (7) days or (b) upon the completion of appropriate regression testing of a vendor-provided patch.
- 3.3 **Remote Diagnosis.** For the purpose of enabling SH&E to provide the maintenance and support services hereunder, Customer shall allow SH&E remote access to its systems either via a dial-up connection, VPN or other designated means; provided, however, that SH&E, in connection with any such access, shall (i) comply with all Customer confidentiality requirements (including without limitation, as set forth in this Agreement) and policies, and (ii) limit any use of or access to systems to such areas and to such information as are necessary for SH&E to perform the maintenance and support services.
- 3.4 **Regulatory Updates.** SH&E shall ensure that the AMP Service and Customer's permitted use thereof complies with all laws applicable to the use of the AMP Service. If at any time during the Term of the Agreement, SH&E is notified or otherwise discovers (or reasonably should have discovered) that the AMP Service, including without limitation, any customizations or Updates thereto, requires an update to comply with an applicable law governing the Customer's use (a "Regulatory Update"), then SH&E shall promptly provide, at no additional cost and in a timely manner (but in any event prior to the effective date of any new or modified AMP Service functionality or Update), any and all Regulatory Updates necessary to make the AMP Service and Customer's use thereof comply with such applicable law. Failure to provide a satisfactory Regulatory Update prior to the effective date of any new or modified Applicable Law constitutes a Severity Level 1 Error.
- 3.5 **Access to Technical Support Web Site and Database.** SH&E shall provide Customer with online access to its known-problem database and any other resource containing information that will aid in problem and Error resolution and correction, as well as any other technical resources made electronically available to any of SH&E's other customers.
- 3.6 **Operating Manual Updates.** Subject to the terms of Section 3.4 of the Agreement, SH&E shall provide Customer with updates, in both print and electronic form, for the Operating Manual (i) as made available by SH&E to other licensees of the AMP Service, (ii) as necessary in connection with any Updates and (iii) as otherwise required in connection with the resolution of any Error.
- 3.7 **Reports.** SH&E shall provide Customer with monthly reports, in a format to be determined by SH&E, summarizing the nature and outcome of each identified Error, including whether SH&E met the performance levels set forth above in this Schedule. If SH&E fails to meet such required performance levels, SH&E shall provide SH&E with a specific plan of action to remedy the Error (if applicable) and SH&E's performance deficiency
- 3.8 **SH&E Report Card.** SH&E and SH&E shall participate in telephone conferences quarterly, or as otherwise mutually agreed by the parties, to discuss SH&E's performance under this Schedule, including without limitation, adherence to performance levels Update plans, regulatory requirements, and security and technical support logs.
- 3.9 **Penalties.** Based on SH&E's monthly performance as reported pursuant to section 3.7 above, Customer may be entitled to financial penalties as described below.

- (a) Potential financial penalties will only occur with regard to failure to resolve Errors of Severity Levels 1 and 2, and failure to incorporate Immediate Static Content Changes within the time parameters specified in the Customer Agreement and Operations Manual.
- (b) The number of hours subject to financial penalties will be determined as follows:
- (1) For each Severity Level 1 or 2 Error and Immediate Static Content Change (“incident”), the number of hours required for resolution will be reported and compared to the performance target for the category of Error or Static Content Change.
  - (2) For each incident, if resolution occurs in less time than specified in the relevant performance target, the difference between resolution time and the performance target will be identified as a performance credit. If resolution requires more time than specified in the performance target, the additional hours will be identified as a performance penalty. Resolution time, credit or penalty hours for each incident will be rounded to the nearest whole hour. For example, a Severity Level 1 error that takes 4 hrs. and 29 minutes for initial resolution will be considered to be resolved in 4 hours; while an error that takes 4 hours and 30 minutes to resolve will be considered to have been resolved in 5 hours.
  - (3) On a monthly basis for each incident category, performance credit hours will be subtracted from performance penalty hours to determine the Net Penalty Hours during the month.
  - (4) Financial penalties will accrue for net penalty hours in excess of 40 hours/month for the first 12 months (full Calendar months) following the effective date of the contract that allows SH&E to sell and collect advertising revenues. For Years 2-5 (months 13-60), financial penalties will accrue for net penalty hours in excess of 30 hours/month.
  - (5) If net penalty hours exceed 40 hours (Months 1-12), or 30 hours (Months 13-60) during the month, these excess hours will be allocated to Severity Level 1, Severity Level 2, and Immediate Static Content Changes based on the percentage distribution of Net Penalty hours incurred by type of incident during the month. The following example illustrates the proposed allocation of excess penalty hours to incidents of different types. (The example is based on the 40 penalty hour allowance that applies to the first 12 months.)

