

PUBLIC COMMUNICATIONS STRUCTURE FRANCHISE AGREEMENT  
Attachment SRV (Services)  
CityBridge, LLC

**PUBLIC COMMUNICATIONS STRUCTURE FRANCHISE AGREEMENT  
ATTACHMENT SRV (SERVICES)**

## **PART I. DESIGN AND IMPLEMENTATION**

### **1.1 Design**

1.1.1 The Franchisee shall design all Structures in accordance with the provisions of this Attachment SRV and the Agreement. The design of all Structures installed under this Agreement must comply with all laws and will be subject to approval of the Art Commission and, to the extent required by law, Landmarks. The Franchisee shall make good faith efforts to obtain approval of the Art Commission and to the extent required by law, Landmarks. The Franchisee shall submit an application signed by DoITT (which shall be in a form reasonably acceptable to DoITT) to the Art Commission (“Preliminary Plans and Specifications”) and, to the extent required by law, Landmarks, for review and approval of the designs (Exhibit 5 Structure Designs). In the event that changes to the designs are required by the Art Commission or Landmarks for their approvals, the Franchisee shall make the changes. Following such approval, the designs as approved will be the designs used to manufacture the Structures.

1.1.2 The designs must fit within one or more of the following design envelopes:

- (i) Advertising Structure: 114” in height and 11” by 35” in dimension
- (ii) Non-Advertising Structure: 122.9” in height and 11” by 16” in dimension

1.1.3 The Franchisee shall provide appropriate staff to represent itself and assist DoITT during any informal or formal public review processes or public presentations.

### **1.2 Installation**

1.2.1 (i) The Franchisee shall construct and install no less than 6,000 Advertising Structures and no less than 1,500 Non-Advertising Structures, over an eight (8) year period, in accordance with the distribution table below. The schedule set forth in Section 1.2.3, sets forth the minimum cumulative number of Structures required to be operational per year, per borough beginning on the Effective Date (which schedule reflects, among other things, completion of not less than 4,000 Advertising Structures and 150 Non-Advertising Structures within four years of the Effective Date).

<b>Borough</b>	<b>Total Number of Structures</b>
Brooklyn	1,346
Bronx	736
Manhattan	3,900
Queens	1,239
Staten Island	279

(ii) The Franchisee may install new Structures (and replace any Existing PPT) at locations where an Existing PPT is in place (or were in place as of April 30, 2014 pursuant to PPT franchises that have expired), provided that such locations are (i) in compliance with the siting criteria referred to in Section 1.2.2 and (ii) if such location would not be within 50 linear feet of another Structure. Notwithstanding the foregoing, DoITT will have the right to deny approval of any such location if DoITT approves an alternative location that in DoITT's reasonable judgment, consistent with the provisions set forth in Section 4.2.1 of the Agreement, is of at least equal economic value to the Franchisee.

(iii) In regard to locations for new Structure installations required to meet the obligation set forth in (i) that are in addition to those described in (ii) above DoITT will, after consultation with the Franchisee, select the locations in DoITT's reasonable discretion, consistent with the provisions set forth in Section 4.2.1 of the Agreement, subject to the requirements of applicable laws. In exercising its discretion, DoITT will review and take into account, among other factors, Franchisee's reasonable concerns regarding the overall revenue generating potential of the locations being selected and the overall cost of installation and service provision from the locations being selected.

(iv) The Franchisee's obligation to satisfy the Build-out requirements set forth in this Section 1.2 is not contingent upon the responsiveness of the providers of electricity or conduit access, or any other necessary service.

1.2.2 The Franchisee acknowledges and accepts that, pursuant to Section 4.1.2 of the Agreement, it is responsible for all costs and expenses, including the costs of utility connections, infrastructure, and utilities consumed during the build-out. Prior to the installation of any Structure, the Franchisee shall provide to DoITT for its approval photographs of the site and a Site Plan substantially conforming to the siting criteria in the Exhibit 4. All Site Plans must be prepared to scale and must include all elements and dimensions relevant to the siting criteria. The Site Plan shall be in a form approved by DoITT.

1.2.3 The following is the schedule described in Section 1.2.1 (a) above. The schedule is intended to be cumulative, so that for example the number listed for Queens in (iii) below is the cumulative number that is to be installed over the full three years from the Effective Date through the third anniversary of the Effective Date:

- (i) Structures to be installed and operational by the first anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	62	0
Bronx	29	0
Manhattan	322	0
Queens	77	0
Staten Island	10	10

- (ii) Structures to be installed and operational by the second anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	189	0
Bronx	89	0
Manhattan	969	0
Queens	233	0
Staten Island	20	30

- (iii) Structures to be installed and operational by the third anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	349	0
Bronx	164	0
Manhattan	1,782	0
Queens	430	0
Staten Island	25	80

- (iv) Structures to be installed and operational by the fourth anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	510	73
Bronx	239	251
Manhattan	2,635	0
Queens	627	32
Staten Island	29	154

- (v) Structures to be installed and operational by the fifth anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	574	204
Bronx	270	282
Manhattan	2,920	0
Queens	707	121
Staten Island	29	179

- (vi) Structures to be installed and operational by the sixth anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	639	328
Bronx	299	313
Manhattan	3,247	0
Queens	786	179
Staten Island	29	202

- (vii) Structures to be installed and operational by the seventh anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	703	452
Bronx	331	344
Manhattan	3,573	0
Queens	864	237
Staten Island	29	225

- (viii) Structures to be installed and operational by the eighth anniversary of the Effective Date and shall be distributed as follows:

<b>Borough</b>	<b>Number of Advertising Structures</b>	<b>Number of Non-Advertising Structures</b>
Brooklyn	767	579
Bronx	361	375
Manhattan	3,900	0
Queens	943	296
Staten Island	29	250

1.2.4 With DoITT's consent and in consultation with the affected Borough Presidents of the City, Franchisee may adjust the schedule of installation of the Non-Advertising Structures.

1.2.5 The Franchisee may construct and install more than the minimum number of installations during the time periods referred to subject to Section 1.2.1.

1.2.6 With DoITT's consent, the Franchisee may, but is not required, to install up to an additional 2,500 Structures, above and beyond the minimum numbers required in the preceding schedules, provided that the locations of additional Structures are mutually agreed upon by DoITT and the Franchisee, subject to applicable laws regarding siting and review of locations. The allocation of additional discretionary Structures between Advertising Structures and Non-advertising Structures is subject to the mutual agreement of the parties.

1.2.7 The Franchisee shall remove or replace Existing PPTs at the locations identified under a schedule to be proposed by the Franchisee and approved by DoITT (the "Existing PPT Replacement Schedule"). The Existing PPT Replacement Schedule will follow the overall construction and installation schedule contemplated by this Agreement. The Existing PPT Replacement Schedule will include at a minimum, for each month of the build-out years, the location of each Existing PPT scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected date for installation. If DoITT notifies Franchisee that a site plan and photographs are required for a location other than as specified in the Existing PPT Replacement Schedule, the Franchisee shall have 120 days to produce the site plan and photographs and submit them to DoITT, and to install the new Structure; provided however that the clock will stop during the time DoITT is reviewing the site plan. DoITT shall notify Franchisee when the site plan is approved, or whether changes are required. The Franchisee may request an extension of such time which may be granted by DoITT in writing in its reasonable discretion. If changes to the site plan are required by DoITT an extension will be granted for a reasonable period of time commensurate with the required changes.

