

**APPENDIX 9**

**NONCOMPLIANCE POINTS TABLE**

9-A Performance Standards

9-B Notification and Reporting Procedures

**APPENDIX 9**

**NONCOMPLIANCE POINTS TABLE**

Ref	Main Heading	Subheading	Failure to:	Noncompliance Cure Period ("FC": Fast Cure Period)	Points	Recurrence Period
1	ACDBE					
1.1		ACDBE Requirements	Make Good Faith efforts to meet the ACDBE goal as specified in <u>Appendix 5-C</u> of the Agreement, comply with any other material requirements under <u>Appendix 5-C</u> of the Agreement.	30 days FC: 15 days	5	15 days
2	O&M Services					
2.1		Audits	Make O&M Services records available for inspection or audit purposes in accordance with <u>Section 23.2 (Audits)</u> of the Agreement.	7 days FC: 3.5 days	3	7 days

Ref	Main Heading	Subheading	Failure to:	Noncompliance Cure Period ("FC": Fast Cure Period)	Points	Recurrence Period
2.2		Performance Standards	Comply with the Performance Standards as provided in <u>Appendix 9-A</u> of the Agreement.	See <u>Appendix 9-A</u> of the Agreement	See <u>Appendix 9-A</u> of the Agreement.	See <u>Appendix 9-A</u> of the Agreement.
2.3		Performance Standards	Report or describe the occurrence of, or to accurately describe the extent of, any Performance Failure in accordance with <u>Appendix 9-B</u> of the Agreement.	3 FC: 1.5 days	3	1 day
<b>3</b>	<b>Concessions Management</b>					
3.1	Concessions Program Management	Concentration of Ownership	Failure to comply with concentration of ownership requirements in accordance with <u>Section 2.3 (Concentration of Ownership)</u> of <u>Appendix 5-A</u> . The Concentration of Ownership shall be calculated on a % of the total square footage used for Concessions operations, excluding storage space, office space, etc.	30 days FC: 15 days	3	15 days

Ref	Main Heading	Subheading	Failure to:	Noncompliance Cure Period ("FC": Fast Cure Period)	Points	Recurrence Period
3.2	Concessions Program Management	Developer Premium Value Concession Program	Failure to comply with the material elements of the Developer Premium Value Concession Program requirements in accordance with <u>Section 2.4 (Developer Premium Value Concession Program)</u> of <u>Appendix 5-A</u> of the Agreement.	30 days FC: 15 days	3	15 days
3.3	Concessions Program Management	Concessions Procurement Plan	Failure to comply with the material elements of the Concessions Procurement Plan requirements in accordance with <u>Section 2.5 (Concessions Procurement)</u> of <u>Appendix 5-A</u> of the Agreement.	30 days FC: 150 days	4	15 days
3.4	Concessions Program Management	Continuity of Concessions Operations	Failure to meet the minimum continuity of concessions ownership requirements in accordance with <u>Section 2.6 (Continuity of Concessions Operations)</u> of <u>Appendix 5-A</u> of the Agreement.	30 days FC: 15 days	3	15 days
3.5	Concessions Program Management	Concessions Promotion Program	Comply with the requirements of the material elements of the Concessions Promotion Program in accordance with <u>Section 2.8.3 (Concessions Promotion Program)</u> of <u>Appendix 5-A</u> of the Agreement.	30 days FC: 15 days	2	15 days

Ref	Main Heading	Subheading	Failure to:	Noncompliance Cure Period ("FC": Fast Cure Period)	Points	Recurrence Period
3.6	Concessions Program Management	Merchandise	<p>Comply within 24 hours with any written direction given by the Owner pursuant to <u>Section 2.8.7 (Merchandise) of Appendix 5-A</u> of the Agreement to modify or withdraw any Merchandise or service offered for sale, or to modify or withdraw menus, signage and product displays, as applicable, that do not comply with the applicable requirements set forth in the CDMP.</p> <p>Developer shall make all reasonable best efforts to cause Concessionaires to comply with such requirements, taking into account the duration of the relevant failure.</p>	<p>3 days FC: 1.5 days</p>	4	24 hours

