

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2012

COUNCIL BILL NO. CB12-0088  
COMMITTEE OF REFERENCE:  
BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed Free Wi-Fi Service Provider License Agreement between the City and County of Denver and Concourse Communications, LLC a Boingo Wireless Company related to free Wi-Fi service at Denver International Airport.**

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

**Section 1.** The proposed Free Wi-Fi Service Provider License Agreement between the City and County of Denver and Concourse Communications, LLC a Boingo Wireless Company in the words and figures contained and set forth in that form of License Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2012-0053, is hereby approved.

COMMITTEE APPROVAL DATE: February 3, 2012

MAYOR-COUNCIL DATE: February 7, 2012

PASSED BY THE COUNCIL: \_\_\_\_\_, 2012

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

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2012

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2012; \_\_\_\_\_, 2012

PREPARED BY: Kevin Cain, Assistant City Attorney *Kevin Cain* DATE: February 9, 2012

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

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: \_\_\_\_\_, Assistant City Attorney DATE: February 9, 2012



**REQUIRED MINIMUM INVESTMENT:**

\$50,000.00

**INSURANCE POLICY AMOUNTS:**

Commercial Comprehensive General Liability: \$1,000,000 each occurrence

General Aggregate Limit \$2,000,000

Operations Aggregate Limit \$2,000,000

Automobile/Delivery Vehicle Liability: \$1,000,000 Combined Single Limit

Umbrella Liability – Area Access \$ 1,000,000 non-airside;

\$10,000,000 airside

Personal & Advertising Injury \$1,000,000

Fire Damage Legal \$ 300,000

Workers Compensation: Statutory requirements

**ACDBE GOAL:**

20%

**DESIGN AND PLACEMENT DEADLINE:**

January 1, 2012

**SBE DESIGN AND CONSTRUCTION GOALS [IF APPLICABLE]:**

(The SBE design and construction goal established for this License is shown on the table, which is subject to change at the discretion of the DSBO.)

\$ 0 < \$30,000 = 0%

\$30,000 - \$90,000 = 3%

\$90,000 < \$150,000 = 5%

> \$150,000 = Goals Committee

**DESCRIPTION OF EXHIBITS AND ADDENDA:**

- Exhibit A                      Locations Subject to this License – Access Equipment Space Plan
- Exhibit B                      Disadvantaged Business Enterprise Participation
- Exhibit C                      Insurance Certificate
- Exhibit D                      Monthly Statistical Report
- Exhibits E, E1                Scope of Work, Licensee's Proposal
- Exhibit F                      Service Level Agreement
- Exhibit G                      Advertising Exclusion List
- Exhibit N                      DIA Environmental Requirements
- Exhibit X                      Provisions for Design and Construction of Improvements

Appendix 1  
Appendix 2  
Appendix 3  
Appendix 10

Standard Federal Assurances  
Standard Federal Assurances, Nondiscrimination  
Nondiscrimination in Airport Employment Opportunities  
Disadvantaged Business Enterprises – Required Statements

**TABLE OF CONTENTS**

**TABLE OF CONTENTS** ..... i

**SECTION 1 – GENERAL**..... 1

    1.01 **CONSIDERATION**..... 1

    1.02 **INCORPORATION OF ATTACHED SUMMARY PAGE, EXHIBITS AND ADDENDA**..... 1

**SECTION 2 – DEFINITIONS**..... 2

    2.01. **ADVERTISER**..... 2

    2.02. **AIRPORT** ..... 2

    2.03. **AIRPORT MASTER PLAN** ..... 2

    2.04. **AUDITOR** ..... 2

    2.05. **COMMENCEMENT DATE**..... 2

    2.06. **CONCOURSES** ..... 2

    2.07. **CONNECTION**..... 2

    2.08. **CUSTOMER** ..... 2

    2.09. **DIA DESIGN STANDARDS**..... 2

    2.10. **DIA ENVIRONMENTAL GUIDELINES** ..... 2

    2.11. **DIA TENANT DEVELOPMENT GUIDELINES**..... 3

    2.12. **EFFECTIVE DATE** ..... 3

    2.13. **IMPROVEMENTS**..... 3

    2.14. **LICENSE SPACE** ..... 3

    2.15. **LICENSEE'S EQUIPMENT**..... 3

    2.16. **LICENSEE'S PROPOSAL**..... 3

    2.17. **MANAGER** ..... 3

    2.18. **MANAGER'S AUTHORIZED REPRESENTATIVE**..... 3

    2.19. **PAST DUE INTEREST RATE**..... 4

    2.20. **PRODUCTS**..... 4

    2.21. **TERMINAL** ..... 4

    2.22. **TERMINAL COMPLEX**..... 4

    2.23. **TRANSPORT** ..... 4

    2.24. **"ULTRAMERCIAL ADS" ADVERTISING** ..... 4

    2.25. **WIRELESS ACCESS EQUIPMENT – CITY** ..... 4

    2.26. **WIRELESS ACCESS POINTS – CITY** ..... 5

    2.27. **WIRELESS ACCESS SYSTEM – LICENSEE** ..... 5

<b>SECTION 3 – GRANT OF LICENSE RIGHTS</b> .....	<b>5</b>
<b>3.01. LICENSE RIGHTS GRANTED</b> .....	<b>5</b>
<b>3.02. MANNER OF ADVERTISING</b> .....	<b>6</b>
<b>3.03. USE OF LICENSE SPACE</b> .....	<b>6</b>
<b>3.04. INSTALLATIONS</b> .....	<b>7</b>
<b>3.05. RIGHTS NOT EXCLUSIVE</b> .....	<b>8</b>
<b>3.06. MEANS OF ACCESS</b> .....	<b>8</b>
<b>3.07. RIGHT OF INSPECTION</b> .....	<b>9</b>
<b>3.08. PROMOTION OF SERVICE</b> .....	<b>9</b>
<b>3.09. SYSTEM AND SERVICE WARRANTIES</b> .....	<b>9</b>
<b>3.10. SERVICE PRESENTATION</b> .....	<b>10</b>
<b>SECTION 4 – TERM</b> .....	<b>11</b>
<b>4.01. TERM</b> .....	<b>11</b>
<b>4.02. SURRENDER OF LICENSE SPACE</b> .....	<b>11</b>
<b>4.03. HOLDING OVER</b> .....	<b>11</b>
<b>SECTION 5 – COMPENSATION</b> .....	<b>12</b>
<b>5.01. LICENSE FEE</b> .....	<b>12</b>
<b>5.02. GROSS REVENUES</b> .....	<b>12</b>
<b>5.03. MONTHLY STATEMENTS AND PAYMENTS</b> .....	<b>13</b>
<b>5.04. TITLE TO CITY’S COMPENSATION</b> .....	<b>14</b>
<b>5.05. INTEREST ON PAST DUE AMOUNTS</b> .....	<b>14</b>
<b>5.06. PLACE AND MANNER OF PAYMENTS</b> .....	<b>14</b>
<b>5.07. APPLICATION OF PAYMENTS</b> .....	<b>15</b>
<b>5.08. BOOKS OF ACCOUNT AND AUDITING</b> .....	<b>15</b>
<b>5.09. RECOVERY OF CITY EXPENSE TO FULFILL LICENSEE’S OBLIGATIONS</b> .....	<b>17</b>
<b>5.10. REMEDIES NON-EXCLUSIVE</b> .....	<b>18</b>
<b>5.11. REESTABLISHMENT OF RENTALS, FEES AND CHARGES</b> .....	<b>18</b>
<b>SECTION 6 – CONSTRUCTION RESPONSIBILITIES OF LICENSEE</b> .....	<b>18</b>
<b>6.01. “AS IS” CONDITION OF LICENSE SPACE</b> .....	<b>18</b>
<b>6.02. TIME TO COMPLETE CONSTRUCTION</b> .....	<b>19</b>
<b>6.03. APPROVAL OF PLANS AND SPECIFICATIONS FOR NEW SPACE</b> .....	<b>19</b>
<b>6.04. FINAL PLANS</b> .....	<b>19</b>
<b>6.05. NOTICE TO PROCEED</b> .....	<b>20</b>
<b>6.06. CONSTRUCTION OF INITIAL IMPROVEMENTS</b> .....	<b>20</b>

6.07.	CONSTRUCTION STANDARDS .....	21
6.08.	REQUIRED MINIMUM INVESTMENT .....	21
6.09.	COORDINATION OF CONSTRUCTION .....	21
6.10.	ENVIRONMENTAL REQUIREMENTS FOR CONSTRUCTION .....	22
6.11.	BUILDING PERMITS.....	22
6.12.	COMPLETION OF CONSTRUCTION.....	22
6.13.	RESTRICTION ON CHANGES AND ALTERATIONS .....	23
<b>SECTION 7 – LICENSEE’S OPERATING OBLIGATIONS.....</b>		<b>24</b>
7.01.	SYSTEM INSTALLATION .....	24
7.02.	MINIMUM INVESTMENT REQUIREMENT .....	24
7.03.	OPERATIONS .....	25
7.04.	MANAGEMENT, SERVICE EMPLOYEE AND OPERATIONAL STANDARDS	27
7.05.	DELIVERIES .....	28
7.06.	HOURS.....	29
7.07.	SIGNS, WINDOW DISPLAYS, AND ADVERTISING.....	29
7.08.	VENDING MACHINES.....	29
7.09.	COMPLIANCE WITH ALL LAWS AND REGULATIONS .....	29
7.10.	COMPLIANCE WITH ENVIRONMENTAL REGULATIONS .....	30
7.11.	WASTE OR IMPAIRMENT OF VALUE .....	31
7.12.	HAZARDOUS USE.....	31
7.13.	WASTE DISPOSAL AND RECYCLING .....	32
7.14.	SANITATION, HYGIENE AND CLEANLINESS.....	32
7.15.	MAINTENANCE OF LICENSE SPACE BY LICENSEE.....	32
7.16.	STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING .....	32
7.17.	NOISE, ODORS, VIBRATIONS AND ANNOYANCES .....	33
7.18.	ACCESS TO FACILITY AND SYSTEMS.....	33
7.19.	QUALITY ASSURANCE.....	33
<b>SECTION 8 – UTILITIES AND SERVICES .....</b>		<b>34</b>
8.01.	UTILITIES.....	34
8.02.	HEATING AND AIR CONDITIONING (HVAC) .....	34
8.03.	WATER SERVICE .....	34
8.04.	ELECTRICITY AND NATURAL GAS .....	34
8.05.	LIGHTING.....	35
8.06.	WINDOW WASHING AND STRUCTURAL MAINTENANCE .....	35

8.07. COMMON USE SERVICES .....	35
8.08. INTERRUPTION OF SERVICES .....	35
<b>SECTION 9 – INDEMNITY, INSURANCE AND GUARANTEES .....</b>	<b>35</b>
9.01. INDEMNITY .....	35
9.02. INSURANCE .....	35
9.03. PERFORMANCE SURETY .....	37
9.04. NO PERSONAL LIABILITY .....	37
9.05. LICENSES, FEES, TAXES AND LIENS .....	37
<b>SECTION 10 –NON-COMPLIANCE AND VIOLATIONS .....</b>	<b>39</b>
10.01. NONCOMPLIANCE .....	39
10.02. CUMULATIVE OR CONTINUOUS VIOLATIONS .....	39
<b>SECTION 11 –DEFAULT, REMEDIES AND TERMINATION .....</b>	<b>40</b>
11.01. DEFAULT .....	40
11.02. REMEDIES .....	42
11.03. REMEDIES CUMULATIVE .....	44
11.04. ADMINISTRATIVE HEARING .....	44
11.05. WAIVERS .....	44
<b>SECTION 12 – DAMAGE, DESTRUCTION OR LOSS .....</b>	<b>45</b>
12.01. DAMAGE TO OR DESTRUCTION OF LICENSE SPACE .....	45
12.02. COOPERATION IN THE EVENT OF LOSS .....	45
12.03. LOSS OR DAMAGE TO PROPERTY .....	45
12.04. MUTUAL WAIVER; INSURANCE COVERAGE .....	45
12.05. RELEASE .....	46
<b>SECTION 13 – PROMOTIONAL PROGRAM .....</b>	<b>46</b>
13.01. JOINT MARKETING FUND .....	46
<b>SECTION 14 – MISCELLANEOUS PROVISIONS .....</b>	<b>47</b>
14.01. ADVERTISING AND PUBLIC DISPLAYS; PRESS RELEASE .....	47
14.02. AGREEMENT BINDING UPON SUCCESSORS .....	47
14.03. AGREEMENT MADE IN COLORADO; VENUE .....	47
14.04. AGREEMENTS WITH THE UNITED STATES .....	47
14.05. RIGHT TO DEVELOP AIRPORT .....	48
14.06. AGREEMENT SUBJECT TO AVIATION PRIORITY .....	48
14.07. MODIFICATIONS REQUIRED BY FAA .....	48
14.08. ASSIGNMENT AND SUBLEASE .....	48



14.09. BOND ORDINANCES .....	49
14.10. FORCE MAJEURE .....	49
14.11. INCONVENIENCES DURING CONSTRUCTION .....	49
14.12. MASTER PLAN .....	49
14.13. LICENSES MASTER PLANNING .....	49
14.14. NONDISCRIMINATION .....	50
14.15. NOT PARTNERSHIP .....	50
14.16. NOTICES .....	50
14.17. PARAGRAPH HEADINGS .....	50
14.18. PATENTS AND TRADEMARKS .....	50
14.19. COLORADO OPEN RECORDS ACT. ....	51
14.20. SECURITY .....	51
14.21. SEVERABILITY .....	52
14.22. THIRD PARTIES .....	52
14.23. ADVERTISING AND PUBLIC DISCLOSURES. ....	52
14.24. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS .....	52
14.25. CITY SMOKING POLICY .....	52
14.26. WAIVER OF CLAIMS .....	53
14.27. INTERPRETATION OF AGREEMENT .....	53
14.28. NUMBER OR GENDER .....	53
14.29. JOINT AND SEVERAL LIABILITY .....	53
14.30. BROKER'S COMMISSION .....	53
14.31. NO LIMIT ON CITY'S POWERS .....	53
14.32. HEADINGS .....	53
14.33. WAR OR NATIONAL EMERGENCY .....	53
14.34. SURVIVAL OF CERTAIN CONTRACT PROVISIONS .....	53
14.35. CAPACITY TO EXECUTE .....	54
14.36. ENTIRE AGREEMENT .....	54
14.37. FINAL APPROVAL .....	54
Service Level Availability (SLA) .....	Error! Bookmark not defined.64
Reporting Metrics .....	Error! Bookmark not defined.64
Definitions of Metrics .....	Error! Bookmark not defined.65
Availability .....	Error! Bookmark not defined.65
Connection Success Rate .....	Error! Bookmark not defined.65

**Average Connection Throughput**..... Error! Bookmark not defined.65  
**Internet Pipe Capacity**..... Error! Bookmark not defined.65  
**Outage and Response Time** ..... Error! Bookmark not defined.65  
**Response Times for Outages and Outage Definition..** Error! Bookmark not defined.66  
**Metric and Service Level Standards** ..... Error! Bookmark not defined.66

## **SAMPLE FREE WI-FI SERVICE PROVIDER LICENSE AGREEMENT**

### **THIS FREE WI-FI SERVICE PROVIDER LICENSE AGREEMENT**

**AGREEMENT** is made and entered into as of the date set forth on the signature page, below (the "Effective Date") by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (the "City"), Party of the First Part, and Concourse Communications, LLC a Boingo Wireless Company, a Delaware corporation authorized to conduct business in the State of Colorado ("Licensee"), d/b/a Boingo Wireless, Party of the Second Part.

#### **RECITALS**

**WHEREAS**, the City owns, operates and maintains Denver International Airport ("DIA"); and

**WHEREAS**, the City owns and maintains a wireless infrastructure at DIA; and

**WHEREAS**, the City operates a concession program at the Airport which is envisioned to be among the best in the world offering value, excitement and a wide range of culinary and retail experiences and services that evoke a strong sense of place reflecting the best of Denver, Colorado and the Rocky Mountain West; and

**WHEREAS**, in furtherance of its vision for its concession program, the City desires to offer to the public free wireless Internet access and maintain a stream of income from the public's wireless Internet access; and

**WHEREAS**, the City has solicited and received proposals for such services and has selected the proposal submitted by Licensee; and

**WHEREAS**, the Licensee can provide free public wireless Internet access and provide the City with an agreed upon amount of revenue; and

**WHEREAS**, the premises set forth in these recitals hereby are made a part of this License;

**NOW THEREFORE**, for good and valuable consideration the sufficiency of which hereby is acknowledged, the Parties hereto, intending to be legally bound by the terms and conditions of this License, agree as follows:

#### **SECTION 1 – GENERAL**

##### **1.01 CONSIDERATION**

The City enters into this Agreement for and in consideration of the payment of compensation by Licensee as herein provided, the construction of all improvements by Licensee as herein provided, the Licensee is authorized to operate at Denver International Airport and the performance and observance by Licensee of the terms, conditions, requirements, covenants and agreements set forth herein.

##### **1.02 INCORPORATION OF ATTACHED SUMMARY PAGE, EXHIBITS AND ADDENDA**

The Summary Page attached to this Agreement, the Exhibits and Addenda attached to and referred to in this Agreement as described on the Summary Page and all general rules and

regulations adopted by the City or the Manager for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency, as they may be amended from time to time, are intended to be, and hereby are, deemed incorporated into this Agreement by this reference.

## **SECTION 2 – DEFINITIONS**

### **2.01. ADVERTISER**

"Advertiser" shall mean the Airport's advertising concessionaire.

### **2.02. AIRPORT**

"Airport" or "DIA" shall mean Denver International Airport.

### **2.03. AIRPORT MASTER PLAN**

"Airport Master Plan" or "Master Plan" shall mean the approved master plan for development of Denver International Airport.

### **2.04. AUDITOR**

"Auditor" shall mean the City's Auditor and the Auditor's authorized representative and shall include the internal audit personnel of the Department of Aviation, the Manager and the Manager's Authorized Representative.

### **2.05. COMMENCEMENT DATE**

The "Commencement Date" shall mean the date on which Licensee first begins offering at DIA Wireless Access Service of any type contemplated under this License.

### **2.06. CONCOURSES**

"Concourses" shall mean Concourses A, B and C located at the Airport but specifically excludes the Terminal as herein defined.

### **2.07. CONNECTION**

"Connection" shall mean the time and date a user initially logs onto the System (as defined at Section 2.26). Each log-on by the user shall be counted as a single Connection.

### **2.08. CUSTOMER**

"Customer" shall mean the traveling public (i.e. a non-tenant, non-contractor, non-government agency or others, all of whom are licensed or permitted to operate at the Airport by the Manager or the Manager's Authorized Representative).

### **2.09. DIA DESIGN STANDARDS**

"DIA Design Standards" shall mean the design standards and criteria established for Denver International Airport and as such standards and criteria may be established or modified from time to time.

### **2.10. DIA ENVIRONMENTAL GUIDELINES**

"DIA Environmental Guidelines" shall mean those portions of the environmental standards and criteria established for non-aviation tenant development and operations at the Airport, as they may hereafter be amended.

**2.11. DIA TENANT DEVELOPMENT GUIDELINES**

“DIA Tenant Development Guidelines” shall mean the criteria established at DIA for tenants and Licensees for design, construction, installation, signage and related matters, and as they may hereafter be amended.

**2.12. EFFECTIVE DATE**

“Effective Date” shall mean the date set forth on the signature page below.

**2.13. IMPROVEMENTS**

“Improvements,” which may also be called “Licensee Improvements,” or “Tenant Improvements,” shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Licensee, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture that conform to drawings and specifications approved in writing by the Manager’s authorized representative.

**2.14. LICENSE SPACE**

“License Space” or “Licensed Space” shall mean collectively the physical premises in which the Licensee’s Wireless Access System (as defined in Section 2.26) is installed and located within the Airport thereto as generally depicted on the Access Equipment Space Plan attached hereto as **Exhibit A**, and radiated radio frequency signal from the WAPs described herein. “License Space” shall include the plural where applicable. The City and Licensee acknowledge and agree that the locations and dimensions of the License Space as set forth in **Exhibit A** may change from time to time and revisions to **Exhibit A** may be made, if necessary, depicting the dimensions and square footage of the License Space, without the requirements of a formal amendment to this License. Such revisions shall be in writing and signed by the Manager or the Manager’s Authorized Representative.

**2.15. LICENSEE'S EQUIPMENT**

“Licensee's Equipment” shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures and other non-affixed personal property installed by Licensee and used in the operation of the business of Licensee (as distinguished from the use and operation of the License Space.)

**2.16. LICENSEE'S PROPOSAL**

“Licensee’s Proposal” shall mean the proposal and any supplemental documents requested during the Request for Proposal (RFP) process including the brand proposed as finally submitted by Licensee and accepted by City and consisting of Licensee’s plans for its design, Licensee’s proposed brand, products, product and services lists and pricing plans, and Licensee’s entire plan of operation.

**2.17. MANAGER**

“Manager” shall mean the City’s Manager of Aviation or the Manager’s successor in function.

**2.18. MANAGER'S AUTHORIZED REPRESENTATIVE**

Whenever reference is made herein to the “Manager or the Manager’s authorized representative,” or words of similar import are used, the City’s Deputy Manager of Aviation/Commercial shall be such authorized representative of the Manager. The Deputy

Manager's authorized representative is the Airport's Licenses Director who designates the Airport's Licenses Manager for administration of this Agreement. Licensee shall submit its reports, memoranda, correspondence and submittals to the Licenses Manager. The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of City authority upon notice to the Licensee.

#### **2.19. PAST DUE INTEREST RATE**

"Past Due Interest Rate" shall mean interest accruing at 18% per annum commencing on the fifth business day after the date such amount is due and owing until paid to City.

#### **2.20. PRODUCTS**

"Products" shall mean the specific food, beverages, merchandise, and services described on the Summary Page and **Exhibit E** that Licensee is authorized to sell at Denver International Airport.

#### **2.21. TERMINAL**

"Terminal" shall mean the Jeppesen Terminal Building located at the Airport.

#### **2.22. TERMINAL COMPLEX**

"Terminal Complex" shall mean collectively the Terminal and the Concourses located at the Airport as they are defined herein.

#### **2.23. TRANSPORT**

"Transport" shall mean the provisioning to third parties, such as but not limited to music and movie downloads for a "fee," the means to distribute downloadable content over DIA WiFi infrastructure. No sale or purchase of content is associated to the transport fee assessed for such purposes. Transport "fees" shall be included into the gross revenue calculation with identical commission percentages applied.

#### **2.24. "ULTRAMERCIAL ADS" ADVERTISING**

"Ultramercial Ads" shall mean a single advertisement displayed to Customers of the wireless Internet access service after initial login and prior to being able to freely navigate on the internet. Such advertisements may be a full screen, timed display up to 30 seconds in length. Licensee shall be permitted to display two 30 second Ultramercial Ads at the beginning of each distinct wireless access session and two additional 30 second Ultramercial Ads every thirty minutes thereafter throughout the continuation of each distinct wireless access session.

#### **2.25. WIRELESS ACCESS EQUIPMENT – CITY**

"Wireless Access Equipment," "Equipment," "Improvements" or "Wi-Fi System" shall mean all access points, cell transceivers, antennae, transmitters, transmission lines and connectors, receivers, wiring, wire cable, fiber, conduit, routers, access zone controllers, remote access monitoring components, wireless network PCs/servers, all wiring from DIA communication/electrical rooms to all transceivers, other associated infrastructure, and improvements, approved changes, upgrades and renovations thereto that are attached to or installed within the walls, soffits and roof areas of the Concourses, Terminal, all hardware and software including third party or other embedded software (but excluding Licensee's proprietary hardware/software that enables access by Licensee to City's Wi-Fi System) necessary for City to operate the foregoing without access to Licensee's network or systems.

## **2.26. WIRELESS ACCESS POINTS – CITY**

“Wireless Access Points” or “WAP(s)” or “Access Points” or “AP(s)” shall mean all wiring from DIA communication/electrical rooms to locations and the attached Antenna throughout the Concourses and the Terminal.

## **2.27. WIRELESS ACCESS SYSTEM – LICENSEE**

“Wireless Access System” or “System” shall mean a fully operational system that may be comprised of items similar to that of Wireless Access Equipment (as defined in Section 2.24) and installed and operated by Licensee pursuant to this License that enables Licensee to provide an interface to the City’s Wi-Fi System in order to provide Internet access services primarily for the traveling public at the Airport.

## **SECTION 3 – GRANT OF LICENSE RIGHTS**

### **3.01. LICENSE RIGHTS GRANTED**

**Rights Granted.** The City hereby grants to Licensee the non-exclusive, revocable License to

A. Occupy, improve and use the space and facilities, shown and described on the attached *Exhibit A*;

B. Coordinate with the City’s Department of Aviation Technologies section to design, install, operate, service, maintain, inform and promote, at Licensee’s own cost and expense, a Wireless Access System at the Airport;

C. Provide an interface with the City’s Wi-Fi system that can accommodate non-interrupted Internet access and viewing, advertising, sponsorships, media content and video downloads by the Public;

D. Provide free uninterrupted Wi-Fi service to the traveling public, design City approved Wi-Fi portal pages, and sell Wi-Fi advertising and sponsorship packages to qualified advertisers;

E. Provide paid daily and monthly Boingo Wi-Fi services to the traveling public. Daily rate is not to exceed \$7.95 per day and monthly rate is not to exceed \$9.95 per month unless approved in writing by the City in advance by the Manager or the Manager’s Authorized Representative.

