
**THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY &
TELECOMMUNICATIONS**

FRANCHISE AGREEMENT

**FOR THE INSTALLATION, OPERATION, AND MAINTENANCE
OF PUBLIC COMMUNICATIONS STRUCTURES IN THE BOROUGHS OF THE BRONX, BROOKLYN,
MANHATTAN, QUEENS AND STATEN ISLAND**

Contract No:

**Bill de Blasio, Mayor
Anne Roest, Commissioner**

FRANCHISEE: CityBridge, LLC

CONTRACT No.

DATE:

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ATTACHMENTS

Attachment SRV (Services)

Exhibit 1 Wi-Fi Terms of Service

Exhibit 2 Wi-Fi Privacy Policy

Exhibit 3 Service Level Agreement and Schedule of Liquidated Damages

Exhibit 4 Siting Criteria

Exhibit 5 Structure Designs

Attachment RDR (Resiliency and Disaster Recovery)

APPENDICES

Appendix A	Investigation Clause
Appendix B	MacBride Principles
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Appendix D	Initial Members of Franchisee
Appendix E	Permitted Transfers
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This is a **PUBLIC COMMUNICATIONS STRUCTURE FRANCHISE AGREEMENT**, fully executed on _____, between the City Of New York (the “City”) through its Department of Information Technology and Telecommunications (“DoITT” or the “Department”) and **CityBridge, LLC**, with its principal place of business at **100 Park Avenue, New York, NY 10017** and designated location for service of process at **100 Park Avenue,, New York, NY** (the “Franchisee”) (each a “party” collectively the “parties”).

BACKGROUND AND AUTHORITY

Section 1072(c) of the New York City Charter (the “Charter”) authorizes DoITT to administer franchises related to telecommunications, which franchises are to be issued and operated pursuant to the provisions of Chapter 14 of the Charter.

On April 30, 2014, DoITT issued a Request for Proposals for a Franchise to Install Operate and Maintain Public Communications Structures in the Boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island (“the RFP”). The RFP was issued pursuant to and was determined by the New York City Corporation Counsel (pursuant to Section 363.e of the Charter) to be consistent with, City Council Authorizing Resolution No. 2309 adopted by the City Council on December 21, 2009 and City Council Authorizing Resolution No. 191 adopted by the City Council on August 25, 2010 (collectively, “the Authorizing Resolutions”)

The New York City Department of City Planning determined, as evidenced in its letter dated April 28, 2014, that a franchise consistent with the RFP would not have land use impacts or implications and that review under Section 197-c of the Charter would not be necessary.

The action being taken hereunder has been reviewed for its potential environmental impacts and a negative declaration has been issued finding that such proposed action will not result in any significant adverse environmental impacts, all in accordance with the New York State Environmental Quality Review Act (“SEQRA”), and the regulations set forth in Title 6 of the New York Code of Rules and Regulations, Section 617 *et seq.*, the Rules of Procedure for City Environmental Quality Review (“CEQR”) (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York).

On December 8, 2014, the New York City Franchise and Concession Review Committee (“FCRC”) held a public hearing on the Franchisee’s proposal for a franchise to install, operate, and maintain Public Communications Structures (defined below) on, over, and under the Inalienable Property of the City, which was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the New York City Charter (the “Charter”). The FCRC, at its duly constituted meeting held on December 10, 2014, voted on and approved the grant to the Franchisee of a franchise as contemplated by the RFP.

FRANCHISE GRANT

As further described hereinafter, DoITT hereby grants to CityBridge LLC a non-exclusive Public Communications Structure franchise for good and valuable consideration, and subject to the mutual covenants, terms, and conditions, set forth in this Franchise Agreement, including its attachments, exhibits, and appendices.

ARTICLE I. DEFINITIONS

Whenever used in this Agreement, the terms, phrases, and words listed below, and their derivatives, have the meanings given below.

1.1 Defined Terms

“Advertising” has the meaning expressed in subsection 5.1.2.

“Advertising Structure” means a PCS on which the Franchisee has the right to display Advertising.

“Affiliate” or “Affiliated Person” means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Franchisee; (ii) each Person in which the Franchisee has directly or indirectly, a Controlling Interest; and (iii) each Person directly or indirectly, controlling, controlled by or under common Control with the Franchisee; provided that “Affiliated Person” shall in no event mean any creditor of the Franchisee solely by its status as a creditor and which is not otherwise an Affiliated Person.

“Agreement” means this agreement, including all attachments, exhibits, and appendices, as it may be amended from time to time.

“Books and Records” means all information, documents, and databases whatsoever created or maintained in the performance, or ancillary to the performance, of this Agreement by, or on behalf of, the Franchisee, in any physical or electronic form whatsoever, including but not limited to, ledgers, sales journals, charts of accounts, trial balances, invoices, contracts, accounting records, prepared statements, sales control reports, designs, maps, drawings, construction schedules, results of performance standard testing and manuals. Financial records shall be kept and prepared in accordance with GAAP.

“City” means the City of New York, or as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department or any other entity of the City of New York, or any authorized officer, official, employee or agency.

“City Delays” has the meaning expressed in Section 15.23.1

“Claim” has the meaning expressed in Section 11.1.

“Commencement Date” has the meaning expressed in Section 2.1.

“Commissioner” means the Commissioner of DoITT or his or her designee.

“Compensation” means that portion of the consideration provided by the Franchisee to the City in exchange for the franchise grant requiring payment, as detailed in Article VI.

“Comptroller” means the Comptroller of the City of New York or designee.

“Contract Year” means each period from and including the Commencement Date or an anniversary thereof to and including the day preceding the next anniversary of the Commencement Date.

“Control” or “Controlling Interest” means, with respect to any Person, possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. “Control” or “Controlling Interest” with respect to the System or the franchise granted hereunder means possession, directly or indirectly, of Control over or of a Controlling Interest in the Person that at the time owns the System or is the Franchisee under this Agreement.

“Curb” means a raised stone or concrete edging along the side of a roadway (or, where no such raised edging exists, the similar line of separation between those portions of the Inalienable Property of the City used primarily for pedestrian and sidewalk uses and those portions used primarily for vehicular and roadway use).

“Current Affiliate” means, with respect to any Person, an Affiliate of such Person on the Execution Date.

“Damages” has the meaning expressed in subsection 11.1.

“Default” has the meaning expressed in subsection 13.2.1.

“DoITT” or the “Department” means the Department of Information Technology and Telecommunications of the City, or designee.

“District” means the Inalienable Property of the City (as defined in this Section 1.1) located within the Boroughs of Manhattan, Brooklyn, Staten Island, Queens and the Bronx.

“Effective Date” means the one hundred twentieth (120th) day after the Art Commissioner approves the design of the PCS.

“Exchange Act” means the Securities Exchange Act of 1934, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder, in each case, as amended from time to time.

“Execution Date” means the date that the Agreement is fully executed.

“Equipment” means, individually and collectively, all of the materials comprising, or associated with, any individual PCS, one or more groups of Structures, or the entire System, including Wi-Fi Equipment and wiring, or cables that connect Structures to the network interface device of the switched telephone network or similar type conduit or power source. Fiber is deemed part of the System unless otherwise specified in the Agreement.

“Existing PPTs” means all PPTs installed on the Inalienable Property as of April 30, 2014.

“Existing PPT System” means all of the PPTs operated by a particular Holdover PPT Operator.

“Existing PPT Replacement Schedule” has the meaning provided in Section 1.2.7 of Attachment SRV.

“Extended Term” has the meaning expressed in Section 2.2.1.

“FCC” means the Federal Communications Commission.

“FCRC” means the Franchise and Concession Review Committee of the City of New York.

“Fiber” means cable, wire, fiber optic communications cable (or other closed-path transmission medium that may be used in lieu of cable wire or fiber optic communications cable for the same purposes), network capacity, and related equipment and facilities, within the Inalienable Property, which is used by the Franchisee to provide the Services that are being delivered from the Structures.

“Fiber Licensor” has the meaning expressed in Section 3.13.2.

“Franchisee” means CityBridge, LLC.

“Franchisee Confidential Information” has the meaning expressed in Section 9.4.1.

“Franchise Fee” has the meaning expressed in Section 6.1.

“Good Working Order” has the meaning expressed in Section 5.2.1 of Attachment SRV.

“Gross Revenues” has the meaning expressed in Section 6.1.

“Historic Districts” means those districts so designated by the Landmarks Preservation Commission.

“Holdover Period” has the meaning expressed in Section 2.5.1.

“Holdover PPT Operator” means an entity that operates one or more Existing PPTs on the Inalienable Property as of the Commencement Date.

“Inalienable Property of the City” means the rights of the City in its waterfront, ferries, wharf property, bridges, land under water, public landings, wharves, docks, streets, avenues, highways, parks, waters, waterways and all other public places, as set forth in Section 383 of the New York City Charter.

“Indemnitees” has the meaning expressed in Section 11.1.

“Indemnitors” has the meaning expressed in Section 11.1.

“Initial Term” means the period from the Commencement Date until the earlier of June 24, 2026 or the earlier termination of this Agreement pursuant to the provisions herein.

“Installation Date” means the verifiable date of installation of a new PCS that comports to all of the requirements and specifications set forth in this Agreement.

“Landmarks” means the Landmarks Preservation Commission of the City or designee.

“Landmark Site” means a property so designated by the Landmarks Preservation Commission.

“Licensed Software” has the meaning expressed in Section 3.3.1

“Litigation Delay” has the meaning expressed in Section 15.23.1

“Maintenance and Monitoring System” or “MMS” means a computer system with the capability to monitor all of the Services provided by the System and perform all of the functions delineated in Part VI of Attachment SRV.

“Mayor” means the chief executive officer of the City or designee.

“Member(s)” has the meaning expressed in Section 10.1.

“Minimum Annual Guarantee” has the meaning expressed in Section 6.1.

“MMS Software” means, individually and collectively, all source code and object code comprising or associated with the Maintenance and Monitoring System.

“Non-Advertising Structure” means a PCS that provides Wi-Fi Services, but does not include Advertising.

“NYS PSC” means the New York State Public Service Commission or its designee.