Ref	Main Heading	Subheading	Failure to:	Noncompliance Cure Period ("FC": Fast Cure Period)	Points	Recurrence Period
3.7	Concessions Program Management	Pricing	<p>Comply with the Pricing Policy requirements defined in <u>Section 2.8.8 (Pricing) of Appendix 5-A</u>. In the event that Merchandise is not priced in accordance with the Pricing Policy, failure to change the price for such Merchandise to comply with the Pricing Policy less than five (5) days following Developer's receipt of the Owner's notice to Developer of the Pricing Policy non-conformance.</p> <p>Developer shall make all reasonable best efforts to cause Concessionaires to comply with such requirements, taking into account the duration of the relevant failure.</p>	<p>5 days FC: 2.5 days</p>	3	3 days
3.8	Concessions Program Management	Customer Service	<p>In accordance with <u>Section 2.8.9 (Customer Service) of Appendix 5-A</u>, respond to all written User complaints received by the Developer (including those referred to Developer by the Owner) within 4 Business Days of notice. Developer shall deliver to the Owner a written copy of Developer's response to any written complaint within the 4 Business Days.</p>	<p>4 days FC: 2 days</p>	2	2 days

Ref	Main Heading	Subheading	Failure to:	Noncompliance Cure Period ("FC": Fast Cure Period)	Points	Recurrence Period
3.9	Concessions Program Management	Financial Reporting	Comply with financial reporting requirements in accordance with <u>Section 4.2.1 (Financial Reporting) of Appendix 5-A</u> , with the data available at time of submission; provided that Developer is complying with <u>Section 4.2.5 of Appendix 5-A</u> of the Agreement.	5 days FC: 2.5 days	3	2 days
3.10	Concessions Program Management	Customer Service Reporting	Comply with customer service reporting requirements in accordance with <u>Section 4.2.2 (Customer Service Reporting) of Appendix 5-A</u> of the Agreement with the data available at time of submission; provided that Developer is complying with <u>Section 4.2.5 of Appendix 5-A</u> of the Agreement.	5 days FC: 2.5 days	1	2 days
3.11	Concessions Program Management	Operations Performance Reporting	Comply with operations performance reporting requirements in accordance with <u>Section 4.2.3 (Operations Reporting) of Appendix 5-A</u> of the Agreement, with the data available at time of submission; provided that Developer is complying with <u>Section 4.2.5 of Appendix 5-A</u> of the Agreement.	5 days FC: 2.5 days	1	2 days

Ref	Main Heading	Subheading	Failure to:	Noncompliance Cure Period ("FC": Fast Cure Period)	Points	Recurrence Period
3.12	Concessions Program Management	Audit	Annual audit, financial audit, and performance audit reporting requirements in accordance with <u>Section 4.3 (Audits)</u> of <u>Appendix 5-A</u> of the Agreement.	30 days FC: 15 days	5	15 days
3.13	Concessionaires' Compliance with Concession Agreements	General	Exercise reasonable best efforts to enforce the Mandatory Provisions, provided that Developer may exercise commercially reasonable discretion in the enforcement of liquidated damages provisions included in the Mandatory Provisions.	30 days FC: 15 days	3	15 days