1.2.8 However, no PPT will be removed unless DoITT has either approved a Site Plan for a new Structure to replace it or determined it will be removed but not replaced. A new Structure will be installed in accordance with this Section 1.2 within ten (10) Business Days of the removal of each Existing PPT, except where DoITT has determined that the Existing PPT will not be replaced and except where the replacement is at a new location. Replacements at new locations shall be made prior to the removal of the Existing PPT. Franchisee shall remove all Existing PPTs as required by the fourth anniversary of the Effective Date. Should DoITT require the removal of any additional PPTs other than as specified in the Existing PPT Schedule, the Franchisee shall have ten (10) Business Days from receipt of notice from DoITT to complete the removal. Any site

where an Existing PPT is removed but not replaced must be promptly restored and the affected sidewalk flags completely replaced utilizing material to match the adjacent flags. Franchisee will not be required to remove more than ten (10) Structures in any given calendar month. Notwithstanding anything to the contrary hereto, the following Existing PPTs, and any Existing PPT that DoITT determines offers public benefits that likely would not be sufficiently replaced, shall not be removed and Franchisee agrees to maintain such Existing PPT during the Term of the Franchise:

- (i) The PPT located on the Northwest corner of 100<sup>th</sup> Street and West End Avenue in Manhattan
- (ii) The PPT located on the Northwest corner of 101<sup>st</sup> Street and West End
- (iii) The PPT located on the Northwest corner of 66<sup>th</sup> Street and West End

1.2.9 Upon installation of any of the Structures the Franchisee shall send DoITT a photograph of the new installation showing the placement in context of such Structure with a request for DoITT's acceptance of the specified Structure, which acceptance shall be conditioned on a satisfactory inspection by DoITT. Such request shall set forth the date the Structure was installed and such date shall be the "Installation Date" if the installation is accepted by DoITT in accordance with Section 1.3 (below). In the event a Structure is installed, but not yet accepted by DoITT in accordance with Section 1.3 (below), (i) the Structure shall count towards the minimum number of Structures detailed in Section 1.2.3, and (ii) Franchisee may immediately display Advertising on such Structure and (iii) Franchisee may turn on Wi-Fi connectivity.

### **1.3 Inspection**

1.3.1 The Franchisee shall follow the procedures in this Section for all installations.

1.3.2 DoITT shall inspect newly installed Structures after the date of receipt by DoITT of a request to inspect from the Franchisee, which must be accompanied by a photo. DoITT shall inspect and either approve or reject the Structure based upon whether it is installed in conformance to the Site Plan. DoITT's approval does not constitute an approval or certification of the structural integrity of any Structure or of any utility connections.

1.3.3 DoITT shall notify the Franchisee of its approval or rejection of the Structure. If DoITT rejects the Structure, DoITT shall identify the problems that need correction. The Franchisee shall correct all problems within seven (7) business days from the date of receipt of notice from DoITT, unless local law requires otherwise. Failure to identify a problem on an initial inspection does not constitute a waiver of DoITT's right to identify a problem in a subsequent inspection.

1.3.4 Regarding liquidated damages, if DoITT sends a rejection notice, the time between the date the Franchisee sent its request for approval and the date DoITT sent the rejection notice does not count towards the assessment of liquidated damages.

#### **1.4 Liquidated Damages**

1.4.1 Except as otherwise set forth in this Agreement, the City will assess liquidated damages against the Franchisee if the Franchisee fails to satisfy the Service Level Requirements set forth in Exhibit 3 Service Level Agreement and Liquidated Damages. Liquidated damages assessed pursuant to this section do not constitute a penalty and are the exclusive remedy available to the City for the delay in performance for the time period during which liquidated damages may be assessed. The City retains the right to any other remedies available to the City under the Agreement, including damages for failed performance by the Franchisee for the time period after which liquidated damages may be assessed, or in the event of termination. In the event that one specific incident of noncompliance provides a basis for the assessment of multiple Liquidated Damages items (i.e., more than one item among the 16 items listed in Exhibit 3), only one item of Liquidated Damages may be assessed with respect to that incident of noncompliance. For the avoidance of doubt, item 14 and item 16 of the Liquidated Damages listed in Exhibit 3 are considered separate incidents of noncompliance.

1.4.2 The total sum of liquidated damages that the Franchisee may be assessed within each Contract Year shall not exceed \$500,000 for Contract Year 1, \$600,000 for Contract Year 2, and \$1,000,000 for Contract Year 3 and \$1,000,000 each Contract Year thereafter.

### **PART II. REMOVAL, REPLACEMENT, RELOCATION, REINSTALLATION**

#### **2.1 PCS Removal**

The Franchisee may remove a Structure operated by the Franchisee in accordance with the following:

2.1.1 If the Structure will be replaced at the same location by a repaired, redesigned or upgraded Structure, then:

- (i) the Franchisee will install such replacement within five (5) business days of notice to DoITT of removal;
- (ii) the Franchisee has received all approvals from DoITT, and any other applicable City approvals, regarding such removal and replacement;

- (iii) the Franchisee has notified DoITT as to the time during which Services will be unavailable (i.e., the period between removal and replacement) and DoITT has approved such temporary unavailability of service.

2.1.2 If the Structure will be not be replaced as described in Section 2.1.1, then:

- (i) the Franchisee has provided written notice to DoITT at least ten (10) business days before removal;
- (ii) the Franchisee has received all required approvals from DoITT and all other applicable requisite agencies;
- (iii) a replacement installation at another location has been installed and accepted by DoITT or DoITT has determined that the PCS shall not be replaced.
- (iv) the Franchisee shall restore the Inalienable Property of the City and other affected property and fully replace any damaged sidewalk flag as specified in 1.2.8 above.

## **2.2. Public Utilities, Other**

The Franchisee shall remove, replace, relocate, or reinstall at the request of the City, all Structures which interfere with the construction, maintenance or repairs of public utilities, public works or public improvements. Nothing in this Agreement abrogates the right of the City to change the grades or lines of any Inalienable Property, or perform any public works or public improvements, or any street widening project, or any other capital project of any description. If the Franchisee refuses or fails to remove, replace, relocate, or reinstall any Structures as directed by the City, the City may remove, replace, relocate, or reinstall the Structures, and the Franchisee shall reimburse the City for all costs and damages incurred by the City.