Incident Type	Net Penalty Hours	Pct. of Total	Excess Hrs Subject to Financial Penalty
Severity Level 1	20 hrs	25%	10 hours
Severity Level 2	40 hrs	50%	20 hours
Immediate Static Content	20 hrs	25%	10 hours
Total Net Penalty Hours	80 hrs	100%	40 hours

The financial penalty associated with each category of incident is as follows:

Incident Type	Penalty per Hour	Max./ Month
Severity Level 1	\$150	NA
Severity Level 2	\$ 75	NA
Immed. Content Change	\$ 30	NA
Total	--	\$8,000

The maximum monthly penalty will be capped at \$8,000 (eight thousand dollars) per month for the duration of the contract.

#### 4. OTHER SH&E OBLIGATIONS

SH&E shall maintain the following security and service standards with respect to all equipment through which the Service is made available to SH&E (the "Equipment"):

- A. The Equipment shall be provided with redundant power sources that permit at least eight (8) hours of backup power, a fire protection system, and adequate cooling and ventilation;
- B. SH&E shall store and operate the Equipment in an environment equipped with 24-hour onsite security and monitoring, security alarm systems, and other reasonable measures designed to protect the security and integrity thereof; and
- C. SH&E shall place all Equipment behind a software and/or hardware firewall, and shall continuously monitor and maintain such firewall.
- D. SH&E will ensure that a third party security validation occurs no less than quarterly and upon its completion of each major Update or Enhancement to the AMP Service. Within five (5) business days following the completion of each such third party security validation, SH&E will provide Customer a report summarizing the validation results and any corrections made to address noted AMP Service vulnerabilities or deficiencies.

**SCHEDULE B  
TO EXHIBIT C**

**AMP Service Utilization Estimates**

The AMP service utilization estimates for Customer are as follows

**flyDenver Website Traffic Assumptions:** Website will average the following pageviews per month for each year as indicated

- **2010** – 3 million pageviews/month average for calendar year
- **2011** – 4 million pageviews/month average for calendar year
- **2012/2013/2015** – 5 million pageviews/month average for calendar year

**AMP Mobile Application(s) Traffic Assumptions:** Mobile Application(s) will in aggregate average the following pageviews per month for each year as indicated

- **2010** – 1 million pageviews/month average for calendar year
- **2011** – 2 million pageviews/month average for calendar year
- **2012/2013/15** – 3 million pageviews/month average for calendar year



**EXHIBIT D**

**WEBSITE TERMS OF USE**

**AIRPORT  
WEB PROPERTIES TERMS OF USE AGREEMENT**

**Last Updated: March \_\_, 2010**

**IMPORTANT -- PLEASE READ THE FOLLOWING TERMS OF USE AGREEMENT (THE "AGREEMENT") CAREFULLY BEFORE ACCESSING OR USING THE \_\_\_\_\_ AIRPORT ("AIRPORT") WEBSITE, WHICH INCLUDES WITHOUT LIMITATION, ANY OF ITS RELATED WEB PAGES, WEB PROPERTIES, WAP SITES, APPLICATIONS, FEATURES, DOWNLOADS, TOOLS AND SERVICES (COLLECTIVELY, THE "AIRPORT PROPERTIES"). THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU ("YOU") AND AIRPORT. YOUR USE OF ALL OR ANY OF THE AIRPORT PROPERTIES SHALL CONSTITUTE YOUR ACCEPTANCE AND AGREEMENT TO THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY (OR CANNOT COMPLY WITH) ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT COMPLETE ANY REGISTRATION PROCESS AND/OR ATTEMPT TO ACCESS OR USE THE AIRPORT PROPERTIES, WHETHER IN WHOLE OR IN PART, IN ANY MANNER.**

A. General. This Agreement is a contract between you and AIRPORT and governs your use of the AIRPORT Properties. The terms and conditions set forth herein govern your use of the AIRPORT Properties, whether you are connecting thereto via a computer, terminal, mobile device or any other means. By completing the registration process made available through the AIRPORT Properties or otherwise using any element thereof, you represent that (i) you have read and understood this Agreement and agree to be bound by its terms and conditions and (ii) you are at least 16 years of age.

B. Notice. AIRPORT may from time to time amend, supplement or modify the terms of this Agreement, and will post a copy of such amended Agreement at [http://www.\\_\\_\\_\\_\\_.com](http://www._____.com). If you do not agree to be bound by (or cannot comply with) the Agreement as amended, your only remedy is to cancel your AIRPORT Properties account and cease to use the AIRPORT Properties. You will be deemed to have accepted the Agreement as amended thirty days after the amended agreement is posted or if you continue to use the AIRPORT Properties; all other terms of this Agreement will continue in effect.