**APPENDIX 9-A**  
**PERFORMANCE STANDARDS**

Ref	Element Category	ELEMENT CATEGORY, DESCRIPTION, AND MINIMUM PERFORMANCE REQUIREMENT(*)(**)	MEASUREMENT			CURE PERIODS, POINTS AND INTERVAL OF RECURRENCE	
			Type of Measurement	Permanent Cure Period (PC) / Temporary Cure Period (TC)/ Fast Cure Period (FC)	Points	Recurrence Period	
<b>BUILDING SYSTEMS AND UTILITY SYSTEMS</b>							
1	Electrical system	<p>Availability of secondary and support equipment of the electrical system: minimum annually 99% / minimum monthly 98%. (Up-time is defined as the time assets operate in accordance with the Construction Documents).</p> <p>Maintain the circuit schedules, panel schedules, and one line drawings up to date.</p> <p>Availability of end distribution electrical assets, such as sockets: minimum annually 97% / minimum monthly 95% (Up-time is defined as the time assets operate in accordance with the Construction Documents)</p> <p>For each individual failure of the Electrical system assets rated as Emergency in Table III.4 of the Technical Requirements, the failure should be addressed within the Define Cure Period as follows here</p>	<p>STOP</p> <p>Availability = (Total up time) / (Total operation time – Planned shutdown time)</p> <p>STOP/Audit</p> <p>STOP</p> <p>Availability = (Total up time) / (Total operation time – Planned shutdown time)</p> <p>STOP</p>	<p>No cure period</p> <p>No Cure Period</p> <p>No cure period</p> <p>TC: 2 HOURS PC: 8 HOURS FC: 5.5 HOURS</p> <p>TC (switch off system to make safe): 1 HOUR</p>	<p>4</p> <p>3</p> <p>2</p> <p>5</p> <p>5</p>	<p>Not applicable</p> <p>Not Applicable</p> <p>Not Applicable</p> <p>24 HOURS</p> <p>TC: 1hr PC: No Recurrence Period</p>	
2	Natural gas system	<p>All gas distribution infrastructure and equipment rated as Emergency in Table III.4 is available, except for the planned shutdown time, and those that are designated as available are functioning as per Construction Documents with no leaks in the gas system from the point of use to the Demarcation Point.</p>	<p>STOP</p>	<p>PC: in line with Table III.4 of the Technical Requirements</p>	<p>4</p>	<p>Not applicable</p>	
3	Plumbing system	<p>Availability of domestic water, sanitation and drainage systems from the point of use to the Demarcation Point: minimum annually 99% / minimum monthly 98% (Up-time defined as assets properly sealed, free of odor associated with non-functioning plumbing and sewage systems, free of blockages and functioning as per the Construction Documents)</p>	<p>STOP</p> <p>Availability = (Total up time) / (Total operation time – Planned shutdown time)</p>	<p>No cure period</p>	<p>4</p>	<p>Not applicable</p>	

ELEMENT CATEGORY, DESCRIPTION, AND MINIMUM PERFORMANCE REQUIREMENT(*)(**)		CURE PERIODS, POINTS AND INTERVAL OF RECURRENCE			
Ref	Element Category	MEASUREMENT Type of Measurement	Permanent Cure Period (PC) / Temporary Cure Period (TC)/ Fast Cure Period (FC)	Points	Recurrence Period
4	Restrooms	STOP/Inspection	TC: 4 HOURS (where applicable closure constitutes temporary cure) PC: 24 HOURS FC: 16 HOURS  Note: no individual items rated as High in Table III.4. of the Technical Requirements will be out of service for more than 5 days.	3	8 HOURS
5	HVAC serving Concession and Public Circulation Space within Level 5 O&M Limits (including exhausts)	BMS System/ Availability = (Total up time) / (Total operation time – Planned shutdown time)	No cure period	3	Not applicable