## **2.3. Public Use, Other**

The City may inspect the Structures and order the removal, replacement, relocation, or reinstallation of any Structure upon a determination by DoITT in its reasonable discretion, that any of the Structures unreasonably interferes or will unreasonably interfere with the use of a street by the public, constitutes a public nuisance, creates a security concern, or that removal, replacement, relocation, or reinstallation is necessary to address changing conditions. Relocations may also be directed by the City which are not related to changing conditions or security concerns but these relocations will be limited to no more than 50 per year and replacement locations will be confined to the same community district as the installation that is being

removed. If the Franchisee fails to so remove, replace, relocate, or reinstall the Structures as directed by the City, the City may remove, replace, relocate or reinstall such Structures, and the Franchisee shall reimburse the City, or the City shall be able to withdraw from the Security Fund, for all costs and damages incurred by the City.

#### **2.4. Emergency**

If the Commissioner determines that an imminent threat to life or property exists, the Commissioner may, with notice as is practicable under the circumstances, take any action the Commissioner determines necessary to alleviate the emergency, including removing, replacing, relocating, or reinstalling any portion of the System. The Commissioner may require the Franchisee to reinstall the Structure if the Commissioner determines that the System or any portion of the System can be safely reinstalled.

#### **2.5. Substitute Location**

In the event that, pursuant to Sections 2.2, 2.3, and 2.4, the City requests removal of a Structure, the Franchisee shall be permitted to install a Structure at a mutually acceptable location of equal or greater advertising value.

### **PART III. TELEPHONE OPERATION**

#### **3.1 Telephone Service Generally**

All Structures must provide pay or free voice telecommunications services in accordance with the PPT Rules and Service Level Requirements, including no-cost access on a continuous, round-the-clock basis to 911 emergency services, 311 non-emergency services, and operator service consistent with the rules and regulations promulgated by the NYSPSC. All Structures built after the Commencement Date must provide free local and long-distance calls within the fifty (50) U.S. States.

#### **3.2 Data Only Public Communications Structures**

DoITT, in its sole discretion, after notice to, and consultation with, the applicable Community Board, may waive the requirement set forth in Section 3.1 and Section 3.3. The waiver is revocable and applies only to the locations without voice telecommunications services. All Structures that do not include voice telecommunications services must still provide free Wi-Fi Services.

### **3.3 Telephone Service Features**

All Structures built after the Commencement Date must provide the following: telephone service via touch screen, integrated lighting, directional speakers, a tactile key pad and braille lettering, a dedicated 911 button, and a USB charging port.

## **PART IV. FREE WI-FI SERVICES**

### **4.1 Defined Terms**

Whenever used in this Attachment and the Agreement, the following terms have the meanings provided below:

4.1.1 “Fiber” means fiber optic telecommunication cable or other closed-path transmission media usable for the same purposes.

4.1.2 “Splash Page(s)” means the initial Internet page(s) which the Franchisee offers to Users as the starting point for subsequent access to Internet sites of each User’s choosing.

4.1.3 “Users” means people making use of the Wi-Fi Services.

4.1.4 “Wi-Fi Equipment” means the hardware, parts, systems, and components necessary to provide the Wi-Fi Services.

4.1.5 “Wi-Fi Service(s)” means the provision of continuous, uninterrupted, unrestricted, free Wi-Fi (wireless fidelity) service, or similar wireless service of comparable use approved by the City, to Users of the internet on Wi-Fi enabled devices.

### **4.2 General Description of Services**

4.2.1 All PCS’s, other than Existing PPTs, must provide free Wi-Fi Services in accordance with the requirements of this Agreement, including Part IV, and must be capable of supporting up to 256 devices with a total aggregate throughput of 1Gbps. Franchisee shall provide the Wi-Fi Services twenty-four hours per day, seven days per week, 365 days per year throughout the term of this Agreement, with an uptime of at least ninety-seven percent (97%) exclusive of upgrades and planned maintenance providing at each PCS a Wireless Access Point (WAP) supporting simultaneous dual spectrum 2.4 GHz 802.11 b/g/n, and 5GHz a/n/ac services.

4.2.2 The Wi-Fi Services must provide a signal strong enough to create a Wi-Fi hotspot that extends a one hundred and fifty (150) feet in line-of-site, regardless of traffic conditions, measured radially from the center of the Structure. A User must be able to log in once and stay connected while within one hundred and fifty (150) feet in

line of site of any PCS. The Wi-Fi Services will be able to allow the Users' devices to automatically re-connect after a connection has been severed and the User comes within the range of another Structure.

4.2.3 The Franchisee shall ensure that the Wi-Fi Equipment is in Good Working Order.

4.2.4 Within sixty (60) days of the first anniversary of the Effective Date, Franchisee shall submit plans to DoITT, describing how it intends to implement a Wi-Fi connection between the Wi-Fi Services provided by the Structures and the Wi-Fi network provided throughout the New York City Subway system ("Subway Wi-Fi").

4.2.5 Franchisee may not charge a fee or offer a premium level of Wi-Fi Services at any time during the Term.

4.2.6 As stated in Section 4.2.1, each WAP must, at a minimum, be capable of supporting up to 256 devices with a total aggregate throughput of 1Gbps. Notwithstanding the requirements of Section 4.2.1, at locations where the City has determined that free Wi-Fi Services are in the best interests of the City, but where it is not commercially reasonable for the Franchisee to provide a WAP capable of 1 Gbps throughput at the time of installation due to telecommunications infrastructure limitations or other considerations, the Franchisee must provide a WAP capable of supporting up to 256 devices with a total aggregate throughput of no less than 100 Mbps. Notwithstanding the foregoing, the table below sets forth the cumulative number of Structures, per borough, per year of the build-out schedule set forth in Section 1.2.3, for which the parties have agreed that the City will identify locations where Franchisee may provide a WAP with aggregate throughput less than 1 Gbps, but no less than 100 Mbps, with respect to the first four (4) years of the Term. For the avoidance of doubt, the values set forth in the table represent a subset of the 7,500 Structures that the Franchisee must construct and install under Section 1.2.1(i).

<b>Contract Year</b>	<b>Brooklyn</b>	<b>Queens</b>	<b>Manhattan</b>	<b>Bronx</b>	<b>Staten Island</b>
Year 1	0	0	0	0	10
Year 2	0	0	0	0	30
Year 3	0	0	0	0	80
Year 4	0	0	400	0	150

4.2.7 As part of the Franchisee's technology refresh obligations pursuant to Section 9.2, the Franchisee shall include in the plan that it submits to DoITT an analysis as to whether it is practicable to upgrade each Structure with a WAP providing less than 1 Gbps throughput, and shall, to the extent practicable and commercially reasonable, upgrade such WAPS to provide higher throughput.

### **4.3 Maintain, Repair and Replace.**

4.3.1 Franchisee shall perform preventive maintenance on all Wi-Fi Equipment, routine and diagnostic, in accordance with the operational practices set forth in the manufacturer's current manuals associated with the Wi-Fi Equipment, as the same may be updated from time to time, and shall repair and replace any part of the System as necessary to meet the Service Level Requirements.