C. Description of AIRPORT Properties. The AIRPORT Properties includes all of the features that are made available to you as well as the underlying technology and content management platform that is either owned by or licensed to DIA, as the same shall exist from time to time. Part of the AIRPORT Properties makes available to you downloadable content, information and applications (collectively, the "Downloads"). Once properly registered, you may be permitted to download to compatible equipment and devices (wireless and otherwise) certain Downloads through the AIRPORT Properties. In addition, AIRPORT intends to roll out further functionalities, features and applications through the AIRPORT Properties, which may include new and improved Downloads, message boards, the ability to post reviews and other mechanisms through which you will eventually be able to send messages, content and information via the AIRPORT Properties (the "Messaging Systems").

D. YOUR REGISTRATION OBLIGATIONS. In order to use certain features of the AIRPORT Properties, you will be required to register and provide certain information about yourself (e.g., name, country or territory of residence and billing information) to AIRPORT ("Registration Data"). You agree to provide current, complete and accurate Registration Data at the time you register and that you will update your Registration Data as necessary to keep it current, complete and accurate in the "My Account" area of the AIRPORT Properties. AIRPORT will use your Registration Data in accordance with its privacy policy, which you can review at <http://www.com/privacypolicy.html>. Please review this privacy policy before you complete the registration process

or attempt to use or access the AIRPORT Properties. You further agree that you will not allow others to use your member name, password and/or account. You agree to indemnify and hold AIRPORT and the AIRPORT Entities (as defined below), as applicable, harmless for any improper, unauthorized or illegal uses of your member name, password and/or your account. This includes illegal, unauthorized or improper use by anyone to whom you have given permission to use your user name, password and/or account.

E. USE OF AIRPORT PROPERTIES

(i) Service. You may use the AIRPORT Properties only in accordance with the terms and conditions of this Agreement and any amendments as well as any additional terms that may be presented in connection with any particular feature or function of the AIRPORT Properties from time to time. The AIRPORT Properties are for your personal use. You understand and agree that you may not transmit or re-transmit, broadcast or re-broadcast or make any commercial use of the AIRPORT Properties, including the Downloads. For example, you may not copy or distribute the AIRPORT Properties in any manner not expressly authorized herein. In addition, you may not attempt (or authorize, encourage or support others' attempts) to circumvent, reverse engineer, decrypt, break or otherwise alter or interfere with the AIRPORT Properties, including the Downloads and underlying platform technology. You agree to advise AIRPORT promptly of any such unauthorized use(s) or attempt(s). THE AIRPORT PROPERTIES ARE NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES OR OTHER EQUIPMENT IN WHICH THE FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

(ii) Downloads. You understand and acknowledge that the Downloads made available as part of the AIRPORT Properties are owned by DIA, its business partners, affiliates and/or licensors, as applicable, and are protected by intellectual property laws. AIRPORT grants you a limited, non-exclusive, non-transferable, revocable right to download the Downloads to your compatible device solely for your own non-commercial use. You understand and agree that you may not download, reproduce, modify, display, perform, transfer, distribute or otherwise use the Downloads except as expressly provided in this Agreement. You understand and agree that you may not authorize, encourage or allow any Downloads used or obtained by you to be reproduced, modified, displayed, performed, transferred, distributed or otherwise used by any other party, and you agree that you will take all reasonable steps to prevent any unauthorized reproduction and/or other use of them.

(iv) Loss of Rights by AIRPORT. AIRPORT's right to make certain applications and tools available to you over the AIRPORT Properties may expire. In such event, AIRPORT will not deliver to you the license necessary to play back, utilize and deploy any such Downloads, applications and tools after the end of the period in which such rights expire. If AIRPORT ceases making any such rights available, you may contact customer support to receive appropriate replacement rights, if available.

(v) Customer Support. Please direct any questions concerning the AIRPORT Properties to a customer service representative by e-mail at: \_\_\_\_\_.

(vi) Government Users. The AIRPORT Properties and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

F. OBJECTIONABLE OR EXPLICIT CONTENT. AIRPORT is not responsible to you for any content or materials constituting all or part of the AIRPORT Properties that you might find objectionable.

G. MESSAGING SYSTEMS

(i) General. The AIRPORT Properties features or is intended at some point in the future to feature a Messaging System that may include text message capabilities and may from time to time contain other features that allow you to exchange messages, content and other information across the AIRPORT Properties such as reviews. AIRPORT and the AIRPORT Entities all have the right but not the obligation to monitor and edit or remove any activity or content in such Messaging Systems. AIRPORT takes no responsibility and assumes no liability for any content, materials, messages and the like that you or any other AIRPORT users or third parties post or send over the Messaging Systems. In addition, you shall have no recourse against AIRPORT if DIA, in its sole discretion, decides to delay or cancel the roll-out of the Messaging System contemplated herein.