ELEMENT CATEGORY, DESCRIPTION, AND MINIMUM PERFORMANCE REQUIREMENT(*)(**)		MEASUREMENT	CURE PERIODS, POINTS AND INTERVAL OF RECURRENCE			
Ref	Element Category		Type of Measurement	Permanent Cure Period (PC) / Temporary Cure Period (TC)/ Fast Cure Period (FC)	Points	Recurrence Period
	Minimum Performance Requirement					
	For each individual failure of the HVAC system assets rated as Emergency in Table III.4, the failures should be addressed within the define Cure Period as follows here	BMS	PC: 2 HOURS FC: 80 MINS.	3	8 HOURS	
<b>FIRE, LIFE, HEALTH, AND SAFETY</b>						
6	Fire hazard	Resolve any hazardous condition per Developer's hazard identification analysis and resolution process or as may be identified in the Contract Documents, by the Owner, the City or the Fire Marshal. No obstruction at/or near fire suppression and detection systems. No obstructions at or near emergency signage or emergency exits shall be allowed.	STOP	TC: 30 MINUTES	5	2 HOURS
7	Fire suppression systems, and detection	All Elements within the Developer's O+M demarcation are in compliance with all applicable Law, regulations, Design Documents, and Construction Documents. All fire extinguishers within the Developer's O+M limits are available, inspected and certified as per NFPA standards)	STOP	PC: 1 HOUR (Stop operation of faulty Equipment)	5	8 HOURS
8	Hazard remediation	Maintain all areas within the O&M Limits free of safety hazards responding within the prescribed response time in Table III.4 of the Technical Requirements. Correct any hazardous or potentially hazardous condition upon detection, whether identified by Developer or upon receipt of a verbal or written notice from the Owner. At the Developer's reasonable discretion, in conjunction with DEN Terminal Operations, it shall close the affected portion within the O&M Limits until the hazardous or potentially hazardous condition is corrected.	STOP	As per Table III.4 of the Technical Requirements FC: as PC	5	Not Applicable
9	Flooring and stairs(***)	Maintain pedestrian circulation and restroom areas free of deterioration, bumps, spalling, chips, excessive cracking, exposed steel, vegetation, holes, misalignments, broken glass and broken mirrors.	STOP	TC: 5 DAYS	2	5 DAYS

ELEMENT CATEGORY, DESCRIPTION, AND MINIMUM PERFORMANCE REQUIREMENT(*)(**)		MEASUREMENT		CURE PERIODS, POINTS AND INTERVAL OF RECURRENCE		
Ref	Element Category	Minimum Performance Requirement	Type of Measurement	Permanent Cure Period (PC) / Temporary Cure Period (TC)/ Fast Cure Period (FC)	Points	Recurrence Period
		<b>CLEANING AND CUSTODIAL SERVICES</b>				
10	Cleaning, finishes and custodial services	Obtain a monthly average in the scores of the joint audits higher than 3.5	<p>Joint Inspections. A minimum of 15 joint inspections per month between Developer and Owner will be carried out. Additional joint inspections can be requested at the reasonable discretion of the owner. The audit is composed by questions with scores from 1 "low performance" to 5 "high performance" covering the Key aspects of the service. The checklist is included in Chapter 16 of the Initial O&amp;M Services Plan. The questionnaire can be modified by mutual agreement in each new version of the O&amp;M Services Plan.</p> <p>Note: Owner can join or not join inspections at their sole discretion</p>	No Cure Period	2	Not Applicable
			STOP	TC: 2 HOURS	2	8 HOURS
			STOP	No Cure Period	3	30 days
		<b>GENERAL</b>				
11	General	A minimum of 85% of Planned Maintenance work orders is to be completed within the planned month and any outstanding Planned Maintenance completed within the following month				

\* The Performance Standards are not applicable to the Concessions premises.

\*\* All performance measurements exclude procurement of long lead items, permitting processes and extraordinary circumstances agreed between the Owner and Developer.

\*\* Without limiting the applicability of the Performance Standard described in section 8 of this table, no Performance Failure shall result under section 9 of this table due to any unforeseen or deliberate damage or items described in such section to the extent such damage or item is subject to Planned Maintenance, provided that any significant damage shall be subject to an immediate rectification plan.