4.3.2 The Franchisee shall furnish all of the materials and services necessary to correct any defects in the operation of all Wi-Fi Equipment in accordance with the Service Level Requirements.

4.3.3 Within 24 hours of receiving notice that Wi-Fi service at a specific PCS is not performing as required at a PCS location, either by inspection or by notice from DoITT or as result of data available to Franchisee, Franchisee shall provide DoITT with a report detailing utilization at the site, including average number of connected devices and bandwidth utilization. If the report indicates that the PCS is not performing as required, and required performance cannot be restored remotely, Franchisee shall physically inspect the PCS within 24 hours, and either take corrective action or inform DoITT that corrective action is not practicable due to site conditions or other factors. If corrective action is impracticable and if the condition persists for more than 5 days, then, at DoITT's discretion, the Franchisee will relocate the PCS. If the PCS is an advertising Structure, the new location will be of equivalent advertising value.

### **4.4 Splash Page; Privacy**

4.4.1 The Franchisee shall not include any content on the "Splash Page(s)," the presentation of which would be illegal under federal, state or local law, such as, for example, presenting material that violates New York State Penal Code 235.05.

4.4.2 The Franchisee shall include on the Splash Page(s) terms of service substantially reflecting the provisions of Exhibit 1, including a statement in a form satisfactory to DoITT which in substance informs Users that the City of New York is not responsible for any material that may subsequently be presented or received by means of the Wi-Fi Service. The Splash Page(s) may acknowledge that the Wi-Fi Service is provided courtesy of the Franchisee. If the Franchisee believes that for network management reasons a period use confirmation screen, subsequent to the initial starting, is appropriate in connection with provision of the Wi-Fi Services, such subsequent use confirmation screen shall also be a Splash Page, subject to the approval of the Commissioner.

4.4.3 Franchisee may include Advertising on the Splash Page, revenue from which will be included in the calculation of Gross Revenues and the Compensation.

4.4.4 Privacy.

(i) Franchisee shall not disclose Personally Identifiable Information concerning any User and shall maintain at all times the best prevailing practices among public Wi-Fi networks (including the cryptographic scrambling of any Personally Identifiable Information and Technical Information that is collected) to safeguard such information against unauthorized access, loss, or unauthorized disclosure to any person other than the User or — to the extent necessary to operate the System — the Franchisee. Notwithstanding the foregoing, Franchisee may disclose Personally Identifiable Information to the extent required by law enforcement as part of a criminal investigation or an investigation related to national security, provided that Franchisee has a good faith belief that such disclosure is reasonably necessary to satisfy law, legal process or enforceable governmental request.

(ii) Additionally, Franchisee may disclose Personally Identifiable Information concerning any User in response to a civil legal demand, unless prohibited by law, and only if Franchisee provides reasonable prior notice to the extent possible to the User and the City before disclosing the information.

(iii) The Franchisee will not collect any such Personally Identifiable Information concerning any User except to the extent necessary for technical management of the Wi-Fi Service.

a) “Personally Identifiable Information” means any information which personally identifies the person to whom such information pertains. Personally Identifiable Information includes: name, address, phone number, fax number, email address, financial profiles, biometric information, medical profiles, social security number, and credit card information. Personally Identifiable Information does not include information that is collected or stored in a manner that no longer reflects or references an individually identifiable user.

b) “Technical Information” means Information (which by itself is not Personally Identifiable Information) such as a unique identifier, location information, IP address or MAC address. Technical Information that is associated with Personally Identifiable Information will also be considered Personally Identifiable Information.

c) “Location Information” means information that enables Franchisee or a third party to identify the physical location of a device

connected to the Wi-Fi Network. Location Information not connected to an identified individual in its then currently stored form, or other information not connected to an identified individual in its then currently stored form is not considered Personally Identifiable Information.

(iv) Franchisee will include, in a conspicuous location on the Splash Page, a link to Franchisee's Wi-Fi privacy policy ("Franchisee Privacy Policy") to be written in the form and font attached as Exhibit 2. The Franchisee Privacy Policy must clearly explain to Users (a) the type of information that may be collected about the Users, (b) how that information may be used, (c) what choices are available to Users regarding the use of that information, and (d) the security procedures in place to protect the misuse of Users' information. Franchisee shall only use or disclose Personally Identifiable Information, Technical Information or other information as set forth in the Franchisee Privacy Policy.

(v) Throughout the Term of the Agreement, Franchisee may propose revisions to the Franchisee Privacy Policy. Such proposed revisions are subject to the review and approval by DoITT.

(vi) The Franchisee in providing the Wi-Fi Services shall further comply with such additional requirements as may be directed by the Commissioner from time to time, after consultation with the Franchisee, that are reasonably calculated to protect the privacy of Users in connection with their use of the Wi-Fi Services.

#### **4.5 Technical Requirements**

4.5.1 Grounding. All Structures must meet FCC requirements governing appropriate grounding and connection of Equipment to ensure reception of Wi-Fi Service.

4.5.2 No Interference. The Franchisee shall provide the Wi-Fi Services, and operate the Equipment used to provide such service, in full compliance with FCC requirements, including those regarding spectrum usage and interference. In the location and operation of the Equipment, the Franchisee shall ensure that the Wi-Fi Services do not interfere with the technical operation of any telecommunications system or service operator used by or for the City to support the City's public safety activities, transportation activities or other activities deemed necessary by the City for the health, safety or welfare of the public ("Interference Protected Systems"). Franchisee shall immediately adjust or cease use of any portion of the Wi-Fi Equipment that is interfering with any Interference Protected System. Interference is deemed to include any form of interference, including spectrum interference.

In the event Franchisee or the City becomes aware of any suspected interference from the Wi-Fi Services to the Interference Protected Systems, the discovering party shall provide notice of such interference to the other party and Franchisee will immediately cease operation of the portion of the Wi-Fi Services causing such interference until the interference is remedied. The City will provide reasonable cooperation to Franchisee in connection with Franchisee's remediation of the interference. Franchisee shall be responsible for the full cost and expense associated with testing, avoidance and remediation of the interference and the City shall have no obligation to incur costs or expenses in connection with its or Franchisee's compliance with this Section 4.5.2. The City agrees that franchisees hereafter authorized by the City to use the Inalienable Property to provide wireless communications services will be required to comply with all applicable FCC requirements regarding spectrum usage interference after the date of this Agreement.

The Franchisee shall comply with FCC regulations regarding avoidance of interference with transmitting and receiving equipment existing at particular locations and shall provide good faith assistance in resolving interference with subsequently installed transmitting and receiving equipment by the City and/or City authorized third parties.

#### 4.5.3 FCC Radio Frequency Limits

Franchisee shall, with respect to Wi-Fi Equipment installed on the Structures (i) comply on an on-going basis with FCC maximum permitted levels of radio frequency energy exposure (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), (ii) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of the Equipment (taking into account the actual conditions of human proximity to Equipment on the Structures), and (iii) perform testing on the Equipment for compliance with this Section. Testing may be directed by the City from time to time, and is to be conducted by independent experts selected by the City after consultation with the Franchisee and shall be conducted in accordance with the FCC's OET (Office of Engineering and Technology) Bulletin 65 (or a successor thereto) unless the City determines that alternative testing procedures that reflect sound engineering practice are appropriate.