F. Provide additional services as may be approved in advance in writing by the Manager which approval shall not be unreasonably withheld or delayed;

all as set forth herein, consistent with the City’s vision, Licensee’s Proposal and subject to all of the terms, conditions, covenants and provisions of this Agreement all of the terms and provisions of this License.

**Construction Obligation** Licensee’s construction obligations, if any, under this Agreement are set forth in more detail in Section 6.

**Delay in Delivery.** If the City cannot deliver possession of the License Space to the Licensee on the Target Possession Date for any reason, the City shall not be subject to any liability therefor. Such failure of delivery shall not affect the validity of the Agreement or the obligations of the Licensee hereunder or extend the Expiration Date. If the City is unable to deliver possession of the License Space to the Licensee within twelve (12) months after the Target Possession Date for any reason then the City, in its sole and absolute discretion, shall have the

option at any time thereafter to notify the Licensee of the City's intent to terminate the Agreement in which event the Agreement shall terminate and both the City and the Licensee shall be released from any liability or obligation under the Agreement.

### **3.02. MANNER OF ADVERTISING**

All proposed advertising items may be run as Ultramercial Ads (as defined in Section 2.13) and sponsorships of splash pages (collectively the "Ad Venues"). All advertisements shall be tasteful, attractive, and non-controversial in nature. Licensee shall not at anytime utilize or permit the display or use of pop-up or banner advertisements. At the Manager's request the Licensee shall review all advertising with the Manager or his authorized representative with respect to content, subject, character, and style.

The Manager shall have the right to reject or compel the removal of any advertising found by him to be illegal, immoral, false or misleading, unsightly, inconsistent with the proper operations and branding of the airport or the obligations of the City under its airport revenue bond ordinances, or otherwise not in accordance with reasonable standards established by the Manager. Any such rejection shall be communicated to Licensee in writing. The Licensee shall promptly advise the Manager of the termination or cancellation of the contract for any such material covered thereby

Licensee shall have the right to display advertising to all Customers who access the free Wi-Fi service on the following terms:

- A. Two (2) advertisements up to thirty (30) seconds in length each may be displayed to Customers upon each initial log-in to the free Wi-Fi service. These advertisements must be viewed in full before Customers may access the free Wi-Fi service.
- B. Every thirty (30) minutes thereafter, two (2) advertisements up to thirty (30) seconds in length each may be displayed to Customers. These advertisements must be viewed in full before Customers can continue to access the free Wi-Fi service.
- C. Licensee shall have the right to promote its premium/paid Wi-Fi services in such advertisements.

### **3.03. USE OF LICENSE SPACE**

**Permitted Use.** Licensee may use the License Space only for the Permitted Use described on the Summary Page and for no other purpose. Licensee shall have a non-exclusive right to operate a License in the License Space shown on **Exhibit A**, and offer those products/services approved by the City and described on the Summary Page and in the Scope of Work and Licensee's Proposal attached hereto as **Exhibits E and E1**. Licensee shall not offer for sale any other items of merchandise or engage in any other commercial activity at the Airport that is not specifically mentioned herein, and further agrees not to use any part of the Airport for any unlawful purpose whatsoever and agrees not to commit or permit any nuisance for or upon the Airport by its employees, agents, contractors or subcontractors. Licensee may not provide at the Airport any pay phone services, prepaid telephone cards, ATM, or any other pay per use services not described herein. Any promotional advertising by Licensee at DIA other than through the System shall be according to the terms of this Agreement. Licensee covenants and agrees to operate its License in strict conformity with the Permitted Use.



**Trade Name.** Without limiting the generality of this Section 3 or any requirements set forth in this Agreement, Licensee shall not operate under any trade name or brand, other than a trade name or brand specifically permitted or required herein.

**Brands are Material.** Licensee acknowledges that the use of brand, branded items or branded concepts is of critical importance to meeting the City's purpose for the Licenses program at Denver International Airport and therefore any Brand that Licensee is authorized to operate at Denver International Airport are a material part of the consideration to the City for this Agreement and may not be unilaterally discontinued or changed by Licensee.

**License or Franchise Agreement.** If the Brand that Licensee is authorized to operate from the License Space, in accordance with the terms of this Agreement, is not owned or controlled outright by Licensee but granted through a separate License Agreement or Franchise Agreement, Licensee shall provide to the City a copy of the License or Franchise Agreement or other documentation satisfactory to the City that conclusively demonstrates that Licensee has entered into such a License Agreement or Franchise Agreement. Licensee must continuously abide by the terms of the License or Franchise Agreement and maintain the License or Franchise Agreement in good standing throughout the term of this Agreement. Licensee hereby represents that there is nothing contained in the License or Franchise Agreement, which would prevent it from fully performing this Agreement and agrees that, in the event of a conflict between this Agreement and the Franchise Agreement or License Agreement, the terms and conditions of this Agreement shall control. If Licensee fails to provide such documentation within thirty (30) days after execution of this Agreement, the City may terminate this Agreement by written notice to the Licensee in which event the Agreement shall terminate and both the City and the Licensee shall be released from any liability or obligation under the Agreement.

### **3.04. INSTALLATIONS**

**A. Installation of Wireless Access Equipment.** Upon execution of this Agreement, Licensee shall, at its sole cost and expense, design, install, maintain, upgrade and operate necessary Information Technology hardware and software that provides for the delivery of content contemplated under this Agreement onto the City's Wi-Fi System. Licensee's installation shall strictly conform to Licensee's original proposal, unless otherwise authorized in writing in advance by the Manager or his authorized representative which approval shall not be unreasonably withheld or delayed. At the time of installation, Licensee shall install a new Wireless Access Service (as defined in Section 2.26); shall demonstrate a successful fail-over feature and functionality; and shall be responsible for all testing; all prior to commencement of approved operations. All installations shall be City-approved and in accordance with DIA Design Standards, DIA Tenant Development Guidelines, and other applicable City requirements as further described on **Exhibit X**. Licensee shall coordinate and collaborate with the City's Department of Aviation Technologies and Telecom sections to with regard to the design, installation, operation, service, maintenance, and upgrades to the wireless access equipment contemplated by this Paragraph 3.04A.

**B. City Provided Equipment.**

The City will provide:

- Rack, power, UPS, network connectivity for "head end" equipment in a City communications room.
- Network access between head end system and City owned and operated Wi-Fi (802.11a/g/n) access points in the terminal and concourses via a central controller.

- Local Area Network access between the head end system to the City high speed internet offering (if City chosen as internet service).
- Configuration and operation of the Meru Wi-Fi system supporting this service.

The City will NOT provide:

- High speed internet connectivity to support the head end gear and aggregate internet connection. The successful respondent will be required to pay for installation and monthly recurring charges for aggregate internet connection. Purchase of high speed internet connectivity through the City Telecommunications Tenant Services offering is an option for the Licensee.

**C. Installation of Additional Wireless Access Equipment.** Licensee shall not install any additional Wireless Access Equipment in the Licensed Space without prior written approval of the Manager or his authorized representative, which shall not be unreasonably withheld or delayed.

**D. System Expansion and Change Management Control.** During the Term of this License, upon mutual agreement between the City and Licensee, Licensee shall, with the Manager's prior written approval and coordination and technical oversight provided by DIA Telecommunications, timely expand and enhance the System or install, operate and maintain, upgrade and enhance the System without the requirement of a formal amendment to this Agreement. All proposed changes to Licensee's System shall be presented in writing to the City for review and prior written approval in advance of implementation which approval shall not be unreasonably withheld or delayed. Approved, documented, direct costs of said expansion are to be borne by the Licensee.

**3.05. RIGHTS NOT EXCLUSIVE**

The City reserves the right to allow others to conduct the operations and/or sell goods and services at the Airport that are the same or similar or even identical to those described on the Summary Page. Licensee understands and agrees that its right to conduct operations and/or sell any goods or services at the Airport is not exclusive and that the use of the property subject to this License is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over the Airport.

**3.06. MEANS OF ACCESS**

***Non-Exclusive Access.*** Licensee, its agents, invitees, guests, employees and suppliers have a non-exclusive right of ingress to and egress from the License Space by a means of access located outside the boundaries of such space as specified by City. Such access shall, without exception, be in common with such other persons (including, at the option of the City, the general public) as the City may authorize or permit, and the City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purpose.

***Subject to Security.*** This right of access is subject to the security requirements of the Section herein entitled *Security*. Moreover, without exception, nothing in this Agreement shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport or using the roadways in or on the Airport, or soliciting passengers upon the Airport, or otherwise operating on the Airport; and City reserves the right to make such charges provided that they do not discriminate unreasonably

against the operators of vehicles used for carrying officers, employees, passengers or property of Licensee.

### **3.07. RIGHT OF INSPECTION**

The City, its agents and employees, retain at all times during the term of this Agreement, the full right of entry in and to the License Space for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection it deems necessary, with or without advance notice, without liability, and without in any manner affecting Licensee's obligations under this Agreement. Without limiting the foregoing, such entry may be made for the purpose of making any inspection the City deems necessary, to make such repairs, alterations, improvements, or additions as the City is required or authorized to make under this Agreement, to determine whether Licensee has complied with the terms and conditions of this Agreement, to cure any breach that remains uncured by Licensee after reasonable notice and opportunity to cure have been given to Licensee. Inspection includes the right of the City to test, using industry acceptable methods, Licensee's hardware and software for security vulnerabilities, initially and randomly in the future. Licensee shall be required to remedy in a timely manner any security vulnerabilities, as identified by the City or otherwise, in Licensee's hardware and software in the best interests of maintaining and providing reliable service. In addition, during any emergency, the City, or its agents, may enter the License Space forcibly, if necessary. Nothing herein contained, however, shall be deemed to impose upon the City any obligation, responsibility, or liability whatsoever, for any care, maintenance, or repair, except as otherwise expressly provided for in this Agreement. No such reasonable entry by or on behalf of the City upon locations subject to this Agreement shall constitute or cause a termination of this Agreement nor shall such entry be deemed to constitute an interference with the use thereof by the Licensee

### **3.08. PROMOTION OF SERVICE**

**A.** After the execution of this Agreement, Licensee shall enter into an agreement with the Advertiser (per Section 14.01) at the Licensee's expense to advertise and promote its Wireless Access System at the Airport. Licensee shall provide all artwork for such promotions; and will also provide collateral materials including but not limited to handbills, counter-cards, table tents, brochures and window-decals.

**B.** At City's sole discretion, City may provide regular audio announcements, pending available broadcast time, to be played over the Airport's public address system at regular intervals; and may provide additional on-site promotional content; all to be mutually agreed upon in advance by Licensee and City. Any costs for audio announcements will be the responsibility of the Licensee. City will identify and offer Licensee any additional promotional opportunities for the purpose of promoting the Wireless Access System at the Airport which may include physical or electronic signage, distribution of promotional collateral and printed materials, audio and video announcements that are not pursuant to the Airport's agreements with any other Media providers.

**C.** Licensee shall have the right to broadcast the SSID "Boingo Hotspot" for the purposes of identifying and promoting its Wireless Access System at the Airport.

### **3.09. SYSTEM AND SERVICE WARRANTIES**

**A.** Each party represents and warrants that it has the authority to enter into this Agreement; and that its obligations under this Agreement do not violate the rights of any third parties and complies with all applicable Federal, State and Local laws and regulations.

**B.** City represents that it owns the Wireless Wi-Fi System, as defined in Section 2.24.

**C.** Disclaimer of Warranty. Each party expressly disclaims any warranty that the use of its software, computer systems, premises or other services will be uninterrupted. Except for the express warranties stated above, in 3.09 (A) and (B) neither party makes any warranty as to its respective software, computer systems, premises and/or services hereunder. Each party's software, computer systems, premises and other services are provided to the other party on an "AS-IS" basis without warranties of any kind, either expressed or implied, including without limitation warranties of merchantability or fitness for a particular purpose or use with respect to the Internet or use of information in connection with any software or computer services provided herein. Each party acknowledges that electronic communications are subject to errors, tampering and break-ins. While each party agrees to take reasonable precautions to avoid such occurrences, neither party guarantees or warrants that such events will not take place.

**D.** Limitation of Liability. City understands and agrees that the Licensee's System is intended for advertising, promotional or personal entertainment purposes only and users of Licensee's System do so at their own risk. Nothing about this limitation of liability shall free Licensee from its obligations to provide the City with its minimum monthly guarantee or other payments under this Agreement.

**E.** Licensee makes no representation or warranty concerning the accuracy or reliability of the content displayed over the WLAN and that this content is intended to be used for advertising, promotional or personal entertainment purposes only and that if the City acts upon any information disseminated therein, they do so at their own risk.

### **3.10. SERVICE PRESENTATION.**

**A.** Licensee warrants that it will not solicit the sale of advertising nor accept advertising intended to appear on the City's Wi-Fi System promoting the sale or distribution of pornographic content, illegal gambling, hate speech, tobacco, alcohol or other such content deemed unacceptable by City under Section 3.02. Licensee will comply with all, local, state and federal laws, ordinances and codes which are relevant to it.

**B.** Licensee warrants that it will not solicit the sale of advertising nor accept advertising intended to appear on the City's Wi-Fi System from those companies indicated by the City on the Advertising Exclusion List for the duration of this Agreement. Such City Advertising Exclusion List is attached as **Exhibit G**. City agrees to inform Licensee in writing of any changes to the advertiser exclusion list. In the event that the City excludes a Licensee advertiser, Licensee shall have seven (7) days to remove all such advertiser's advertisements from the System.

**C.** With prior written approval from the City, Licensee may make reasonable changes to the service from time to time. Changes may include but not be limited to user interface design (layout, color, size, etc), advertising unit modifications and/or entertainment/utility content offerings. Licensee will notify the Manager's authorized representative of all intended substantive and/or service affecting system changes in writing in advance of implementation.

**D.** End user Wireless connection speed experience shall be no less than 256 Kbps, and typical web pages shall take no longer than 10 seconds to load into any common "fixed" or

“mobile” web browser including but not limited to Mozilla FireFox, Netscape Navigator or Communicator, Internet Explorer, Chrome, Opera, Opera Mini, Safari, Flock, Image Xplorer, or similar browser. The user experience shall be similar to that enjoyed in a typical successful wired connection.

E. Users shall be presented with an End User License Agreement (EULA) upon initial access to the service. This EULA screen shall be composed of EULA language normal to users and providers of this type of service. This screen shall also provide a list of optional wireless service providers to choose from, to which the user may connect, such as Boingo, Clear Wire, etc. One of these choices shall be “None of the above, connect to Denver International Airport’s Free Wireless Service as provided by Concourse Communications,” (or similar verbiage.) Other than this provision, provider shall not “redirect” users to any webpage or website other than those intentionally selected by users.

## SECTION 4 – TERM

### 4.01. TERM

This Agreement shall commence and become fully effective and binding upon the Parties as of the Effective Date. “Term” as used herein shall mean the date commencing upon the Effective Date and expiring upon the date listed on the Summary Page (“Expiration Date”), unless sooner terminated pursuant to the provisions of this Agreement or by law.

### 4.02. SURRENDER OF LICENSE SPACE

**Standard for Surrender.** Upon the expiration or earlier termination of this Agreement or on the date specified in any demand for possession by City after any default, Licensee must have fully performed all of its obligations under this License, including delivery to the City of all keys to any doors and to any Improvements located on the locations subject to this Agreement. Licensee covenants and agrees to surrender possession of the License Space to City in broom clean condition and good state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include deterioration that could have been prevented by proper maintenance practices, or by Licensee performing all of Licensee's obligations under this Agreement. Licensee covenants and agrees to cooperate with the City’s Termination procedures described in Section 11.

### 4.03. HOLDING OVER

**Holding Over.** If Licensee holds over after the Expiration Date, any extension thereof, or earlier termination of this Agreement as herein provided, and the City and Licensee have not otherwise agreed, in writing, to the terms and provisions of such holding over, thereafter Licensee’s occupancy shall be deemed by the City to be either a month-to-month holdover tenant, or a tenant at sufferance, at a monthly rental, payable in advance, equal to 150% of the monthly MMG provided in Section 5 of this Agreement (“holdover fee”), and Licensee shall remain bound by all terms, conditions, covenants, and agreements hereof.

**Month -to -Month Tenancy.** If Licensee is deemed to be a holdover tenant, Licensee and the City agree that: (a) the tenancy shall be month-to-month and may be terminated at any time by thirty (30) days prior written notice from either Party to the other; and (b) the MAG shall continue to adjust annually, using the same formula for MAG adjustment as provided in Section 5.

**Tenant at Sufferance.** In the event that the City deems Licensee a tenant at sufferance, all of the provisions of the previous sentence shall apply, except that the City will notify Licensee, in writing, that Licensee is a tenant at sufferance. Thereafter, the City may take immediate action to evict Licensee without further notice and may otherwise exercise any other rights and remedies available to it at law or in equity.

**Holdover Fee Waiver.** Upon expiration of this Agreement, and in the Manager's sole discretion, the holdover fee may be waived in writing by the Manager or the Manager's designee to allow Licensee to holdover at 100% of the monthly Rent provided in Section 5 of this Agreement.

**No Right to Holdover.** Nothing herein shall be construed to give Licensee the right to hold over at any time, and the City (after expiration or termination of this Agreement), as the case may be, may exercise any and all remedies at law or in equity to recover possession of the License Space, as well as any damages incurred by City on account of such holding over.

## SECTION 5 – COMPENSATION

### 5.01. LICENSE FEE

A. Licensee covenants and agrees, in advance, without setoff, deduction, prior notice or abatement, to pay City a License Fee for the rights and privileges herein granted by City. "License Fee" shall mean the greater of (a) a sum equal to Licensee's annual Gross Revenues, as defined herein times the percentage rate shown on the Summary Page ("Percentage Fee"), derived by the Licensee under this License, or (b) the Minimum Annual Guarantee ("MAG") stated on the Summary Page, which may be annually adjusted as provided below. Said obligation to pay the License Fee shall commence upon the Commencement Date as defined herein and shall continue through the Term hereof.

B. The MAG shall be paid monthly in twelve equal installments ("MMG"). The first MMG payment shall be due and payable on the Commencement Date and thereafter the MMG shall be paid on the first day of each month through the Term hereof

C. After the first full year and for each subsequent year of this License, the MAG will be adjusted annually on a common annual date to be established by the City to an amount equal to (i) 85% of the License Fee paid or payable to the City for the prior year as computed under this Section 5 (excluding any Additional Fees) or (ii) the first year MAG initially stated on the Summary Page, whichever is greater.

### 5.02. GROSS REVENUES

**All Revenue.** As used herein, the term "Gross Revenues" shall mean all billings and receipts at the point of sale from sales of all other items sold, whether for retail or wholesale, and the charges for all services performed by Licensee or any other person or entity in, at, or from the License Space, regardless of place or time of actual payment or receipt of merchandise, whether for cash, credit or otherwise, regardless of whether any party other than Licensee is providing or operating equipment or services involved in the transaction or billing or receiving revenue from such transaction, without reservation or deduction for uncollected amounts, credit card fees or charges, or collection costs, including, but not limited to: (a) all sales and services occurring on the License Space or within the Airport, including all orders that originate in, at or from the License Space, regardless of where delivery or performance is made; (b) orders that are made to and/or filled from the License Space pursuant to mail, telephone, fax, catalog, internet, or otherwise received, filled, or distributed from the License Space, including catering,

even if performed at cost or related to a service or management fee associated with providing products and/or services for an airline's preferred passenger club/lounge (c) any income resulting from transactions originating in, at, or from the License Space or within the Airport including but not limited to promotional or advertising income received by or paid to Licensee in exchange for displays, promotions, advertising or other business transacted at the License Space, (d) deposits not refunded to customers; and (e) insurance proceeds received due to loss of gross earnings under business interruption coverage.

**Excluded from Gross Revenues.** When properly recorded and accounted for, a reduction from Gross Revenues shall be allowed for: (i) bona fide returns for credit, (ii) refunds to customers, but only to the extent the original sale to that customer was included in Gross Revenues; (iii) sales of fixtures, machinery and equipment after use in Licensee's business in the License Space; (iv) sales, excise, or similar taxes imposed by a governmental entity and collected from customers and then directly paid by Licensee to the government entity; sales taxes collected for remittance to the State or City, tips, and federal excise taxes collected, which must be separately stated, collected from the customer and remitted to the federal government by the Licensee; and (v) shipping and delivery charges if provided at cost and separately stated on customer invoices. There shall not be allowed from Gross Revenues any reduction for bad debts, loss from theft or any deduction except as outlined above.

**Recording of Gross Revenues and Handling of Cash.** To record all sales generated in, at, or from the License Space, Licensee shall use a cash register and point of sale system (collectively, "POS") acceptable to the City, which is capable of producing duplicate sales slips, or printouts on which each sale is identified, itemized and recorded. Licensee shall adhere to a "Cash and Record Handling" policy developed by Licensee, which is acceptable to the City. Licensee shall submit the Cash and Record Handling policy to the City upon request.

### **5.03. MONTHLY STATEMENTS AND PAYMENTS**

**MAG Payment.** An amount equal to one-twelfth of the MAG as adjusted pursuant to Section 5.01, shall be payable by Licensee to the City in advance and without demand on the Commencement Date, and on the first day of each calendar month thereafter. The MAG for a partial month during the Term of this Agreement shall be prorated on a per diem basis.

**Percentage Rent Payment and Revenue Statements.** By the 10th day of the second and each succeeding month following the Rent Commencement Date, Licensee shall furnish to the Airport's Finance Section and provide copies to the Licenses Management Section in a form acceptable to the Manager's authorized representative, a true and accurate verified statement ("Revenue Statement") of Licensee's Gross Revenues (broken down by type, including by way of reference but not limitation: roaming, advertising, sponsorships, daily paid service, monthly paid service) for the preceding month and in the event that the Percentage Rent of Licensee's Gross Revenues derived from its operations for the preceding month exceeds the MMG payment for that month, Licensee shall pay to the City an amount equal to such excess. Monthly Revenue Statements shall be submitted to the City by mail to the address shown below in Section 5.06. At any time upon advance written notice to Licensee, the City may require Licensee to submit its monthly Revenue Statements in electronic form or change the timing of the submittal of the monthly Revenue Statements, or otherwise to modify the form of the monthly Revenue Statement. The City shall also be entitled to receive, upon request, detailed monthly profit and loss statements, also broken down into categories specified by the City.

**Revenue Statements to be certified.** Revenue Statements shall be signed by the chief financial officer or the chief executive officer of Licensee certifying that to the best knowledge of

the officer submitting the Statement, the Gross Revenue reported and the Rent paid by Licensee for the preceding month, was correct and properly calculated in accordance with the terms of this Agreement.

**Joint Marketing Fund Payment Due.** With its monthly Revenue Statement, Licensee shall also calculate and pay to the City a Joint Marketing Fund payment which shall be an amount equal to the percent of Licensee's Gross Revenues stated on the Summary Page.

**Additional Rent.** All amounts required to be paid by Licensee under this Agreement, other than the MAG and Percentage Rent, shall be deemed "Additional Rent" (whether or not so designated herein), including but not limited to the Joint Marketing Fund payment, Interim Rent, utilities fees, late or delinquent fees, accrued interest, liquidated damages and any other fees or charges payable under this Agreement. Licensee shall pay Additional Rent in the manner and at the place provided in this Agreement. If such amounts or charges are not paid at the time and in the manner as provided in this Agreement, they shall nevertheless be collectible as Additional Rent with the next installment of Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of the City. All amounts of MAG, Percentage Rent and Additional Rent (also collectively referred to in this Agreement as "Rental") payable in a given month shall be deemed to comprise a single rental obligation of Licensee to City.

**Performance Surety may be drawn.** If the City has not received the monthly Revenue Statement on the date due, the City reserves the right, in addition to all of its other rights as stated herein, to immediately thereafter, and without notice, invoice Percentage Rent to Licensee based on the City's estimate of Licensee's Gross Revenues and to draw on the Performance Surety, based on the City's estimate of what is due. Any such draw against the Performance Surety by the City shall not release Licensee from the obligation of providing the actual monthly Revenue Statement.

**Licensee's Payment Obligations.** Licensee covenants to pay all Rent and charges under this Agreement independent of any obligation of the City. No breach of this Agreement by the City shall relieve Licensee of its obligation and duty to pay all such Rent and charges when due under the terms of this Section 5.

#### **5.04. TITLE TO CITY'S COMPENSATION**

Immediately upon Licensee's receipt of monies from the Licensee's authorized operations under the terms of this Agreement, the percentages of said monies belonging to City shall immediately vest in and become the property of the City. Licensee shall be responsible as trustee for said monies until the same are delivered to City.

#### **5.05. INTEREST ON PAST DUE AMOUNTS**

Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

#### **5.06. PLACE AND MANNER OF PAYMENTS**

All sums payable to City hereunder shall be made payable to "Airport Revenue Fund" and paid without notice at the following:

Airport Revenue Fund  
Denver International Airport  
P.O. Box 492065



Denver, CO 80249-2065

or, at such other place as the Manager's authorized representative may hereafter designate by notice in writing to Licensee. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Licensee agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees, costs and expenses.