## APPENDIX 9-B

### NOTIFICATION AND REPORTING PROCEDURES

#### 1. Notice of Noncompliance

##### 1.1 Performance Failure

If either Party becomes aware of a Performance Failure, the Party shall promptly (and in any event not later than 8 hours after the Party becomes so aware) submit a Performance Failure Service Request to the STOP with respect to such Performance Failure, including the following information:

- (a) Details of the Performance Failure that has occurred; and
- (b) The reasons, to the extent known, why the Performance Failure has occurred.

The Logged Failure Time in relation to any Performance Failure shall be the time at which the relevant Performance Failure Service Request is received by the STOP.

For any monthly availability Performance Failure set forth in Sections 1.1, 1.3, 3.1, 4, or 5.1 of Appendix 9-A of the Agreement, Developer will notify the Owner of such failure as part of the O&M Monthly Report and will be excluded from STOP.

The Owner's determination regarding any Performance Failure shall prevail for the purposes of calculating Noncompliance Points and Performance Deductions, pending any final determination pursuant to the Dispute Resolution Procedures.

##### 1.1.2 Commercial Noncompliance

If either Party becomes aware of a Noncompliance related to Concessions management or ACDBE requirements (each, a "**Commercial Noncompliance**"), the Party shall promptly (and in any event not later than 8 hours after the Party becomes so aware) notify the other Party in writing with respect to such Commercial Noncompliance, including the following information:

- (a) Details of the Commercial Noncompliance that has occurred;
- (b) Details of the relevant failure including, where applicable, the relevant Cure Period believed to be applicable to the relevant Noncompliance; and
- (c) The reasons, to the extent known, why the Commercial Noncompliance has occurred.

The Logged Failure Time in relation to any Commercial Noncompliance shall be the time at which the relevant Commercial Noncompliance is notified in writing to the other Party.

## **2. Responding to Notice of Noncompliance**

2.1 For so long as the Noncompliance remains uncured, Developer shall provide to the Owner:

- (a) When requested, a daily update on the progress made in curing such Noncompliance, together with any revised estimate as to when such Noncompliance will be made safe, temporarily cured and permanently cured;
- (b) On a monthly basis, accompanying the Monthly Supplemental Payment invoice, a Monthly O&M Report that sets forth details of each event of Noncompliance reported in the preceding calendar month together with confirmation of the time period between the Logged Failure Time and the Logged Permanent Cure Time and the time period between the Logged Failure Time and the Logged Temporary Cure Time for each event of Noncompliance.

2.2 For so long as the Commercial Noncompliance remains uncured, Developer shall provide to the Owner on a monthly basis, accompanying the Monthly Supplemental Payment invoice, a Monthly Concessions Report that sets forth details of each event of Commercial Noncompliance reported in the preceding calendar month together with confirmation of the time period between the Logged Failure Time and the Logged Permanent Cure Time and the time period between the Logged Failure Time and the Logged Temporary Cure Time for each event of Commercial Noncompliance.

## **3. Commencement and Duration of Noncompliance**

For the purposes of this Section 3, a Temporary Cure or a Permanent Cure is only effective when the cure has both been effected.

With respect to any Noncompliance, subject to the first paragraph of Section 3 of Appendix 10 of the Agreement:

- (a) If the Noncompliance that has been duly notified to the Owner (in writing for Commercial Noncompliance and uploaded into STOP for other Noncompliances) has been Temporarily Cured or Permanently Cured by the end of the Temporary Cure Period and Permanently Cured by the end of the Permanent Cure Period, then it will be deemed that no Noncompliance occurred on that occasion, and where applicable, for the purpose of calculating Performance Deductions.