(ii) Restrictions. You may not use the AIRPORT Properties (or any part of it, including but not limited to the Messaging Systems) to upload, post, transmit, display, perform or otherwise make available to AIRPORT users or third-parties any messages, content or materials that are illegal, obscene, threatening, defamatory or invasive of privacy; violate (intentionally or unintentionally) a contractual, fiduciary or confidentiality obligation or duty you have to any third party; infringe intellectual property or other third-party rights; harm minors in any way; comprise or contain software viruses or other computer code designed to interfere with the functionality of any computer systems, software or hardware; interfere with or disrupt the AIRPORT Properties (including the flow of dialogue or other exchange of information in any Messaging System) or any networks or servers connected to or by the AIRPORT Properties; constitute unsolicited bulk email, political campaigning, commercial solicitation, chain letters, pyramid schemes, mass mailings, or any form of spam; or violate (intentionally or unintentionally) any applicable local, state, national or international law. In addition, you may not use a false or masked email address or other form of user ID, impersonate any person or entity (including but not limited to other AIRPORT users and employees of DIA, its affiliates or licensors), or otherwise mislead other AIRPORT Users or third parties as to your identity or to the origin of a message or content. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any messages, content or material that you upload, post, transmit, display or otherwise make available through your use of the AIRPORT Properties is solely your responsibility. In addition to the foregoing, AIRPORT shall be under no obligation to post any or all of the messages that you desire or attempt to transmit via the Messaging Systems.

(iii) AIRPORT's Rights. By posting messages, inputting data, or engaging in any other form of communication through the AIRPORT Properties, you represent and warrant that you own or otherwise control all applicable rights to the content, materials, messages and the like that you post, upload, transmit or display; that the content, materials, messages and the like are accurate; that use of the content, materials, messages and the like that you supply does not violate third-party rights and will not cause injury to any person or entity; and that you will indemnify AIRPORT and the AIRPORT Entities, as applicable, for all claims resulting from content, messages, materials and the like that you supply. In addition to the above, you acknowledge and agree that AIRPORT may store and/or disclose, as applicable, any such content, messages or material it is required to do so by law, or has a good faith belief that such storage or disclosure is reasonably necessary to comply with court orders or other legal processes; to enforce this Agreement; to respond to any claims that such content (or your use of the same) violates any third party's rights; or to protect the rights, property or personal safety of DIA, its business partners, affiliates, licensors and/or licensees, any other AIRPORT user or the general public.

H. INTERNATIONAL CONSIDERATIONS. Currently, the AIRPORT Properties are only intended to be used by residents of the United States and Canada. You understand and acknowledge that you may not establish and/or register a AIRPORT Properties account if you are not a resident of the United States or Canada, nor shall you use any of the Message Services, Downloads or other interactive elements, features, tools and applications. Furthermore, you agree to abide by U.S., Canadian and other applicable export control laws and not to transfer, by electronic transmission, the Messaging Systems or otherwise, any Downloads, content or software subject to restrictions under such laws to a national destination or person prohibited under such laws.

#### I. PRIVACY.

(i) As between AIRPORT and you, all AIRPORT User Data will be owned by AIRPORT. The data collected via AIRPORT will be subject to that party's standard privacy policies and the security, privacy and confidentiality provisions contained in this Agreement. For purposes of this Agreement, "AIRPORT User Data" includes all information collected by AIRPORT in connection with your use of the AIRPORT Properties.

(ii) At a minimum, AIRPORT's privacy policy provides: (a) what personally identifiable information ("PII") is collected and how it will be used by that party, (b) whether PII is shared with third parties, (c) the use of any tracking technology employed within the AIRPORT Properties, and (e) what security measures are in place to protect the PII. For additional information regarding AIRPORT's use of information collected in connection with the AIRPORT Properties, please refer to AIRPORT's Privacy Policy, a copy of which is available at

#### J. COPYRIGHT INFORMATION

(i) General. The AIRPORT Properties contain or comprise materials protected by copyright and other intellectual property rights that are owned by AIRPORT and/or one or more of the AIRPORT Entities. Your rights with respect to your use of the same are governed by all the terms and conditions of this Agreement, all applicable laws, including but not limited to, intellectual property laws, and any applicable end-user license agreements. For the avoidance of doubt, your use of the AIRPORT Properties is strictly under license, and you will not obtain any ownership interest in any of them through this Agreement or otherwise.

(ii) Notices. AIRPORT respects the intellectual property rights of others, and it expects you to do the same. If you know of or suspect that any use of the AIRPORT Properties constitutes copyright infringement, please send a notice to AIRPORT via email to support@\_\_\_\_.com. The notice must contain the following information: (a) a physical or electronic signature of the copyright owner or a person authorized to act on the copyright owner's behalf; (b) description of the copyrighted work(s) that is/are allegedly being infringed; (c) the location of the allegedly infringed work(s); (d) your current contact information (e.g. address, phone number, and email address); (e) a statement that you have a "good faith belief" that the use of the complained-of copyrighted work(s) is not authorized by the copyright owner, its agent, or the law; and (f) a statement by you signed under penalty of perjury that all the information you provide in the notice is accurate and that you are the copyright owner or a person authorized to act on the copyright owner's behalf (all of this collectively is a "Notice").