#### **5.07. APPLICATION OF PAYMENTS**

The City is entitled to accept, receive and cash, or deposit, any payment made by Licensee for any reason or purpose or in any amount whatsoever, and apply the same, in the City's sole option, to any obligation of Licensee. Such payment or application shall not constitute payment of any amount owed, except that to which the City has applied the payment. No designation of any payment by Licensee for application to a specific portion of Licensee's financial obligations hereunder shall be binding upon the City. No endorsements or statement on any check or any letter accompanying any check or payment as compensation or other charges shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check, payment or partial payment, shall be without prejudice to the City's right to recover the balance of any and all compensation or other charges due from Licensee to the City and the City's right to pursue any other remedy provided in this Agreement or in law or at equity.

#### **5.08. BOOKS OF ACCOUNT AND AUDITING**

**Annual Statement.** Not later than February 28 of each and every year during the Term hereof, Licensee 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 Licensee (stating that the Gross Revenue reported and Rent paid by Licensee 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 Licensee's: (a) annual total Gross Revenues broken out monthly, as shown on the books and records of Licensee, detailed as used to compute any Percentage Rents during the period covered by the Annual Statement; (b) the total Rent due under each category; and (c) the total Percentage Rent 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 Licensee 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, Licensee 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 Licensee elects to have its chief financial officer or chief executive officer certify its Annual Statement and is late with its Annual Statement or if Licensee's Bi-annual Statement is late, then Licensee 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 Licensee. 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.** Licensee 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 Licensee's operations hereunder to be distinguished from all other locations or operations of Licensee. Licensee shall prepare financial statements in conformity with generally accepted accounting principles, applying certain estimates and informed judgments, as required.

**Financial Accountability.** Licensee shall keep and make available upon request true and complete records and accounts of all Gross Revenues and business transacted, including daily bank deposits. Licensee 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 Licensee related to revenue derived or generated under this Agreement. Licensee 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 Licensee 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.** Licensee, upon written request, shall make all such documents available for examination and provided to the City in electronic format acceptable to the City, at the sole expense of Licensee. 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 Licensee's statement for such year were understated, Licensee shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If an audit reveals that Licensee 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 Licensee; Licensee 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, Licensee 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 Licensee's statement for that year has been delivered to the City.

**City's Sales Taxes.** Licensee 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 Licensee 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 Licensee by the City's Department of Revenue. Licensee 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.

#### **5.09. RECOVERY OF CITY EXPENSE TO FULFILL LICENSEE'S OBLIGATIONS**

**Licensee to Reimburse City.** If the City has paid any sum or sums or has incurred any obligations or expense for which the Licensee has agreed to pay or reimburse the City, or if the City is required or elects to pay any sum or sums or insure any obligations or expense (a) by reason of failure, neglect, or refusal of the Licensee to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement; or (b) as a result of an act of omission of the Licensee contrary to the conditions, covenants, and agreements contained in this Agreement, then, after written notice thereof by the City, the Licensee agrees to pay to the City the sum or sums so paid or the expenses so incurred, including all interest, costs, damages, and penalties, plus a twenty percent (20%) administrative fee, and each and every part of the same shall be and become Additional Rent, recoverable by the City in the same manner and with like remedies as if it were originally a part of the Rent as set forth herein.

**Evidence of Reasonable Expense.** For all purposes under this Section 5.09, and in any suit, action, or proceeding of any kind between the Parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be prima facie evidence against the Licensee that the amount of such payment was necessary and reasonable. In the event the City brings suit to collect any delinquent payments due it by the Licensee, the City shall be entitled to recover all court costs and its reasonable attorney fees. Should the City elect to use its own operating and maintenance staff in making any repairs, replacements, and/or alterations and to charge the Licensee with the cost of same, any timesheet of any employee of the City showing hour of labor or work allocated to any such repair, replacement, and/or alteration, or any stock requisition of the City showing the issuance of materials for use in the performance thereof, shall be prima facie evidence against the Licensee that the amount of such charge was necessary and reasonable.

#### **5.09. Termination by Licensee**

Licensee may terminate this Agreement at any time one (1) year after the Effective Date by providing at least ninety (90) days written notice to the City. Upon termination of this Agreement by Licensee pursuant to this Section 5.09 then, after written notice thereof by the City, the Licensee agrees to pay to the City at time of termination any remaining Minimum Annual Guarantees contemplated under this Agreement as if the Agreement had not been terminated.

#### **5.10. REMEDIES NON-EXCLUSIVE**

The remedies provided in this Section 5 are in addition to all other rights and remedies that the City may have for a breach or violation of this Agreement. Nothing in this Section shall be deemed to be a waiver by the City of any breach or violation, nor shall it be deemed to stop the City from terminating this Agreement or from asserting any other of its other rights or remedies under this Agreement, or at law or in equity. Nothing contained herein shall be construed to require the City to accept delinquent Rent, or delinquent Additional Rent. Acceptance of full or partial payment of delinquent Rent, or delinquent Additional Rent, shall not constitute a waiver of any of the City's other rights and remedies under Section 11.

#### **5.11. REESTABLISHMENT OF RENTALS, FEES AND CHARGES**

***City may Reestablish Rentals, Fees and Charges.*** The City, through the Manager, may from time to time, at intervals of not more than five (5) years, at the Manager's sole discretion, and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees and charges provided for herein. The City agrees that such reestablished schedule of rentals, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining property, services and facilities of the airport system.

***Licensee may Cancel and Terminate Agreement.*** If the Manager proposes any change in the schedule of rentals, fees and charges, the City will give notice thereof to Licensee not less than 90 days before the same is to become effective. Should the proposed rentals, fees and charges result in an increase of more than 5% in the dollar amount of compensation paid by Licensee for the prior calendar year, then Licensee may decline to pay compensation at the new rate(s). Licensee shall promptly advise the Manager (but in no event less than 60 days prior to the proposed effective date of such schedule of rentals, fees and charges) of its intention to cancel and terminate this Agreement. Upon such notice of intent to cancel and terminate, Licensee shall surrender the License Space upon a date specified by the Manager. Should Licensee fail to give such notice of cancellation and termination, then it shall be deemed to have accepted the new rate(s) of compensation as promulgated by the Manager.

***No Waiver.*** No failure by the City to reestablish the rentals, fees and charges at a five (5) year interval date shall constitute a waiver of the City's right to reestablish the rentals, fees and charges at any time thereafter.

### **SECTION 6 – CONSTRUCTION RESPONSIBILITIES OF LICENSEE**

#### **6.01. “AS IS” CONDITION OF LICENSE SPACE**

Licensee accepts the License Space in “as is” and “where is” condition with absolutely no warranties as to condition or suitability for use being given by the City. Licensee is required to completely demolish and remodel the License Space and all improvements made to the License Space, unless otherwise specified herein, shall be made and maintained by Licensee, at Licensee's sole cost and expense.

## **6.02. TIME TO COMPLETE CONSTRUCTION**

**Time is of the Essence.** The Parties agree that time is of the essence in the performance of Licensee's construction obligations throughout the Term of this Agreement.

**Construction Completion Deadline.** Licensee, at its own cost and expense, shall complete its design, obtain building permits and complete construction or installation of the initial Improvements no later than the Construction Completion Deadline stated on the Construction Summary Page. Such period may be extended by the Manager or the Manager's authorized representative, in writing, if completion of the design or construction or installation of the initial Improvements was delayed by fault of the Airport. The Parties understand and agree that design shall commence before the Target Possession Date, as outlined in Section 6.03 and 6.04.

## **6.03. APPROVAL OF PLANS AND SPECIFICATIONS FOR NEW SPACE**

**Conceptual Plans.** As soon as practicable but no later than 30 days after execution of this Agreement, Licensee shall attend a pre-design meeting with the Airport's Licenses management team and thereafter, prepare and submit for City review, conceptual plans and specifications (collectively "Conceptual Plans") and a proposed design and construction progress and completion schedule ("Construction Schedule") for the construction of all proposed initial Improvements.

**Prompt Submission.** Conceptual Plans shall show architectural design as well as planned furnishings, equipment and decorative effects. Conceptual Plans must be submitted to the City promptly. Prior to submission of Conceptual Plans, Licensee should carefully review the DIA Design Standards and the DIA Tenant Development Guidelines, with paying particular attention to the Sense of Place section of the Tenant Development Guidelines, which outline the process for preparing the Conceptual Plans and for working with the City in obtaining approval of Conceptual Plans.

**Prompt Review.** The City shall promptly review and comment on the Conceptual Plans. City approval shall extend to all design elements (e.g., materials, color selections) and all architectural and aesthetic matters. During this comment and review period, Licensee must be available to respond to the City in order to arrive at mutually acceptable plans for the License Space. Licensee will promptly submit necessary modifications and revisions thereof and the City agrees to act promptly upon receipt of such modifications and revisions and upon Licensee's requests for approval of Licensee's Conceptual Plans.

## **6.04. FINAL PLANS**

**Design Considerations.** Once Conceptual Plans are approved, Licensee may move forward with the design for the License Space. The design shall include all tenant finish requirements including but not limited to lighting, power, plumbing, HVAC distribution from main air supply, HVAC controls for the tie in to the base building system, supplemental HVAC if needed, life safety systems, interior finishes, all furnishings, fixtures, trade fixtures, equipment, and signage necessary to operate in a first-class manner. Special attention must be given to the design of the HVAC and electrical systems. For a concept that creates odors, the mechanical system must be designed or configured to prevent the transmission of said odors to other portions of the Concourses or the Terminal. All plans and specifications, materials and color selections are subject to review and approval by the Manager's authorized representative.

**Preparation of Final Plans.** Licensee shall prepare final plans and detailed specifications that incorporate the design intent approved in the Conceptual Plans ("Final Plans"). Final Plans

shall be submitted for approval by the City. Final Plans must be prepared by an architect or engineer licensed to practice in the State of Colorado.

**Resubmission until Approved.** The City reserves the right to reject any design concept or layout plan submitted and to require Licensee promptly to submit necessary modifications and revisions that address the City's concerns and resubmit Final Plans until they meet the City's approval. Licensee agrees to submit promptly necessary modifications and revisions thereof and the City agrees to act promptly upon receipt of such modifications and revisions and upon Licensee's requests for approval of Licensee's Final Plans. Once the Final Plans have been approved, in writing, by the City, all construction shall conform to the Final Plans, and no substantial changes or alterations shall be made in any plans or specifications at any time during this Agreement without the prior written approval of the City.

**No Construction without Final Plans.** As soon as practicable but no later than 10 days after approval by the City of Licensee's Final Plans, Licensee shall attend a pre-construction meeting with the Airport's License Tenant Facilities Manager. Tenant may not construct or install the initial Improvements as defined in this Section 6.06 and **Exhibit X** without City approved Final Plans and a City issued Notice to Proceed ("NTP") as defined in Section 6.05.

#### **6.05. NOTICE TO PROCEED**

Once Final Plans are approved and prior to the commencement of construction, Licensee shall submit necessary documents identified in the DIA Tenant Development Guidelines and **Exhibit X**, which outline the process for working with the City to obtain an NTP. As provided therein, Licensee shall deliver to the Manager a payment bond that guarantees prompt and faithful payment of the construction contract by the Licensee directly to the contractor and shall ensure that Licensee's contractors deliver a construction performance and payment bond that guarantees prompt and faithful performance of the contract and prompt payment by Licensee's contractors to all persons supplying labor, materials, team hire, sustenance, provisions, provender, supplies, rental machinery, tools and equipment used directly or indirectly by the said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract, which shall protect the City from any liability, losses or damages arising therefrom. All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City, and shall be in form and with conditions as provided by the City. In lieu of a construction bond, the Licensee may provide only such alternate forms of security as are permitted by the Manager, in such form and with conditions as the Manager requires.

#### **6.06. CONSTRUCTION OF INITIAL IMPROVEMENTS**

**Licensee to Install Initial Improvements.** Once an NTP is issued by the City, Licensee shall construct and install at Licensee's own expense, all initial Improvements necessary for the customary operation of Licensee's business, including, but not limited to, lighting, power, plumbing, HVAC distribution from main air supply, HVAC controls for the tie in to the base building system, supplemental HVAC if needed, life safety systems, interior finishes, all furnishings, fixtures, trade fixtures, equipment, signage, counters, display cabinets, interior partitions, lighting, fixtures, wall and ceiling finishes, flooring and floor coverings, and all other equipment and furnishings necessary to operate in a first-class manner.

**Licensee to Supply Licensee's Equipment.** Licensee shall supply all of Licensee's furniture, furnishings, trade fixtures and equipment. All non-affixed items, including point of sale equipment, moveable furnishings, safes, racks, telephone equipment and non-affixed display fixtures, shall be deemed to be Licensee's Equipment as defined in Section 2.07. All of

Licensee's Equipment must be of first-class quality, safe, attractive, in compliance with all applicable codes and the DIA Tenant Development Guidelines and may be installed only with the City's prior written approval. All of Licensee's Equipment that cannot be removed without damage to the License Space shall be considered "Tenant Improvements." As used in this Agreement, "Tenant Improvements" shall mean affixed Improvements.

#### **6.07. CONSTRUCTION STANDARDS**

All construction performed by Licensee, including construction and installation of all Tenant Improvements, shall conform in all material respects to the Final Plans, DIA Tenant Development Guidelines, applicable statutes, ordinances, building codes, fire codes, State and federal Occupational Safety and Health Act safety requirements, Airport Rules and Regulations, the City's tenant construction permit requirements, the requirements of **Exhibit X, Provisions for Design and Construction of Improvements** and the Americans with Disabilities Act ("ADA") requirements. Any approval given by the City shall not constitute a representation or warranty as to such conformity. Responsibility for conformity at all times shall remain with Licensee. Before beginning any construction work on the License Space, Licensee must obtain at Licensee's expense, an NTP, as described in the Tenant Development Guidelines.

#### **6.08. REQUIRED MINIMUM INVESTMENT**

**Minimum Capital Investment Required.** Licensee guarantees that it will make capital investments for said License and shall construct the initial Improvements, furnish and equip the License Space at a minimum investment set forth on the Summary Page ("Required Minimum Investment"). The Required Minimum Investment shall not include financial costs, interest, inventory, pre-opening expenses or intra-company charges, but may include architectural and engineering fees not exceeding 15% of the total.

**Minimum Capital Investment is Material.** The Required Minimum Investment is a material part of the consideration to the City under this Agreement. Within 90 days after completion of construction Licensee shall file with the Manager lien releases for the above expenditures and a statement certified by its architect setting forth the total construction costs with appropriate detail itemizing design fees, original construction contract amount, total change orders, decorations, furnishings, fixtures, and equipment. At City's request, Licensee shall also submit copies of invoices supporting such costs. Non-receipted expenditures will not be credited. If the total amount of the Licensee's construction costs is less than the Required Minimum Investment, the difference between such total cost (as detailed by the certified receipts) and the Required Minimum Investment for renovating the License Space, shall be paid to City within 30 days after written notice from City to Licensee.

#### **6.09. COORDINATION OF CONSTRUCTION**

**Periodic Design and Construction Meetings.** Licensee shall cooperate with City and its planners, designers, architects, and engineers in the construction and installation of the Improvements on the License Space, and shall comply with all approved plans and the Building Code. Licensee agrees to meet with the City on a periodic basis, as requested by the Airport Licenses Manager. The Airport Licenses Manager shall be copied on all design and construction meeting minutes.

**Construction in Adjacent Areas.** Licensee recognizes that during the Term of this Agreement, construction may also occur in adjacent areas surrounding its License Space, and Licensee agrees to cooperate with and grant to other contractors access to Licensee's License Space when necessary to accommodate construction occurring in adjacent areas.

**Work Subject to Inspection.** All construction work, materials and installations involved in or incidental to the construction on the License Space shall be subject at all times to inspection and regulatory control by the City. The City shall at all times have the right of access to the License Space to monitor and inspect the construction, work, materials and installation of the Improvements to ensure that such improvements conform in all respects to the Final Plans.

#### **6.10. ENVIRONMENTAL REQUIREMENTS FOR CONSTRUCTION**

In the performance of construction activities for the Improvements, Licensee is responsible for compliance and shall require its contractors to comply with all federal, state, and local environmental requirements including, without limitation the Environmental Requirements set forth on **Exhibit N, DIA Environmental Requirements**.

#### **6.11. BUILDING PERMITS**

In addition to approvals required by the Airport, Licensee and its contractor are solely responsible for applying for, obtaining, and paying for all required building permits, licenses and other required approvals, and are responsible for submitting plans and specifications to the City's Building Inspection Division for the necessary building permits.

#### **6.12. COMPLETION OF CONSTRUCTION**

**Completion of Construction.** Upon completion of construction of the initial Improvements Licensee shall deliver to City a copy of the Temporary Certificate of Occupancy ("TCO") and Certificate of Occupancy ("CO") for the entire (100%) License Space, if one is issued by the City Building Department. If a TCO or CO is not issued by the City Building Department, Licensee shall provide a copy of the final Permit Inspection Card indicating inspection and approval by the issuer of said permit. Licensee shall obtain the City's written permission to remove its construction wall and shall immediately thereafter open for business and document the Rent Commencement Date as provided in Sections 2.19 and 4.01.

**Delay in Opening.** If Licensee has not opened for business, as provided in Section 2.19, by the Required Opening Date stated on the Summary Page, Licensee shall pay Interim Rent every month until construction is completed and the License Space is opened for business, at which time the Parties shall document the final Rent Commencement Date as provided in Section 4.01. Rent then shall be due and payable monthly as provided in Section 5.

**Interim Rent.** For each month due and payable, Interim Rent shall be the amount stated on the Summary Page for the License Space which consists of 1/12 of the annual sales (Gross Revenue) projected by Licensee in its Proposal and Pro Forma for year one. The amount of such Interim Rent has been determined based upon numerous considerations including the fact that the City has foregone other proposed revenue-producing uses of the License Space and expended money in reliance upon and based upon Licensee opening for business on the intended opening date as well as Licensee's Proposal and Pro Forma. Such interim Rent shall be deemed to be in lieu of the Percentage Rent (as that term is defined in Section 5.01) that might have been earned during the period of Licensee's failure to open.

**Interim Rent Due on the Required Opening Date.** The first Interim Rent payment is due on the Required Opening Date. If that date is other than the first day of the month, then the first Interim Rent payment shall be prorated for that month. Thereafter, Interim Rent payment is due on the first day of each calendar month until construction is completed and the License Space is opened for business.



**Interim Rent as a remedy.** The Parties agree that it is and will be impracticable and extremely difficult to determine the actual damages suffered by the City and therefore, in order to compensate the City for its loss Licensee agrees that it shall pay Interim Rent to the City for each month Licensee delays its initial opening beyond the time specified herein. This remedy shall be in addition to any other remedies provided in this Agreement or in law or in equity to the City in the event of default by Licensee.

**Date Adjustment Required When ...**

- **Possession Date Changes.** If the actual date of possession of the License Space by the Licensee is after the Target Possession Date, the amount of time between Target Possession Date and date of actual possession shall be added to the Construction Deadline, the Required Opening Date, the Refurbishment Completion Date and the Expiration Date and the new dates shall be added to **Exhibit D**. Possession of the License Space earlier than the Target Possession Date, shall not affect the Construction Deadline, the Required Opening Date, the Refurbishment Completion Date and the Expiration Date.
- **Construction Deadline Changes.** If the Construction Deadline is enlarged pursuant to the authority reserved to the Manager in Section 6.02, the amount of time by which the Construction Deadline is enlarged shall be added to the Required Opening Date, the Refurbishment Completion Date and the Expiration Date and the new dates shall be added to **Exhibit D**.

**No Amendment Required.** The Parties agree that each of these required date adjustments and the corresponding adjustment to **Exhibit D**, may be taken without the requirement of a formal amendment to this Agreement.

**Lien Releases and other documents.** Within the earlier of (a) 30 days after completion of construction of the initial Improvements or (b) 60 days after Licensee opens for business, Licensee shall deliver to City original executed copies of all mechanics' lien releases or other lien releases notarized and unconditional, in such form as City shall have approved, and an architect's certification that the Improvements have been constructed in accordance with the approved Final Plans and are fully complete in accordance with **Exhibit X**. Licensee agrees that, upon the request of the City, Licensee will inspect the License Space jointly with the City to verify as-built drawings.

**Security Procedures.** Licensee shall submit to the City for review, at least 30 days prior to the Required Opening Date, written operating and security procedures for its operations hereunder. Licensee shall revise such operating and security procedures as necessary to obtain City approval of them.

**6.13. RESTRICTION ON CHANGES AND ALTERATIONS**

**Subsequent Construction Requires Prior Approval.** After construction and installation of the initial Improvements Licensee agrees not to materially improve, change, alter, add to, remove or demolish all or any part of the Improvements without the prior written consent of the Manager or the Manager's authorized representative.

**Licensee to Comply with all Imposed Conditions.** Subsequent construction work occurring during the term of this Agreement, including all repairs, refurbishments, and remodeling, shall be subject to the prior written approval of the City and, if required, in the determination of the City, an NTP. If subsequent construction remodeling, repairs and/or refurbishment changes are approved, the same process outlined herein for City approval of the initial construction shall be

followed, unless otherwise directed by the City. Licensee must comply with all conditions imposed by the Manager's authorized representative in his commercially reasonable judgment and all required approvals, submittals, and procedures of whatsoever nature, as set forth in the City's approval. Any work necessary to make alterations, improvements or additions to the License Space throughout the term of this Agreement shall be done at the Licensee's cost and expense.

**Revised Drawings, Final Waivers to be provided.** Upon completion of subsequent construction work, the Licensee shall deliver to the City revised as-constructed drawings, evidence of payment, contractor's affidavits and full and final waivers of any liens for labor, services or materials. The Licensee shall include in its agreement with its contractors provisions whereby such contractors shall defend and hold the City harmless from all costs, damages, liens and expenses related to such work.

**Removal and Demolition of Improvements.** Licensee shall not replace, remove or demolish, in whole or in part, any Tenant Improvement on the License Space during the term of this Agreement without the prior written approval of the Manager's authorized representative. The Manager's authorized representative may, in its sole discretion, condition such approval upon the obligation of Licensee to replace the Improvement by a comparable improvement specified by the Manager's authorized representative.

**City may Demand Removal or Satisfactory Changes.** In the event that any construction, improvement, alteration, modification, addition, repair (excluding emergency repairs), or replacement is made without the prior written consent of the Manager's authorized representative, or made in a different manner than approved, the City may terminate this Agreement in accordance with the provisions for termination herein, or upon notice to do so, Licensee will remove the same, or, at its discretion, cause the same to be changed to the satisfaction of the City. In case of any failure on the part of Licensee to comply with the notice, the City may, in addition to any other remedies available to it, effect the removal or change referenced above in this Section and Licensee shall pay the cost thereof to the City upon demand.

## **SECTION 7 – LICENSEE'S OPERATING OBLIGATIONS**

### **7.01. SYSTEM INSTALLATION**

Licensee agrees to install and operate the Wireless Access System, as defined in Section 2.26, consistent with **Exhibits A, E and E1** attached hereto. Licensee shall coordinate with the City's Department of Aviation Technologies section to with regard to the design, installation, operation, service, maintenance, and upgrades to the wireless access equipment contemplated by this Paragraph 7.01. Licensee shall give City prior written notice within a reasonable time of any proposed change to the specifications set forth in **Exhibits A, E and E1**. Except as provided for in Section 3.10(D), Licensee shall not make any changes in or to the approved System without the prior written approval of the Manager, which shall not be unreasonably withheld or delayed, in his sole discretion.

### **7.02. MINIMUM INVESTMENT REQUIREMENT**

Licensee shall have a Minimum Investment Requirement of not less than \$50,000.00 for Wi-Fi infrastructure and upgrades necessary to run a successful free Wi-Fi program (exclusive of financial costs, interest, inventory, pre-opening expenses, or intra-company overhead charges). This amount is a bargained-for contractual requirement of this Agreement. Should the actual

cost of infrastructure and upgrades subject to this Section 7.02 be less than \$50,000.00, the difference will be due and payable to the City within six months of the Effective Date.

### **7.03. OPERATIONS**

Licensee agrees to conduct its business to accommodate the traveling public at the Airport and to operate its business in the following manner:

**A.** Licensee shall operate the System in a first-class manner that complies with all the requirements of this License. Service shall be prompt, clean, courteous and efficient. Licensee shall employ at all times a sufficient number of personnel necessary to assure prompt service.

**B.** Other than base wired infrastructure and initial Wireless Access Points (WAPs), Licensee shall supply all labor, materials, equipment, supervision, tools, and all other items, facilities and personnel to install, maintain, and support the head-end equipment necessary to provide free Wi-Fi service to the traveling public, design Wi-Fi portal pages and sell Wi-Fi advertising and sponsorship packages to qualified advertisers. Licensee shall collaborate with DIA Telecom Engineering to perform or cause to be performed, at Licensee's expense, improvements to base infrastructure to improve or expand service, or to rectify problems with service delivery.

**C.** Licensee will advertise and promote the Wi-Fi services within the airport at Licensee's expense by contracting with the airport's advertising concessionaire (the "Advertiser").