“PCS Software” means, individually and collectively, all source code and object code used by an individual PCS, one or more groups of Structures, or the entire System.

“Permitted Transferee” has the meaning expressed in Section 10.6

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not for profit, but does not mean the City.

“Public Communications Structure,” “PCS,” or “Structure” means any of the following: (i) a PPT; (ii) a non-Advertising Structure that provides free Wi-Fi Services; or, (iii) a telephone installation that was installed or maintained prior to the Commencement Date pursuant to a now-expired PPT franchise agreement. Upon transfer of ownership to the Franchisee, each PPT that was installed and or maintained prior to the Commencement Date pursuant to a now-expired PPT franchise agreement is deemed a PCS.

“Public Pay Telephone” or “PPT” means a telephone installation: (i) from which calls can be paid for when made by a coin, credit card, prepaid debit card or in any other manner; (ii) available for use by the public; and (iii) which provides access to a switched telephone network or similar type conduit for voice or data communications. The term “Public Pay Telephone” or “PPT” includes any pedestal or telephone bank supporting one or more telephones, PPT Enclosures, signage and other associated equipment.

“Public Pay Telephone Rules” or “PPT Rules” means Chapter 6 of Title 67 of the Rules of the City of New York as they may be amended from time to time. Each PCS that provides telephone service is deemed a Public Pay Telephone under the PPT Rules, and, unless provided to the contrary, the PPT Rules apply to Structures with the same force and effect as they apply to PPTs operated under the Public Pay Telephone Franchise, including all provisions setting forth penalties for failure to comply.

“Public Pay Telephone Enclosure” or “PPT Enclosure” means any associated housing or enclosure attached to a pedestal, telephone bank, or affixed to a building, and partially or fully surrounds a PPT.

"Public Service Advertising" means advertising, the purpose or effect of which is to communicate information pertaining to the public health, safety, and welfare of the citizens of the City, as determined by DoITT in its sole discretion.

"Security Fund" has the meaning expressed in Article VII.

"Service(s)," "PCS Service(s)," or "Public Communications Structure Service(s)" means, individually and collectively, all work, goods, and services that the Franchisee is obligated to provide under this Agreement.

"Software" means, individually and collectively, all source code and object code used by the Franchisee in performing the Services, including the PCS Software and the MMS Software.

"System" means all of the Structures owned, operated, or maintained by the Franchisee pursuant to this franchise. Fiber is deemed part of the System unless otherwise specified in the Agreement.

"Term" means the term of the Agreement, including the Initial Term and the Extended Term, if any.

"Termination Default" has the meaning expressed in Section 13.3.1.

"Third Party Claim" has the meaning expressed in Section 11.1.

"Transition Period" has the meaning expressed in Section 3.13(i).

"Unavoidable Delay" has the meaning expressed in Section 15.23.1.

1.2 Other Definitions

1.2.1 The words "section" and "subsection" in the Agreement, an attachment, an exhibit, or an appendix refer to sections and subsections of, respectively, the Agreement, the attachment, the exhibit, or the appendix, unless stated otherwise. A reference to "attachments" or "appendices" means, respectively, the attachments and the appendices to the Agreement unless provided otherwise. The words "include" and "including" are not terms of limitation and will be interpreted as "including, but not limited to." The word "or" means "and/or" unless the context requires otherwise, the word "all" means "any and all," and the words "writing" or "written" mean preserved or presented in retrievable or reproducible written form, whether electronic (including e-mail, but excluding voice-mail) or hard copy, unless otherwise stated. The words "commercially reasonable efforts" means undertaking all available measures that a reasonable person would pursue to satisfy an obligation in good faith. The words "best practices" means employing the method or technique that has consistently shown results superior to those achieved with other means, and that is a benchmark in the industry. Definitions of City, state or federal agencies, offices, departments, department heads,

or employees include, if applicable, any successor in function or interest. The word “applicable law,” “law,” or “laws” means all federal, state, or local statutes, rules, codes, regulations, or judicial or executive orders applicable to the subject matter of the corresponding obligation, representation, warranty, or acknowledgement, or this Agreement generally.

1.2.2 The words “construct,” “install,” “operate,” and “maintain,” individually or collectively, in any form, combination, or variation, include all construction, installation, operation, maintenance, repair, upgrading, renovation, removal, relocation, alteration, replacement or deactivation, as appropriate to perform the Services.

1.3 References to Time

The words “day,” “month,” and “year” mean, respectively, calendar day, calendar month and calendar year. “Business hours” or “business day” means 9:00 a.m. through 5:00 p.m. Monday through Friday, excluding the following City holidays, unless otherwise agreed to by the parties: New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, Thanksgiving Day, and Christmas Day. If one of these days falls on a Saturday, the preceding Friday is a holiday and if one of these days falls on a Sunday, the following Monday is a holiday. The word “current” means contemporaneous with the date the obligation arises.

1.4 Undefined Terms

Words not otherwise defined in the Agreement are given their common and ordinary meaning appropriate to the context in which they appear.

ARTICLE II. TERM AND PRECONDITIONS TO EXECUTION

2.1 Initial Term

The Initial Term of this Agreement and the franchise granted commences on the Commencement Date, and will expire on June 24, 2026, unless extended by the DoITT pursuant to Section 2.2, or unless terminated earlier as provided by Section 13.3 or for any other reason in this Agreement. The Commencement Date will be 12:01 a.m. on the tenth (10) day after the date on which all of the following conditions have been met:

- (i) this Agreement has been registered with the Comptroller as provided in Sections 375 and 93.p. of the City Charter;
- (ii) all the documents have been submitted as required by Section 2.3;
- (iii) the City’s Vendex review process of the Franchisee has been favorably completed; and

- (iv) payment has been made to the City of the Security Fund and the FCRC publication costs as described in Section 371 of the Charter.

For example, if all of the conditions listed above are met on December 1, 2014, the Commencement Date will be December 11, 2014.

2.2 Extended Term

2.2.1 Provided the Agreement remains in effect immediately prior to its scheduled expiration on June 24, 2026, the Commissioner, in his or her discretion, may after a request by the Franchisee pursuant to Section 2.2.2, extend the Agreement for an Extended Term to expire no later than the day preceding the fifteenth (15th) anniversary of the Commencement Date.

2.2.2 If Franchisee wishes to extend the Franchise beyond the Initial Term then Franchisee must submit a written request to DoITT to extend this Agreement and the Franchise granted hereunder, as described in the preceding Section 2.2.1, not later than June 24, 2025. The Franchisee shall thereafter submit to DoITT all information and documentation requested by DoITT in connection with the evaluation of Franchisee's request for an extension. Nothing in this section will be construed to obligate DoITT to thus extend this Agreement or the Franchise.

2.3 Preconditions to Execution, Security Fund Documentation

The following actions are preconditions for execution of the Agreement by the City.

2.3.1 The Franchisee represents that it has submitted to the Mayor's Office of Contract Services current and up-to-date questionnaires required with the City's Vendor Information Exchange System ("VENDEX"). The VENDEX questionnaires must be fully completed by the Franchisee and have received a favorable review by the City.

2.3.2 The Franchisee represents that it has submitted to DoITT the following documents on or before the date of execution of this Agreement by the City:

- (i) an insurance certificate that satisfies the requirements set forth in Section 12.3.1;
- (ii) certified copies of documentation showing (a) the Franchisee is duly organized, in good standing, and authorized to do business in New York as a corporation, partnership, limited liability company or sole proprietorship, and (b) the person or persons who will execute this Agreement on the Franchisee's behalf is (or are) authorized to execute and deliver the Agreement on the Franchisee's behalf as a legal, binding and enforceable agreement of the Franchisee;
- (iii) an opinion from the Franchisee's counsel dated as of the date of execution by the Franchisee in a form to be approved by DoITT;
- (iv) document evidencing that the Security Fund required under Article VII has been created; and

- (v) a certification from the Franchisee confirming that: (A) binding and enforceable agreements between each individual Member and the Franchisee have been executed and are in full force and effect, and (B) such agreements contain commitments (in the aggregate) of not less than \$100 million in total of equity contributions by all Members of the Franchisee as required for the Franchisee to fulfill its obligations to the City.

In light of changes to the rollout schedule for structures to be installed hereunder, which changes were requested by the City and agreed to by the Franchisee shortly before execution of this Agreement, the MSA contemplated by Section 3.13.3 will be provided as described in Section 3.13.3 rather than delivered as a condition to such execution.

2.4 Effect of Expiration

Upon expiration or termination of this Agreement — and if no new franchise of similar effect has been granted to the Franchisee under the New York City Charter, any authorizing resolution or other applicable law in effect when the franchise expires — all rights of the Franchisee in the franchise will cease with no value allocable to the franchise itself; and the rights of the City and the Franchisee to the System, or any part, will be determined as provided in Section 13.5.

2.5 Holdover Period

2.5.1 Any period of time during which the Franchisee is performing any of the Services or is occupying the Inalienable Property with the Structures other than during (i) the Initial Term or (ii) the Extended Term constitutes a Holdover Period.

2.5.2 Unless specified in a particular clause of this Agreement, terms and conditions governing Franchisee's obligations with respect to the Services and its occupation of the Inalienable Property succeed the termination or expiration of this Agreement during the Holdover Period.

2.5.3 The Franchisee acknowledges and accepts that DoITT, in its sole discretion, may require the Franchisee to immediately cease performing any part of the Services or to remove any one or more Structures or the entire System during any Holdover Period. Continued occupancy or operation during a Holdover Period subject to the obligations described in this Section 2.5 shall not be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the Term, including, but not limited to, damages and restitution.

ARTICLE III. GRANT OF FRANCHISE

3.1 Nature and Limitation of Franchise

The City grants the Franchisee, subject to the terms and conditions of this Agreement, a non-exclusive franchise providing the right and consent to design, install, operate, repair, maintain, upgrade, remove and replace Public Communications Structures, including Equipment, on, over and under the Inalienable Property of the City as described in this Agreement. Exercising this franchise is subject to the obligations in this Agreement and all applicable laws.

3.2 Ownership of Structures

3.2.1 During the Term all Structures are deemed the property of the Franchisee, except as provided to the contrary in this Section 3.2.