K. TRADEMARK. All trademarks, service marks, trade names, domain names, slogans, logos, and other indicia of origin that appear on or in connection with the AIRPORT Properties are the property of AIRPORT and/or its affiliates, licensors and/or licensees. You may not copy, display or use any of these marks without prior written permission of the mark owner.

L. VIOLATION OF INTELLECTUAL PROPERTY RIGHTS. If AIRPORT (a) receives a Notice alleging that you have engaged in infringing behavior or (b) reasonably suspects that your use of the AIRPORT Properties violates AIRPORT's or others' intellectual property rights, AIRPORT may, in its sole discretion, suspend or terminate your use of the AIRPORT Properties and/or account with or without notice to you. If AIRPORT suspends or terminates your use and/or account under this paragraph, it shall have no liability or responsibility to you.

M. NO RESALE. In addition to the restrictions set forth above, you acknowledge and agree that you may not copy, distribute, sell, resell or exploit for any commercial purposes, any portion of the AIRPORT Properties (or any Downloads accessible on or through the AIRPORT Properties), or your user name or password.

N. PROMOTIONS AND ADVERTISING. AIRPORT and/or its business partners may present advertisements and promotional materials on or through the AIRPORT Properties. Your participation in any promotional event is subject to the terms and conditions associated with that event. Your correspondence or business dealings with, or participation in promotions of, any third-party advertisers on or through the AIRPORT Properties, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third-party. You agree that neither AIRPORT nor its business partners shall be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third parties on the AIRPORT Properties.

O. LINKS TO THIRD-PARTY SITES. The AIRPORT Properties may present links to retailers and/or other third-party websites not owned or operated by AIRPORT. These links are provided only as a convenience to you. Neither AIRPORT nor its business partners are responsible for the availability of these outside sites or their contents. You understand and agree that neither AIRPORT nor its business partners are responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with your use of or

reliance on any content of any such site or goods or services available through any such site. You should direct any concerns regarding these third-party sites to those sites' administrators.

P. **MODIFICATIONS TO AIRPORT PROPERTIES.** AIRPORT reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the AIRPORT Properties (or any element or feature thereof) with or without notice to you. You agree that neither AIRPORT nor its affiliates or licensors shall be liable to you or to any third party for any modification, suspension or discontinuance of the AIRPORT Properties for any reason.

Q. **REMEDIES.** You understand and agree that any unauthorized use of the AIRPORT Properties would result in irreparable injury to AIRPORT and/or its affiliates or licensors for which money damages would be inadequate, and in such event AIRPORT its affiliates and/or licensors, as applicable, shall have the right, in addition to other remedies available at law and in equity, to immediate injunctive relief against you. Nothing contained in this paragraph or elsewhere in this Agreement shall be construed to limit remedies or relief available pursuant to statutory or other claims that DIA, its affiliates and/or licensors may have under separate legal authority, including but not limited to, any claim for intellectual property infringement.

R. **INDEMNITY.** You agree to indemnify and hold harmless AIRPORT and the AIRPORT Entities from and against any and all claims, actions, demands, causes of action and other proceedings arising from or concerning your use of any aspect of the AIRPORT Properties (collectively "Claims"), and to reimburse them on demand for any losses, costs, judgments, fees, fines and other expenses they incur (including attorneys' fees and court costs) as a result of any Claims.

S. **TERMINATION, CANCELLATION AND PLAN CHANGES.** AIRPORT may, in its sole discretion, terminate this Agreement or suspend your account at any time with or without notice to you for any reason. If AIRPORT terminates this Agreement or suspends your account, it shall have no liability or responsibility to you. You understand and agree that the cancellation of your account is your sole right and remedy with respect to any dispute with AIRPORT. This includes, but is not limited to, any dispute related to or arising out of: (1) any term of this Agreement or AIRPORT's enforcement or application of the same; (2) any policy or practice of DIA, including its Privacy Policy, or AIRPORT's enforcement or application of these policies; (3) the Downloads or the Messaging Systems; (4) your use of and/or ability to access and use the AIRPORT Properties; and (5) the amount or type of fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods. You can cancel your account by delivering notice to AIRPORT at support@\_\_\_\_\_.com. Cancellation for subscribers will take effect at the end of the Subscription Month during which you deliver notice to DIA.