**D.** At the time of installation, the Equipment shall be new. Licensee agrees that it shall provide routine maintenance and upgrade and enhance the System in light of developing technologies in order to maintain a 99% level of service availability throughout the Term, 24 x 7, 365 days a year, excluding planned outages, system maintenance, hardware upgrades and the like. Licensee agrees to make necessary reliability and performance improvements to the System, at their own cost, within a reasonable amount of time that further improves reliability and availability. Licensee shall maintain enough equipment on site such that system is completely redundant in either a manual failover or automated failover mode. Licensee shall provide written instruction to City regarding failover methods and procedures in the event that Licensee's equipment has failed. Instruction shall include detailed procedures for failing over the system to redundant hardware on site and what activities need to be performed by the City to bring system back on line.

**E.** Licensee shall promptly repair or replace at its own cost any broken or nonfunctioning piece of Equipment, and replace any Equipment that cannot be promptly and satisfactorily repaired on location. Licensee shall retain service personnel who are completely qualified to service and repair and support the Equipment. If the Equipment cannot be repaired by means of Licensee's advanced on-site equipment repair system personnel shall be available at the Airport to repair the Equipment within twenty-four (24) hours of its malfunction.

**F.** Licensee shall at all times retain an experienced manager fully authorized to represent and act for it in the technical and business operations of Licensee and to accept service of all notices provided for herein.

**G.** Licensee shall, on or before October 1<sup>st</sup> of each year of the Term hereof, present and annual business plan to the City, for review and the Manager's authorized representative's approval. Licensee's Proposal submitted for this Free Wi-Fi Service Provider shall constitute

the Annual Business Plan for the first year of the Term. Such plans shall contain the following at a minimum:

- Review of the prior year's performance including achievement of sales projections, financial results and other goals and objectives;
- Establishment of new operational goals and objectives for the forthcoming year of the plan including identification of sales opportunities;
- Identification of employee and labor initiatives to ensure compliance obligations herein;
- Projection of sales, sales per enplaning passenger and payments to the City due under this License for the forthcoming year;
- Any planned expenditures, investments, or improvements in the Wi-Fi system, if any;
- Any anticipated changes or improvements in the management of the Wi-Fi Service such as marketing efforts, promotional activities, training, or service; and
- Quarterly updates to budget, potential advertiser list, marketing , and professional goals and guidelines.

**H.** Licensee shall allow duly authorized representatives of governmental entities at-will access to the Licensed Spaces for inspection purposes. Licensee agrees to obtain, at its own expense, and maintain at all times, all licenses and certificates necessary for the operations of its services.

**I.** The Manager or his authorized representative shall have the right to make reasonable objections to the character of the service rendered, and to the appearance and condition of the License Space. Licensee agrees to promptly discontinue or remedy any reasonably objectionable practice or condition within five (5) business days after receipt of written notice by the Manager or his authorized representative.

**J.** Licensee shall make all deliveries of merchandise and supplies in such a manner and at such times and locations as the Manager or his authorized representative may reasonably approve. Emergency deliveries may be made at other times subject to prior arrangements with the Manager or his authorized representative.

**K.** Licensee shall maintain current contact data of both business and technical contacts involved with service delivery with the City and provide City with current and updated information. Licensee shall be required to have 24 x 7, 365 days a year technical escalation contacts and the capability to do remote system monitoring and troubleshooting.

**L.** Licensee shall participate in sound change management practices and agree to allow City personnel, specifically the Department of Aviation Technologies section, to review and reasonably approve in advance proposed changes to appearance of content delivery application after initial product acceptance.

**M.** Licensee agrees that City retains the right of prior review and final approval for all aspects regarding look and feel of the viewable content and overall user experience. Licensee will work with City regarding design and implementation of initial splash page to include the addition of mandated City content such as legal disclaimers and links to City website ([www.flydenver.com](http://www.flydenver.com)). Design of content delivery system shall be such that it is accessible by both PC and MAC operating systems with no pop-ups or mandatory screen sessions other than that which are reviewed and approved by the City in advance.

N. By the 10th day of each month following the Effective Date Licensee shall provide statistics via email on a Daily, Weekly, and Monthly basis in a format similar to that shown in Exhibit D, or other acceptable format as designed collaboratively by Licensee and DIA Telecom Engineering, to the Manager or the Manager's Authorized Representative. Such reporting format shall be developed and finalized jointly by the Licensee and the City within thirty (30) days of commencement of this Agreement. Licensee shall supply City statistical reports that include, at minimum, the following information:

- (1) number of connects on a per hour, day, week, and monthly basis for the previous Day, Week (Sun-Sat), and Month; and
- (2) average hourly and peak number of simultaneous connections on a per day basis; and
- (3) average connection time; and
- (4) peak level of traffic throughput to/from Internet on a per day basis; and
- (5) detailed metrics of additional services, if any, added during the Term; and
- (6) detailed listing of any outages with start/stop time, root cause of failure, improvements made; and
- (7) overall service level availability for the previous month and accumulative totals since the effective date of this Agreement

#### **7.04. MANAGEMENT, SERVICE EMPLOYEE AND OPERATIONAL STANDARDS**

**Management.** The operation and management of the License Space shall be under the constant and direct supervision of a well-trained, qualified and experienced manager employed by Licensee. The manager shall have the authority to make all decisions necessary in the day-to-day operations of the License including, without limitation, decisions regarding WiFi service returns or credits, customer complaints or concerns, service quality and price, customer resolution and technical related service, and employee conduct. The manager shall be available on-site or by telephone and/or email during the majority of operating hours and when not available as herein described, the manager shall appoint an assistant manager, or shift lead, with authority to act on the Manager's behalf, and/or the ability immediately to contact the manager in order to be able to respond promptly to customer or City concerns. Licensee may be required to employ more than one (1) manager to meet the requirements set forth herein.

**Service Standards.** Licensee shall employ sufficient personnel to staff and meet the reasonable needs or demands of patrons during all required hours of operation including, but not limited to, maintenance of the License Space as needed. All customers shall receive prompt, attentive and courteous service. Processing of customer purchases returns and exchanges shall be prompt and Licensee shall visibly display its return and exchange policy. Licensee shall properly itemize receipts, which shall reflect precisely the actual sale of goods and shall present individual prices, totals and taxes, if any.

Licensee shall ensure that all personnel refrain from any loud, boisterous, offensive or inappropriate conduct, and that they treat all patrons professionally, equally and courteously, including but not limited to forms of address, without regard to race, creed, color, national origin, ethnicity, age, disability, gender or sexual orientation. Licensee shall use reasonable efforts to employ an adequate number of bilingual personnel to serve English and non-English-speaking patrons as market demand may warrant.

**Employee Standards.** Licensee shall recruit, provide proper training to ensure the certification and/or licensing of employees in all areas of service as their duties might practically and legally require, supervise, direct and deploy the number of qualified, trained and courteous employees necessary to provide services promptly to all customers in accordance with the service standards of a first-class License. All employees shall be informative and helpful to the public. All employees shall be clean, neat, professional, courteous and of the highest character. All employees shall be attired appropriately and professionally in clean identifiable dress and in keeping with attire worn by personnel in similar first-class businesses in the Denver metropolitan area. All employees must at all times properly display the official Airport identification badge and Licensee's identification name tag. Licensee's identification name tag shall clearly display the name of the Licensee. In the event that the City initiates one or more customer service programs for employees of tenants operating Licenses at the Airport, City reserves the right to require Licensee to fully participate (and cause its employees to participate) in such programs and shall pay immediately to the City its share of such costs upon invoice by the City.

**Licensee Surveys (Customer Feedback Cards).** Licensee agrees to display openly or to provide by electronic means Customer Feedback Cards that are approved and furnished by the City for the purpose of monitoring the quality of the Licensee's business from the perspective of its customers. Licensee agrees to give the City a copy of any and all completed Customer Feedback Cards that it receives on a weekly basis.

**Sales and Dignified Use.** Licensee's employees and agents shall not engage in "high pressure" sales tactics or unfair or deceptive trade practices in the operation of the License. Licensee is strictly prohibited from engaging in any and all activities outside the License Space within the Airport for the recruitment or solicitation of business. Additionally, Licensee's employees and agents shall not engage in solicitation for or in connection with any services offered on or about the Airport by Licensee or any other party.

Licensee shall conduct no public or private auction, fire sale, going out of business, bankruptcy or similar types of sales in or from the License Space, unless otherwise approved by the Manager's authorized representative. The License Space shall be used only in a dignified and ethical manner, consistent with the general high standards of other first-class Licenses operating at the Airport.

#### **7.05. DELIVERIES**

**Transportation of Deliveries within the Airport.** All goods should be packaged within sealed containers that prevent damage or leakage during transportation. In transporting retail and other products, trash, and refuse associated with operating Licensee's business to and from the License Space, Licensee shall use only those delivery and receiving routes established by the City and shall use only carts provided by Licensee to handle merchandising or equipment, vehicles, or conveyances ("Delivery Carts") that are sealed and leak-proof and have only gray bumper pads. Pallet jacks, if used as Delivery Carts, may only be utilized on the ramp level of the Terminal. If delivery and receiving routes are carpeted, Delivery Carts must be equipped with wheels suitable for operating on carpets without causing damage to them. Delivery Carts may only be used in those elevators designated for delivery. Under no circumstances may Delivery Carts be taken onto the escalators or moving sidewalks. Licensee must always refrain from transporting operating materials, such as office supplies, inventory, food, merchandise, recyclables and trash through the Public Areas of the Airport whenever service corridors and delivery tunnels are available. Licensee is responsible for the compliance with these requirements by its vendors.

## **7.06. HOURS**

**Hours of Service/Continuous Operation.** Public access to the System will be available 24 hours per day, 7 days per week, 365 days per year. .

## **7.07. SIGNS, WINDOW DISPLAYS, AND ADVERTISING**

**Signage Standards.** Licensee understands and agrees that City has established criteria so that all signs conform to certain uniform standards and criteria and that those criteria are set out in the DIA Design Standards and the DIA Tenant Development Guidelines. City shall have the right in City's sole discretion to prohibit any sign proposed by Licensee.

**Advertising.** Licensee may not advertise in the Airport, outside its License Space, except as specifically set forth in this Agreement.

**Signs to be removed.** At Licensee's sole cost and expense, upon demand by the Manager's authorized representative, Licensee shall immediately upon receipt of such demand, remove any sign installed in violation of the foregoing provisions. At Licensee's sole cost and expense, Licensee shall return the site of such sign to its condition prior to the placement or erection of the sign.

## **7.08. VENDING MACHINES**

No amusement or vending machines or any other machines operated by coins, paper currency, tokens or credit/debit cards, except those expressly permitted under this Agreement, shall be installed or maintained in or upon the License Space. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; telephones; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

## **7.09. COMPLIANCE WITH ALL LAWS AND REGULATIONS**

**No Prohibited Use.** Licensee agrees not to use or permit the License Space to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the License Space in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency. Licensee further agrees to submit any report, reports or information which the City is required by law or regulation to obtain from Licensee or which the Manager may request relating to Licensee's operations.

**Americans with Disabilities Act.** Without limiting the foregoing, Licensee shall determine and assess the requirements to design, construct, operate and shall at all times maintain the License Space in accordance with and in compliance with the requirements of the Americans with Disabilities Act, 42 USC §12,000 et seq., including the ADA Accessibility Guidelines and all federal regulations adopted pursuant to the ADA. In the event that compliance cannot be achieved, Licensee shall proceed formally to the federal agency having jurisdiction for a waiver of compliance. If, as a result of Licensee's use or occupancy of the License Space, or the making of any alterations, additions, or improvements therein, any additions, alterations, or improvements must be made by the City to any part of the Airport in order to comply with any

requirements of the ADA, or any other laws, codes or regulations, Licensee shall reimburse the City, on demand, for the costs incurred by the City to effect such compliance.

**Prevailing Wage Obligation.** Licensee shall require its contractor and sub contractors performing any work at DIA that is covered by §20-76 of the Denver Revised Municipal Code to pay every worker, laborer or mechanic employed by them in the performance of the fabrication and placement of RMUs and improvements on the locations subject to this License prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code and shall furnish to the City for each week during which covered work was performed copies of certified payroll records for all such workers.

**M/W/BE Obligation.** Licensee agrees to comply with the Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, in the design and construction of Improvements throughout the term of this License. Licensee agrees to comply with rules and regulations issued by the Director of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. The DSBO Director will set goals for design and construction in accordance with the MBE/WBE Ordinance. Licensee shall meet, or make a good faith effort to meet, such goals. Licensee shall submit to DSBO monthly reports in a form satisfactory to DSBO identifying all MBE and WBE firms and the amounts spent with such firms during the preceding month for the purpose of demonstrating compliance by Licensee with this section.

**ACDBE Obligation.** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Licensee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any License agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Licensee agrees to include the above statements in any subsequent License agreement or contract covered by 49 CFR Part 23 that it enters into and causes those businesses to similarly include the statements in further agreements. The DSBO may also establish ACDBE License specific goals as a percent of annual gross receipts to be undertaken by the Licensee under this Agreement. The Licensee agrees that it shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the License specific goals for ACDBE participation in the performance of this Agreement. Licensee acknowledges that any action or failure to act by it which violates the ACDBE requirements of this Agreement constitutes a material breach of this Agreement, which shall entitle the City to exercise all of its rights at law or equity for such material breach.

#### **7.10. COMPLIANCE WITH ENVIRONMENTAL REGULATIONS**

Licensee, in conducting any activity on the License Space or commons areas, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements"). Licensee shall acquire and comply with all necessary federal, state and local environmental permits and requirements.

Licensee shall maintain copies of Material Safety Data Sheets (MSDS) for all chemicals used in the operation of the License, including for cleaning and maintenance. This obligation is continuing for the term of this Agreement and Licensee shall make this documentation available for inspection by DIA upon request.



Licensee agrees to ensure that its License Space is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Licensee agrees to evaluate methods to reduce the generation and disposal of waste materials. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps.

In the case of a release, spill or leak as a result of Licensee's construction, operation or maintenance activities, Licensee shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Licensee shall reimburse the City for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Licensee of any pollutant or hazardous material on the Airport.

#### **7.11. WASTE OR IMPAIRMENT OF VALUE**

Licensee agrees that nothing shall be done or kept in the License Space which might impair the value of the City's property or which would constitute waste.

#### **7.12. HAZARDOUS USE**

Licensee agrees that nothing shall be done or kept in the License Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the License Space which might be unsafe or hazardous to any person or property. Further, Licensee shall not do or permit to be done any act or thing upon the License Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the License Space or the buildings in which the License Space is located or which, in the opinion of the Manager or the Manager's authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Licensee to comply with the provisions of this Section, after receipt of notice in writing from the City, any fire insurance rate on the License Space or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Licensee shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Licensee; provided, that nothing herein shall preclude Licensee from bringing, keeping or using on or about the License Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

Any nuisance, annoyance or hazardous or potentially hazardous condition, on or emanating from the License Space, shall be corrected immediately upon Licensee's actual knowledge of the condition, or receipt of oral or written notice from the City. If, in the City's sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, the City may require Licensee to close its business without compensation and bar the public from the License Space until the hazard or potentially hazardous condition has been abated. Nothing in this Section shall be deemed to preclude the City from pursuing any available remedy for Default of this Agreement. Licensee's failure to correct promptly a nuisance, annoyance or hazardous or potentially hazardous condition under this Section shall be a material breach of this Agreement.

### **7.13. WASTE DISPOSAL AND RECYCLING**

***Waste Disposal and Recycling.*** Licensee shall gather, sort, and transport all garbage, refuse and recyclable materials daily to the City's designated holding area. Garbage, refuse and other debris shall be placed in non-broken, non-punctured, new 3-mil trash bags or such other garbage containers as may be required by the City suitable for transportation to a designated bin or compactor in the manner and at the time and places specified by the City. Licensee shall participate in the Airport's waste recycling program. Licensee shall place all garbage, refuse and recyclable materials in the appropriate containers at the City designated holding area, taking all reasonable measures to reduce the amount of waste it generates by requiring suppliers to remove nonessential over wrap, containers and other packaging, and to use recyclable materials for essential packaging whenever possible. The City currently provides containers for recycling the following: (a) corrugated cardboard; (b) magazines; (c) newspapers; (d) tin and steel cans; (e) glass that is clear, brown, or green; (f) batteries, and (g) high grade office paper, including letterhead, typing paper, colored paper, photocopy paper, and computer paper. Recyclable materials, including food waste, should be placed into the appropriate containers. Except for the recycling of batteries, Licensee shall ensure that the following materials are not deposited in City recycling containers: (i) Hazardous Substances, (ii) cans or other containers used to store paint, oil, solvent, cleaning fluids, or other Hazardous Substances; and (iii) un-clean paper, including paper that is soiled with food, paper with plastic covers or windows and wax coated paper. In addition, the City may establish other specific requirements concerning the storage and transport of waste and recyclables in the Airport's Rules and Regulations.

### **7.14. SANITATION, HYGIENE AND CLEANLINESS.**

***Sanitation, Hygiene and Cleanliness.*** Licensee shall keep the License Space free of debris, trash, and hazardous conditions, shall keep public areas around the License Space free of hazardous conditions originating from Licensee's operations and shall orally notify the City promptly of other hazardous conditions in the public areas outside the License Space upon actual knowledge of any such hazardous condition. Licensee shall provide a proper arrangement for the adequate sanitary disposal of all trash and other refuse on the License Space and shall provide for its timely removal to a central collection point provided by the City. Licensee shall take appropriate action in the handling of waste materials to prevent the presence of rodents and other vermin. Licensee shall keep all garbage materials in durable, fly-proof and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors or covers, and shall be kept tightly covered when material is not being deposited in them. Licensee shall clean the containers, as necessary, to prevent odors. Licensee shall not allow boxes, cartons, barrels, or other similar items to remain within view of Public Areas. The City shall be responsible for handling and removal of trash and other refuse deposited by the public in Public Areas. Licensee shall not deposit any of its trash or other refuse in any containers except those designated for Licensee's trash, as provided in Section

### **7.15. MAINTENANCE OF LICENSE SPACE BY LICENSEE**

***[RESERVED]***

### **7.16. STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING**

Licensee agrees that nothing shall be done or kept on the License Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the License Space which might impair the structural soundness of the building, result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses or interfere with electric,

electronic or other equipment at the Airport. In the event of violations hereof, Licensee agrees immediately to remedy the violation at Licensee's expense.

#### **7.17. NOISE, ODORS, VIBRATIONS AND ANNOYANCES**

Licensee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the License Space or annoy, disturb or be offensive to others in the Terminal or Concourses and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

#### **7.18. ACCESS TO FACILITY AND SYSTEMS**

Licensee shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the License Space or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the License Space or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Further, Licensee shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the License Space, including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.

Licensee shall not place any additional lock of any kind upon any window or interior or exterior door in the License Space, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the License Space, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to the City any and all keys to the interior or exterior doors on the License Space, whether said keys were furnished to or otherwise procured by Licensee. If any keys furnished to Licensee by City are lost, Licensee shall pay the City, on demand therefor, as Additional Rent, the cost for replacement thereof.

#### **7.19. QUALITY ASSURANCE**

**Quality Assurance Inspections.** The City or its agents may, in its discretion and at any time, inspect, monitor and test Licensee's operations for quality assurance ("Quality Assurance Inspections") to ensure compliance with all of Licensee's operating obligations set forth in this Section 7. All Quality Assurance Inspections shall, at a minimum, focus on, but not be limited to, the following:

- License Space: General upkeep, signage, maintenance, equipment and cleanliness
- Products: Delivered as represented, taste and attractiveness
- Personnel: Professionalism, appearance, customer service, receipts provided and activity

The City shall provide Licensee with written results of the Quality Assurance Inspections. Licensee agrees to promptly correct all deficiencies noted in Licensee's performance. Licensee shall promptly notify the City of the corrections as completed, or request additional time to correct outstanding items where the City determines progress has been made by Licensee to correct such deficiencies. In the event that Licensee fails to correct in a timely manner the deficiencies noted, the City may elect to impose Sanctions as per Section 10 and/or declare an Event of Default.

## **SECTION 8 – UTILITIES AND SERVICES**

### **8.01. UTILITIES**

Most License areas in the Terminal and Concourses have services of adequate capacity to supply reasonable amounts of hot or chilled water, gas, electricity, potable water, fire protection, sanitary waste, grease waste and storm sewer capacity to serve the License areas. The Licensee shall verify capacity of all systems, in the License Space and shall be responsible for all utility system upgrades that are necessary for their License build out. As of the date of actual possession, Licensee shall be responsible for the payment of all utilities required for operations in the License Space.

At its option, the City may bill Licensee its pro-rata share of certain utilities consumed or estimated to be consumed. In such case, the City will charge a rate no higher than that which would allow the City to recover the cost of providing the service, which will include but not be limited to standard rates, fees and charges established by the Airport.

### **8.02. HEATING AND AIR CONDITIONING (HVAC)**

Licensee shall, at its expense, furnish, install and maintain any ductwork and other connections within or leading into its License Space required to connect and complete the HVAC from the Airport's central system for the License Space.

City, at its expense, shall furnish normal and reasonable quantities of central air from the central HVAC system to the License Space and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the City shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Licensee properly maintains the ductwork and other connections within or leading into its License Space and complies with the recommendations of the City's engineer regarding reasonable occupancy and use of the License Space.

### **8.03. WATER SERVICE**

Licensee shall, at its expense, furnish, install and maintain a water meter for the License Space at a location and of a type specified by the City and shall pay all costs for water used within the License Space. Licensee shall be responsible for all water hook-up of its equipment.

City shall furnish water from the central water source in reasonable quantities; provided that Licensee complies with all water conservation programs in effect or as adopted.

### **8.04. ELECTRICITY AND NATURAL GAS**

Licensee shall, at its expense, furnish, install and maintain an electric meter and a gas meter if required, at a location and of a type specified by the City, and shall pay all costs for electricity and gas used within the License Space. Licensee shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the License Space. Any bills by the City for such costs shall be due within 30 days and shall accrue interest at the Past Due Interest Rate if not paid when due.

City will provide a premises wiring system to the License Space that will handle electronic information such as telephone and telecommunications equipment. Licensee shall be responsible for any extension of the wiring and connection of any terminals and devices in accordance with City requirements, and shall pay for telephone service to the License Space.

#### **8.05. LIGHTING**

Licensee shall, at its expense, furnish, install and maintain all lighting fixtures and wiring for general illumination of the License Space. Levels of illumination and wattage requirements shall be subject to approval by City.

#### **8.06. WINDOW WASHING AND STRUCTURAL MAINTENANCE**

City shall, at its expense, provide exterior window washing and maintain all structural parts of the Terminal and Concourses, including exterior glass, walls and roof.

#### **8.07. COMMON USE SERVICES**

The Manager may establish common use services at the Airport, including but not limited to trash and garbage removal, deliveries, industrial waste handling, recycling and security guards, which Licensee may be required to use and pay its prorata actual share.

#### **8.08. INTERRUPTION OF SERVICES**

Licensee agrees that City shall not be liable for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Licensee from any of its obligations hereunder, except as otherwise provided in the Section entitled "Damage, Destruction or Loss."

### **SECTION 9 – INDEMNITY, INSURANCE AND GUARANTEES**

#### **9.01. INDEMNITY**

Licensee hereby agrees to release and indemnify and save harmless the City, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, its construction of the License Improvements, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents of the Licensee; provided, that the Licensee need not release, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Licensee hereunder.

#### **9.02. INSURANCE**

**Required Insurance.** Licensee agrees to secure at its own expense and to keep in force at all times during the Term hereof, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of obligations under this Agreement by the Licensee, its agents, representatives or employees. The types and amounts of insurance coverage Licensee must procure are specified in the Certificate of Insurance for

Aviation, attached hereto as **Exhibit C**. Insurance requirements set forth on **Exhibit C** do not limit in any way the indemnity covenants contained in this Agreement or the amount or scope of liability of Licensee under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the City is willing to accept to help insure full performance of all terms and conditions of this Agreement. Licensee specifically agrees to comply with each condition, requirement or specification set forth in **Exhibit C** during all periods when the required coverage is in effect. Insurance must be maintained without any lapse in coverage during the entire term of this Agreement. Insurance canceled without the City's consent or failure by Licensee to provide evidence of renewal is a material breach and shall be deemed an immediate Event of Default under this Agreement.

**Certificates Required.** Licensee shall furnish the City and County of Denver with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificate of insurance for each policy is to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates required by this Agreement (including renewal certificates) shall be sent directly to Denver International Airport, Licenses Management Section, Airport Office Building, Room 9870, 8500 Pena Boulevard, Denver, Colorado 80249. The City's contract control number for this Agreement shall be noted on each certificate of insurance. All certificates and any required endorsements are to be received and approved by the City and each insurance policy required by this Agreement must be in effect at or prior to the Target Possession Date (or date of actual possession, if earlier). Any renewal certificate shall be delivered to the Airport Licenses Management Section at least 10 days prior to a policy's expiration date, except for any policy expiring after the Expiration Date of this Agreement or any extension thereof. The City reserves the right to require and Licensee agrees to deliver upon request at any time, complete, certified copies of all insurance policies required by this Agreement.

**Deductibles and Retentions.** Any deductible or self-insured retention exceeding fifteen percent (15%) of the per-occurrence or per-accident limit of a required policy is subject to approval by the City's Risk Administrator.