#### 4.5.4 System Characteristics:

The System must meet or exceed the following requirements:

- (i) All of the Service Level Requirements set forth in Exhibit 3.

- (ii) The System must conform to all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, and shall conform to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures;
- (iii) Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
- (iv) National Electrical Code;
- (v) National Electrical Safety Code (NESC); and
- (vi) IEEE Standards.

#### 4.5.5 Tests and Inspections:

- (i) The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Agreement, and to ensure that the System components are operating as required.
- (ii) The City may designate a City employee (or a third party consultant operating on the City's behalf) to visually inspect the System.
- (iii) The Franchisee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City upon the City's request. The City shall have the same rights the FCC has to inspect the Franchisee's performance test data.
- (iv) If any test indicates that any part or component of the System fails to meet applicable requirements, the Franchisee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved, and supply the City with a copy of the results within thirty days from the date corrective action was completed.

#### **4.6 [RESERVED]**

#### **4.7 Net Neutrality**

The Franchisee in providing the Wi-Fi Service shall not block lawful content, applications, services or non-harmful devices, subject to reasonable network

management. The Franchisee shall not in providing the Wi-Fi Service unreasonably discriminate in transmitting lawful network traffic.

#### **4.8 LIMITS ON INTERNET ADVERTISING**

Except as provided for in Section 4.4, Franchisee shall not, in providing the Wi-Fi Service, add or insert Advertising to User screens or devices.

#### **4.9 WI-FI Services Encryption**

Initial encryption services will include HotSpot 2.0, for devices capable of Wi-Fi encryption (“Wi-Fi Encryption”), for those devices not currently supporting HotSpot 2.0, an open network option will be provided. From time to time, in accordance with the Franchisee’s obligations under Section 9.1, Franchisee will evaluate and implement changes to the Wi-Fi Encryption to improve the User experience or security or to support new technology.

#### **4.10 Endpoint Security**

CityBridge will not scan or monitor web content for viruses or harmful applications. Users are expect to install and maintain antivirus and adhere to security best practices. To eliminate peer-to-peer security threats, wireless device peer-to-peer communication will be blocked at the network level.

### **PART V. MAINTENANCE, REPAIR, MONITORING, AND INSPECTION**

#### **5.1 911 Access and Operability**

The Franchisee shall perform weekly physical inspections and daily electronic testing on all Structures to confirm Good Working Order of the 911 access at each PCS.

#### **5.2 Maintenance, Repair and Inspection**

5.2.1 “Good Working Order” means, with respect to each individual PCS and the System in its entirety, (i) the uninterrupted operation of the Wi-Fi Services, and all of its components; (ii) keeping all Structures, including all Equipment and the adjacent Inalienable Property, undamaged, clean, free of debris, rubbish, and graffiti, and safe, in conformance to the performance requirements and other requirements of the Agreement. For the purposes of this Agreement, adjacent Inalienable Property means a two-foot radius measured from the Structure’s outer edge.

5.2.2 Starting on the Effective Date and continuing throughout the Term and any Holdover Period, the Franchisee shall maintain the System in Good Working Order.

5.2.3 As part of its obligation to maintain to the System in Good Working Order, the Franchisee shall perform the tasks listed below.

- (i) Perform preventative maintenance.
- (ii) Inspect each PCS on at least two (2) non-consecutive days each week, and promptly clear and remove debris, rubbish, or graffiti.
- (iii) Perform electrical inspection, including service and post connections and test for stray voltage at least four times each year (the Franchisee shall record in MMS the date(s) and results of the inspections and testing). Such inspection shall be in a manner that is acceptable to DoITT.
- (v) The Franchisee shall promptly and diligently, and in all cases within the minimum standards and timeframes included in this Section 5.2.3, maintain, replace or repair any parts or components of the Structures that are broken, deteriorated or damaged, regardless of the nature, cause, or frequency of the conditions using materials and methods for maintenance, repair and replacement that comply with applicable law and the manufacturers suggestions, whichever standard is more stringent.
- (vi) Maintain the sidewalk immediately adjacent to the structure to the extent that the Structure creates additional requirements or burdens in maintenance requirements that would not exist but for the structure. For the purposes of this Agreement, immediately adjacent to the Structure means a two-foot radius measured from the outer edge of the Structure.
- (vii) Provide and maintain adequate illumination for all Structures, between dusk and daylight, or whenever artificial lighting is required for the protection, safety and welfare of the public (provided that where there is no existing electrical connection to a Structure location and where adding an electrical connection would be impractical, then the phrase "adequate illumination" shall mean courtesy lighting powered by solar panel).
- (viii) Remove broken glass, such that the structure is made safe, within 4 hours after the Franchisee learns of the problem, (the glass shall be replaced when practicable within 4 hours of the Franchisee learning of the problem, but in no event later than 24 hours after learning of the problem).
- (ix) Complete repairs, replacement of parts, or removal of the Structure or its components as necessary to ensure public safety of the Structure, within

24 hours (subject to the time frames for the replacement of glass in Section 5.2.1(vii) of the time the Franchisee learns of the problem, including without limitation by oral or written notice from DoITT that repair, replacement or removal is necessary to ensure public safety, or Franchisee's own regular inspections. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 24 hours of receipt of permit, provided that the Franchisee submits a complete application for such permit without delay. The Franchisee shall make the structure safe while permits are pending.

- (x) Complete any other repairs, replacement of parts or removals not covered by the preceding clause (i), within five (5) business days of the time the Franchisee learns of the problem, unless a permit is required. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within five (5) business days of receipt of permit, provided that the Franchisee submits a complete application for such permit without delay.
- (xi) If the Franchisee removes a Structure as part of its obligations in this Section 5.2, and such Structure is replaced at the same location, such replacement will take place within the time frames set forth in this Section 5.2.1. If a permit is required, the time shall be measured from receipt of permit, provided that the Franchisee submits a complete application for such permit without delay.
- (xii) If the Franchisee fails to make replacement, complete repairs, or effectuate removals, as required, then DoITT may, in addition to any other rights and remedies set forth in this Agreement, and with no further notice, make replacement and repairs, or effectuate removals, at the sole cost and expense of the Franchisee.

5.2.4 Franchisee acknowledges that it is solely responsible for all costs, either directly or indirectly, incurred by Franchisee in performing maintenance, repair and replacement of all Structures, and that it is not entitled to payment from the City, or a credit against moneys due the City.