3.2.2 It is the intention of the parties that to the extent it is within the control of the parties, each acting reasonably, the Franchisee shall take ownership and, subject to the provisions of Section 3.2.4, be responsible for the operation and maintenance of all Existing PPTs as of the Commencement Date, and the parties shall take all reasonable steps within their respective rights to achieve that end. To the extent that the Franchisee does not have ownership and control of some or all of the Existing PPTs as of the Commencement Date, the Franchisee and DoITT shall continue to cooperate reasonably, within their respective rights, to arrange for ownership and control to be achieved as promptly as practical after the Commencement Date.

3.2.3 The Franchisee acknowledges that the City neither warrants nor makes any representations whatsoever concerning any Existing PPT(s) or Existing PPT Enclosure(s) physical condition, structural integrity, electrical or network connectivity, cost of operations, revenue projections, or any other consideration.

3.2.4 The Franchisee agrees to take ownership of all Existing PPTs "as is," and acknowledges that at no time before, during, or after the Term is the City liable or responsible for the repair, maintenance, operation, or upgrade of any Existing PPT or PCS. The City and the Franchisee acknowledge that, as of the Commencement Date, some of the Existing PPTs may fail to meet the standards provided in the PPT Rules. The Franchisee will determine the operability of each Existing PPT within twenty (20) business days of the later of: (i) the Commencement Date, or (ii) the date that the Franchisee acquires the Existing PPT. With respect to each Existing PPT that is inoperable, the Franchisee may file a Notice of No Dial Tone, and, pursuant to the PPT Rules, is entitled to ninety (90) days to return the PPT to operability. The Franchisee may provide dial tone service from Existing PPTs by upgrading phones with cellular technology or it may continue to utilize Verizon through its copper lines or it may use a combination of copper and cellular, provided the Verizon copper lines provide reliable dial tone service. If, through no fault of its own and notwithstanding commercially reasonable efforts,

the Franchisee is unable to make an Existing PPT operable within the ninety (90) day period, the Franchisee may temporarily remove the payphone instrument within the Existing PPT and may continue to display Advertising on the Existing PPT for up to an additional ninety (90) days temporary removal period.

3.2.5 At the end of the Term, disposition of the Structures will be as provided in Section 13.5 and 13.6.

3.3 Ownership of Intellectual Property

3.3.1 Definitions

“City Products” means any intellectual property, or embodiments thereof, whether preliminary, final or otherwise, created or developed by (i) the City or (ii) for the City by (a) the Franchisee (or an Affiliated Person) at the specific request of the City and pursuant to the City’s written specifications or (b) any other third-party where the Franchisee, Affiliated Person, or third party has transferred the ownership rights in such intellectual property to the City. With respect to City Products that are software, City Products includes both the source code and the object code. An example of a City Product would be a mobile app, created by or for the City, which provides a mapped list of all PCS locations.

“Documentation” means the complete set of manuals (e.g., user, installation, instruction and diagnostic manuals) in either hard or electronic copy, that are necessary to enable the City to properly test, install, operate and enjoy full use of the Licensed Software.

“Licensor” means the entity with the ownership rights to permit the Franchisee and the City to use the Licensed Software for the business use contemplated by this Agreement.

“Licensed Software” means, individually and collectively, all of the software licensed to the City by or through the Franchisee under the Agreement. “Licensed Software” includes error corrections, upgrades, updates, enhancements or new releases required under the license terms, and any deliverables due under maintenance and support requirements (e.g., patches, fixes, program temporary fixes, programs, code or data conversion, or custom programming).

“Object Code” means the machine-executable code that can be directly executed by a computer’s central processing unit(s).

“Source Code” means the programming statements or instructions written or expressed in any language understandable by a human being skilled in the art, which are translated by a language compiler to produce executable machine Object Code.

3.3.2 The Franchisee hereby grants to the City a paid-up, royalty-free, worldwide, non-exclusive, irrevocable license to use the Licensed Software, as necessary for the City to use the System for its intended purpose during and after the Term. The Franchisee warrants and

represents that it has the right or will obtain the right to grant the license for the City to use any third-party Software, for the intended purpose.

3.3.3 The Franchisee is not authorized to include in the System any Licensed Software without the prior written approval of DoITT's General Counsel or designee. Prior to the incorporation of the Licensed Software, the Franchisee shall present the proposed license agreement or other document setting forth the conditions on the ability of the Franchisee or the City to make use of the Licensed Software to the DoITT's General Counsel or designee for review and approval.

3.3.4 City Ownership of City Products

- (i) City Products may be used by the Franchisee for no purpose other than in the performance of its responsibilities under the Agreement, without the prior written permission of the City.
- (ii) The Franchisee acknowledges that the City may, in its sole discretion, register copyright, trademark, patent and patent designs in the City Products with the United States Copyright Office, the United States Patent and Trademark Office, respectively, or any other entity authorized to grant copyright, trademark or patent registrations. The Franchisee shall fully cooperate in this effort, and shall provide all Documentation necessary to accomplish this.
- (iii) The Franchisee shall not undertake any action that may prevent the City from at all times having immediate access to the most current version of the City Products, such that the City, independent of the Franchisee, may utilize the City Products in whatever manner it determines appropriate.
- (iv) The City hereby grants to Franchisee the non-exclusive and fully paid-up, license during the Term to use, adapt and modify the City Products in solely for the purposes of providing the Services. In the event the City Product generates revenue, the City is entitled to any revenue.

3.3.5 Ownership of Licensed Software

- (i) Title and ownership of the Licensed Software is and shall remain with the Licensor.
- (ii) To the extent that the Franchisee is the Licensor, the Franchisee hereby grants to the City a paid-up, royalty-free, worldwide, non-exclusive, irrevocable license to use the Licensed Software, as necessary to fully effectuate the purposes of the Agreement and the business purposes of the City.

- (iii) The Franchisee shall present to the City all agreements that permit the Franchisee to use and sublicense PCS Software, and the right to future maintenance, to the City. Franchisee shall continuously maintain, update, and make available to DoITT a catalog of the PCS Software currently in use.

3.3.6 Nothing precludes either party from otherwise using any general knowledge, skills, ideas, concepts, know-how, techniques, and experience learned during the performance of its obligations under the Agreement. For avoidance of doubt, except for the City Products, all intellectual property, all embodiments thereof, and all technology or software that is created, conceived, or used by Franchisee or Licensor in connection with the Services or this Agreement is owned by Franchisee or Licensors.

3.4 Warranty of Title

The Franchisee represents and warrants that all Equipment and Software provided by or through the Franchisee:

- (i) are original to the Franchisee or validly licensed or sublicensed to the Franchisee;
- (ii) do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any law; and
- (iii) do not constitute defamation or invasion of the right of privacy.

3.5 Non-exclusivity

This franchise grant is non-exclusive. The City retains the absolute right to grant to any other Person a franchise, consent, or right to occupy and use the Inalienable Property of the City for the installation, operation, or maintenance of facilities including Public Communications Structures, with or without advertising. To the extent the City grants one or more additional franchises for Public Communications Structures prior to the City having issued permits for installation of 4,000 new Advertising Structures as contemplated in Section 1.2 of Attachment SRV, the Franchisee will be entitled to an equitable reduction in the amount of the Minimum Annual Guarantee payable under Section 6.3.1 reflecting the fact that the Minimum Annual Guarantee amount as stated in Section 6.3.1 is based on an assumption that no less than the 4,000 new Advertising Structures contemplated in Section 1.2 of Attachment SRV will be authorized for installation prior to the grant of additional franchises for PCSs.

3.6 No Waiver

Nothing in this Agreement will be construed as a waiver of any law or of the City's right to require the Franchisee to secure the appropriate permits or authorizations necessary to install the Structures to be installed hereunder and perform the Services.

3.7 No Release

Nothing in this Agreement constitutes a waiver or release of the rights of the City in and to its Inalienable Property. If all or a portion of the Inalienable Property of the City is eliminated, discontinued, closed or demapped, then all rights and privileges granted under this Agreement regarding the affected portion of the Inalienable Property ceases on the effective date of the elimination, discontinuance, closing or demapping.

3.8 Compliance with the ADA

The Franchisee shall require and ensure that the System comports to the current requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA"), the Architectural and Transportation Barriers Compliance Board Guidelines, and any other current applicable laws relating to accessibility for persons with disabilities. All Structures built after the Commencement Date shall include a tactile key pad and braille lettering, and be equipped with volume control equipment and Telecoil compatible technology to enable hearing impaired persons to access and utilize telecommunication services.

3.9 Software Escrow Agreement

3.9.1 All software created by or licensed to the Franchisee or the City in connection with the creation, operation or maintenance of the MMS or any replacement of the MMS is subject to the minimum software escrow requirements of this Section 3.9. This Section 3.9 does not apply to "off-the-shelf" software or "software as a service" created or maintained by a third-party other than the Franchisee or an Affiliate.

3.9.2 The Franchisee shall (i) cause the Licensor to enter into, and maintain in full force and effect a source code escrow agreement with an escrow agent (the "Software Escrow Agent") and (ii) ensure that all Source Code and Documentation for the Licensed Software shall be under escrow deposit pursuant to said escrow agreement. The Franchisee shall cause its software Licensor to provide thirty (30) days prior written notice of a change of the Software Escrow Agent. The escrow agreement must be in effect within sixty (60) days of the Effective Date and provide materially the same terms and conditions as set forth below:

- (i) The Software Escrow Agent must hold the Source Code for the benefit of the City;
- (ii) All major updates (e.g., new versions and critical patches and fixes) must be escrowed promptly after issuance; minor updates may be escrowed in batches no less frequently than monthly;
- (iii) The Software Escrow Agent shall verify deposit of the source code and all updates and so notify the City;

- (iv) The City may require periodic testing by the Software Escrow Agent of all Source Code held in escrow; and
- (v) If the Licensor: (a) becomes insolvent or ceases to exist as a business entity; or (b) fails to perform its obligations under the license agreement or escrow agreement, and is unable to cure such failure within ten (10) days of notice thereof by Franchisee, the City shall have the right to so certify to the Software Escrow Agent and to direct the Software Escrow Agent to provide the City with a copy of the Source Code and Documentation for the installed release level of the MMS software. All Source Code materials granted under this clause shall be maintained subject to the confidentiality provisions of this Agreement and shall be used solely for the internal business purposes of the City. Title to any source code released to the City remains the property of the Licensor.