T. **DISCLAIMERS**

(i) You understand and agree that your use of the AIRPORT Properties is at your own sole risk. THE AIRPORT PROPERTIES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY BY AIRPORT OR ITS AGENTS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES, LICENSORS, BUSINESS PARTNERS AND/OR SUPPLIERS (THE "AIRPORT ENTITIES"), AS APPLICABLE, AND, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, AIRPORT AND THE AIRPORT ENTITIES, AS APPLICABLE, EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT. THERE IS NO WARRANTY THAT THE AIRPORT PROPERTIES WILL MEET YOUR REQUIREMENTS, OR THAT YOUR ACCESS TO THE SAME WILL BE UNINTERRUPTED OR ERROR-FREE. AIRPORT AND/OR THE AIRPORT ENTITIES, AS APPLICABLE, DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE AIRPORT PROPERTIES WITH RESPECT TO PERFORMANCE, ACCURACY, RELIABILITY, SECURITY CAPABILITY, CURRENTNESS OR OTHERWISE. YOU WILL NOT HOLD AIRPORT AND/OR THE AIRPORT ENTITIES, AS APPLICABLE, RESPONSIBLE FOR ANY DAMAGES THAT RESULT FROM YOU ACCESSING THE AIRPORT PROPERTIES OR USING THE AIRPORT PROPERTIES INCLUDING, BUT NOT LIMITED TO, ANY INFECTIONS OR CONTAMINATIONS OF YOUR DEVICES YOU USE TO ACCESS THE SAME OR TO TRANSFER DOWNLOADS THAT MAY RESULT FROM THAT USE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY

PERSON SHALL CREATE A WARRANTY IN ANY WAY WHATSOEVER RELATING TO AIRPORT AND/OR THE AIRPORT ENTITIES AS APPLICABLE.

UNDER NO CIRCUMSTANCES SHALL AIRPORT AND/OR THE AIRPORT ENTITIES AS APPLICABLE, BE LIABLE FOR ANY UNAUTHORIZED USE OF THE AIRPORT PROPERTIES.

UNDER NO CIRCUMSTANCES SHALL AIRPORT AND/OR THE AIRPORT ENTITIES AS APPLICABLE, BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OR INABILITY TO USE THE AIRPORT PROPERTIES, EVEN IF AIRPORT AND/OR THE AIRPORT ENTITIES AS APPLICABLE, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TO THE EXTENT THAT IN A PARTICULAR CIRCUMSTANCE ANY DISCLAIMER OR LIMITATION ON DAMAGES OR LIABILITY SET FORTH HEREIN IS PROHIBITED BY APPLICABLE LAW, THEN, INSTEAD OF THE PROVISIONS HEREOF IN SUCH PARTICULAR CIRCUMSTANCE, AIRPORT AND/OR THE AIRPORT ENTITIES AS APPLICABLE, SHALL BE ENTITLED TO THE MAXIMUM DISCLAIMERS AND/OR LIMITATIONS ON DAMAGES AND LIABILITY AVAILABLE AT LAW OR IN EQUITY BY SUCH APPLICABLE LAW IN SUCH PARTICULAR CIRCUMSTANCE, AND IN NO EVENT SHALL SUCH DAMAGES OR LIABILITY EXCEED \$100.

U. LAW AND LEGAL NOTICES. This Agreement and any other terms or documents referred to herein represent your entire agreement with AIRPORT with respect to your use of the AIRPORT Properties. You understand and agree that, except as expressly set forth herein, this Agreement is not intended to confer and does not confer any rights or remedies upon any person other than the parties to this Agreement. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. AIRPORT's failure to pursue any available claim or defense pursuant to this Agreement or otherwise will not be a waiver of such claim or defense. The headings used in this Agreement are for convenience only, and will have no effect on the interpretation or legal enforceability of the terms herein. The laws of the State of \_\_\_\_\_, excluding its conflicts-of-law rules, govern this Agreement and your use of the AIRPORT Properties. You expressly agree that the courts in the State of \_\_\_\_\_ have exclusive jurisdiction over any claim or dispute with AIRPORT or relating in any way to your account or your use of the Service. You further agree and expressly consent to personal jurisdiction over you in the federal and state courts of \_\_\_\_\_ in connection with any such dispute including any claim involving AIRPORT or its partners, parents, licensors, affiliates, subsidiaries, employees, contractors, officers, directors or suppliers.



## EXHIBIT E

### BRIDGETRACK® SERVICES TERMS AND CONDITIONS

#### 1. Definitions.

1.1 For purposes of this Agreement only, the capitalized terms will have meanings as set forth below.

“**BridgeTrack System**” and “**BridgeTrack**” mean Sapien’s proprietary advertising and marketing management system branded ‘BridgeTrack’, including all software, technology, documentation and all related materials and intellectual property.

“**Code**” means HTML tags, Javascript tags or other code, updates, fixes or patches provided by SH&E to Customer for use on the Customer Sites.

“**Customer**” means the entity specified in the Agreement to which SH&E will provide BridgeTrack Services.

“**Customer Data**” means all data (excluding Personal Data) collected by SH&E in the course of tracking, pathing and monitoring activity on the Customer Sites, together with all measurement statistics and data generated therefrom in the course of SH&E’s provision of the Services.

“**Customer Sites**” means (a) web sites owned, operated and/or managed by Customer to which the Customer or SH&E attach Code and/or (b) to or from which the BridgeTrack System provides or obtains information pursuant to this Agreement.