### **5.3 Sidewalk and Pavement**

No Structure, including appurtenant utility connections, shall be designed, installed, operated, repaired, maintained, upgraded, replaced or removed so it would result in the unrepaired destruction or damage of any part of a sidewalk pavement. Prior to any such installation, the Franchisee shall make a good faith effort to procure sufficient quantities of those materials of which the sidewalk or pavement is comprised

to repair, replace, or restore it to its condition existing immediately before the installation of the Structure and in compliance with the New York City Administrative Code. If the City is the sole source of those materials of which the sidewalk pavement is comprised, then it shall provide the Franchisee, at the Franchisee's expense, any such materials stored by the City. If the installation, operation, maintenance or removal of any Structure results in damage to a sidewalk pavement, such sidewalk pavement shall be restored to its condition existing immediately before the installation of the Structure in accordance with the timeframes in Section 5.2.1 and in compliance with the New York City Administrative Code and the requirements of the Landmarks at the sole cost and expense of the Franchisee, using in-kind materials. The Franchisee may request an extension of time to the timeframes referred to in the preceding sentence which DoITT in its sole discretion may grant.

## **PART VI. MAINTENANCE AND MONITORING SYSTEM**

### **6.1 Maintenance and Monitoring System**

6.1.1 Within sixty (60) days of the Commencement Date and throughout the Term, the Franchisee shall at its sole cost and expense, and as more fully set forth in the RFP and Proposal, install and maintain a Maintenance and Monitoring System for the Structures. If during the Term DoITT determines in its reasonable discretion that MMS is no longer sufficiently state-of-the-art or the technology is otherwise failing for its purposes in connection with the Franchise, then DoITT may direct the Franchisee to make such necessary modifications to MMS as it deems reasonably necessary, and such modifications shall be implemented in a reasonable amount of time by the Franchisee at its sole cost and expense.

6.1.2 To the extent necessary the MMS, any part, or any software necessary for its operation shall be installed and maintained by the Franchisee on DoITT provided personal computers to provide for access by authorized DoITT users. DoITT shall make appropriate information technology personnel available to coordinate the installation of the MMS on its equipment and/or network.

6.1.3 The MMS shall not run primarily on DoITT's equipment or network and DoITT shall not be responsible for management, maintenance or assuring access to the system. All such requirements shall be the responsibility of the Franchisee.

6.1.4 Within sixty (60) days of the Commencement Date, the Franchisee shall provide full access to the MMS (and training reasonably satisfactory to DoITT) to no fewer than ten authorized personnel of the City in the manner requested by the City. The City shall have access, through the same means, for a reasonable number of additional users to allow read-only access to conduct searches of the MMS and to allow

311 operators (or operators of a successor organization) to enter and review the status of complaints received.

6.1.5 The MMS shall provide at minimum: two-way information sharing between the City and the Franchisee for the recording and processing of complaints from the public and the City, plotting public communication structures on city maps, Wi-Fi usage data for each Structure and in the aggregate, color coding of Structures, incident recording and reports, financial information regarding revenues by location and structure type, advertising panels displaying NYC Program Advertising, back-up maintenance and data protection protocols, and a help-menu function for assisting with system operation. The City shall provide appropriate personnel to coordinate the creation of an interface between MMS and the 311 system.

6.1.6 The MMS shall be available to authorized users 24 hours per day, seven days a week, except when the Franchisee is conducting maintenance or upgrades to the MMS. Franchisee shall provide reasonable notice to the City if is planning to conduct maintenance or upgrades to the MMS. If lost access occurs, it shall be restored within six hours of notification by the City.

## **6.2 Records in MMS**

The Franchisee shall maintain records, in a form satisfactory to the Commissioner and in a format which is downloadable to commercially available software, demonstrating compliance with the maintenance and operating requirements in Section 6.1, and the Agreement. Such records shall be available for inspection by the City upon reasonable written advance notice and copies, whether in paper, electronic or other form, shall be provided to DoITT promptly upon request. Not later than sixty (60) days after the Commencement Date, the Franchisee shall submit to DoITT a detailed description of all proposed recordkeeping procedures that will document compliance with the minimum service operating procedures in this Attachment. If DoITT determines in its reasonable discretion that such proposed recordkeeping procedures are insufficiently detailed or otherwise unlikely to adequately document compliance with the minimum service operating procedures, DoITT may direct the Franchisee to adopt such modifications to the proposed recordkeeping procedures as it deems reasonably necessary, and such modifications shall be promptly implemented by the Franchisee at its sole cost and expense.

## **6.3 Alternative MMS Software**

The Franchisee may during the Term, replace the software and related components then constituting the MMS with alternative software and related components (which may be proprietary to the Franchisee or an Affiliate of the Franchisee), at its sole cost and expense, provided that the features of the replacement

MMS are substantially equivalent or superior to the MMS being replaced. The Franchisee shall grant to the City all necessary licenses and sublicenses required for the replacement MMS, and shall escrow or cause to be escrowed the source code as required by Section 3.9 of the Agreement. If such software is proprietary to the Franchisee or an Affiliate of the Franchisee, the Franchisee shall grant to the City all necessary licenses to operate the MMS as contemplated by this Agreement following the Term, on a perpetual, royalty-free basis. All right, title, and interest in all data collected by the MMS and all other information necessary for the City to maintain and operate the Structures will become the sole and exclusive property of the City with no compensation to the Franchisee after the termination or expiration of this Agreement and the Franchisee and its software vendor shall return all such data to the City in a format accessible and usable by the City without the Franchisee's and/or software vendor's software; provided, however, that the Franchisee may retain and use for its own business purposes a copy of such data, and the City shall grant to the Franchisee any necessary license.

#### **6.4 [RESERVED]**

#### **6.5 Reporting.**

6.5.1 Commencing on the Commencement Date and continuing throughout the Term, the Franchisee shall maintain records, in a form satisfactory to the Commissioner and downloadable by the City, at its convenience, to commercially available software, demonstrating compliance with the maintenance and operating requirements in this Attachment SRV. The parties agree that the obligation to provide a report to DoITT is satisfied once the information is available and downloadable by the City through the MMS, provided that the Franchisee shall provide any reports required provided the Agreement in hard copy or other commercially reasonable formats if requested by DoITT, from time to time. Additionally, upon request of DoITT, the Franchisee shall assist DoITT with accessing and downloading reports from the MMS.

6.5.2 Franchise shall, on an annual basis, no later than thirty (30) days after the month following each anniversary of the Effective Date, provide DoITT with a report describing any construction or installation of Structures that has occurred during the previous twelve months and the Franchisee's reasonably anticipated plans for such construction and installation for the coming twelve months. It is understood by the parties that Franchisee shall have the unrestricted right to adjust such reasonably anticipated plans and such report of anticipated plans shall not restrict Franchisee's rights under this Agreement to reserve space for, and install, Structures in a manner and at locations which may not be consistent with such report of anticipated plans.

6.5.3 Upon the request of DoITT, Franchisee shall submit, in a reasonable amount of time to DoITT any information or report reasonably related to the Structures and this Agreement, or to Franchisee's obligations under this Agreement in such form and containing such information, reasonably related to the Structures and this Agreement, as the DoITT shall reasonably specify. Such information or report shall be accurate and complete.