3.9.3 The Franchisee shall provide to the City all information necessary for the City to comply with registration requirements of the Software Escrow Agent. The Franchisee shall adhere to the obligations in any agreement with the Licensor or the Software Escrow Agent as they relate to the deposit of software in escrow. The escrow agreement shall provide that the City shall have the opportunity to cure any default of the Franchisee, at the sole cost and expense of the Franchisee, that jeopardizes the ability of the City to access the escrowed source code as provided for under this Agreement. The escrow agreement provisions in this Section 3.9 will apply with equal force to any software licensed to the City by the Franchisee or an Affiliate.

3.10 No Discrimination

The Franchisee shall not discriminate in the provision of Services on the basis of race, creed, color, national origin, sex, age, disability, perceived disability, marital status, sexual affectation, or real or perceived sexual orientation.

3.11 Tariffs

Upon the written request of the Commissioner, and at his or her sole discretion, the Franchisee shall submit to DoITT a list of all tariffs or tariff applications, and all amendments or modifications that the Franchisee has filed with any federal, state or local regulatory authorities or other government agencies regarding, associated with, or arising from the Franchisees performance of the Services. The Franchisee shall submit the list in a form acceptable to the Commissioner within thirty (30) calendar days of the request. Upon a written request of the Commissioner and at his or her sole discretion, the Franchisee shall promptly, but in no case later than thirty (30) calendar days following the request, deliver to DoITT a complete copy, including all amendments or modifications, of any tariff or tariff applications.

3.12 Data Rights

3.12.1 The Franchisee retains ownership rights in all data created in the course of providing the Wi-Fi Services to the extent that such data doesn't include Personally Identifiable Information, and subject to the requirements of subsection 4.4.4 of Attachment SRV. The Franchisee retains no ownership rights in Personally Identifiable Information.

3.12.2 The City retains exclusive title and ownership rights in (i) all non-public information concerning or embodying the processes, statistics, software, systems, programs, research, development, strategic plans, or the like with respect to the operations and activities of the City (ii) all non-public information concerning the City's infrastructure, public safety, or other data set that the City has identified as "sensitive" ("City Data").

3.12.3 The Franchisee shall hold confidential, both during and after the expiration or termination of this Agreement, all City Data furnished to or used by the Franchisee. The Franchisee shall not make any City Data available to any person or entity without the prior written approval of DoITT. The Franchisee shall maintain the confidentiality of City Data by using a reasonable degree of care, and using at least the same degree of care that the Franchisee uses to preserve the confidentiality of its own confidential information. The Franchisee may not—without DoITT's express written consent—merge City Data with other data, keep a copy of it, commercially exploit it, or use it for any purpose other than providing the Services. All City Data will be treated as confidential except to the extent the data is (i) already known by the Franchisee at the time it is obtained, free from any obligation to keep the City Data confidential; (ii) is or becomes publicly known through no wrongful act of the Franchisee; (iii) is rightfully received by the Franchisee from a third party without restriction (other than an Affiliated Person) and without breach of this Agreement; or (iv) is independently developed by the Franchisee without using any City Data.

3.12.4 Disclosure of City Data does not violate the confidentiality obligations imposed by this Section to the extent that City Data must be disclosed pursuant to a court order or as required by a regulatory agency or other government body of competent jurisdiction. Upon receipt of a request under this subsection, the Franchisee shall notify the City immediately upon receipt of such an order or requirement to disclose and use reasonable efforts to resist, or to assist the City in resisting, such disclosure and, if such disclosure must be made, to obtain a protective order or comparable assurance that the City Data disclosed will be held in confidence and not be further disclosed absent the City's prior written consent.

3.12.5 The Franchisee shall grant the City a perpetual, unhindered, irrevocable right to use any anonymized aggregated data created in the provision of the Wi-Fi Services. The ongoing irrevocable right to use such data — created at any time during the Term or any Holdover Period — is provided in exchange for the franchise granted to the Franchisee under this Agreement. The City will not have any rights to use Personally Identifiable Information.

3.13 Franchise Fiber – Definitive MSA

3.13.1 For the purposes of this Section, the terms “System” and “Equipment” are exclusive of all Fiber except Fiber that was provided by the Franchisee under this Franchise Agreement. To the extent that Fiber was installed pursuant to another franchise agreement and provided through Franchisee by a Fiber Licensor, that Fiber does not constitute Equipment, and is not included in the System. The Franchisee is required to maintain, at all times, an agreement between the Franchisee and one or more Fiber Licensors that specifies which Fiber is provided by the Franchisee pursuant to this Agreement and which Fiber is provided through the Franchisee by a Fiber Licensor (the “Definitive MSA”).

3.13.2 Definitions

“Transition Period” means a period of up to 3 years, at the option of the City, following termination or expiration of this Agreement, during which time the Franchisee shall provide the Services set forth below.

“Fiber Licensor” means an Affiliate, Member in its individual capacity, or other third party that provides the Franchisee with Fiber for the performance of the Franchisee’s obligations under the Agreement.

3.13.3 Not later than sixty (60) days from the Commencement Date, Franchisee shall reach agreement with the Fiber Licensor on a Definitive MSA that meets the requirements below for Fiber that is to be provided by a Fiber Licensor. The Definitive MSA must be reviewed and approved by DoITT, the approval of which shall not be unreasonably withheld. The Definitive MSA must include the following provisions:

- (i) Upon expiration or termination of this Agreement, the City will have an irrevocable right to continue to use the Fiber (subject to the same minimum technical requirements concerning capacity, service levels and maintenance) as exists between the Franchisee and the Fiber Licensor during the Term of this Agreement and the Transition Period.
- (ii) In the event the City, or a third party acting on the City’s behalf, assumes the Franchisee’s rights with respect to Fiber, the City or such third party will be obligated to pay the Fiber Licensor a reasonable market rate of compensation for the provision of Fiber and those other obligations assumed by the third party to the Franchisee which the City elects to continue.
- (iii) The City and the third party will reasonably cooperate with the Franchisee and the Fiber Licensor to effect an orderly transition without interruption of service and to determine an appropriate market rate of compensation.
- (iv) If the parties are unable to agree on an appropriate rate of compensation the parties shall submit the matter to a single arbitrator assigned by the American Arbitration Association (“AAA”) who shall act in accordance with the rules of the AAA to determine a fair market compensation. (In connection with any such arbitration the City shall not assert that the compensation paid by Franchisee to a Member party reflects a market rate of compensation nor shall such rate of

compensation be disclosed to or taken into account by the Arbitrator.) The cost of any such arbitration shall be shared equally by the parties, unless the arbitrator determines that an alternative allocation is more appropriate.

- (v) It is the intent of the parties that the City be a third party beneficiary to the Definitive MSA.
- (vi) The term of the Definitive MSA shall be for the Initial Term, the Extended Term (if any), Transition Period, and any Holdover Period.
- (vii) The indemnification requirements set forth in Sections 11.4 and 11.5.
- (viii) The limitation of liability requirements set forth in Section 11.7.
- (ix) The insurance requirements set forth in Article XII.

3.13.4 The services to be provided pursuant to the Definitive MSA may be further modified as necessary to be consistent with the obligations under this Agreement. Nothing herein shall preclude Franchisee from requesting City approval of more than one Definitive MSA or to request approval of changes to any Definitive MSA previously approved.

ARTICLE IV. CONSIDERATION AND SCOPE OF SERVICES

4.1 Consideration and General Description of Services

4.1.1 In exchange for the City's granting of a non-exclusive franchise to Franchisee pursuant to Section 3.1, the Franchisee shall fulfill all of its obligations under the Agreement, including payment to the City of all Compensation and satisfactory performance of the Services identified below, as more fully described in Attachment SRV. This Section 4.1.1 is intended to provide a summary of the Franchisee's obligations and is not intended to modify or supersede the scope of the Public Communications Structure Services described in Attachment SRV.

- (i) Assume ownership of all Existing PPT Systems.
- (ii) Design, install, operate, and maintain the System, including the replacement of Existing PPTs with New Structures.
- (iii) Provide free or pay telephone service.
- (iv) Provide free public Wi-Fi.

4.1.2 The provision of all of the Services, individually and collectively, will be provided at the sole expense of the Franchisee. Unless a provision of this Agreement specifies to the contrary, the Franchisee is liable and responsible for payment of any costs incurred in order to perform any of the Services, including administrative costs, ancillary costs, permit fees, costs to repair City sidewalks or other property, electrical costs, telecommunications costs, licensing fees, costs to install, maintain, operate, or upgrade the Structures (including costs to purchase and replace Existing PPTs), taxes, or any other charge, fee, expense, or cost whatsoever arising out of the Franchisee's performance of its obligations under this Agreement. The Franchisee is

not entitled to reimbursement or a credit against the Compensation owed for any outlay of costs made by the Franchisee under this Agreement. However, if the Franchisee becomes liable for the New York City Commercial Rent Tax attributable to the Structures, it may deduct the full amount of such taxes that it pays from any payment owed to the City pursuant to Section 6.3.

4.2 Permits, Authorizations, Approvals, Consents and Licenses

4.2.1 Before installing any Structure, the Franchisee must obtain all necessary permits, authorizations, approvals, consents, licenses, and certifications required for each Structure, including, but not limited to: (i) those required under law related to materials and construction and all applicable sections of the building, plumbing and electrical codes of the City; (ii) all permits, authorizations, approvals, consents, licenses and certifications required by the City's Department of Transportation, Landmarks and the Public Design Commission, and any other agency of the City with jurisdiction over the property on which the Structure is located; (iii) any permits, authorizations, approvals, consents, licenses, and certifications required by law, including under Section 6-35 of Title 67 of the Rules of the City of New York, under Section 23-402 of the City Administrative Code, and under Section II(C) of the RFP; and (iv) any necessary permits, authorizations, approvals, consents, licenses and certifications from Persons to use easements, poles, conduits or other private property that the Franchisee seeks to use in connection with the provision of the Services. The Franchisee acknowledges that the City, in exercising its rights and obligations under the Agreement, will act consistent with any memoranda of understanding entered into between DoITT and the Borough Presidents. Where work to be done pursuant to this Agreement requires work to be performed by an electrician, the Franchisee shall employ and utilize only licensed electricians.