- (b) If the Noncompliance that has been duly notified to the Owner (in writing for Commercial Noncompliance and uploaded into STOP for other Noncompliances) has not been either Permanently Cured or Temporarily Cured by the end of the Temporary Cure Period but has been Permanently Cured by the end of the Permanent Cure Period, then it will be deemed that the Noncompliance occurred from the Logged Failure Time for the duration of the Temporary Cure Period and, as applicable, a Performance Deduction shall be made in respect thereof.
- (c) If the Noncompliance that has been duly notified to the Owner (in writing for Commercial Noncompliance and uploaded into STOP for other Noncompliances) has been Temporarily Cured by the end of the Temporary Cure Period but has not been Permanently Cured by the end of the Permanent Cure Period, then it will be deemed that Noncompliance occurred from the end of the Temporary Cure Period and a Performance Deduction, as applicable, shall be made in respect of the Permanent Cure Period and each Recurrence Period up to and including the Recurrence Period in which the Noncompliance is Permanently Cured.
- (d) If the Noncompliance that has been duly notified to the Owner (in writing for Commercial Noncompliance and uploaded into STOP for other Noncompliances) has not been Temporarily Cured by the end of the Temporary Cure Period and has not been Permanently Cured by the end of the Permanent Cure Period, then it will be deemed that Noncompliance occurred from the Logged Failure Time and, where applicable, a Performance Deduction shall be made in respect of each of the Temporary Cure Period, the Permanent Cure Period, and each Recurrence Period up to and including the Recurrence Period encompassing the Logged Permanent Cure Time.

#### **4. Cessation of a Noncompliance**

Developer shall notify the Owner in writing of details relating to the Temporary Cure time or Permanent Cure time by the end of the calendar day when any Commercial Noncompliance has been Temporarily Cured or Permanently Cured. The times advised will, subject to the other provisions of this Section 4, constitute the Logged Temporary Cure Time or the Logged Permanent Cure Time respectively in relation to such Commercial Noncompliance. If, upon inspection, the Owner determines that such Commercial Noncompliance has not been so cured, it shall notify Developer in writing within 24 hours and it shall be deemed that the Logged Temporary Cure Time or Logged Permanent Cure Time in respect of the incident has not yet occurred, any time period between the Developer's notification of Cured (or Temporarily Cured) and written notification of acceptance or rejection from the Owner, will not count as part of the Cure Period. The Owner's decision will prevail for the purposes of determining whether the

relevant Commercial Noncompliance has been cured, subject to the right of Developer to refer the matter to the Dispute Resolution Procedures.

Developer shall input the data relating to the Temporary Cure time or Permanent Cure Time into the STOP by the end of the calendar day when any Performance Failure has been Temporarily Cured or Permanently Cured. Developer shall notify the Owner of details relating to the Temporary Cure time or Permanent Cure time by the end of the calendar day when any Performance Failure has been Temporarily Cured or Permanently Cured. The times logged in the STOP will, subject to the other provisions of this Section 4, constitute the Logged Temporary Cure Time or the Logged Permanent Cure Time respectively in relation to such Performance Failure.

When Developer determines that it has completed cure of any Performance Failure, Developer shall deliver notice to the Owner in accordance with this Appendix 9-B. Thereafter, the Owner may inspect to verify completion of the cure within 24 hours after the Owner has been notified. The Owner may, via written notice of rejection, reject any Developer notice of cure if it determines that Developer has not cured the Performance Failure and shall, upon making this determination, deliver a written notice of rejection to Developer within 24 hours and it shall be deemed that the Logged Temporary Cure Time or Logged Permanent Cure Time in respect of the incident has not yet occurred. Any time period between the completion of the work and written notification of acceptance or rejection from the Owner, will not count as part of the cure period. If notice of rejection is not received the cure will be considered complete. The Owner's decision will prevail for the purposes of determining whether the relevant Performance Failure has been cured, subject to the right of Developer to refer the matter to the Dispute Resolution Procedures.

## **5. Written Notices**

All notices required to be provided in writing under this Appendix 9-B shall be deemed to have been provided in writing if provided by (a) email, (b) as part of the Monthly O&M Report or Monthly Concessions Reports, or (c) notification via the STOP, in the case of a Performance Failure Service Request.