**Licensee's Risk.** The City in no way warrants that the minimum limits contained herein are sufficient to protect the Licensee from liabilities that might arise out of the performance of the terms and conditions of this Agreement by the Licensee, its agents, representatives or employees. Licensee shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Licensee is not relieved of any liability or other obligations assumed or pursuant to the Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types. In no event shall the City be liable for any: (a) business interruption or other consequential damages sustained by Licensee; (b) damage, theft or destruction of Licensee's inventory, Improvements, or property of any kind; or (c) damage, theft or destruction of an automobile, whether or not insured. If at any time any of the insurance policies shall be or become unsatisfactory to the City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the City, Licensee shall promptly obtain a new and satisfactory replacement policy and give the City an updated certificate of insurance that complies with the new insurance requirements of the City.

**Governmental Immunity.** The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101

to 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials and employees.

### **9.03. PERFORMANCE SURETY**

Upon possession of the License Space, Licensee shall deliver to the Manager, and maintain in effect at all times throughout the Term, including a period of six (6) months after expiration or earlier termination of the this Agreement, an irrevocable letter of credit or such other acceptable surety as first approved in writing by City, in an amount initially equal to six (6) months of the initial MAG, which is stated on the Summary Page. Such guarantee shall be payable without condition to the City with surety acceptable to and approved by the City's Manager, which irrevocable letter of credit shall guarantee to the City full and faithful performance of (i) all of the terms and provisions of this Agreement to be performed by Licensee, as said Agreement may be amended, substituted, supplemented or extended, and (ii) all obligations and duties of Licensee under all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport as amended or supplemented. All irrevocable letters of credit shall be in a form, and issued by a bank, acceptable to the City and shall be subject to claim in full or in part by the City.

Notwithstanding the foregoing, if at any time during the term hereof, the Manager deems the amount of the surety insufficient to properly protect the City from loss hereunder because Licensee is or has been in arrears with respect to such obligations or because Licensee has, in the opinion of the Manager, violated other terms of this Agreement, Licensee agrees that it will, after receipt of notice, increase the surety to an amount required by the Manager; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to Licensee's Minimum Annual Guarantees in effect under this Agreement.

Whether in the form of a surety bond or Irrevocable Letter of Credit, the surety may be issued for a one (1) year period, provided, however, that evidence of renewal or replacement of the surety must be submitted annually by Licensee to the City at least sixty (60) days prior to the Expiration Date of the instrument. The surety shall contain language that the surety company shall notify the City in writing within forty-five (45) days of a determination that the surety is to be terminated, or is not going to be renewed. The surety bond must be executed by Licensee and by a surety meeting the qualifications set forth below.

If, following an Event of Default, the City chooses to draw upon the performance surety; it shall be the obligation of Licensee to replenish the performance surety to the originally contracted level within 30 days of such draw down by the City. Failure to do so shall constitute a Default under this Agreement.

### **9.04. NO PERSONAL LIABILITY**

No director, officer or employee of either party hereto shall be held personally liable under this Agreement or because of its execution or attempted execution.

### **9.05. LICENSES, FEES, TAXES AND LIENS**

**Business Licenses.** Licensee, at all times and at its sole cost and expense, shall maintain current federal, State, and local licenses, certificates, permits and any other such documents necessary or required by law for the operation of Licensee's business at the Airport including where applicable those documents governing specialty retail enterprises, Licensee shall comply with all applicable health, safety and sanitary laws, regulations and inspections concerning the same. Licensee shall keep such licenses and permits displayed on the License Space, as

required by law. Licensee shall allow duly authorized representatives of governmental entities access to the License Space for inspection purposes.

**Doing Business in Colorado.** In the event that Licensee shall be a corporation or a limited liability company, the Parties executing this License on behalf of Licensee hereby covenant and warrant that Licensee is a duly qualified corporation or limited liability company and all necessary steps have been taken to become authorized to do business in Colorado; corporate taxes have been paid to date; and all future forms, reports, fees and other documents or payments necessary to comply with applicable laws will be filed or paid when due.

**Fees.** Licensee agrees to promptly pay all excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the License Space and further agrees not to permit any of said excises, license fees or permit fees to become delinquent.

**Taxes and Assessments.** The Licensee shall pay all taxes and assessments of whatever character that may be levied, assessed, or charged upon the property, possessory interest, personal, occupied, used, or owned by the Licensee, or upon the rights of the Licensee to occupy the License Space, or upon the Licensee's Tenant Improvements and any other property thereon, or upon the Licensee's rights or operations hereunder. The Licensee shall have the right at its sole cost or expense to contest such taxes as may have been or may be levied, assessed or charged.

**Liens.** Licensee also shall not create, permit, or suffer to be created or to remain, not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the License Space or improvements thereto, or any part or parcel thereof, by reason of any construction, services, work or labor performed or materials furnished by any mechanic or material man. If any such lien shall at any time be filed, Licensee may contest the same in good faith. Notwithstanding such contest, Licensee shall, within fifteen (15) calendar days after the filing thereof, cause such lien to be released of record by payment, bond, or order of a court of competent jurisdiction. In the event Licensee fails to clear the record of any such lien within the aforesaid period, the City may remove said lien by paying the full amount thereof, or by bonding, or in any other manner the City deems appropriate, without investigating the validity thereof, and irrespective of the fact that Licensee may contest the propriety or the amount thereof. Thereafter Licensee shall, upon demand, pay the City the amount paid by the City in connection with the discharge of said lien, plus a twenty percent (20%) administrative fee, and all reasonable expenses incurred in connection therewith, including reasonable attorneys' fees, which amounts are due and payable to the City as Additional Rent on the first (1st) day of the month following payment by the City. Nothing contained in this Agreement shall be construed as consent on the part of the City to subject the License Space to any lien or liability.

**Prompt Payment.** Licensee agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Licensee further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no mortgage, judgment or execution to be filed against the License Space or improvements thereon which will in any way impair the rights of the City under this Agreement.



## SECTION 10 –NON-COMPLIANCE AND VIOLATIONS

### 10.01. NONCOMPLIANCE

**Manager's Objections.** The Manager or the Manager's authorized representative shall have the right to make reasonable objections to Licensee's failure to create and maintain a vibrant first-class License at the Airport as provided in Sections 3, 5 and 7 and operate its business in a manner satisfactory to the Manager or the Manager's authorized representative. Licensee agrees to promptly discontinue or remedy any objectionable practice or condition within the cure period stated in any written notice issued by the Manager or Manager's authorized representative.

### 10.02. CUMULATIVE OR CONTINUOUS VIOLATIONS

Should Licensee violate the provisions of Sections 3, 5 or 7 of this Agreement, the City may place the Licensee on notice to cure said violation or violations without declaring the violation an Event of Default, and in addition, collect liquidated damages as provided below.

With each notice, whether verbal or in writing, Licensee will be given a cure period in which to remedy the violation without further consequence. Licensee will be allowed two written notices cumulatively in each calendar year before imposition of liquidated damages. Beginning with the third written notice, and any written notices thereafter, liquidated damages may be assessed should Licensee fail to remedy the violation before the expiration of the cure period.

Licensee's Performance Obligations as Described in Sections 3, 5 and 7	
Form of notice	Consequence
Pre-written Notice(s)	Verbal notification(s) issued by City to Licensee (cure period allowed)
1 <sup>st</sup> Written Notice	First written notice issued by City to Licensee (cure period allowed)
2 <sup>nd</sup> Written Notice	Second written notice issued by City to Licensee (cure period allowed)
3 <sup>rd</sup> Written Notice and thereafter	Third written notice by City to Licensee (cure period allowed). After the cure period, Licensee shall be assessed \$100 per day as liquidated damages for each whole or partial day until the violation is cured.

For the purposes of this Section 10 only, the following definitions shall apply:

**Cure Period.** An amount of time required to become compliant with the Agreement for violations stated in pre-written or written notices issued by the City to the Licensee, either as mutually agreed between City and Licensee or in City's sole reasonable judgment taking into account the specific circumstances of the violation or violations and/or time allowed under previous verbal and written notices concerning the same or similar violations.

**Pre-written Notice(s).** Oral notifications of a Section 3, 5 or Section 7 violation at the premises delivered by the City to Licensee's ownership, management or its premises on-site management or staff. Pre-written notices may be in person or via telephone.

**Written Notice.** Notice of a Section 3, 5 or Section 7 violation at the premises delivered by the City to Licensee's ownership, management or its premises on-site management or staff via letter, email or by some other form as may be adopted from time to time by the City and delivered to Licensee at the notice address for Licensee specified in this Agreement.

**Liquidated Damages.** Licensee's failure to adhere to the operating requirements set forth in this Agreement are reasonably anticipated to result in significant inconvenience to the public,

adversely affect the overall business of the Airport, and reduce the amount of Rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Licensee. The Parties hereby agree that total damages sustained by the City for violations of the Sections of this Agreement enumerated above could be significant, but would be difficult to determine and to track. Therefore, the liquidated damages set forth below for violation of Licensee's performance obligations are agreed to between the Licensee and the City to be reasonable amounts and reasonable estimates of the loss anticipated to be suffered or incurred by the City. Licensee, therefore, hereby agrees that imposition of these liquidated damages is fair and reasonable and Licensee agrees to pay to the City as Additional Rent the specified liquidated damage amounts immediately upon demand by the City, in accordance with the above procedures. Liquidated damages relating to this Section 10 shall be \$100 per each full and each partial day for which the violation remains uncured beyond the cure date stated in third and subsequent written notices.

Imposition of any of these pre-written notices, written notices and any liquidated damages assessed or collected shall not constitute a waiver of any other remedies available to the City due to Licensee's failure to maintain Licensee's performance obligations as provided in Sections 5 and 7 of this Agreement.

**Remedies Non-Exclusive.** The City reserves the right, in the Manager's sole and absolute discretion, not to impose the Sanction of Liquidated Damages and instead to seek any other remedy available to the City as an Event of Default under Section 11, including termination of this Agreement.

The remedies provided in this Section 10 are in addition to all other rights and remedies that the City may have for a breach or violation of this Agreement. Nothing in this Section 10 shall be deemed to be a waiver by the City of any breach or violation of this Agreement, nor shall imposition of any of these sanctions be deemed to stop the City from terminating this Agreement or from asserting any other of its other rights or remedies under this Agreement, or at law or in equity. If any or all of these Sanctions are found to be unenforceable, then the unenforceable Sanction(s) will be discontinued, but the violations shall continue to be immediately covered by Section 11 and the remedies shall be as provided in Section 11.

## SECTION 11 –DEFAULT, REMEDIES AND TERMINATION

### 11.01. DEFAULT

**Event of Default.** The occurrence of any of the following shall constitute an "Event of Default" (also referred to as a "Default").

**Default in Rent.** An Event of Default shall occur if Licensee fails to pay timely any Rent or Additional Rent and such failure or violation is not cured within ten (10) days after written notice by the City describing the nature of the breach or Default.

**Cross-Default.** The occurrence of an uncured breach, violation or default under any other agreement with the City for License space at the Airport shall constitute an Event of Default.

**Bankruptcy/Insolvency.** The Insolvency of Licensee shall be an Event of Default for which no notice or opportunity to cure need be given. For the purposes of this Agreement, and to the extent permitted by the United States Bankruptcy Code, "Insolvency" shall be deemed to

include: (a) an assignment by Licensee for the benefit of creditors; (b) the filing by Licensee of a voluntary petition in bankruptcy; (c) dissolution; (d) the appointment of a receiver, trustee or liquidator of any or substantially all of the properties of Licensee and the receiver, trustee or liquidator is not discharged within forty- five (45) days; (e) the filing of an involuntary petition of bankruptcy and failure of Licensee to secure a dismissal of the petition within sixty (60) days after filing; and, (f) attachment of, or the levying of execution on this Licensee's interest, and failure of Licensee to secure discharge of the attachment or release of the levy of execution within forty-five (45) days.

**Unapproved Transfers.** An Event of Default shall occur if Licensee transfers its interest under this Agreement, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation.

**Failure of Licensee's Obligation to Construct and Use License Space.** An Event of Default shall occur if Licensee fails to timely submit plans and specifications, bonds and other preconstruction submittals, fails to promptly begin or timely complete construction of Improvements, fails to open for business to the public when construction is completed, or fails to occupy and use the License Space after construction is completed or fails to operate the License.

**Illegal Use.** An Event of Default shall occur if Licensee uses, or gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Licensee for its use under this Agreement.

**Abandonment.** An Event of Default, for which no notice or opportunity to cure need be given, may be declared, at the City's option, if the City discovers that Licensee has abandoned, deserted or vacated the License Space.

**Liens against City Property.** If Licensee suffers any lien or attachment adverse to the interest of the City, including but not limited to mechanic's or materialman's liens to be filed against the License Space, or any lien or attachment to be filed against the Airport or the City's property because of any act or omission of Licensee, an Event of Default shall occur if such lien or attachment is not discharged or contested by Licensee in good faith by proper legal proceedings within 20 days after receipt of notice thereof by Licensee.

**Material Misrepresentation.** An Event of Default, for which no notice or opportunity to cure need be given, may be declared, at the City's option, if the City discovers that Licensee made a material misrepresentation to the City that induced the City to enter into this Agreement.

**License or Franchise Agreement.** If the License or Franchise Agreement related to the Brand Licensee is authorized to operate at the Airport, is terminated, expires or is materially amended prior to the expiration of this Agreement, an Event of Default shall be deemed to have occurred.

**Default in Other Covenants.** An Event of Default shall occur if Licensee fails to keep, perform and observe any other promise or violates any term, covenant or condition of this Agreement, other than the payment of Rent, or Additional Rent, as described above, and such failure or violation is not cured within thirty (30) days after written notice by the City describing the nature of the breach or Default. If the violation is of such a nature that it cannot be completely cured within the thirty (30) day period, this provision shall be complied with if Licensee begins to perform whatever may be required to correct its failure to perform its obligation or to correct the violation within such thirty (30) day period, and thereafter proceeds in good faith and continues such performance with all due diligence and without interruption, except for causes beyond its control, to effect the cure as soon as practical.

## 11.02. REMEDIES

**Remedies on Default.** Immediately upon the occurrence of an Event of Default, the City, at its option, may, exercise any of the following rights and remedies, in addition to any other rights and remedies provided elsewhere in this Agreement, or otherwise at law or in equity.

**Right to Draw on Performance Surety.** In an Event of Default, the City may draw upon Licensee's Performance Surety as follows: In the event of a bankruptcy or Insolvency, the City may immediately draw upon the Performance Surety to cure any and all violations of this Agreement, whether or not any cure period has elapsed and whether or not all required notices have been given. In the case of failure to pay Rent or Additional Rent, that may be remedied, or partially remedied, by the payment of money, the City shall be entitled to draw upon the Performance Surety without notice at any time after the Rent or Additional Rent is past due.

**Right to Cure Licensee's Default.** If Licensee fails to perform any of Licensee's obligations under this Agreement, the City, without waiving any of its remedies pursuant to this Agreement, may, but shall not be obligated to, perform the same for the account of, and at the expense of Licensee, without notice in a case of emergency, and in any other cases, only if such failure continues after the expiration of thirty (30) days from the date the City gives Licensee written notice of the failure. The City shall not be liable to Licensee for any claim for damages resulting from such action by the City. Licensee agrees to reimburse the City, upon demand, any amounts the City may spend in complying with the terms of this Agreement on behalf of Licensee, plus a twenty percent (20%) administrative fee. The City shall have the same rights and remedies in the event of the nonpayment of sums due to be reimbursed under this Section as in the case of Default by Licensee in the payment of any other Rent.

**Elect to Continue and Enforce Agreement.** The City may elect to allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with Past Due Interest.

**Termination of Agreement.** Subject to Licensee's right to cure, if any, the City may terminate this Agreement and Licensee's right to possession immediately upon the occurrence of an Event of Default. Any notice to terminate may be given before or within the applicable cure period and may be included in a notice of failure of compliance. The City may cancel and terminate this Agreement and repossess the License Space, with or without process of law, and without liability for so doing, upon giving 30 days written notice to Licensee of its intention to terminate, at the end of which time all the rights hereunder of the Licensee shall terminate, unless the default, which shall have been stated in such notice, is by its nature curable and shall have been cured within such 30 days. Notwithstanding the foregoing, Licensee shall be allowed only two notices of curable default hereunder which it may cure within the time specified in this Section. The third notice shall be final and the City shall at its option (1) cancel and terminate all of the rights hereunder of the Licensee, reenter the License Space, remove therefrom all property of the Licensee and store the same at the expense of the Licensee, or (2) elect to proceed to re-enter as described below.

**Damages upon Termination.** If City elects to terminate, Licensee shall be liable to City for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate City for all loss of compensation, damages, and costs, including attorney's fees, caused by Licensee's failure to perform its obligations hereunder, or which in the ordinary

course would likely result therefrom. Nothing in this Section shall be construed to grant a right to Licensee to cure a default, which by its nature is not capable of being cured.

**Re-Entry.** Without accepting surrender and without prejudice to any remedies for damages or breach, the City may elect to reenter and take possession of the License Space or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefore, and may expel Licensee or any person claiming under Licensee, and remove all effects as may be necessary, to the end that the City may have, hold and enjoy the License Space. Such reentry shall not be construed as termination of this Agreement unless a written notice specifically so states; however, the City reserves the right to terminate the Agreement at any time after reentry.

Notwithstanding re-entry by the City, Licensee shall continue to be liable for all amounts due as compensation under this Agreement, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the Agreement by the City, the City, having credited to the account of Licensee any amounts recovered through reletting, shall refund, without interest, any amount that exceeds the compensation, damages and costs payable by Licensee under this Agreement.

**Reletting.** Following re-entry, the City may relet the whole or any part of the License Space from time to time, either in the name of the City or otherwise, to such tenants, for such terms ending before, on or after the Expiration Date of this Agreement, at such rentals and upon such conditions (including financial Licenses and free rent periods) as the City may determine to be appropriate. To the extent allowed under Colorado law, the City shall not be liable for refusal to relet the License Space, or, in the event of any such reletting, for failure to collect any Rent due upon such reletting; and no such failure shall operate to relieve Licensee of any liability under this Agreement or otherwise affect any such liability. The City may make such physical changes to the License Space as the City considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Licensee of any liability under this Agreement or otherwise affecting Licensee's liability. If the City has other vacant space, the City shall have no obligation to attempt to relet the License Space prior to leasing such other vacant space. The City shall not be required to attempt to relet the License Space to a potential lessee with whom the City has been negotiating for other space owned by the City or to whom the City has shown other space owned by the City. If the City has relet all or any part of the License Space for the period which otherwise would have constituted all, or any part, of the unexpired portion of the term of this Agreement, the amount of Rent reserved on such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part, or the whole, of the License Space so relet during the term of the reletting. Acts of maintenance, or preservation, or efforts to relet the License Space, or the appointment of a receiver upon initiative of the City to protect the City's interest under this Agreement, shall not constitute a termination of this Agreement or an acceptance of surrender of this Agreement.

**Damages upon Re-Entry.** Whether or not the City retakes possession or relets the License Space, the City shall have the right to recover damages immediately, without waiting until the due date of any future Rent or until the date fixed for expiration of this Agreement, which damages, shall include, but not be limited to the following: ( a) all Rents lost, calculated through the Expiration Date, subject only to the statutory requirements to mitigate damages, if any; (b) all legal expenses and other related costs incurred by the City as a result of Licensee's Default; (c) all costs incurred by the City in restoring the License Space (or other damaged City property where damage was caused by Licensee) to good order and condition, or in remodeling, renovating or otherwise preparing the License Space for reletting, including, without limitation,

removal and disposal of Licensee's Improvements or other property; (d) all taxes due or to become due under this Agreement; and, (e) all costs incurred by the City in reletting the License Space, including, without limitation, any advertising costs, brokerage commissions and the value of the City's staff time expended as a result of the Default. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Colorado banks in effect on the date of trial.

### **11.03. REMEDIES CUMULATIVE**

***Remedies Cumulative and Nonexclusive.*** Each right and remedy in this Agreement shall be deemed cumulative and will be in addition to every other right or remedy in this Agreement, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. Such rights and remedies shall not be in lieu of or exclusive of each other and shall in no way affect any other remedy available to the City under law or equity. The exercise or beginning of the exercise, by the City of any such rights or remedies will not preclude the simultaneous or later exercise by the City of any other such rights or remedies. All such rights and remedies are nonexclusive. Nothing contained herein shall be construed to require the City to accept delinquent Rent, or delinquent Additional Rent. Acceptance of full or partial payment of delinquent Rent, or delinquent Additional Rent, shall not constitute a waiver of any of the City's other rights and remedies under this Section 11. The City may sue periodically to recover damages during the period corresponding to the remainder of the term of this Agreement, and no action for damages shall bar a later action for damages subsequently accruing.

### **11.04. ADMINISTRATIVE HEARING**

Disputes arising out of this Agreement shall be resolved by administrative hearing before the Manager following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, that City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph. The Parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to the Licensee's right to appeal the determination under Colorado Rules of Civil Procedure, Rule 106.

### **11.05. WAIVERS**

***Non-Waiver of Rights – Default.*** No waiver of a breach or violation of this Agreement by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Licensee shall be construed as, or shall operate as, a waiver of any subsequent breach or violation of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the Licensee

***Non-Waiver of Rights – Partial Payment.*** No failure of City to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, no failure by City to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by Licensee shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Licensee.

## **SECTION 12 – DAMAGE, DESTRUCTION OR LOSS**

### **12.01. DAMAGE TO OR DESTRUCTION OF LICENSE SPACE**

If Licensee's Improvements, or any portion thereof, are destroyed or damaged by fire, the elements or otherwise, the Licensee shall promptly remove all debris resulting from such damage to the Improvements and shall at its sole cost and expense repair and/or reconstruct the Improvements with due diligence whether or not the damage or destruction is covered by insurance in accordance with the plans and specifications for the License Space as they existed prior to such damage or according to the current needs of the Licensee as approved by the City. If Licensee fails to repair or replace damaged Improvements in accordance with a schedule agreed to by the City and Licensee, and provided that this Agreement has not been canceled, the City may make such repairs or replacement and recover from Licensee the direct cost and expense of such repair or replacement, plus a twenty (20%) percent administrative overhead fee.

If the License Space, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Licensee, the obligation of Licensee to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within 90 days after the destruction or damage which the City will promptly provide to Licensee. Licensee may then, at its option, cancel and terminate this Agreement.

### **12.02. COOPERATION IN THE EVENT OF LOSS**

If the City elects to rebuild, Licensee must replace all License Improvements at its sole cost and in accordance with the Required Minimum Investment in January 2012 dollars, subject to escalation according to the Engineering News Record Building Cost Index for the Denver, Colorado area, and performance standards as set forth in *Exhibit X*. City and Licensee shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

### **12.03. LOSS OR DAMAGE TO PROPERTY**

The City shall not be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Licensee agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

### **12.04. MUTUAL WAIVER; INSURANCE COVERAGE**

City and Licensee each waive any and every claim for recovery from the other for any and all loss of or damage to the License Space or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Licensee agrees to give to each insurance company which has issued, or may issue, to the Licensee policies of fire and extended coverage insurance, written notice of the

terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

**Licensee Caused Damage.** If Licensee caused the damage described in this Section 12, Licensee shall pay for all of the full rebuilding costs, except to the extent of the waiver of subrogation set forth in this Section and Rent shall not be reduced.

**Limits of the City's Obligations Defined.** It is understood that, in the application of this Section 12, the City's obligations shall be limited to the repair or reconstruction of the License Space to a condition with utilities stubbed to the License Space suitable for Licensee to re-build. Redecoration, Improvements, Trade Fixtures, inventory and replacement of all of Licensee's furniture, equipment, inventory and supplies shall be the sole responsibility of Licensee and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed under the terms of this Agreement.

**No Duty to Protect.** Protection against loss by fire or other casualty to any of the contents of the License Space shall not, at any time, be an obligation of the City.

#### **12.05. RELEASE**

Licensee agrees that the City shall not be liable to Licensee for any injury to or death of any of the Licensee's agents, representatives or employees or of any other person or for any damage to any of Licensee's property or loss of revenue caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport, whether such injury, death or damage is due to negligence or otherwise.

### **SECTION 13 – PROMOTIONAL PROGRAM**

#### **13.01. JOINT MARKETING FUND**

The City shall provide or cause to be provided a central marketing and promotional fund which, in the City's sole judgment, will serve to promote overall service, retail and food and beverage Licenses at the Airport. The fund shall be known as the "Joint Marketing Fund." Beginning the first month after written notice from the City that the Joint Marketing Fund has been established, Licensee shall contribute during each month, as Licensee's share of the Joint Marketing Fund, an amount equal to 1% of monthly Gross Revenues of Licensee. This amount is payable to the City by the 10th day following the end of each calendar month. If Licensee is unable to calculate actual Gross Revenues in time to make the required payment to the Joint Marketing Fund, the payment may be made based on an estimate of Gross Revenues. Any and all such estimated payments shall be adjusted as of the end of each six (6) month period of each year. Within 30 days of the end of each six (6) month period, Licensee shall send a report to the City reconciling estimated and actual Gross Revenues and showing any over or underpayments to the Joint Marketing Fund. A check for any underpayments must accompany the reconciliation. All overpayments will be credited to the next payment(s) due to Licensee within 30 days of the Agreement termination date. The City shall not be obligated to expend more for promotions and advertising than is actually collected from Licensees. Any promotional services and personnel so provided shall be under the exclusive control and supervision of the City. The City reserves the right at any time to terminate the Joint Marketing Fund and thereafter to provide central marketing and promotional services until the remaining funds are exhausted.