4.2.2 The Franchisee agrees that fees it pays to obtain any permits, consents, licenses, or any other forms of approval or authorization are not in any manner a tax, or compensation for this franchise in lieu of the Compensation.

4.2.3 The Franchisee acknowledges and accepts that the City has the sole discretion in the management of its rights-of-way to approve or deny any request by the Franchisee, or other Person, for a permit to install a Structure in a particular location.

ARTICLE V. ADVERTISING DISPLAYS

5.1 General Requirements

5.1.1 In consideration of the Franchisee's performance of the Services, and payment by the Franchisee of the Compensation, the City hereby grants to the Franchisee the right throughout the Term to display Advertising, and to lease space for the display of Advertising on the Structures that are the subject of this Agreement, provided that Advertising displays will only be permitted on Structures that offer public pay telephone service (or are in the transition

period contemplated in Section 3.2.4) and that are located in commercial or manufacturing zoning districts (defined as zoning districts where commercial or manufacturing uses are permitted as of right), and provided also that the authority to display Advertising on Structures is subject to the terms, conditions and limitations on advertising rights as are described in this Agreement. The Franchisee shall provide the information and certifications required by Section J.(8)(i),(ii)and (iii) of City Council Resolution 2309 of 2009.

5.1.2 The term “Advertising” means any printed matter or electronic display including words, pictures, photographs, symbols, graphics or visual images, in connection with the promotion or solicitation of sale or use of a product or service or not-for-profit, public service or governmental messages, other than information required to be posted on a PCS in accordance with this Agreement or applicable law.

5.2 Location of Advertising; Permitted Advertising Methods

5.2.1 Non-digital and Static digital Advertising. Printed poster Advertising (with backlighting at the Franchisee’s option) and static digital Advertising are permitted on all Structures where Advertising is permitted as described in Section 5.1.1, provided however that digital Advertising and backlit poster advertising may not be used within an historic district or adjacent to a site that Landmarks has designated a “landmark site” except with the prior approval of Landmarks by rule or on an individual basis. Static digital Advertising for purposes of this agreement is defined as Advertising in which a series of fixed digital images are displayed electronically, and each fixed image must be displayed for a minimum of fifteen (15) seconds and fade in and fade out no faster than one (1) second, except as may be authorized by the NYC Department of City Planning. For the avoidance of doubt, the references to commercial and manufacturing zoning districts in Section 5.1.1 include commercial overlay districts adjacent to residential zoning districts. In the case of any ambiguity regarding which zoning district a Structure is in, the Structure is deemed to be in the zoning district that includes the property closest to the Structure that is not Inalienable Property.

5.2.2 Slow motion digital. The electronic display of advertising images that include motion at slow speeds may be permitted but only in high density commercial districts, and only with the prior written approval of the Commissioner, in his or her sole discretion.

5.2.3 Other media and new technologies. Requests to display “zippers,” scrolling poster ads, innovative advertising and electronic advertising media not expressly covered in this Agreement will be evaluated on a case-by-case basis and will be subject to the zoning regulations applicable to the property adjacent to the site.

5.2.4 Audio advertising is not permitted in connection with advertising displays. However, an audio component used in connection with telecommunications services may be permitted in the sole discretion of the Department.

5.3 Advertising Siting and Clearance.

5.3.1 Advertising on Public Communications Structures is not permitted:

- (i) on Building-line Structures as defined by PPT Rules;
- (ii) within Historic Districts or adjacent to a landmark site unless the Advertising complies with the rules and other requirements of the Landmarks Preservation Commission.

5.3.2 Advertising Display Panels

- (i) Advertising on display panels on Structures may not exceed 1,539 square inches;
- (ii) Advertising on Existing PPTS, prior to their replacement with a Structure, shall be permitted pursuant to the old Franchise;
- (iii) Each PCS may have no more than 2 advertising panels.

5.4 [RESERVED]

5.5 Restrictions

5.5.1 The Franchisee shall not sell or place Advertising that is false or misleading; promotes unlawful conduct or illegal goods, services or activities; or, is otherwise unlawful or obscene, as determined by the City, including advertising tobacco products or trademarks and advertising that constitute a public display of offensive sexual material in violation of Penal Law 245.11.

5.5.2 Tobacco advertising and electronic cigarette advertising [are](#) not permitted. The term “electronic cigarette” is defined for this purpose as set forth in Section 17-502 of the Administrative Code of the City of New York. Alcohol advertising within two hundred feet of a building used exclusively as school, day care center, or house of worship is not permitted. The 200 feet shall be measured in straight lines from the center of the nearest entrance of the school, day care center or house of worship to the nearest outer edge of the PCS.

5.6 Maintenance of Advertising Displays

5.6.1 The Franchisee shall maintain all advertising display panels in a clean and attractive condition at all times and is responsible for the cost of any power consumption used, electrical and network connectivity, and all other costs arising from the display of Advertising.

5.6.2 The Franchisee shall require and ensure that all Advertising display panels are safe, secure and sturdy throughout the Term. If the Franchisee becomes aware, or is informed

by the City, that a panel is unsafe, insecure, not sturdy, or otherwise poses a threat to public safety, the Franchisee shall repair or remove or otherwise secure the panel promptly and in any event within four hours of notification.

5.7 Removal of Advertising

5.7.1 Within forty-eight (48) hours of receipt of written notice (which may be provided by email) that Advertising on a PCS is either unauthorized, prohibited, or otherwise fails to comply with any requirement of the Agreement, as determined by the City, the Franchisee must remove the Advertising or cure the failure. If the Franchisee fails to remove the Advertising or otherwise cure the failure, the City may, at the Franchisee's expense, perform any efforts it determines appropriate to remove the advertising or otherwise cure the failure. The Franchisee must reimburse the City for all costs or damages incurred by the City, including repair and restoration costs arising out of the performance of the work, no later than thirty (30) days after the City cures the Franchisee's failure.

5.7.2 Any action by DoITT under this subsection will be in addition to and cumulative of all rights and remedies set forth in Article XIII and all other rights or remedies, expressed or implied, available to the City at law or in equity.

5.8 NYC Program Advertising

5.8.1 NYC Program Advertising (NYCPA) as described in this Agreement will be administered on behalf of the City by NYC & Company or such other entity or agency as the City may from time to time direct (the NYCPA Manager). In each year of the Term, Franchisee shall provide advertising space to the NYCPA Manager for NYC Program Advertising (NYCPA) at no cost to the City or the NYCPA Manager consisting of 5% of the total value of the advertising space on the Structures then available to Franchisee under this Agreement. At the NYCPA Manager's option, such space provided to the NYCPA Manager shall be comprised of an agreed-upon set of particular panels at agreed-upon locations. Alternatively, if agreeable to the NYCPA Manager, some or all of the NYCPA Advertising space may be allocated on a time-based fractional basis such that certain panels are used by the NYCPA Manager for NYCPA Advertising at certain times or during certain periods rather than set aside entirely for NYCPA Advertising. In either case, if at any time the NYCPA Manager and the Franchisee cannot agree on an allocation that equals such 5% of value, then the NYCPA Manager and the Franchisee shall each provide a proposed allocation to an arbitrator assigned by the American Arbitration Association ("AAA"), who shall select (using the procedures of the AAA) one of the two proposals submitted, whichever is determined by the arbitrator to better reflect the required 5% of the total value advertising space on the structures, in which case the arbitrator's selection shall be treated as compliant with the 5% requirement. The cost of any such arbitration shall be shared equally by the Franchisee and the City. NYCPA Advertising shall mean, for purposes of this Agreement, advertisements reasonably determined by the NYCPA Manager to be within its corporate or charter purpose, including but not limited to commercial advertisements, advertisements promoting New York City, and public service

advertisements, but NYCPA shall not include “spot market advertising”. For purposes of the preceding sentence “spot market advertising shall mean advertising sold by the NYCPA Manager to commercial advertisers (whether for cash, trade or barter) in a manner unrelated to any broader sponsorship or partnership arrangement between such advertiser and either the NYCPA Manager or the City and unrelated to any event, sponsorship or support efforts, or intergovernmental agreement, of the NYCPA Manager or the City (for this purpose, “intergovernmental agreements” shall mean agreements between the City and/or the NYCPA Manager and other governmental or quasi-governmental entities).

5.8.2 The administration of NYCPA, including posting, planning, installation, maintenance, removal and reporting shall be performed by Franchisee at no cost to the City or the NYCPA Manager (except that Advertising posters shall be provided to or at the direction of Franchisee), shall be implemented in accordance with the same standards and best practices and utilization of the same materials and methods as used by Franchisee for displays of its paying commercial clients, which shall include, at a minimum: sufficient lead time for planning, a copy change every four weeks (or equivalent industry standard for digital displays), location lists with spotted maps provided to the NYCPA Manager and DoITT two weeks prior to the posting date of any campaign, a completion report including at least six quality photographs of distinct panels for every campaign and an affidavit certifying the date that materials were received and posted provided to the NYCPA Manager and DoITT within 6 weeks of the posting completion. In programming the NYCPA, the NYCPA Manager shall provide Franchisee with a monthly inventory of the NYCPA locations and the advertising campaign requested at each location.