## **6.6. On-Going System Support/Assignment of Software Licenses**

6.6.1 If any Member (as such term is defined in the CityBridge LLC Amended and Restated Limited Liability Company Agreement dated \_\_\_\_\_) enters into a license or maintenance agreement with CityBridge for any software used for operation of the System (excluding off-the-shelf software and software as a service), then each such agreement shall provide that it is fully assignable to the City upon either (i) the termination of this Agreement by the City due to a Termination Default, as defined herein or (ii) the expiration of this Agreement.

6.6.2 If CityBridge obtains from any non-Member licensor a source code escrow for any software pertaining to the operation of the System, CityBridge shall use commercially reasonable efforts to secure the City's access to the source code of the software subject to the terms of such source code escrow agreement.

6.6.3 CityBridge shall use commercially reasonable efforts to allow for the assignment to the City of any maintenance or license agreement between any non-Member and CityBridge for software pertaining to the operation of the System.

## **PART VII. ANCILLARY SERVICES**

The Franchisee may provide ancillary services from the Structures that offer technical support for the provision of the public pay telephone service contemplated in Part III above and the Wi-Fi Service contemplated in Part IV above, subject to the approval of the Commissioner, provided however that the provision of USB charging ports, touch screens on the Structures, and one-way blue-tooth transmission of Structure location information are expressly contemplated ancillary services and do not require subsequent approval of the Commissioner. The Franchisee agrees to provide such USB charging ports on 100% of the Advertising Structures (not including Existing PPTs) and touch screens on at least 100% of the Advertising Structures (not including Existing PPTs). To the extent ancillary services are authorized and provided, Franchisee shall provide them in a safe and reliable manner and will keep the relevant equipment in good repair.

## **PART VIII      CUSTOMER COMPLAINTS**

### **8.1      Complaint Handling Procedures**

8.1.1 Within thirty (30) days after the Commencement Date of this Agreement, the Franchisee shall establish and maintain prompt and efficient complaint handling procedures for handling complaints from customers and others and for handling complaints forwarded to the Franchisee by DoITT, which procedures follow all applicable laws, rules and regulations and this Section. Such procedures shall be in writing, and Franchisee shall maintain copies at Franchisee's office and make them available to the public and the Commissioner upon request.

8.1.2 All Structures shall have on them a legible and conspicuously posted notice in compliance with, and in such manner permitted or required by, the rules and regulations of the Public Service Law, advising the public of (i) the identification of the owner and operator of the telephone, (ii) that the owner and operator has been franchised by the City and (iii) that they may direct complaints and comments to 311 or a dedicated telephone line established by Franchisee.

8.1.3 The Franchisee shall have a telephone line for receiving complaints forwarded from DoITT, the 311 system or other designated City agencies. The line will be answered in person from 9:00 a.m. to 5:00 p.m. Monday through Friday and at other times will be answered via recorded message. Notwithstanding the above, the Franchisee shall have a contact person available to DoITT by phone 24 hours a day, seven days a week.

8.1.4 The Franchisee shall record all complaints received on the telephone line, through MMS, or from any other source, in the manner set forth in this Section 8.1 and shall diligently and promptly investigate each complaint. If such complaint is reasonably determined to be accurate, the condition shall be cured within the timeframes of this Attachment.

8.1.5 Any complaint regarding an uncompleted call for which no refund was received must be recorded in the manner set forth in Section 8.2 below, diligently investigated and, if reasonably determined to be accurate, the appropriate refund shall be mailed within thirty (30) calendar days from receipt of the complaint.

8.1.6 Any complaint regarding an unauthorized charge for a call(s) made from a PCS must be recorded in the manner set forth in Section 8.2 below, diligently investigated, and referred to the appropriate operator service provider within seventy-two (72) hours from receipt of the complaint.

8.1.7 Any complaint regarding incidents of theft from or vandalism to a Structure shall be recorded in the manner set forth in Section 8.2 below, diligently investigated, and, if reasonably determined to be accurate, within five (5) business days from receipt of the complaint the Franchisee shall take reasonable measures to deter and/or prevent any such further illegal activity, which may include, without limitation, the installation of physical mechanisms designed to prevent theft and/or vandalism and participation in any enforcement program or programs, established by or with DoITT or other applicable City agencies, against the sources of such vandalism and/or theft.

8.1.8 Any complaint regarding coinless access to 911 service and/or operator service at a Structure shall be recorded in the manner set forth in Section 8.2 below. Such complaint shall be verified by testing and/or inspection no later than the Franchisee's next scheduled daily testing and/or inspection visit made under Section 5.2. If determined to be accurate, the condition shall be cured promptly but in no case later than as required under Section 5.2.

8.1.9 Any complaint regarding a non-working Structure, or part thereof, shall be recorded in the manner set forth in Section 8.2, below. Such complaint shall be verified by testing and/or inspection no later than the Franchisee's next scheduled daily testing and/or inspection visit under Section 5.2. If determined to be accurate, the condition shall be cured promptly, but in no case later than as required under Section 5.2.

8.1.10 Any complaint regarding the cleanliness of a Structure (including, but not limited to, stickers or graffiti) shall be recorded in the manner set forth in Section 8.2 below and diligently investigated. If such complaint is reasonably determined to be accurate, the condition shall be cured within seventy-two (72) hours from receipt of the complaint.

8.1.11 Any complaint regarding overcharges at any Structure shall be recorded in the manner set forth in Section 8.2 below and diligently investigated. If such complaint is reasonably determined to be accurate the appropriate refund shall be mailed within thirty (30) calendar days from receipt of the complaint.

8.1.12 Any complaint regarding any aspect of service not set forth in Sections (9) through (11) above shall be recorded in the manner set forth in Section 8.2 below and diligently investigated. If such complaint is reasonably determined to be accurate the underlying problem shall be cured promptly and in no event later than thirty (30) calendar days from the receipt of the complaint; provided, however, that a complaint regarding a hazardous condition shall be promptly investigated and, if reasonably determined to be accurate, shall be cured immediately.

8.1.13 The Franchisee shall provide to DoITT a reasonable and adequate explanation describing corrective steps taken by the Franchisee in response to any complaint or reasons no corrective steps were taken.

8.1.14 If a complaint has not been diligently and promptly investigated and/or the underlying problem has not been cured by the Franchisee to the satisfaction of the Commissioner within the periods set forth above, the Commissioner may (i) order the Franchisee in writing to take appropriate action to investigate such complaint and/or cure the problem and (ii) if the Franchisee fails to take appropriate action investigate and cure the underlying problem at the Franchisee's sole cost and expense.