## **SECTION 14 – MISCELLANEOUS PROVISIONS**

### **14.01. ADVERTISING AND PUBLIC DISPLAYS; PRESS RELEASE**

**A.** After the execution of this Agreement, the Licensee may enter into an advertising agreement with the Advertiser, to advertise and promote its Wireless Access System at the Airport.

**B.** Permission will not be granted for any advertising of the System that fails to comply with DIA Design Standards. Licensee shall coordinate with DIA's advertising Licensee to ensure any advertising generated by Licensee will not infringe upon such advertising agreement with the City.

**C.** Licensee may issue a press release announcing the execution of this Agreement and the License granted hereunder, subject to the advanced approval of the Manager which approval shall not be unreasonably withheld or delayed.

### **14.02. AGREEMENT BINDING UPON SUCCESSORS**

This Agreement, subject to the provisions of the Section entitled "Assignment ," shall be binding upon and shall inure to the heirs, personal representatives, successors and assigns of the City and Licensee where permitted by this Agreement. The term "Licensee" shall include an assignee or sub lessee from the Licensee on any assignment or sublease approved by the City, but no such assignment or sublease shall be approved or shall have any effect unless the Licensee and its proposed assignees or sub lessee shall thereafter be jointly bound thereby as the Licensee hereunder. However, in the event the Licensee is authorized to assign, or sublet to, or contract with, a third party to perform or provide any service or sell any product, the term Gross Revenues as used herein shall include the total Gross Revenues generated by the performance of or sale of product by such third party, and not the amount received by the Licensee from such third party

### **14.03. AGREEMENT MADE IN COLORADO; VENUE**

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the Charter and Ordinances of the City and County of Denver and the Parties agree that venue for any action arising from this Agreement shall be in the District Court in and for the City and County of Denver. The Licensee agrees that any and all notices, pleadings and process may be made by serving two copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by mailing by return mail an additional copy of the same to the Licensee at the address shown herein; that said service shall be considered as valid personal service, and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading or answer is not made.

### **14.04. AGREEMENTS WITH THE UNITED STATES**

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport or airport system. The provisions of the attached Appendices 1, 2, 3 and 10 are incorporated herein by reference.

#### **14.05. RIGHT TO DEVELOP AIRPORT**

Licensee agrees that the City reserves the right to further develop or improve the Airport and all landing areas and taxiways as the City may see fit, regardless of the desires or views of Licensee and without any interference or hindrances from Licensee.

#### **14.06. AGREEMENT SUBJECT TO AVIATION PRIORITY**

Licensee's right to use the License Space for the purposes as set forth in this Agreement shall be secondary to, and subordinate to, the operation of the Airport. Licensee acknowledges that because of the location of the License Space at the Airport, noise, vibrations, fumes, debris and other interference with the Permitted Use will be caused by Airport operations. Licensee hereby waives any and all rights or remedies against the City arising out of any noise, vibration, fumes, debris and/or interference that is caused by the operation of the Airport. The City specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft.

#### **14.07. MODIFICATIONS REQUIRED BY FAA**

In the event that the FAA or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Licensee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements, subject to the provisions of this Agreement.

#### **14.08. ASSIGNMENT AND SUBLEASE**

Licensee shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber (collectively "Transfer"), or dispose of this Agreement or any interest created by this Agreement, or any interest in any portion of the same, nor grant any license or License hereunder, or permit any other person or persons, company or corporation to occupy the License Space, without first obtaining the written consent of the Manager, which consent may be granted or denied in the sole and absolute discretion of the Manager. Any attempt by the Licensee to in any way Transfer its interest in this Agreement, in whole or in part, directly or indirectly (including any attempt to transfer the ownership of the equity or voting interest in the stock if Licensee is a corporate entity or the ownership interest in such other entity or control of Licensee or Licensee's operations through sale, exchange, merger, consolidation or other such Transfer), without the prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of the Licensee hereunder. These restrictions on Transfer shall also apply to assignment of activities, uses, privileges, and obligations authorized under this Agreement.

The City's consent to a Transfer shall not include consent to enlarge the Term or modify other material provisions of this Agreement. The City's consent to a Transfer shall not constitute a release of liability of Licensee pursuant to the requested Transfer. The City's consent to one such Transfer shall not be deemed consent to subsequent Transfers.

#### **14.09. BOND ORDINANCES**

This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances, which should amend, supplement or replace such bond ordinances. The Parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Licensee agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Licensee agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

#### **14.10. FORCE MAJEURE**

Neither Party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Licensee to reduce or abate its obligation to pay the MAG or Percentage Compensation Fee herein, or any other compensation due hereunder.

#### **14.11. INCONVENIENCES DURING CONSTRUCTION**

Licensee recognizes that from time to time during the Term of this Agreement, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be maintained, improved, and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Licensee in its operation at the Airport. Licensee agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Licensee waives any right to claim damages or other consideration therefrom.

#### **14.12. MASTER PLAN**

Licensee agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport, and waives any right to claim damages or other consideration arising therefrom.

#### **14.13. LICENSES MASTER PLANNING**

Licensee agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master planning for the Airport's Licenses program, and waives any right to claim damages or other consideration arising therefrom.

**14.14. NONDISCRIMINATION**

In connection with the performance of work under this Agreement, Licensee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and Licensee further agrees to insert the foregoing provision in all subcontracts hereunder.

**14.15. NOT PARTNERSHIP**

It is understood and agreed by and between the Parties hereto that the status of the Licensee shall be that of an independent contractor. Notwithstanding the provisions herein for payment by Licensee to City of sums based upon a percentage of Gross Revenues, it is further expressly understood and agreed that the City shall not be construed by a third party or held by Licensee to be a partner, associate or joint venturer of Licensee in the conduct of its business. Licensee shall at all times have the status of an independent contractor and is not intended nor shall it be construed that the Licensee, its employees or sub contractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever with any right or City authority to impose tort or contractual liability upon the City.

**14.16. NOTICES**

All notices required to be given to the City or Licensee hereunder shall be in writing and sent by certified mail, return receipt requested, as follows:

to City:	Manager of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
----------	---

with a copy to:	Deputy Manager of Aviation, Revenue and Business Development Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
-----------------	--

to Licensee:	At the address and to the attention of the person so designated on the Summary Page.
--------------	--

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to the intended Party.

**14.17. PARAGRAPH HEADINGS**

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

**14.18. PATENTS AND TRADEMARKS**

Licensee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this

Agreement. Licensee will not utilize any protected patent, trademark or copyright, including any patents, trademarks or copyrights owned by the City, in its operations under this Agreement unless it has obtained proper permission and all releases and other necessary documents. Licensee agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Licensee under this Agreement.

#### **14.19. COLORADO OPEN RECORDS ACT.**

The Licensee 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 Licensee 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 Licensee asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by the Licensee to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Licensee 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.

#### **14.20. SECURITY**

It is a material requirement of this Agreement that the Licensee shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. Licensee shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City or the Transportation Security Administration (TSA), including 49 CFR Subtitle B, Chapter XII, as amended from time to time. Licensee understands and acknowledges that its ability to remain open and sell the Products it is authorized to sell under this Agreement is subject to changes in alert status as determined by TSA. Violation by Licensee or any of its employees of any rule, regulation or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall constitute a material breach of this Agreement and any person who violates such rules may be subject to revocation of his/her access authorization. Licensee will reimburse the City, in full, for any fines or penalties levied against the City for security violations as a result of any actions on the part of Licensee, its agents, contractors, suppliers or employees and for any attorney fees or related costs paid by the City as a result of any such violation. The Licensee shall return to the City at the expiration or termination of this Agreement, or upon demand by the City all access keys or access badges issued to it for any area of the Airport, whether or not restricted. If the Licensee fails to do so, the Licensee shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Licensee under this Agreement. The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Agreement, the Licensee shall take immediate steps to comply and assist its Operators with compliance with security modifications which occur as a result of the changed status. The Licensee may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Licensee's operations at the Airport.

**14.21. SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the validity and enforceability of the remaining provisions herein, which are severable, shall be unaffected.

**14.22. THIRD PARTIES**

The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Licensee, and nothing contained in this Agreement shall be deemed or construed to confer upon or grant to any third party or parties (except Parties to whom the Licensee may assign this Agreement in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Licensee because of any breach hereof or because of any failure to comply with of any of the terms, covenants, agreements and conditions herein. It is the express intention of the City and the Licensee that any other person other than the City or the Licensee receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

**14.23. ADVERTISING AND PUBLIC DISCLOSURES.**

**Public Disclosures.** The Licensee shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager, which will not be unreasonably withheld. Any oral presentation or written materials related to Denver International Airport shall include only presentation materials, work product, designs, renderings and technical data which have been accepted by the City. The Manager shall be notified in advance of the date and time of any such presentations. Nothing herein; however, shall preclude the transmittal of any information to officials of the City, including without limitation, the Mayor, the Manager of Aviation, member or members of City Council, the Auditor or the City Clerk and Recorder.

**Advertising.** Unless otherwise provided for herein, Licensee may not advertise in the Airport, except with an advertising company with which the City has contracted to sell advertising at the Airport. Permission will not be granted to Licensee for any other advertising at the Airport. Licensee shall not use nor permit the License Space to be used as a medium for third party paid advertising including any advertising material, sign, fixture or equipment whether paid for in-kind or by cash or credit.

**14.24. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**

Licensee, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Except as otherwise may be provided herein, Licensee shall also prohibit consumption of alcohol within the License Space. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Licensee from City facilities or participating in City operations.

**14.25. CITY SMOKING POLICY**

Licensee agrees that it will prohibit smoking by its employees and the public in the License Space and will not sell or advertise tobacco products. Licensee acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. Licensee and its officers, agents and employees shall cooperate and comply with the provisions

of the City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et. seq.

**14.26. WAIVER OF CLAIMS**

Licensee hereby waives any claim against the City for loss of anticipated profits caused by any suit or proceedings attacking the validity of this Agreement, or any part of this Agreement, or by any judgment or award in any suit declaring this Agreement null, void, or voidable, or delaying this Agreement or any part of it being carried out.

**14.27. INTERPRETATION OF AGREEMENT**

This Agreement is the result of arms length negotiations between the City and Licensee, and therefore any ambiguity in this Agreement shall not be construed against the City by reason of its preparation of this Agreement.

**14.28. NUMBER OR GENDER**

The use herein of a singular term shall include the plural, and use of the masculine, feminine, or neutral genders shall include all others.

**14.29. JOINT AND SEVERAL LIABILITY**

If Licensee is a partnership or other business organization, the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.

**14.30. BROKER'S COMMISSION**

Licensee represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees in connection with the execution of this Agreement, and Licensee shall indemnify and hold the City harmless against and from all liabilities arising from any such claims caused or incurred by it (including without limitation, the cost of attorney fees in connection therewith).

**14.31. NO LIMIT ON CITY'S POWERS**

Nothing in this Agreement shall limit, in any way, the power and right of the City to exercise its governmental rights and powers, including its powers of eminent domain.

**14.32. HEADINGS.**

The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**14.33. WAR OR NATIONAL EMERGENCY**

During the time of war or national emergency, the City shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with this Agreement to the Government shall be suspended, and in that event, a just proportionate part of the MAG hereunder shall be abated.

**14.34. SURVIVAL OF CERTAIN CONTRACT PROVISIONS**

The Parties understand and agree that all terms and conditions of this Agreement, (such as the indemnity agreement set forth herein) which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term

or otherwise) shall survive such termination or earlier termination of this Agreement and shall continue to be fully enforceable as provided herein.

**14.35. CAPACITY TO EXECUTE**

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting.

**14.36. ENTIRE AGREEMENT**

The City and Licensee each warrant and represent to each other that this Agreement constitutes their legal, valid and binding obligation and that the provisions herein including all Exhibits and other documents incorporated by reference, contains the entire agreement between the City and Licensee as to this Agreement. It is further understood and agreed by Licensee that the City and the City's agents and employees have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that all representations made by any officer, agent or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved to the Manager herein, shall be valid or effective unless mutually agreed upon in writing and an amendment to this Agreement is executed by an instrument in writing by the Parties with the same formality as this Agreement.

**14.37. FINAL APPROVAL**

This Agreement is expressly subject to, and shall not be or become effective or binding on the City until approved by the City Council, and fully executed by all signatories of the City and County of Denver.

**[SIGNATURE PAGE FOLLOWS]**



**Contract Control Number:** PLANE-201103813-00

**Vendor Name:** Concourse Communications, LLC, a Boingo Wireless Company

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

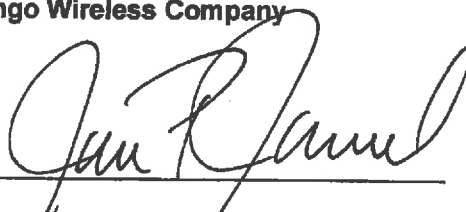




IN WITNESS WHEREOF, the parties hereunto set their hands and affixed their seals at Denver, Colorado as of the day on the City's signature page.

**Contract Control Number:** PLANE-201103813-00

**Vender Name:** Concourse Communications Group, LLC,  
a Boingo Wireless Company

By: 

Name: JAMES P. JANOWICK  
(please print)

Title: VICE PRESIDENT  
(please print)

**ATTEST: [if required]**

By: 

Name: DENISE M. OULIS  
(please print)

Title: OFFICE MANAGER  
(please print)

**SECTION 14: AS-BUILT DOCUMENTS.** Not later than 60 days after completion of all work for the Improvements, Tenant shall provide DIA two complete sets of as-built documents prepared in accordance with DIA requirements. If Tenant fails to provide as-built documents after written notice from DIA, DIA may elect to have the documents completed and charge the Tenant for the costs associated therewith. Tenant agrees that, upon the request of DIA, Tenant will inspect the Improvements jointly with DIA to verify as-built documents.

## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City."

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

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

2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

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

5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the

sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX NO. 2**

### **STANDARD FEDERAL ASSURANCES**

NOTE: As used below, the term "DOT" means the United States Department of Transportation.

1. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Party of the Second Part shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Party of the Second Part shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

### **APPENDIX NO. 3**

#### **NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES**

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or an interest therein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, Licensees and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.



## **APPENDIX NO. 10**

### **DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS**

**Policy.** It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the ACDBE requirements of 49 CFR Part 23 apply to this agreement.

**ACDBE Obligation.** The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 23.5 defines a DOT-assisted contract as "any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee." "Contractor" means ... "and includes lessees." The City is the "recipient."

**EXHIBIT A**  
**LOCATIONS SUBJECT TO THIS LICENSE – ACCESS EQUIPMENT SPACE PLAN**

The head-end equipment will be located in shared Comm Room Concourse A, Room 1-4C70.

**EXHIBIT B**  
**DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

---

**SECTION 1 – GENERAL.** Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this *Exhibit* to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or in any *Exhibit* thereto.

**SECTION 2 – ACDBE OBLIGATION.** This agreement is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23. The Licensee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any License agreement, management contract, or subcontract, or other agreement covered by 49 CFR Part 23.

**SECTION 3 – OTHER AGREEMENTS.** The Licensee agrees to include the above statements in any subsequent License agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

**EXHIBIT C  
INSURANCE CERTIFICATE**

**PLEASE GIVE THIS FORM TO YOUR INSURANCE AGENT FOR COMPLETION. THIS IS THE ONLY CERTIFICATE FORM THAT WILL BE ACCEPTED BY THE CITY AND COUNTY OF DENVER.**

**CITY AND COUNTY OF DENVER  
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION (02/07/01)**

Original COI  
 Change

Advice of Renewal

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER  
Manager of Aviation  
Denver International Airport  
8500 Pena Boulevard, Room 8810  
Denver CO 80249

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: Wi-Fi Service Provider @ DIA**

**I. MANDATORY COVERAGE**

**WC-1 Colorado Workers' Compensation and Employer Liability Coverage**

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
COLORADO Workers' Compensation Employer's Liability	WC Statutory Limits \$100, \$500, \$100 Limits		

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

**CGL-1 Commercial General Liability Coverage**

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)	Each Occurrence: \$1,000 General Aggregate Limit: \$2,000 Products-Completed Operations Aggregate Limit: \$2,000 Personal & Advertising Injury: \$1,000 Fire Damage Legal (Any one fire \$50 (\$300 if a City facility is leased)		

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 or equivalent
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent, if applicable.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provisions

**BAL-1. Business Automobile Liability Coverage**

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Business Automobile Liability (coverage at least as broad as ISO form CA 0001)	Combined Single Limit \$1,000		

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

**II. ADDITIONAL COVERAGE**

(Coverage is required only when City has checked the box to the left of each coverage section)

**UL-1 Umbrella Liability**

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Umbrella Liability <input checked="" type="checkbox"/> Non-restricted area access  <input type="checkbox"/> Unescorted airside access	Each occurrence and aggregate \$1,000  Each occurrence and aggregate \$9,000		

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

**PROP-1 Property Coverage**

Coverage	Limits, Other Provisions )	Policy No. & Company	Policy Period
<input checked="" type="checkbox"/> Personal Property, Contents, Fixtures, Tenant Improvements and Betterments  <input checked="" type="checkbox"/> Business Income including Loss of Rents	<ul style="list-style-type: none"> <li>• 100% of the Replacement Cost value of Personal Property, Contents, Fixtures, Tenant Improvements and Betterments</li> <li>• Covered Cause of Loss – Special Form including glass coverage and signs</li> <li>• Replacement Cost Endorsement</li> </ul> Amount equal to all Minimum Annual Rent and Other Sums payable under the Lease		

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Waiver of Subrogation Applies to City as Landlord for any protected Landlord Property.
3. In the event of payment of any Loss involving Tenant Improvements and Betterments, permanent fixtures, etc, the insurance carrier shall pay the City (as Landlord) its designee first for said property

loss

### **III. ADDITIONAL CONDITIONS**

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
2. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
3. Advice of renewal is required
4. All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
5. Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
6. No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.
7. The Insured named above shall promptly advise the City in the event any general aggregates or other aggregate limits re reduced below the required per occurrence limits. At the Insured's expense will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new Certificate showing such coverage is in force.

### **IV. NOTICE OF CANCELLATION**

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, the issuing company or its authorized Agent shall mail to the address shown above, by mail, return receipt requested, forty-five (45) days prior written notice ten (10) days for non-payment of premium, referencing the contract/project number set forth herein.

**EXHIBIT D**  
**MONTHLY STATISTICAL REPORT**



## **EXHIBIT E**

### **SCOPE OF WORK**

#### **Service Level Availability (SLA)**

---

DIA and Concourse Communications will jointly operate a WiFi Network at DIA. DIA maintains all wireless access points and infrastructure up to the demarcation point at the Concourse Communications network captive portal/local server. Concourse Communications maintains all equipment and infrastructure from the demarcation point to the internet.

- Concourse Communications will report on Availability (A) as defined from the Concourse Communications demarcation point to the internet.
- Concourse Communications will report on Connection Success Rate (CSR) defined as the number of internet accesses granted and the number of attempts to access the internet (as seen at the Concourse Communications captive portal).
- Concourse Communications will report on Average Connection Throughput (ACT) defined as the bit rate or packet transfer rate per user per session for both the uplink (user to internet) and downlink (internet to user).
- Concourse Communications will report on Internet Pipe Capacity (IPC) defined as the average Internet Pipe usage and the total Internet Pipe bandwidth capacity.

#### **Reporting Metrics**

---

Concourse Communications will report on the following metrics

1. daily availability (provided monthly)
2. monthly availability
3. number of connections daily (provided monthly)
4. number of connections per hour per day (provided monthly)
5. type of connection (VoIP, Internet, OS, Device Type ...) (provided monthly)
6. daily Connection Success Rate (provided monthly)
7. monthly Connection Success Rate
8. daily Average Connection Throughput per user session (provided monthly)
9. Average Connection Throughput per user session for daily, weekly and monthly, broken out by intervals, Operating Systems, and Browsers in a manner similar to the tables represented in Exhibit (provided monthly)
10. daily by hour Internet Pipe Capacity (provided monthly)
11. daily (as required) outage reports with cause, response time, resolution time by Service level (provided monthly)

## **Definitions of Metrics**

---

### **Availability**

---

#### **Availability is defined as:**

$A = 100 - \text{Outage Time/Available Time}$

An outage is defined as:

Access to the internet is not possible (Concourse Communications equipment or communications lines are not operating) by the travelling public.

Not included in Available Time are:

*Planned Downtime:* The total number of minutes during which internet access was intentionally unavailable as a planned outage (maintenance, updates, backups) with advance notice.

### **Connection Success Rate**

---

#### **Connection Success Rate is defined as:**

$CSR = 100 - \text{number of granted connections/number of requested connections}$

*Connection Success Rate:* A measurement of connection success is calculated by the number of successful User connections divided by the number of attempts made in any given calendar month. This value shall be expressed as a percentage.

### **Average Connection Throughput**

---

#### **Average Connection Throughput (ACT):**

$ACT \text{ Uplink} = \text{Number of Bits Transferred/Total Connection Time (bits sent by user)}$

$ACT \text{ Downlink} = \text{Number of Bits Transferred/Total Connection Time (bits received by user)}$

*Number of Bits Transferred:* For a user session, the total number of bits transferred (note uplink/downlink).

*Total Connection Time:* The total connection time for each User session.

### **Internet Pipe Capacity**

---

#### **Internet Pipe Capacity (IPC):**

$IPC = 100 - \text{Average Internet Pipe used/Total Internet Pipe Capacity}$

*Average Internet Pipe used:* The total aggregate used bandwidth.

*Total Pipe Capacity:* The rate for the Total Internet Pipe Capacity is 50 Mbps (as submitted in proposal).

### **Outage and Response Time**

---

## Response Times for Outages and Outage Definition

---

The following response times, resolution times for outages will be provided per the Service Level Standards and Outage definitions:

Outage Severity	Definition	Response Time	Resolution Time
One	Total Network <i>Outage</i>	30 minutes	2 hours
Two	Partial Location <i>Outage</i>	1 hours	4 hours
Three	Issues that do not impact customer ability to access the network including, but not limited to, billing, documentation, or other questions.	1 business day	As necessary

**Table 1 Outage Severity Types and Response Times**

*Outage:* Any communication line, equipment and/or software failure(s) in the Concourse Communications infrastructure/network which results in a degradation of the services provided.

*Outage Response Time Target:* The maximum amount of time allowed for Concourse Communications to respond to an *Outage*.

*Outage Resolution Time Target:* The maximum amount of time allowed for Concourse to resolve an *Outage*.

*Severity One Outage:* Any *Outage* that affects the entire Concourse Communications network at DIA.

*Severity Two Outage:* Any *Outage* that affects only a portion of the Concourse Communications network at DIA.

*Severity Three Outage:* Issues that do not impact customer ability to access the network including, but not limited to, billing, documentation, or other questions.

## Metric and Service Level Standards

---

Metric	Definition	SLA Target	Notes
Availability (A)	$A = 100 - \text{Outage Time/Available Time}$	99%	Severity 1 Only
Connection Success Rate (CSR)	$CSR = 100 - \text{number of granted connections/number of requested connections}$	95%	<30 seconds delay from request to grant
Average	ACT Uplink = Number of Bits	>512 kbps	

<b>Metric</b>	<b>Definition</b>	<b>SLA Target</b>	<b>Notes</b>
Connection Throughput (ACT) Uplink	Transferred/Total Connection Time (bits sent by user)		
Average Connection Throughput (ACT) Downlink Uplink	ACT Downlink = Number of Bits Transferred/Total Connection Time (bits received by user)	>2.048 Mbps	
Internet Pipe Capacity (IPC)	IPC = 100 - Average Internet Pipe used/Total Internet Pipe Capacity	<95%	for any consecutive 2 hour window
Outage	See above, three types, 1, 2 or 3	Per Table 1	All types
Outage Response Time	Per SLA Above	Per Table 1	
Outage Resolution Time	Per SLA Above	Per Table 1	

**Table 2 Metric Standards**

*Service Level Standards:* The standards set forth in Table 2 delineate the requirement for each metric.

**1. Customer Service Language.**

- a. Licensee shall provide 24/7 direct, end user support known as "Tier 1" customer support for the Wi-Fi services. **"Tier 1 Customer Support"** means direct communications with end users, receiving inbound queries respecting access to the Wi-Fi services provided by Licensee, both telephone and electronic, with respect to sales, order processing, billing changes, and basic troubleshooting.

**EXHIBIT E1**  
**LICENSEE'S PROPOSAL**

**EXHIBIT F**  
**SERVICE LEVEL AGREEMENT**



# Customer Care Overview

June 2011



# Tier 1- End Users Customer Care

- **Customer Service** – Boingo believes in providing our customers with “World Class Customer Care”.
- **Support Channels** – to this end, we offer 24/7/365 customer service that can be reached via toll-free phone support, email, chat and self care.
- **Self-Care** – customers can login to their Boingo account at my.boingo.com to manage their account, including:
  - View Wi-Fi Usage
  - Reset Password
  - Generate Receipts
  - Update Billing Information
  - Update Credit Card Information
- **FAQs** – available on boingo.com and white-listed within Boingo’s owned and operated Walled Gardens, customers can troubleshoot technical issues or learn more about services at <http://www.boingo.com/boingo-faq.php>
- **Foreign Language Support** – French and Spanish phone support also provided.