5.8.3 For the purposes of this Section 5.8, an exclusive advertising campaign shall be any campaign whereby Franchisee agrees to limit its rights to enter into advertising agreements with entities that compete with a particular advertiser. If the Franchisee wishes to enter into an exclusive advertising campaign, and the City controls NYCPA Advertising in a geographic area which would be valuable to the Franchisee and the particular advertiser for use in such exclusive advertising campaign, then Franchisee may propose to the NYCPA Manager that the NYCPA Manager honor the terms of exclusivity for the NYCPA, or in the alternative to cooperate in good faith with Franchisee to address any potential issues that may arise out of an accommodation by the NYCPA Manager of such exclusivity arrangement, including, for example, consideration of an in-kind exchange of panel locations on a one for one basis to accommodate a specified geographic exclusivity. For the avoidance of doubt, NYCPA has no obligation beyond such good faith cooperation to accommodate any such exclusivity commitment sought by Franchisee, and Franchisee is expressly prohibited from entering into any agreement with an advertiser that places restrictions on NYCPA Manager’s use of the NYCPA. The notice to the NYCPA manager described in this paragraph shall contain information as to the schedule, duration, geographic reach and number of panels involved in the proposed exclusive advertising campaign.

ARTICLE VI. COMPENSATION AND OTHER PAYMENTS

6.1 Defined Terms

Whenever used in this Agreement, the terms, phrases, and words listed below, and their derivatives, have the meanings given below.

“Franchise Fee” means the amount of annual compensation paid to the City in exchange for the franchise, calculated in accordance with Section 6.3.1.

"Gross Revenues" means the sum of all revenues paid or obligated to be paid to the Franchisee, its subsidiaries, affiliates or third parties as a result of the installation, operation, maintenance or removal (temporary or otherwise) of the Public Communications Structures and Existing PPTs, including for the display of advertising, the provision of communications services, sponsorship, and the like.

"Minimum Annual Guarantee" or "MAG" means, for each year during which the Franchisee performs the Services (including during any Extended Term or Holdover Period), the amount set forth in Section 6.3.1, subject to any adjustment under Section 6.3.3.

6.2 Gross Revenues

6.2.1 [RESERVED]

6.2.2 Gross Revenues will be calculated on the basis of the total amounts of revenue from whatever source derived, (net of bad debts) but without any other deduction whatsoever for commissions, fees, brokerage, labor charges or other expenses or costs, as determined in accordance with generally accepted accounting principles, on an accrual basis, paid or obligated to be paid, directly or indirectly, to the Franchisee, its subsidiaries, affiliates, or any parties directly or indirectly retained by the Franchisee to generate revenue (not including amounts paid or obligated to be paid to third parties by or on behalf of the Franchisee or any subsidiary or affiliate of the Franchisee).

6.2.3 Gross Revenues includes the fair market value of any non-monetary consideration (in kind) in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the Franchisee may receive.

6.2.4 In the event that the Franchisee provides any advertising space pursuant to any transaction which is not an arm's-length or free-standing transaction (because, for example the transacting Persons share some common ownership, or one party is controlled by the other party or the transaction involves the Franchisee's including or grouping advertising on the Public Communications Structures with other assets in the Franchisee's inventory (in New York City or elsewhere), the amount to be included in Gross Revenues will be no less than the then-current Rate Card value as defined below in this Section 6.2.4 .

- (i) In the event that Franchisee sells Advertisements bundled with any other goods or services offered by or for Franchisee, Franchisee shall not: (1) sell the Advertisements at a higher discount than any good or service in such bundle or (2) act or fail to act in any way that results in Advertisements being sold in a manner to reduce the amounts payable to the City hereunder or to increase the amounts allocable to Franchisee's other goods or services.
- (ii) No later than thirty (30) days after the Commencement Date, the Franchisee shall submit to DoITT a Rate Card reflecting a set of values corresponding to the purchase of advertising space on the Structures. Each rate on the Rate Card must reflect a rate not less than the average amount actually charged by the Franchisee during the twelve (12) months preceding the Commencement Date. The Rate Card may include different rates for different types of advertising space, different locations, different size purchases (for example, different rates that reflect volume discounts), provided that in each case the listed rate reflects the Franchisee's average prevailing rate for arm's length, free-standing transactions in the previous year as described in the preceding sentence.
- (iii) No more than thirty (30) days after each anniversary of the Commencement Date, the Franchisee shall submit to DoITT an updated Rate Card, based upon the rates actually charged in the preceding year.

6.2.5 Gross Revenues do not include (i) collection of any sales taxes or similar taxes which the Franchisee is obligated by law to collect on behalf of and remit to a government entity or (ii) revenues generated as a result of charges for print production and other Creative Services provided by the Franchisee. Creative Services means services provided to advertisers by Franchisee with the creation of advertising copy for display on a PCS pursuant to a separate agreement. The Franchisee may not offer a discount on the Advertising to advertisers purchasing Creative Services, subject to Section 6.2.4(i). Gross Revenues shall be reduced by the amount of any payment made by the Franchisee to a Special Assessment District ("SAD") association (in connection with the location of Existing PPTs or Structures on sidewalks in the applicable SAD) that had previously been receiving payment from holders of now expired PPT franchises.

6.2.6 The Franchisee shall not divert or re-characterize revenue that would otherwise have been considered Gross Revenues for purposes of this Agreement. Violation of this provision constitutes a material breach of the Agreement.

6.3 Compensation

6.3.1 The Franchisee shall pay to the City a Franchise Fee, with respect to each Contract Year, in an amount equal to the greater of (i) fifty percent (50%) of Gross Revenues for that Contract Year or (ii) the Minimum Annual Guarantee payment, as detailed in the table below. In Contract Year Eight, the Percentage of Gross Revenue payable to the City shall

increase to fifty-five (55%) percent for Gross Revenues derived by Franchisee from the display of Advertising on the PCS, but shall remain at fifty (50%) percent for all other Gross Revenues. In the event that the Agreement expires or is terminated by reason other than a Termination Default, before the completion of a Contract Year, the Franchisee shall pay to the City a pro-rated amount of the Minimum Annual Guarantee (based on the number of days in the Contract Year prior to such expiration or termination divided by 365). If within any Contract Year Franchisee makes payment to DoITT to satisfy any permitting fee relating to the installation of a Structure, such payment will be credited as payment towards the Minimum Annual Guarantee.

Contract Year	Minimum Annual Guarantee	Percentage of Gross Revenue Advertising	Percentage of Gross Revenue – Non Advertising
Contract Year 1	\$20,000,000	Fifty (50%) Percent	Fifty (50%) Percent
Contract Year 2	\$22,500,000	Fifty (50%) Percent	Fifty (50%) Percent
Contract Year 3	\$25,000,000	Fifty (50%) Percent	Fifty (50%) Percent
Contract Year 4	\$27,500,000	Fifty (50%) Percent	Fifty (50%) Percent
Contract Year 5	\$42,000,000	Fifty (50%) Percent	Fifty (50%) Percent
Contract Year 6	\$47,000,000	Fifty (50%) Percent	Fifty (50%) Percent
Contract Year 7	\$51,500,000	Fifty (50%) Percent	Fifty (50%) Percent
Contract Year 8	\$57,983,000	Fifty-Five (55%) Percent	Fifty (50%) Percent
Contract Year 9	\$59,722,000	Fifty-Five (55%) Percent	Fifty (50%) Percent
Contract Year 10	\$61,514,000	Fifty-Five (55%) Percent	Fifty (50%) Percent
Contract Year 11	\$63,291,000	Fifty-Five (55%) Percent	Fifty (50%) Percent
Contract Year 12	\$65,119,000	Fifty-Five (55%) Percent	Fifty (50%) Percent
Contract Year 13	\$67,001,000	Fifty-Five (55%) Percent	Fifty (50%) Percent
Contract Year 14	\$68,938,000	Fifty-Five (55%) Percent	Fifty (50%) Percent
Contract Year 15	\$70,932,000	Fifty-Five (55%) Percent	Fifty (50%) Percent

In no event will the dollar figure in the first column of the above table for any Contract Year commencing after January 1, 2016 be less than the amount which equals \$20,000,000 (Twenty Million Dollars) multiplied by a fraction the numerator of which is the CPI in effect on the first day of the Contract Year and the denominator of which is the CPI that was in effect on the Commencement Date. The CPI for this purpose shall mean the Consumer Price Index (All Urban Consumers, All Items, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 1982-84=100)

6.3.2 [RESERVED]

6.3.3 If in DoITT’s good faith determination, or as a consequence of the removal of Advertising Structures pursuant to Section 3.7, the Franchisee’s total number of advertising installations falls below 4,000 at any time during the Term, and the reason the total number falls below 4,000 is not the fault of Franchisee, and the percentage of Gross Revenues due to the City falls below the Minimum Annual Guarantee payment for that Contract Year then, if the failure is a consequence of City Delay or Litigation Delay (as defined in Section 15.23.1), the

Minimum Annual Guarantee will be reduced by a percentage commensurate with the number of advertising installations short of the 4,000 number and the percentage of the year that the advertising installation number fell short of 4,000.

6.4 Payment

6.4.1 On or before the 17th day of each calendar month, the Franchisee shall pay to the City one twelfth (1/12) of the Minimum Annual Guarantee accrued in previous month. The first payment will be made forty-seven (47) days after the Commencement Date and subsequent payments will be made on the seventeenth (17th) day of each month. With each payment, Franchisee shall submit a report, in a format acceptable to the Department, showing Gross Revenues accrued that month. The report must include, at a minimum, a comprehensive itemized list of all Gross Revenues received and any other information reasonably required by the City.

6.4.2 Twice annually, the Franchisee shall provide a report (the "True-Up Report") showing total Gross Revenues generated during the first six months of the current Contract Year and for the full twelve months of the recently completed Contract Year. The report must be in a format reasonably acceptable to DoITT. The Franchisee shall simultaneously submit a payment for any amount owed reflecting a true-up of the full amount payable to the City under Section 6.3.1 above based on the information reflected in the true-up report.

- (i) The Franchisee shall submit the first true-up report no more than thirty (30) days following the date falling six months after the commencement of the current Contract Year; and shall submit the second true-up report no more than thirty (30) days following the end of the previous Contract Year.
- (ii) In the event the year's second True-Up Report shows that the City has been overpaid (i.e. – the City has received more than the greater of (i) the percentage of Gross Revenues set forth in Section 6.3.1 for that Contract Year or (ii) the Minimum Annual Guarantee payment), the Franchisee shall be entitled to a credit in the amount of such overpayment against the next Franchise Fee payment or payments due.