## **8.2 Complaint Record Keeping**

The Franchisee shall maintain written, accurate and complete records of all complaints that shall be available to DoITT through MMS or, at DoITT's reasonable advance request, in written form. Such records shall indicate: (i) the specific Structure, including its identifying number and its exact location, for which the complaint was made; (ii) the type of complaint; (iii) the date and time of complaint; (iv) if the complaint is in written form, the name, address, and telephone number of the person filing the complaint; (v) the Franchisee's action to address the complaint; and (vi) to the extent applicable the date of resolution of the complaint. All such records shall be retained by the Franchisee throughout the Term. The MMS shall provide DoITT a means by which it can search for complaints by location and/or time period, and shall produce statistical reports, at DoITT's request, by type of complaint, location of complaint, type of structure, and time period.

## **8.3 Continuity of Service**

If the Franchisee, with the consent of the City as required and in compliance with Article 13 of the Agreement, sells or otherwise transfers the System, or any part thereof, or Control to any Person, or to the City or the City's assignee, or if the franchise terminates, the Franchisee shall transfer the System, or such relevant part, in an orderly manner to maintain continuity of Service.

## **8.4 Other Reports**

Upon the request of the Commissioner, the Franchisee shall promptly submit to DoITT or the City, any information or report reasonably related to the Franchisee's obligations under this Agreement, its business and operations, or those of any Affiliated Person, regarding the System or its operations, or any Service distributed over the System, in such form and containing such information as the Commissioner shall reasonably specify. Such information or report shall be accurate and complete. The franchisee shall not enter into any contract or agreement with a third party for business

related to the franchise that includes any confidentiality clause that might be interpreted to limit DoITT's ability to review or audit these contracts or agreements or related records. The Commissioner or the City may inform the Franchisee in writing with regard to the adequacy or inadequacy of such reports pursuant to the requirements of this Section 8.4.

## **Part IX. State of the Art**

### **9.1 General Requirement.**

Throughout the term of the Agreement, the Franchisee shall construct, operate, maintain and upgrade the System in order to reasonably ensure that it continuously conforms to current industry standards (the "State of the Art") for the Services.

### **9.2 State of the Art Report**

Upon the City's request, but not more than once every three (3) years, the Franchisee shall provide to the Commissioner in a form satisfactory to the Commissioner, a report of the Franchisee's review and assessment of the current State of the Art of the System and Services and, if appropriate, its plans for upgrading the System and Services to conform to the State of the Art. The report shall address, at a minimum: technological advances making possible enhanced signal quality, publicly available equipment for the receipt of comparable services or greater capacity and interactive systems; a comparison of the services, facilities and technologies utilized in, and the terms and conditions of comparable services in other jurisdictions; a representative sample jurisdiction in which new technologies have been or are being used and a description of the experience those jurisdictions have had with such new technologies; an assessment of the costs associated with implementing such new technologies into the System, a discussion of additional technological advances anticipated during the remainder of the Term of the Franchise, along with (if appropriate) a projection of the costs and timetable for the Franchisee offering such advances as a part of or in place of the current System and Service; a discussion of what improvements (if appropriate) the Franchisee anticipates making in its Structures, equipment, systems and operations during the remainder of the Term of the Franchise, along with a projection of the costs and timetable for the implementation of such improvements; and generally, the steps the Franchisee or any Affiliated Person is undertaking to continuously construct, operate, maintain and upgrade the System in accordance with the provisions of Section 9.1; and such additional information as the City may request. The Franchisee acknowledges and agrees that the State of the Art report submitted pursuant to this Section 9.2 is only one resource that the City will consider in evaluating the Franchisee's obligation pursuant to the terms and conditions of this Agreement to continuously construct, operate, maintain and upgrade the System in accordance with Section 9.1, and the Commissioner may, at the City's own expense,

commission third parties, as necessary, to ascertain the current State of the Art of the Equipment and Services generally.

### **9.3 Procedures for Maintaining State of the Art**

9.3.1 The Franchisee shall perform a technology refresh and upgrade to each part of the System that is not State of the Art no later than the sixth (6<sup>th</sup>) and tenth (10<sup>th</sup>) Contract Years, in accordance with the plans described in Section 9.3.2. Performance of the second technology refresh and upgrade of the System is contingent upon the City extending the Agreement pursuant to Section 2.2 of the Franchise Agreement.

9.3.2 Within ninety (90) days after the sixth (6<sup>th</sup>) anniversary of the Commencement Date, the Franchisee shall submit plans, describing how it intends to complete the technology refresh and upgrade. Upon approval of such plans by the Commissioner, the Franchisee shall commence and complete implementation of the required upgrade within the time specified.

9.3.3 Notwithstanding Section 9.3.1, the Commissioner may determine, based upon the report to be provided, pursuant to Section 9.2 and any other information available to the Commissioner, that the System is currently State of the Art, and that either one or both of the technology refreshes and upgrades is(are) unnecessary. To avoid doubt, a determination that a technology refresh and upgrade is unnecessary under this Section is discretionary and not appealable. In the event that the Commissioner determines that the technology refresh and upgrade is unnecessary in the sixth (6<sup>th</sup>) year, the Commissioner may require that the refresh and upgrade be performed in either the seventh (7<sup>th</sup>) or eighth (8<sup>th</sup>) years.

## **PART X Performance Standards and Corrective Actions**

### **10.1 Performance Standards and Corrective Actions**

In addition to the service requirements for all Services under this Attachment, the following performance measures shall apply to the Structures:

10.1.1. If, during the term of this Agreement, the Commissioner reasonably determines that:

(i) During any quarterly period, ten percent (10%) or more of a representative sample of the Franchisee's Structures surveyed by the City did not comport to the operability requirements in the Agreement for emergency telephone telecommunications services. A representative Sample shall include no less than 500 Structures; or

(ii) During any quarterly period, fifteen percent (15%) or more of a representative sample of the Franchisee's Structures surveyed by the City did not comport to the operability requirements in the Agreement for non-emergency telephone telecommunications services. A representative Sample shall include no less than 500 Structures; or

(iii) During any quarterly period, fifteen percent (15%) or more of a representative sample of the Franchisee's Structures surveyed by the City did not comport to the cleanliness requirements in the Agreement. A representative Sample shall include no less than 500 Structures;

then, notwithstanding compliance with the minimum service operating procedures described in Part V, the Commissioner shall require the Franchisee to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as he or she deems appropriate to ensure the Franchisee's compliance with the requirements in Part V, and may, require such other corrective action as he or she deems appropriate, including, but not limited to, requiring the Franchisee to enter into a service agreement with another party acceptable to the Commissioner to ensure the Franchisee's compliance with the requirements in Part V. To secure full implementation of such modified procedures and other corrective action measures, and to protect the interests of the City pending implementation, the Commissioner may also suspend further approvals of the Franchisee's applications for permits for the installation, operation and maintenance of new Structure or suspend a Franchisee's right to advertise regarding one or more Structure within the System until the Franchisee has demonstrated achievement of appropriate compliance milestones in a manner satisfactory to the Commissioner.

10.1.2. If the Commissioner makes a second determination pursuant to Section 10.1.1 above within a three (3) year period following an initial such determination, the Commissioner may, in addition to taking any action specified above, declare an Event of Default that shall be grounds for termination of this Agreement.