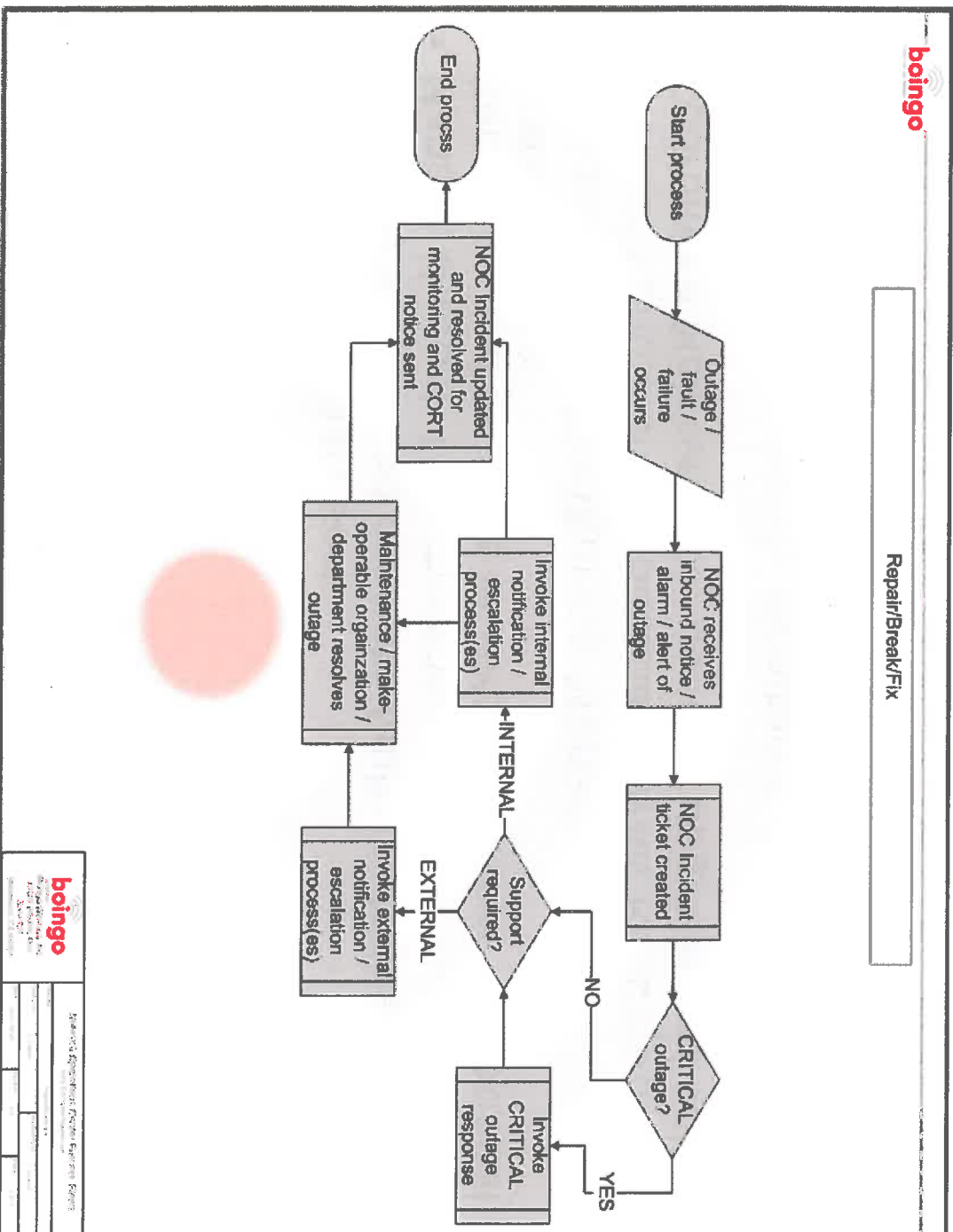
# Tier 2 & 3- The NOC

- The Boingo Network Operations Center
  - Network monitoring and performance management
  - Fault diagnosis, isolation and resolution management
  - Provide policies and procedures for identifying, categorizing, prioritizing, escalating and tracking of network and service outages
  - Includes specific area regarding:
    - Quality Records
    - Wireless Services Management
      - Boingo NOC Operational Responsibilities
    - Trouble Reporting
      - Trouble Reporting and Resolution Process, Incident Priority, Communications and Escalations Plan, TT Monitoring and Tracking
    - Security Incident Response
    - Repair and Maintenance Activity Scheduling and Notification
    - NOC Responsibilities
    - Enterprise and Retail / Wholesale Services Activity Scheduling Process
    - Scheduled Maintenance Windows
    - Boingo Operations Network Freeze Policy
      - Maintenance windows
      - Launches
      - Waivers
  - - Emergency//Make Operable Activities
    - Boingo CRITICAL Outage Response Team (CORT) Procedure

# NOC Capabilities

- Current operations
  - Multiple monitoring systems
    - Venue/Owned and operated - WUG/WUP
    - Core/enterprise – Tivoli, Nagios, Cacti
  - Ticketing system - Remedy
  - Multiple locations - Westwood, CA and McKinney, TX
  - Staffing – 7x24x365

# NOC Break Fix Process Flow (high level)



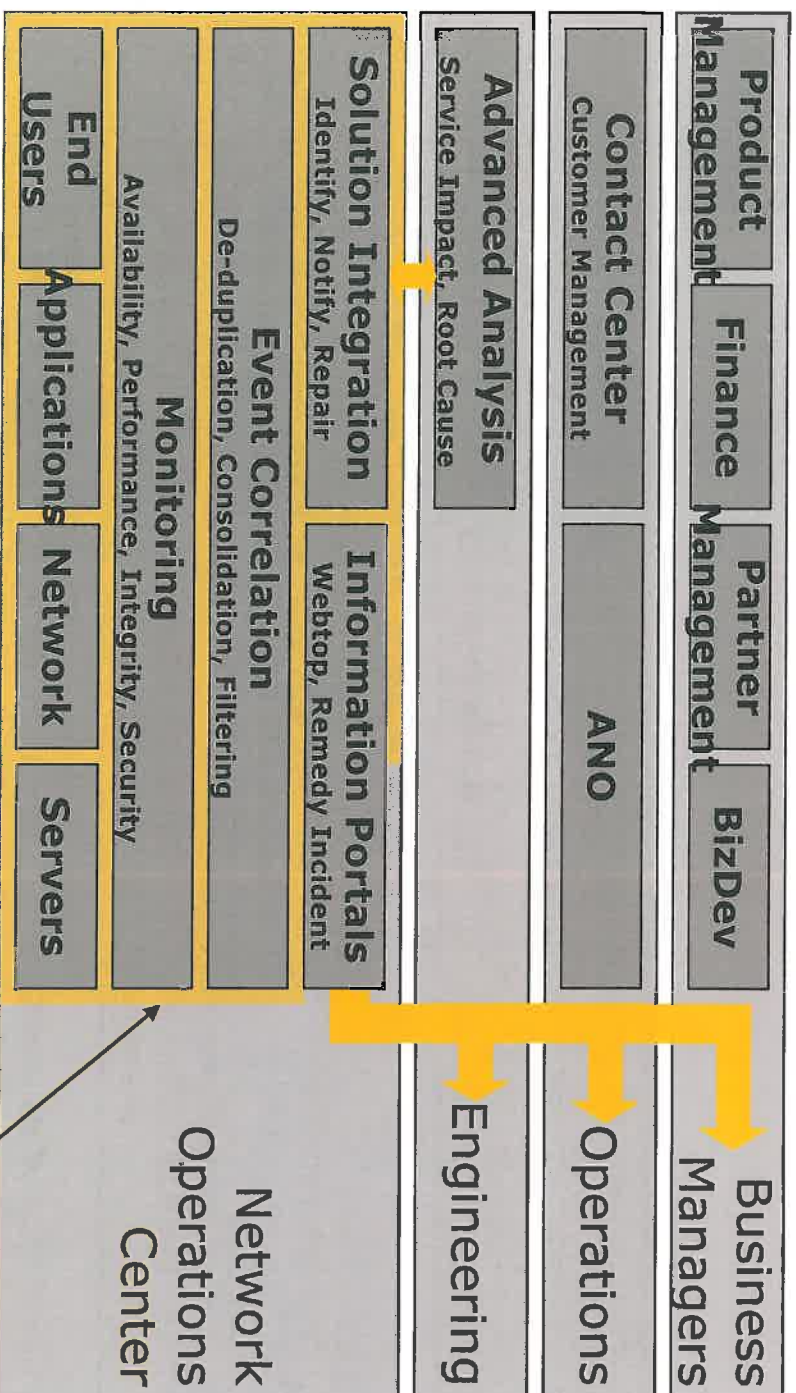
**boingo**

Standard Agreement Program Expense Report


# Organization/Staffing

- Hours of operations
  - NOC 24X7X365
- Staffing
  - NOC Analysts/Supervisors
    - Receive, assess and escalate faults/outages/degradations
    - Manage through to completion network incident tickets
    - Reporting and analysis of NMS and other operational systems' data
  - Provisioning and Monitoring Managers
    - Provision and Manage Backhaul, WAN Requirements
    - Coordinate Maintenance, update, upgrade and optimize NMS
    - Add, delete and modify monitored devices, services and applications
    - Expand scope and deployment of monitoring protocols, probes, and agents
    - NMS quality assurance

# Network Monitoring Value Chain



Service Aligned

Comprehensive Visibility

Consolidated Performance and Service Management

# Software

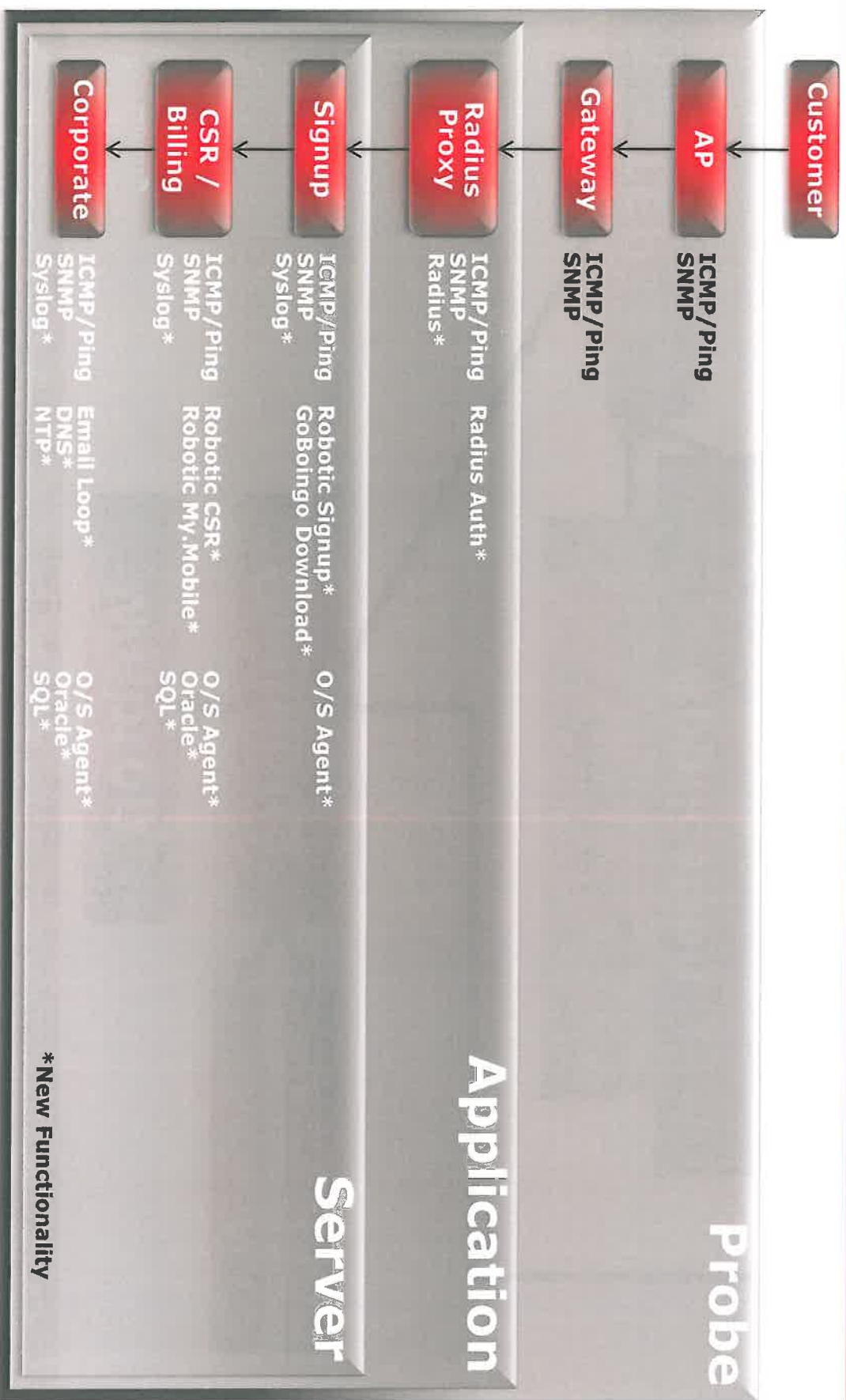
Feature	Impact	Tools replaced/ Enhanced
<b>ICMP / SNMP</b>	<b>Device availability</b> - Basic network health across all devices (O&O and core network)	IPSwitch (WUP/WUG) and Nagios
<b>Probes</b>	<b>Detailed Event Logs</b> - Detailed logging of performance, utilization, capacity and scale	Nagios and Cisco WLCs/WCS and The Dude (Mikrotik)
<b>Db Monitoring</b>	<b>Database Health</b> - Real-time Database health, performance, utilization, capacity and scale	
<b>Application Manager</b>	<b>Near Real-time Service Availability</b> - Health and availability of applications across multiple servers (i.e. signup)	
<b>Event correlation</b>	<b>Single Incident for Cascading Alarms</b> - Ties and consolidates all events into root cause incidents	
<b>Trending</b>	<b>Future Planning</b> - Capacity and performance management	

CURRENT functionality

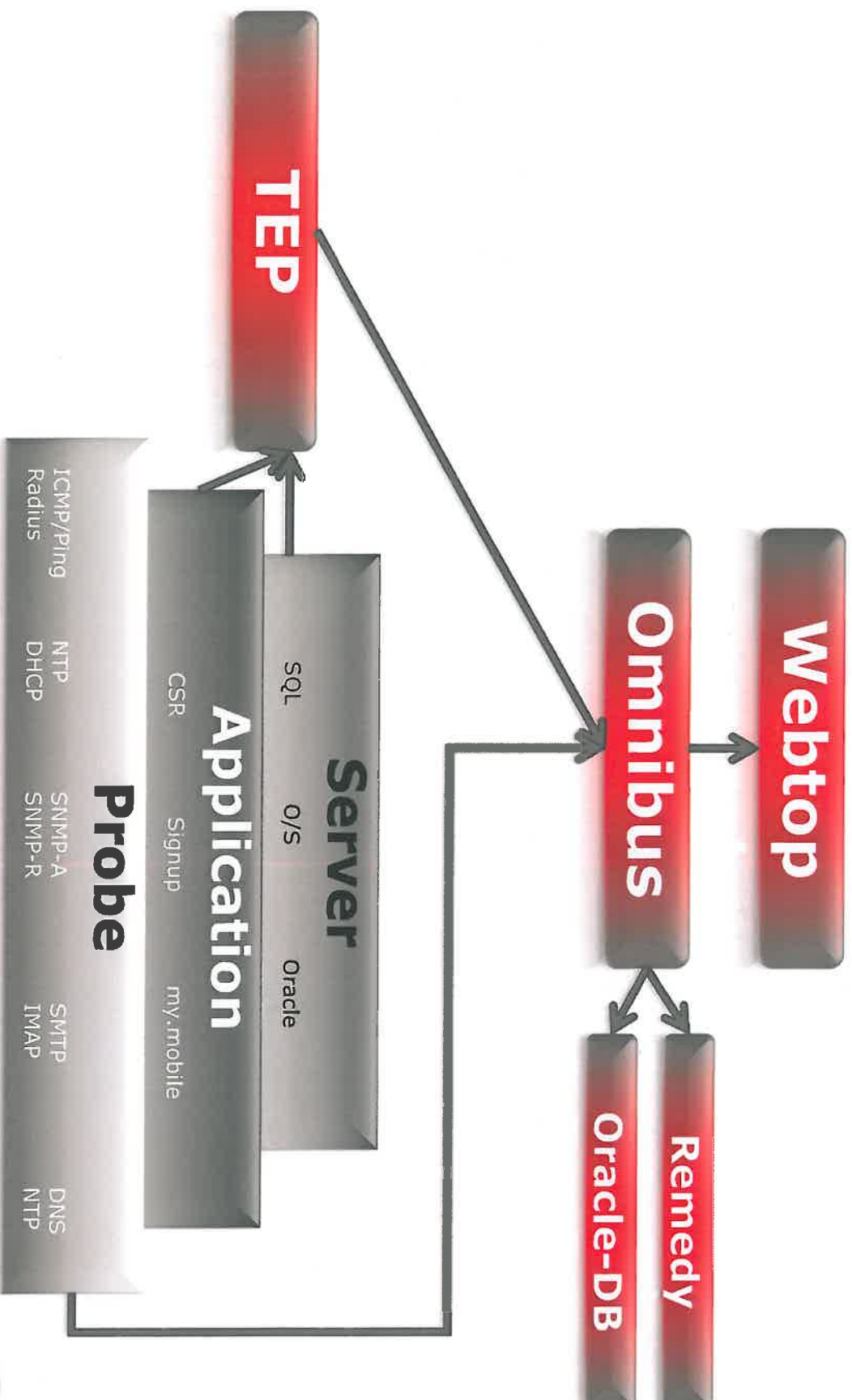
NEW functionality

PLANNED functionality

# Capabilities/Lifecycle Monitoring



# Technologies





# Webtop (dash board)

Message	Node	Alert Key	Summary	Manager	Last Occurrence	First Occurrence	Count	Owner	Tick
Major	boingo-wa-svr-2-ec-	Entry 103	DVC Failed - No response from server	DNS ISM	11/9/08 4:10:48 PM	11/9/08 7:05:48 PM	1406	Nobody	
Major	ccg-jhm-upst1		Link Down (S1 4)	MTTrapped Probe on o	11/9/08 4:07:12 PM	11/9/08 2:02:32 PM	238	Nobody	
Major	ccg-jhm-powercont1		DVC Failed - Pings Complete	ICMP ISM	11/9/08 4:07:12 PM	11/9/08 4:06:02 PM	1154	Nobody	
Major	ccg-jhm-ap-ndb30		DVC Failed - Pings Complete	ICMP ISM	11/9/08 4:07:12 PM	11/9/08 4:06:02 PM	1154	Nobody	
Major	ccg-jhm-figst1		DVC Failed - Pings Complete	ICMP ISM	11/9/08 4:07:12 PM	11/9/08 3:36:38 AM	1018	Nobody	
Major	ccg-mhp-ap-bq114		DVC Failed - Pings Complete	ICMP ISM	11/9/08 4:07:05 PM	11/7/08 5:48:00 PM	557	Nobody	
Major	ccg-mhp-ap-bq150		DVC Failed - Pings Complete	ICMP ISM	11/9/08 4:06:36 PM	11/9/08 12:56:35 AM	1	Nobody	
Major	ccg-mhp-ap-bq110		DVC Failed - Pings Complete	ICMP ISM	11/9/08 4:06:36 PM	11/9/08 4:06:36 PM	142	Nobody	
Major	ccg-mhp-ap-bq154		DVC Failed - Pings Complete	ICMP ISM	11/9/08 4:06:36 PM	11/9/08 12:26:35 AM	1	Nobody	
Major	66.103.80.4						64		



# Tivoli Webtop (dash board)

Network Monitoring Console

boingo

All Events  
Total: 251  
Last 24 Hours: 8  
Journal Viewer

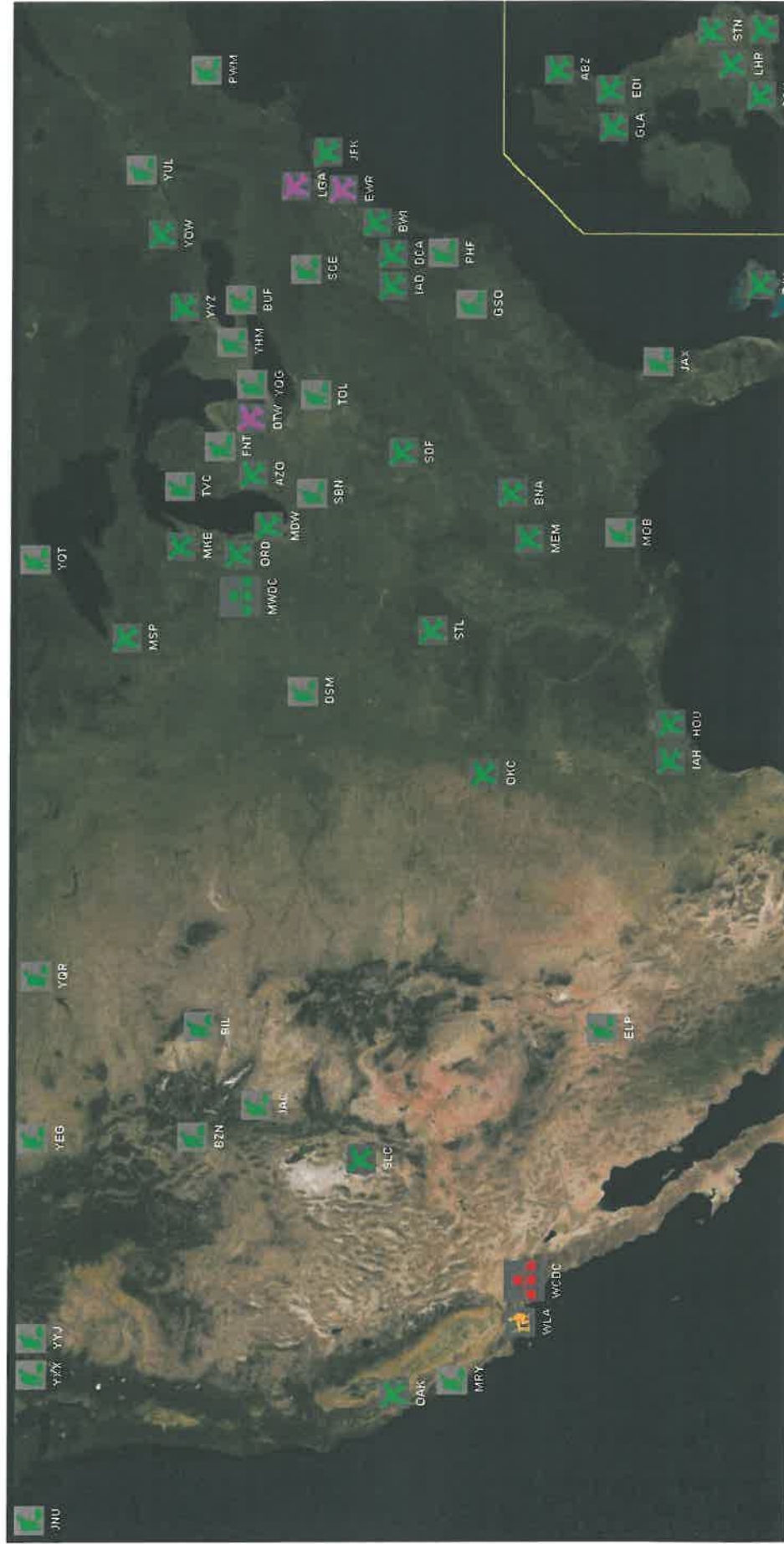
Enterprise Alerts

Severity: Minor Warning

Severity	Node	Alert Key	Summary	Manager	Last Occurrence	First Occurrence	Count	Owner	Tick
Minor	boingo-els-rt-4-e-0...	10.226.0.41	Authentication Failure (from 10.226.0.41)	MTTraid Probe on 0...	10/21/08 3:53:24 PM	10/20/08 10:56:05 PM	99	Nobody	
Warning	boingo-els-rt-3-e-0...	Interface: Ethernet0/0	Ethernet0/0 transmit error	MTTraid Probe on 0...	10/21/08 3:44:04 PM	10/20/08 10:45:02 PM	317	Nobody	
Warning	boingo-els-rt-4-e-0...	tcpConnEnty:10.226	TcpConnEnty Terminated (From: 10.226.0.14, User: ...)	MTTraid Probe on 0...	10/21/08 3:41:48 PM	10/21/08 3:41:48 PM	1	Nobody	
Warning	boingo-els-rt-3-e-0...	tcpConnEnty:10.226	TcpConnEnty Terminated (From: 10.226.0.15, User: ...)	MTTraid Probe on 0...	10/21/08 3:25:49 PM	10/21/08 3:25:49 PM	1	Nobody	
Warning	boingo-els-rt-3-e-0...	tcpConnEnty:10.226	TcpConnEnty Terminated (From: 10.226.0.15, User: ...)	MTTraid Probe on 0...	10/21/08 3:25:48 PM	10/21/08 3:25:48 PM	1	Nobody	



# Tivoli Webtop (venue map)



# Tivoli Webtop (venue map)

The screenshot displays the 'Server Status' interface for the Tivoli Webtop. The interface is organized into a grid of server status indicators. At the top left, the 'boingo' logo is visible. The title 'Server Status' is located at the top right. The main area contains a grid of server icons, each with a label below it. The servers are arranged in three rows and three columns. The first row contains 'Black 50', 'Black 53', and 'Blue 2'. The second row contains 'Black 51' and 'Blue 3'. The third row contains 'Black 52'. Each server icon consists of a small server rack image, a red progress bar, and a set of four status icons: a red flag, a red gear, a red heart, and a green gear. The labels 'Black 50', 'Black 51', and 'Black 52' are positioned below their respective server icons. The labels 'Black 53', 'Blue 2', and 'Blue 3' are positioned below their respective server icons. The 'boingo' logo is located at the bottom left of the interface.