6.5 Sponsorship

6.5.1 Subject to the Commissioner's approval, the Franchisee may enter into an agreement (a "Sponsorship Agreement") with an entity whereby the entity (a "Sponsor") will be given sponsorship recognition or similar recognition as a provider of key support of one or more of the Services.

6.5.2 Prior to entering into a Sponsorship Agreement, the Franchisee must receive the express written permission of DoITT. The Franchisee shall present to DoITT a proposal that

includes the proposed details of the sponsorship, including designs of any proposed sponsorship logo(s), and the draft sponsorship agreement. DoITT may, in its discretion, approve, deny, or in lieu of denial propose changes to the Sponsorship Agreement or other proposed details that would be sufficient to grant DoITT's approval.

6.5.3 The Franchisee's obligations under this Agreement, including this Section, are not affected by the performance or non-performance of the Franchisee's obligations under the Sponsorship Agreement.

6.5.4 Gross Revenues includes all payments that the Sponsor agrees to pay in connection with the System, including in exchange for recognition and/or acknowledgement of the Sponsor's role.

6.5.5 More than one Sponsor and Sponsorship Agreement may be requested by the Franchisee and permitted by DoITT, in its discretion, subject to the provisions of this Section 6.5 being applicable to each.

6.6 City Incurred Cost

The City shall provide five (5) business days' notice of its intention to perform any work that is the responsibility of the Franchisee and Franchisee shall have such five (5) business days to perform such work, or, in an emergency, such shorter notice as the City may deem reasonable under the circumstances. In the event such work is not performed by the Franchisee, the City shall have the option to perform such work and the Franchisee shall reimburse the City for all costs and expenses incurred by the City in the course of the City performing any work that should have been performed by the Franchisee. Payment under this Section is due thirty (30) days after receipt of an invoice from the City setting forth the amount to be reimbursed.

6.7 Future Costs

In the event of a Default by the Franchisee, the Franchisee shall pay to the City or to third parties, at the direction of DoITT, an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including attorneys and other consultants) in connection with enforcement of remedies including termination for cause. Before any reimbursable work is performed, the City will advise the Franchisee that the City will be incurring the services of third parties pursuant to the preceding sentence. However, in the event the City terminates this Agreement or brings an action for other enforcement of this Agreement against the Franchisee, or the Franchisee brings an action against the City, and the Franchisee finally prevails, then the Franchisee shall have no obligation to reimburse the City or pay any sums directly to third parties, at the direction of the City, pursuant to this Section with respect to such termination or enforcement. In the event the Franchisee contests the charges, it shall pay any uncontested amounts. DoITT shall review the contested charges and the services rendered and shall reasonably determine whether such

charges are reasonable for the services rendered. In addition to the foregoing, the Franchisee shall pay to the City or to third parties, at the direction of DoITT, an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or transfer, amendment or other modification of this Agreement or the franchise to be made at the request of the Franchisee. Before any reimbursable work is performed, the City will advise the Franchisee that the City will be incurring the services of third parties pursuant to the preceding sentence. The Franchisee expressly agrees that the payments made pursuant to this Section are in addition to and not in lieu of, and shall not be offset against, the compensation to be paid to the City by the Franchisee pursuant to any other provision of this Article.

6.8 Limitations on Credits or Deductions

6.8.1 The Franchisee acknowledges and agrees that:

- (i) the Compensation and Services provided under this Agreement, as well as costs and expenses incurred by the Franchisee in performing its obligations under the Agreement, do not constitute a tax and must be provided in addition to all taxes, fines, fees, or other charges of all kind levied by any governmental entity, all of which remain separate and distinct obligations of the Franchisee;
- (ii) Franchisee knowingly and intentionally relinquishes and waives its rights and the rights of any Affiliated Person to a deduction or other credit pursuant to Section 626 of the New York State Real Property Tax Law and any successor or amendment thereto, and to any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 6.8, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any such deduction or other credit;
- (iii) except as expressly permitted under this Agreement, the Franchisee shall not claim a deduction or credit for any part of the Compensation or Services provided under this Agreement, or the costs and expenses incurred by the Franchisee in performing its obligations under the Agreement, against any taxes, fines, fees, or other charges of any kind levied by any governmental entity (other than income taxes);
- (iv) except as expressly permitted by this Agreement, the Franchisee shall not apply taxes, fines, fees, or other charges of any kind levied by any governmental entity as a deduction or credit against the Compensation or Services that the Franchisee is obligated to provide under this Agreement.

6.8.2 The Franchisee shall not cooperate with, encourage, or otherwise support any attempt by an Affiliated Person to undertake, for the benefit of the Franchisee, an Affiliated

Person, or a third party, any action that the Franchisee is prohibited from undertaking itself under Section 6.8.1.

6.8.3 Nothing in this Agreement is intended to prevent the Franchisee from treating the Compensation or costs incurred in connection with providing the Services as an ordinary expense of doing business for the purposes of its City, state, or federal tax liabilities.

6.9 Interest on Late Payments

If any payment required by this Agreement is not timely received by the City as required by the Agreement, the Franchisee shall pay interest on the amount due commencing on the due date until payment is received at an annual rate per year equal to the rate for delinquent payment of water charges in effect as of the Execution Date.

6.10 Method of Payment

Except as provided elsewhere in this Agreement, the Franchisee shall direct all payments to the City under this Agreement by check or wire (if approved by DoITT), payable to “The New York City Department of Information Technology and Telecommunications,” addressed to: Director of Franchise Audit and Revenue, Department of Information Technology and Telecommunications, 2 MetroTech Center, 4th Floor, Brooklyn, NY 11201, or as otherwise directed by DOITT.

6.11 Continuing Obligation and Holdover

6.11.1 If the Franchisee continues to operate all or any part of the System, including placing Advertising, and the collection of revenue related to the Franchise or System, after the expiration or termination of this Agreement, then the Franchisee shall continue to comply with all provisions of this Agreement as if the Agreement was still in force and effect, including providing Compensation to the City as required under the Agreement and the maintenance of the Security Fund throughout the Holdover Period.

6.11.2 The Franchisee acknowledges and agrees that the parties do not intend that continued operation by the Franchisee during any Holdover Period will constitute a renewal or other extension of this Agreement—even if the Franchisee performs otherwise in compliance with this Agreement.

6.11.3 If the Franchisee fails to perform as required under this Agreement during any Holdover Period, the Franchisee acknowledges and accepts that the City may exercise any of the City’s rights and remedies under Article XIII, as it would during the Term.

ARTICLE VII. SECURITY FUND AND MINIMUM EQUITY CONTRIBUTIONS

7.1 Letter of Credit & Additional Security

7.1.1 No later than five (5) business days after the Execution Date, Franchisee shall provide to the City an irrevocable letter of credit in favor of the City in the initial amount of \$20,000,000. Such letter of credit shall provide for scheduled increases or, no later than 20 days prior to the end of the applicable Contract Year, shall be supplemented or replaced by additional letters of credit such that the aggregate face amount of such letter(s) of credit shall equal the required amounts, increasing as indicated in the table below. Each such letter of credit or letters of credit must include cancellation and renewal provisions compliant with Section 7.1.4 below. If Franchisee fails to deliver the letter of credit as required, City may deem Franchisee to be in default in the performance of its obligations hereunder. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank by the City. In addition, no later than 20 days prior to the commencement of each Contract Year beginning with the seventh Contract Year, the Franchisee shall provide the City with the Additional Security indicated in the table below. The Additional Security will be in the form of a Letter of Credit, a surety bond or cash deposited with a third party escrow agent selected by Franchisee and reasonably acceptable to the City, the selection among the letter of credit, bond, or cash format for the Additional Security shall be at the discretion of Franchisee. Franchisee will provide the Additional Security for the upcoming Contract Year no later than twenty (20) days before the end of each Contract Year.

Contract Year	Letter of Credit	Additional Security
Contract Year 1	\$20,000,000	N/A
Contract Year 2	\$22,500,000	N/A
Contract Year 3	\$25,000,000	N/A
Contract Year 4	\$25,000,000	N/A
Contract Year 5	\$25,000,000	N/A
Contract Year 6	\$25,000,000	N/A
Contract Year 7	\$25,000,000	\$750,000
Contract Year 8	\$25,000,000	\$3,992,000
Contract Year 9	\$25,000,000	\$4,861,000
Contract Year 10	\$25,000,000	\$5,757,000
Contract Year 11	\$25,000,000	\$6,646,000
Contract Year 12	\$25,000,000	\$7,560,000
Contract Year 13	\$25,000,000	\$8,501,000
Contract Year 14	\$25,000,000	\$9,469,000
Contract Year 15	\$25,000,000	\$10,466,000

7.1.2 The letter of credit must be issued by a financial institution with a long term credit rating of not less than “A2” by Moody’s and “A” by S&P or a short term credit rating of not less than “P-1” by Moody’s and “A-1” by S&P and be in form and substance reasonably acceptable to the City.

7.1.3 The letter of credit and the Additional Security described in Section 7.1.1 above

(together the "Security Fund") will constitute a security deposit guaranteeing faithful performance by Franchisee of the material terms, covenants, and conditions of this Agreement, including all monetary obligations set forth in such terms. The City may make a demand under Security Fund for all portions of the Security Fund to compensate the City for any loss or damage (in each case, as reasonably documented by the City) that they may have incurred by reason of Franchisee's material default or material breach of this Agreement; provided, however, that the City will present its written demand to a bank for payment under a Security Fund only after the City first has made its demand for payment directly to Franchisee, and five full Business Days have elapsed without Franchisee having made payment to the City. Should the City terminate this Agreement due to a breach by Franchisee, the City shall have the right to draw from the Security Fund those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City arranges for another contractor and the agreement between the City and that contractor becomes effective. The City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the Security Fund is so used or applied by the City (other than in connection with a termination of this Agreement), Franchisee, within ten (10) business days after written demand by City, shall reinstate the Security Fund to its original amount; Franchisee's failure to do so will be a material breach of this Agreement. In the event this Agreement is terminated pursuant to Section 13.4.2, the City agrees to return the Security Fund upon the request of Franchisee (except that in the event of a Holdover Period, the City shall not be required to return the Security Fund until the Holdover Period ends).