“**Effective Date**” means the start date specified on the cover page of the Agreement.

“**Party**” shall mean SH&E or Customer, respectively (collectively, the “**Parties**”).

“**Personal Data**” means information constituting “personal data” under the Directive.

“**Renewal Term**” shall have the meaning ascribed to it in Section 6.1.

“**Report(s)**” mean statistical reports and any other data generated by SH&E using the BridgeTrack System, based on information gathered in the course of tracking visitor behavior on the Customer Sites, which reports are provided to Customer as part of the Services.

“**Services**” or “**BridgeTrack Services**” means those BridgeTrack-related services and/or products that SH&E provides to Customer in connection with Customer’s use of the AMP Services.

“**Setup Services**” means services to be provided by SH&E to Customer to enable Customer to implement the Services in accordance with this Agreement

“**SH&E**” means, solely for purposes of this Exhibit G, collectively SH&E and its designees, including Sapien.

“**User**” means an employee or agent of Customer who is authorized and designated by Customer to access the Reports using a unique password or login ID, as provided exclusively by SH&E.

#### 2. Services.

2.1 **Access and updates.** To enable SH&E to provide Services to Customer, upon SH&E’s request Customer shall provide reasonable cooperation to SH&E with regard to access to its relevant people, facilities and equipment. In order to improve the Services or as otherwise required by SH&E’s third-party vendors, SH&E may provide updated Code to Customer. Customer shall install the updated Code, or authorize SH&E to install such updated



Code, on the Customer Site(s) and related systems as necessary no later than thirty (30) days after notification from SH&E that the updated Code is available for installation.

**2.2 Telecommunications Capabilities.** Customer acknowledges and agrees that its use of the Services is dependent upon its access to adequate telecommunications facilities and connection to the Internet, sufficient to support SH&E's provision of, and Customer's access to, the Services. Customer shall be solely responsible for acquiring and maintaining all required Internet or telecommunications services in order to access and use the Services, including, without limitation, any related fees and expenses.

**2.3 Third Party Consents.** Customer warrants, represents and undertakes that it is solely responsible for obtaining all third party consents, if any, necessary to access and use the BridgeTrack system and obtain or implement the Services, including use of the Code within the Customer Sites and related systems and use of the BridgeTrack System.

**2.4 Improvements to the BridgeTrack System.** During the term of this Agreement, SH&E may, at its discretion and at no extra cost to the Customer, incorporate into the BridgeTrack System accessed by Customer and the Services any releases, upgrades or updates to the BridgeTrack System that are made generally available to all BridgeTrack System users ("**Improvements**"). SH&E shall have no obligation to develop Improvements. If during this Agreement SH&E develops new BridgeTrack System functionality, SH&E may make such additional functionality available to the Customer at an additional cost to be agreed by the Parties.

### **3. Services.**

**3.1 Access.** Subject to and conditional upon Customer's compliance with the terms of this Agreement, and in consideration of the fees paid by Customer under this Agreement, SH&E grants to Customer, during the term of this Agreement, non-exclusive, non-transferable access to: (i) the BridgeTrack System for use solely in conjunction with the Customer Sites under the terms of this Agreement, for the purpose of receiving the Services or using BridgeTrack in conjunction with Customer Partners and (ii) access to the Reports concerning Customer Data. SH&E reserves all rights not granted in this Section 3.1.

**3.2 Setup.** As part of the Setup Services, Customer shall be provided with the number of User passwords and log-in IDs mutually agreed upon by the Parties. SH&E shall suspend or terminate a User password or log-in ID immediately upon Customer's written request. Customer shall provide SH&E on a monthly basis an updated list of Users. SH&E shall be entitled to suspend or terminate any User password or log-in ID if SH&E believes (acting reasonably) that such User password or log-in ID is being used in a manner which is outside the scope of the permissions granted to Customer under this Agreement. SH&E shall provide notice of such termination as soon as is reasonably practical.

**3.3 Restrictions.** Customer agrees NOT to: (i) sell, rent, license or lease access to the Services or access or use the BridgeTrack System, Reports and/or the Code to provide services to any third parties, except in accordance with the terms of this Agreement; (ii) remove, obscure or alter any proprietary notices associated with the Services or Reports; (iii) tamper with SH&E's provision of the Services or Reports; (iv) use or access the BridgeTrack System and Services, or allow them to be used or accessed, in any manner or for any purpose other than as expressly permitted herein; (v) reproduce, modify, make derivative works of, publicly perform, publicly display, use, make, have made, sell, offer to sell, export or import any part of the BridgeTrack System or the Code except as provided in this Agreement; or (vi) disassemble, decompile, or reverse engineer the Code (except to the extent permitted by applicable laws).