# Daily NOC Open/Close Report

INFRASTRUCTURE		
AM	PM	
Neglig	Pending	
Carti	Pending	
iCore	N/A	
PaymentTech	Pending	
None	Infranet outage effected Sign Up server	

CALL CENTER		
AM	PM	
CALLS	779	
ABD	28	
E-MAIL		
Support	19	
Service	59	
Mobile	5	
REPORTED INTERNAL ISSUES		
AM: None		
PM: Web Based Remedy required a re-start, and CSR issues		

O&O SESSION DATA		
AM	PM	
CCG	10265	
CCG Lim	282	
BOINGO Lim	146	
ATL	1143	
MWAA	133	
	879	11891

NOC Incidents					
Type	Description	Priority	Owner	Age of Incident	Last Update
Data Network	CCG/STL SW and POE 6 (Concl)	Medium	twalsh	305	94
Data Network	CCG/AZC AP 1 ticketing (1.54)	Low	dboote	127	177
Data Network	CCG/MKE AP 044 (Rcon D11)	Low	spoucher	198	99
Data Network	CCG/MKE 2 APs down, overia	Medium	tearnas	245	124
Data Network	CCG/BWI AP B3 (17.139, Gate	Low	twalsh	124	1
Voice Network	CCG/JFK T9 Britcell (3.63) A	Low	twalsh	130	0
Voice Network	CCG/JFK T9C Britcell (3.66) A	Low	twalsh	130	0
Voice Network	CCG/EWR Omni voice alarm	Low	kdgrzyc	119	0
Voice Network	CCG/DTW Omni1 (5.11) Flaky	Low	dboote	100	100
Voice Network	CCG/JFK T9C Britcell (3.66) J	Low	twalsh	94	0
Data Network	CCG/BWI rogue Opti-Fi signal	Low	twalsh	78	1
Data Network	CCG/DTW Powercon replace	Low	dboote	78	78
Voice Network	CCG/DTW Britcell Smith Ter	Low	dboote	59	59
Voice Network	CCG/DTW Britcell Smith Ter	Low	dboote	59	59
Voice Network	CCG/MDW main is britcell	Low	reminger	49	42
Data Network	CCG/MSP Lind Term Conc A M	Low	dboote	44	44
Data Network	CCG/EWR Omni flaking voice	Low	kdgrzyc	44	0
Data Network	CCG/MSP Lind Term Conc F A	Low	dboote	33	7
Voice Network	CCG/LT-NJL Power Supply r	Low	twalsh	31	31
Voice Network	CCG/JFK T5 3G Ingering issue	Low	twalsh	25	0
Data Network	CCG/MEW equipment rack pa	Medium	nwayland	22	0
Private Service C	CCG/DTW ps customer Alpha	Medium	mtullio	22	22
Voice Network	CCG/BWI Britcell (17.23) all	Low	twalsh	17	0
Data Network	CCG/JFK T1 AP 1-3-1 (Iufians)	Low	twalsh	16	9
Voice Network	CCG/Lincoln Tunnel VZ comol	Medium	twalsh	10	0

Support Tickets					
Type	Description	Priority	Owner	Age of Ticket	Last Update
Operator	BOINGOMOBILE/Mobilelender	High	pfiores	352	95
Operator	BOINGOMOBILE/Nexus - Nokia	Medium	pfiores	231	24
Operator	SMARTNET/Boingo: No Partner	High	pfiores	178	11
Partner	BTINFO.NET/SPR: CPU overload	High	lgamm	129	16
Operator	BOINGO/DLTD - No Client or M	High	pfiores	92	11
Operator	CDLONP NETWORKS/Boingo: All	Medium	sswope	91	3
Operator	STAYONLINE/Boingo: Roaming	Medium	sswope	88	8
Boingo Wireless	TPN - UAM and xCCos client is	High	pfiores	50	11
Partner	FIBERLINK/Vista Connection iss	Medium	jdoley	35	24
Partner	BOINGO/Fiberlink: Investigate	Medium	sswope	28	0
Partner	FIBERLINK/Spectrum Interactive	High	lgamm	18	3
Partner	FIBERLINK/Bahn: connection	High	lgamm	14	3
Operator	LINKSPOT/Boingo: Reduction in	Medium	sswope	11	5
Partner	WAYPORT/Boingo: Westin Bond	Medium	sswope	7	1
Partner	BOINGO/Fiberlink: Cert. Issues	Medium	sswope	0	0
			CCG/AM	AVE	AVE
			PM	AVE	AVE



# Remedy Incident

Remedy User - [BW:NetworkIncident (Modify)]

File Edit View Tools Actions Window Help

Windows BW:NetworkIncident

NOC ID	Description	Priority	Assigned To	Create Date	Status
NOC0000000000041	CCG/STL SW and POE 6 (Concourse B) down 1/5/08 10:15 PM CDT	Medium	twalsh	1/7/2008 3:38:42 AM	Assigned
NOC0000000000028	CCG/MIKE ZAPs down, overlapping coverage available	Medium	stoucher	6/17/2008 11:32:26 PM	Assigned
NOC0000000000037	CCG/EVR Term C AP 6-3-1 (C1 food court) flaking	Medium	twalsh	10/8/2008 12:37:07 PM	Assigned
NOC0000000000038	CCG/JFK T4 AP 17-1-1 (Conc B, Gate Z) down	Medium	twalsh	10/15/2008 2:53:17 PM	Assigned
NOC0000000000039	CCG/DTW ps customer Alpha signal issue	Medium	twalsh	10/15/2008 7:04:48 AM	Assigned
NOC0000000000041	CCG/MEM equipment rack permanent solution needed	Medium	twalsh	10/15/2008 1:25:33 PM	Assigned
NOC0000000000030	CCG/AZD AP 1 latching (194) down	Low	twalsh	10/15/2008 3:31:25 PM	Assigned
NOC00000000000156	CCG/MIKE AP D44 (Room D115: 224) flaky	Low	twalsh	4/25/2008 11:57:11 AM	Assigned
NOC00000000000207	CCG/JFK T3C Britecell Alarms 1.5.4 Sprint/Netel/Mobile Node 5-8	Low	twalsh	6/22/2008 12:03:17 PM	Assigned
NOC00000000000208	CCG/JFK T3C Britecell Alarms 1.7.4 Node VZ 5-7	Low	twalsh	6/22/2008 12:04:59 PM	Assigned
NOC00000000000236	CCG/BWI AP B3 (Gate B9) Down (rearest AP B5)	Low	twalsh	6/26/2008 3:15:02 AM	Assigned
NOC00000000000236	CCG/JFK T9 Britecell (3.65) Alarms 3.10.2 ATT nodes 1-6	Low	twalsh	6/30/2008 2:22:55 PM	Assigned

Modify BW:NetworkIncident NOC00000000000041

### BW:Network Incident

Description: CCG/STL SW and POE 6 (Concourse B) down 1/5/08 10:15 PM CDT

Status: Assigned  *On to Resolve?* YES Priority: Medium Assigned To: twalsh Create Date: 1/7/2008 9:38:42 AM Submitter: twalsh

Owner: BW D-0 Work Log: Modified Date: 6/5/2008 9:56:47 AM Last Modified By: twalsh

8w D+0 Boingo Internal Other HSD Attach / Notify Venue: US, Saint Louis, MD - Lambert-St Louis (STL)

NOC Issue Data Network Hardware SERVICE AFFECTED: No  Yes  Venue Location: Term/Conc/Pier B Support Group: Lake Success

TASKS: Task ID: Create Date: Short Description: Status: Assigned To: Due Date/Time: Priority: Open Task Count: 0

1 Selected



**EXHIBIT G**  
**ADVERTISING EXCLUSION LIST**  
**[RESERVED]**





**EXHIBIT H  
CONFIRMATION LETTER  
ESTABLISHING ACTUAL DATE OF COMMENCEMENT  
AND CONFIRMING THE TERM**

Pursuant to the requirements of this Agreement, the City and Concessionaire agree that, as of the date below the signature of the Manager, the following dates are hereby confirmed:

Commencement Date: \_\_\_\_\_

Term:

Effective Date: \_\_\_\_\_

Commencement Date:  
\_\_\_\_\_

Expiration Date:  
\_\_\_\_\_

Concessionaire:

By:

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

Countersigned and Approved by the City:  
Kim Day, Manager of Aviation

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

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

Date: \_\_\_\_\_



## EXHIBIT N

### DIA ENVIRONMENTAL REQUIREMENTS

**Section 1. General Requirements.** Tenant, in conducting any activity on DIA property, shall comply with all applicable airport, local, state, and federal rules, regulations, statutes, laws, and orders (Environmental Requirements). In addition, these Environmental Requirements include applicable Environmental Guidelines developed for DIA's Environmental Management System (EMS), as summarized in DIA Rules and Regulations Part 180. DIA's Environmental Guidelines, Environmental Policy, and all Rules and Regulations are available at [www.flydenver.com](http://www.flydenver.com). These Environmental Requirements address, but are not limited to, requirements regarding the storage, use, and disposal of Hazardous Materials, solid and hazardous waste, or petroleum products; the National Environmental Policy Act (NEPA); and other federal, state, and local water, wastewater, and air quality regulations.

**A. EMS:** DIA's EMS has been certified to the ISO 14001 standard. DIA's EMS includes the above-noted airport-wide Environmental Policy and is designed around the significant aspects identified in DIA Rule and Regulation 180. It is a requirement of the standard that all entities providing products, goods, and/or services on behalf of DIA ensure that their personnel are aware of DIA's Environmental Policy, DIA's significant environmental aspects, and the specific environmental aspects and associated impacts for the products, goods, and/or services that will be provided by the Tenant,

**B. Permits:** Tenant shall acquire all necessary federal, state, local and airport permits/approvals and comply with all permit/approval requirements. Tenant shall prepare and update all plans and provide all information required by the City for regulatory compliance purposes and provide copies of all permit applications and permits to DIA.

**C. Hazardous Materials Limited:** Any hazardous materials not normally used in Tenant's operations are barred from DIA premises. Tenant shall identify all hazardous materials to be used at DIA along with a description of how these materials and any associated hazardous or other waste materials generated by Tenant will be managed while on airport property. This information is required prior to the Tenant conducting activities on DIA property.

**D. MSDSs:** Prior to operation, Tenant shall maintain copies of Material Safety Data Sheets (MSDSs) for all chemicals to be used in their activities, including those used for cleaning and maintenance. This obligation is continuing for the term of this Agreement, and Tenant shall make this documentation available for inspection by DIA upon request.

**E. Pollution Prevention:** Tenant is encouraged to utilize the concepts of pollution prevention, energy efficiency and waste minimization with regard to its activities at DIA.

**Section 2. Review of Environmental Documents.** Tenant, at the request of the City, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials that the Tenant has

prepared pursuant to any Environmental Requirement hereunder or submitted to any governmental or regulatory agency. If there is a requirement to file any notice or report of a release or threatened release of a substance on, under or about the work conducted on DIA property, Tenant shall provide a copy of such report or notice to the City.

**Section 3. Access for Environmental Inspection.** The City shall have an unimpeded right of access to the occupancy or work areas without prior notice to Tenant to inspect the same in order to confirm that Tenant is conducting its activities in accordance with this Agreement. At the City's request, Tenant shall conduct any testing and analysis at its cost as is necessary to ascertain whether the Tenant is in compliance with this Agreement.

**Section 4. Correction of Environmental Non-Compliance.** If the Tenant fails to comply with any applicable Environmental Requirement, the City, in addition to its rights and remedies described elsewhere in this Agreement, at its election, may enter the facility and/or work area and take such measures as may be necessary to ensure compliance with the Environmental Requirements, all at the Tenant's expense.

**Section 5. Duty to Notify City.** In the event of a release or threatened release of a substance relating to or arising out of the Tenant's use or activities on DIA, or in the event any claim, demand, cause of action, or notice is made against the Tenant with regard to the Tenant's failure or alleged failure to comply with any requirement hereunder, the Tenant, immediately shall notify the City verbally by contacting the Airport Communications Center (303-342-4200) and the appropriate regulatory agency. Tenant shall immediately control and remediate the contaminated media and, as provided below, follow-up Tenant's verbal notice with a written report within three days of such incident. In addition, the Tenant shall provide the City, at Tenant's expense, with copies of any written claims, demands, notices or actions so made.

**Section 6. Environmental Remediation.** Tenant shall undertake all actions necessary to remedy or remove any released or spilled materials and any other contamination discovered on or under DIA property introduced by or affected by Tenant and shall restore the Access Premises to either its condition immediately prior to the initiation of this Agreement or to a condition in compliance with all applicable local, state, federal, or airport laws, rules, regulations, or orders, at the City's sole discretion. This work shall be performed at Tenant's expense and the City shall have the right to review the project plan and review and inspect all such work at any time using consultants and representatives of the City's choice. Tenant shall further conduct surface and subsurface monitoring pertaining to Tenant's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits or as determined by the Manager of Aviation.

**Section 7. Environmental Requirements for Construction.** Tenant agrees to ensure that its premises are designed, constructed, operated, and maintained in a manner that minimizes environmental impacts through application of appropriate preventive measures and complies with all federal, state, and local environmental requirements. Tenant shall comply with the DIA Tenant Development Guidelines, as amended, for any alterations to existing facilities or the construction of any new facilities. In addition, the Tenant shall comply with Exhibit X of this agreement.

## **EXHIBIT X**

### **PROVISIONS FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS**

#### **GENERAL PROVISIONS**

**SECTION 1: GENERAL.** Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit X to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or any exhibit thereto. Reference to Denver International Airport (DIA), Department of Aviation or Manager of Aviation shall mean that entity specifically, or that division or individual authorized to represent that entity. Reference to Tenant shall include "Licensee" as the context requires.

**SECTION 2: IMPROVEMENTS.** "Improvements," which may also be known as "License Improvements" or "Tenant Improvements," shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Tenant, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture which conform to drawings and specifications approved in writing by the Manager of Aviation. Such drawings and specifications must provide for the necessary and proper operation of the business contemplated under this Agreement.

**SECTION 3: COMPLIANCE WITH LAWS AND REGULATIONS.** Tenant agrees to comply with and require its contractors to comply with all applicable federal, state and local laws and all general rules and regulations applicable to construction at DIA, including but not limited to payment of prevailing wages and sales and use taxes, compliance with the Americans with Disabilities Act, 42 USC 12,000 et seq. and its regulations.

In addition to the above, the Tenant and its contractors shall comply with all DIA specific rules and regulations regarding site access, use of site, safety, security, design and construction and shall obtain and pay for all related permits. Failure to comply will be grounds for denial of access and/or suspension of construction activities. Regulations in force specific to DIA include but are not limited to the following:

- The Denver Municipal Airport System Rules and Regulations

- DIA Design Standards

- DIA Tenant Development Guidelines

**SECTION 4: PAYMENT OF PREVAILING WAGE RATES.** Tenant shall require its contractor and all of its subcontractors to pay every worker, laborer or mechanic employed by them in the performance of the construction of the Improvements prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and the Tenant shall require the contractor to submit with its bid the wage schedule applicable. The contractor shall post in a prominent and easily accessible place at the site of the Improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Mayor's Office of Contract Compliance and to the Auditor, or his authorized representative, each week during which work is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the contractor that the copy is a true and correct copy of

the payroll records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 5-18(d), Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, hereinabove set forth, shall result in an order from the Manager of Aviation for the work to cease until there is satisfactory evidence that the violation has been remedied and will not reoccur. The issuance of a stop-work order shall not relieve contractor's surety of any liability on contractor's bond or bonds, but such a stop-work order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

**SECTION 5: SBE AND MBE/WBE PARTICIPATION.** This Agreement is subject to the requirements of Articles III and VII of the Denver Revised Municipal Code.

Tenant agrees that it shall provide for participation of Small Business Enterprises (SBEs) in the design and construction of Improvements, in compliance with Article VII, Division 1 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), or any successor ordinance effective at the time of any design and construction which Tenant may carry out during the life of this Agreement. The goal for percentage of design and construction work to be performed by SBE firms is set forth on the Construction Summary Page, and Tenant shall make a good faith effort to meet such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize SBEs and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

Tenant agrees that it shall provide for participation of Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") in the design and construction of Improvements, in compliance with the requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, during the life of this Agreement. Tenant agrees to comply with rules and regulations issued by the Director of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. The goal for percentage of design and construction work to be performed by MBE/WBE firms is set forth on the Construction Summary Page, and Tenant shall meet, or make a good faith effort to meet, such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize MBE/WBE firms and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

**SECTION 6: INSURANCE REQUIREMENTS.** Refer to Appendix B of Manual 1 of the DIA Tenant Development Guidelines for insurance requirements for Tenant, Tenant's Design Consultants and Tenant's Contractors for required insurance coverage for design and construction of Improvements and completed Improvements, including requirements for submittal of certificates and renewals of insurance.

**SECTION 7: EVIDENCE OF INSURANCE.** Certified copies of required insurance policies, or certificates, in the standard form required, evidencing the existence thereof, or binders, shall be delivered to the DIA Division of Planning and Development at least 15 days prior to the commencement of any design work to be performed by Tenant's consultants and any construction work for Improvements. If a binder is delivered, it shall be replaced within 30 days by a certified copy of the policy or the required certificate. Policies shall be in a form and of a company acceptable to and approved by the City, and certificates shall be on standard City and County of Denver Certificate of Insurance forms.

Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without 45 days prior written notice (10 days for nonpayment of premium) given by certified mail, return receipt requested, to the Manager of Aviation, 8500 Peña Boulevard, Denver, Colorado 80249-6340.

Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policy shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance.

Any renewal certificate shall be delivered to the Manager of Aviation at least 10 days prior to the expiration of each expiring policy. If at any time any of the insurance policies shall be or become unsatisfactory to the Manager of Aviation as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Manager of Aviation, Tenant shall promptly obtain a new and satisfactory replacement policy.

**SECTION 8: LIMITATION ON LIABILITY.** Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the Improvements or other Improvements to the Tenant's site made by the Tenant. Tenant agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas, travelers, other businesses or airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. Tenant agrees to indemnify, defend and hold harmless the City from any loss, cost, damage or expense incurred, claimed, asserted or arising in connection with Tenant's or its contractors' or agents', construction or installation of the Improvements or other Improvements to the site made by the Tenant.

### **DESIGN PROVISIONS**

**SECTION 9: DESIGN PROCEDURES.** Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding design, including but not limited to design process and schedule, submittal requirements, review and approval process, design modifications and project coordination.

Approval of the Manager of Aviation extends to and includes consideration of architectural, structural, mechanical, electrical, specialty systems, site, signage, landscaping and aesthetic matters, and DIA reserves the right to reject any design submitted and to require Tenant to resubmit designs and layout proposals until they meet with the approval of the Manager of Aviation. No substantial changes or alterations shall be made in said drawings or specifications after approval by the Manager of Aviation, and no alterations or improvements shall be made to or upon the Tenant's site without prior approval.

**Tenant CADD Submittal Requirements:** All issue for construction and project record drawings shall be provided by the tenant to DIA in AutoCAD Rel. 2007 .dwg file format in accordance with DIA CADD standards set forth in Design Standards Manual 1.

**License CADD Submittal Requirements:** AutoCAD 2007 .dwg format CADD files that match the tenant's hardcopy drawings must be submitted via: CD-ROM or DVD-ROM in MS-Windows format. All drawings must represent precision input and follow industry standard CADD practices. The drawings must reflect true design dimensioning and must NOT be graphic representations of the design. All site, civil and utility drawings MUST be produced using units in feet and the DIA Grid Coordinate System. The DIA project manager must approve submittal and may require adherence to the requirements set forth in DIA design standards. In addition to the above, Tenant is responsible for coordination with the Denver Building Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, Health and Hospitals, etc. as may

be required to comply with submittal, review and approval requirements in order to obtain all required permits. Prior to the issuance of a Notice to Proceed with Improvements from the Manager of Aviation, the Tenant shall obtain and pay for all approvals, licenses and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the most stringent law or regulations applicable to this Agreement shall control.

**SECTION 10: DESIGN STANDARDS.** First-class standards of design and construction are required, and all Improvements shall conform to applicable statutes, ordinances, building codes, and regulations as well as the DIA Design Standards and DIA Tenant Development Guidelines, as they may be amended from time to time, and any other applicable design, construction, and maintenance standards.

Approval of the Manager of Aviation shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Tenant to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Tenant shall promptly submit necessary modifications and revisions thereof. The approval given by the Manager of Aviation shall not constitute a representation or warranty as to such conformity; therefore, responsibility remains with the Tenant at all times.

### **CONSTRUCTION PROVISIONS**

**SECTION 11: CONSTRUCTION PROCEDURES.** Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding construction, including but not limited to construction schedule, submittal requirements, review and approval process, construction inspections, construction modifications and project coordination.

**Compliance with standards:** All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the Improvements are constructed and installed in full compliance with the plans and specifications.

**Standard of Performance:** All work done by the Tenant or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between State or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this agreement shall control.

**City Inspection:** All construction work, materials, and installations involved in or incidental to the construction of the improvements undertaken by the Tenant throughout the term hereof shall be subject at all times to inspection and approval by the City. DIA shall at all times have the right of access to the construction site and to monitor and inspect the construction of all Improvements to insure that all Improvements are constructed and installed in compliance with approved drawings and specifications.

DIA shall have the right to halt construction of the Improvements or deny access to the site at any time if construction is at material variance from the approved drawings and specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.



In order to assist DIA in monitoring and inspecting construction, the Tenant shall submit, or cause to be submitted for information and record, copies of all field test reports, certificates of insurance, waivers of liens, material certificates, shop drawings and submittals for review for compliance with DIA design and construction standards, contractor application for payment requests, construction progress reports, notification of substantial completion of Improvements and final acceptance, two copies of maintenance and operation manuals in connection with building systems and all updates thereof, as-built documents, and any other documents related to the construction of the Improvements which may be reasonably requested by DIA.

No change order or other contract modification which materially changes the scope of the Improvements shall be executed without prior approval of the Manager of Aviation, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve, or disapprove submissions of change orders which materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

The Building Inspection Division of the City and County of Denver shall also receive copies of all change orders. Any conditional approval or disapproval shall be accompanied by an explanation of the reasons.

Tenant is responsible for all temporary utilities required during construction. Tenant, at its sole cost and expense, shall obtain and make utility connections, hook-ups or taps as necessary or as stipulated in this Agreement, securing all necessary applications or permits and paying all associated fees. Tenant, at its sole cost and expense, shall provide meters, calibrated by the utility company, and maintain equipment as required to provide accurate measurement of usage and consumption. DIA makes no warranty as to the location of structures, wiring, fixtures or systems, and Tenant accepts them on an "as is" basis without further recourse against DIA as to their location, number or suitability for the particular purposes of the Tenant.

Tenant is responsible for maintaining a clean, orderly and safe construction site, free of accumulated construction debris and waste materials and shall be responsible for legal removal of same. Construction shall be accomplished without interfering with travelers, airport operations or other businesses, providing barricades and/or construction enclosures as required.

**SECTION 12: CONSTRUCTION BONDS AND PERMITS.** Prior to Notice to Proceed with construction Improvements, Tenant and its contractor shall deliver to the Manager of Aviation performance and payment bonds and copies of all required permits, licenses and all other documents as required by Manual 1 of the DIA Tenant Development Guidelines.

**SECTION 13: MODIFICATIONS AND ALTERATIONS.** Modifications and alterations to existing tenant improvements are subject to the same requirements and provisions as new tenant improvements as itemized in this Exhibit X and the Lease Agreement.

**Advance Notice of Modification:** The Tenant shall give or cause to be given to the City advance notice before performing any material modification to the improvements.

**Expense of Alterations.** Any work necessary to make any alterations, improvements, or additions to the facility throughout the term of this Agreement shall be done at the Tenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.

**SECTION 14: AS-BUILT DOCUMENTS.** Not later than 60 days after completion of all work for the Improvements, Tenant shall provide DIA two complete sets of as-built documents prepared in accordance with DIA requirements. If Tenant fails to provide as-built documents after written notice from DIA, DIA may elect to have the documents completed and charge the Tenant for the

costs associated therewith. Tenant agrees that, upon the request of DIA, Tenant will inspect the Improvements jointly with DIA to verify as-built documents.