**4. Intellectual Property.** Customer owns all right, title and interest in and to the Customer Data (as applicable under the terms of this Agreement) that are generated using the Services, provided that such rights are subject to SH&E's underlying rights in the Services and the BridgeTrack System, including, but not limited to, the Code, Report design, Report interface, Report functionalities, data collection functionalities, supporting software, systems architecture, and any and all related technologies ("**SH&E Intellectual Property**"). Nothing in this Section 4 shall be considered a grant to Customer any right, title or interest in or to SH&E Intellectual Property. SH&E retains all right, title and interest in, and to, the SH&E Intellectual Property, including all improvements,

modifications or derivative works. No transfer of intellectual or other property is intended or shall be effective under this Agreement except as specifically provided.

## 5. Privacy and Data Protection

**5.1 Privacy Laws and Compliance.** The Customer hereby warrants, represents and undertakes that it shall:

(a) comply with all laws and regulations concerning the collection and use of Personal Data (including without limitation European Directive 95/46/EC regarding the processing of personal data (the “**Directive**”) and Directive 02/58/EC regarding privacy and electronic communications), which apply in connection with the provision of the Services by SH&E to Customer or the collection of any Personal Data provided to SH&E by Customer, including, where applicable, the laws of any jurisdiction in which: (i) Personal Data is collected from individuals or processed; and (ii) an individual from whom Personal Data is collected is resident (the “**Relevant Laws**”));

(b) maintain the necessary data protection mechanisms (including privacy policies regarding collection of Personal Data from individuals and relevant opt-in and opt-out mechanisms) in all relevant jurisdictions in accordance with the Relevant Laws to enable Customer to use the Services, the BridgeTrack System and any Personal Data collected in connection therewith;

(c) not provide to SH&E any Personal Data other than (i) Personal Data which SH&E has agreed in writing to receive and (ii) the minimum necessary for it to receive the Services;

(d) promptly notify SH&E in writing in the event of its non-compliance or other breach of this Section 5.

**5.2 Applicability of Directive.** If the Directive is applicable each Party acknowledges that: (i) Customer is the “data controller” in respect of the Personal Data of any consumers that is processed in connection with the Services; and (ii) SH&E is the “data processor” in respect of such Personal Data, as each such term is defined in the Directive.

**5.3 SH&E Use of Customer Data and Personal Data.** SH&E shall process the Customer Data and the Personal Data on behalf of the Customer solely for the purposes of performing the Services, and for no other purpose, except with the express written consent of the Customer. Notwithstanding anything to the contrary herein, SH&E hereby agrees that the Customer Data and Personal Data will not be used for any purpose, including aggregation of Customer Data and Personal Data with other SH&E clients’ data of a confidential nature, except as set forth herein, and except as may be otherwise agreed upon by the Parties in writing. Save where SH&E is permitted to do so pursuant to this Agreement, or as is otherwise required by law, SH&E shall not divulge the Customer Data or Personal Data, whether directly or indirectly, to any persons, firm or Customer, without the express written consent of the Customer. SH&E shall not keep or use Personal Data for longer than is necessary for SH&E to fulfill its obligations pursuant to the Agreement. SH&E warrants, represents and undertakes that it will comply with the Relevant Laws.

**6. Termination.** Upon any termination or expiration of this Agreement: (i) the Customer’s access to the BridgeTrack System, the Services and the Reports under this Agreement will automatically terminate and Customer shall cease using the BridgeTrack System immediately; and (ii) Customer will within fifteen (15) days of termination or expiration, at its expense, delete all copies of the Code from the Customer Sites, as applicable, and remove all references and links to the Services from the Customer Sites. If Customer does not remove the Code and references and/or links to the Services in accordance with this Section 6, Customer will be liable for all applicable fees for the provision of Services and any continued use of the Code or Services in violation of this Section 6 will be subject to liability and other remedies available at law or in equity.

## 7. Warranty Disclaimer; Duty to Defend.

**7.1 Disclaimer of Warranty.** ALL CODE, MATERIALS, AND SERVICES ARE PROVIDED “AS IS.” SH&E MAKES NO REPRESENTATION OR OTHER WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND IT SPECIFICALLY DISCLAIMS THE SAME. SH&E IS NOT RESPONSIBLE FOR ANY DAMAGE, LOSS,

USE OR MISUSE OF CUSTOMER'S LOGIN ID'S OR UNAUTHORIZED ACCESS TO PASSWORDS UNLESS SPECIFICALLY CAUSED BY SH&E.

**7.2 Customer's Duty to Defend.** To the extent permitted by law, Customer will assist SH&E and share equally in the costs of the defense of any action or other proceeding brought against SH&E, to the extent that such action or proceeding is based on a third-party claim that Customer's actions violate any laws or regulations (including any Relevant Laws), Customer's privacy policy or any third party's rights in respect of data protection or personal privacy. Customer's obligation to defend under this Section 7.2 shall apply only if: (i) SH&E notifies the Customer in writing of any potential claim within a reasonable time.