7.1.4 Any letter of credit that is to constitute all or part of Security Fund required hereunder must provide that it will not be cancelled, and will not expire without renewal, except after at least thirty (30) days' notice to the City of the impending cancellation, or expiration without renewal, of such letter of credit. Any failure to replace or renew a Security Fund letter of credit by a date which is thirty (30) days prior to the impending cancellation or expiration of such a letter of credit will constitute Default under this Agreement, which the City may cure by (i) drawing on the Security Fund and itself holding the proceeds as a replacement Security Fund (with all rights to draw on the proceeds for Security Fund purposes as provided under this Agreement) until such time as the Company completes the required letter of credit replacement or renewal, or (ii) exercising any other lawful remedy or remedies. Interest earned on proceeds held by the City as a replacement Security Fund will be retained by the City.

7.2 Performance Bond

7.2.1 Effective upon the Commencement Date of the Franchise Agreement, Franchisee will deliver a Performance and Payment Bond, in a form approved by DoITT, in the penal sum of \$75,000,000 for the construction and installation of the Public Communication Structures.

7.2.2 Performance Bond Reduction. The penal sum of \$75,000,000 for the Performance Bond may be reduced to \$60,000,000 at such time as a sufficient number of Structures have been constructed and installed as contemplated in Section 1.2.3 of Attachment SRV, such that no more than 2,000 Structures remain to be installed in order to complete the

full set of schedules described in Section 1.2.3 of Attachment SRV. The penal sum of the Performance Bond may be further reduced to \$45,000,000 at such time as a sufficient number of Structures have been constructed and installed as contemplated in Section 1.2.3 of Attachment SRV, such that no more than 1,500 Structures remain to be installed in order to complete the full set of schedules described in Section 1.2.3 of Attachment SRV. The penal sum of the Performance Bond may be further reduced to \$30,000,000 at such time as a sufficient number of Structures have been constructed and installed as contemplated in Section 1.2.3 of Attachment SRV, such that no more than 1,000 Structures remain to be installed in order to complete the full set of schedules described in Section 1.2.3 of Attachment SRV. The penal sum of the Performance Bond may be further reduced to \$15,000,000 at such time as a sufficient number of Structures have been constructed and installed as contemplated in Section 1.2.3 of Attachment SRV, such that no more than 500 Structures remain to be installed in order to complete the full set of schedules described in Section 1.2.3 of Attachment SRV. For purposes of implementing the reductions contemplated in this Section 7.2.2, at such time as a reduction is permitted, the City shall at Franchisee's request issue a letter to the Surety confirming the new, reduced penal sum of the bond amount may be affected.

7.3 Minimum Equity Contributions

The Franchisee shall maintain the minimum commitment of total equity contributions by Members of the Franchisee as described in Section 2.3.2(vi) until the Franchisee has completed installation of the quantity of Structures set forth in Section 1.2.3(vi) of Attachment SRV, provided, however, such total minimum equity commitment requirement shall be reduced by such amount as has already been funded to the Franchisee by one or more Members.

ARTICLE VIII. EMPLOYMENT AND PURCHASING

8.1 Right to Bargain Collectively

The Franchisee shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Franchisee shall recognize and deal with the representatives duly designated or selected by the majority of its employees for collective bargaining regarding rates of pay, wages, hours of employment or any other terms, conditions or privileges of employment. The Franchisee shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

8.2. Local Opportunities

The Franchisee shall use commercially reasonable efforts to recruit, educate, train and employ residents of the City, for opportunities created by the construction, installation, operation, management, administration, marketing, and maintenance of the System. Recruitment activities will include provisions for coordinating with the City's workforce development and training programs (such as the Per Scholas and Red Hook Initiatives), and

posting employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. The Franchisee shall ensure the promotion of equal employment opportunity for all qualified persons employed by, or seeking employment with, the Franchisee.

8.3. Obligation to Use Domestic and Local Contractors and Subcontractors

The Franchisee certifies that at least 80 percent of the overall costs incurred by the Franchisee for the labor and materials involved in the manufacture, including without limitation, assembly, of the Structures will be within the United States and that at least 50 percent of the overall costs incurred by the Franchisee for the labor and materials involved in the manufacture, including without limitation, assembly of the Structures will be within the City of New York.

8.4. No Discrimination

8.4.1 The Franchisee shall not: (i) refuse to hire, train, or employ; or (ii) bar, layoff, discharge, modify compensation or hours, promote, demote, transfer, or take any other employment action based to any extent on an individual's race, creed, color, national origin, religion, gender or gender identity, age, disability, perceived disability, marital status, military status, sexual affectation, or real or perceived affectional preference, or sexual orientation.

8.4.2 The Franchisee shall comply with all federal, state and local labor and employment laws.

8.5 Employment Projections

The Franchisee currently expects that the Franchise will create an estimated 100-150 direct jobs through the platforms development, manufacturing, installation, maintenance, data analytics, and application development, plus an estimated 650 additional support jobs. The Franchisee will submit to DoITT and the FCRC by the thirtieth of January of each year during the term of this Agreement and any renewals, a report documenting its progress on the job creation described in this section.

ARTICLE IX. OVERSIGHT

9.1 Records

9.1.1 Throughout the Term, and for a minimum of six (6) years after Franchisee ceases to provide any of the Services, the Franchisee shall maintain complete and accurate Books and Records of the business, ownership, and operations of the Franchisee regarding the System to allow the DoITT or the Comptroller to determine whether the Franchisee is in compliance with the Agreement.

9.1.2 If DoITT or the Comptroller determines that the Franchisee is not in compliance with Section 9.1.1, the Franchisee shall alter the manner in which the Books and Records and the accounting and commission reporting system is organized and maintained as directed by the City in order to comply. All financial books and Books and Records must be maintained in accordance with generally accepted accounting principles either in electronic or paper format, or both. The Franchisee shall also maintain and provide any additional Books and Records as the Comptroller or DoITT determine necessary to ensure proper accounting of all payments due the City. At all times the Franchisee shall maintain its Books and Records regarding advertising-based revenues in a manner which allows DoITT and the Comptroller to evaluate compliance with Section 6.2 above.

9.2 Right of Inspection

9.2.1 DoITT or the Comptroller may, upon written demand with reasonable notice to the Franchisee, inspect, examine, or audit during normal business hours, at the Franchisee's New York City office, all documents, records, computer systems or other information in the Franchisee's possession related to or affecting the Franchisee's obligations under this Agreement and to interview staff that perform functions related to these records. If access to computer systems, related documents and records, and related staff cannot be provided in New York City then Franchisee will provide access elsewhere and provide transportation and accommodations for a minimum of two auditors.

9.2.2 Access by DoITT or the Comptroller to any of the documents in Section 9.1 shall not be denied by the Franchisee on the grounds that such documents are alleged by the Franchisee to contain confidential, proprietary or privileged information, provided that the requirement shall not be deemed to constitute a waiver of the Franchisee's right to assert that confidential, proprietary or privileged information contained in such documents should not be disclosed to a third party pursuant to Section 9.4.1.

9.3 Compliance with Investigation Clause

The Franchisee acknowledges, accepts, and shall comply with, the Investigation Clause, attached as Appendix A.

9.4 Confidentiality

9.4.1 To the extent permissible under applicable law, the City shall protect from disclosure any documents or information that is both (i) labeled by the Franchisee as a trade secret or otherwise confidential ("Franchisee Confidential Information") and (ii) identified with specificity in a written communication to the Assistant Commissioner for Franchises. Labeling and written notification are the responsibility of the Franchisee.

9.4.2 If the City is requested to disclose Franchisee Confidential Information pursuant to law, the City shall undertake commercially reasonable efforts to provide the Franchisee with

prompt written notice. If a protective order or other remedy is not obtained, the City shall furnish the Franchisee Confidential Information only to the extent legally required, and will exercise commercially reasonable efforts to obtain assurances that confidential treatment will be accorded the Franchisee Confidential Information.

9.4.3 Information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this Agreement, (ii) was available publicly without a breach of an obligation of confidentiality by a third party, or (iii) was learned from a third party not under an obligation of confidentiality, is not Franchisee Confidential Information for the purposes of this Agreement.

9.4.4 Notwithstanding the obligations in this section or any other provision of this agreement, the Franchisee acknowledges and accepts that the city of New York does not have any financial liability to the Franchisee for disclosure of Franchisee confidential information. The Franchisee hereby waives any right to recovery of pecuniary damages for breach by the city of its obligations under this section.

9.5 Oversight

9.5.1 At its discretion, DoITT may oversee, regulate, and inspect the installation, maintenance, operation and upgrade of the System, or delegate its rights under this section to a third party.

9.5.2 The Franchisee shall establish and maintain managerial and operational records, standards, procedures, controls, and reports as requested by the City that establish, to the satisfaction of the City, that the Franchisee is performing in accordance with the requirements of the Agreement.

9.5.3 The Franchisee may use functionality in the MMS to meet the requirements of this section, but technical failure of the MMS does not relieve the Franchisee of its obligations under this section.

9.6 Regulation by City

To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue rules, regulations, orders, or other directives governing the System(s) and Services that the City determines necessary or appropriate in the lawful exercise of its powers under the New York City Charter. The Franchisee acknowledges and accepts, and shall comply with all rules, regulations, orders, or other directives.

ARTICLE X. ASSIGNMENT AND OTHER TRANSFERS; LIMITATIONS

10.1 City Approval Required

10.1.1 Appendix D hereof sets forth, as of the date of execution of this Agreement (the “**Execution Date**”), a listing of each of the members of the Franchisee (“**Members**”), including, with respect to each such initial Member, the number of units of membership interest in the Franchisee held by such initial Member. Subject to the provisions of this Article X, each of the following transactions shall be subject to the prior approval of the City, provided that the City may not be arbitrary and capricious in denying or conditioning any request for such approval or in the timing of its decision with respect to any request for such approval: (i) any sale, assignment or transfer of the Franchisee’s interest in the System, the franchise granted hereunder or the Franchisee’s rights and obligations under this Agreement (other than assignments of rights and delegations of obligations expressly permitted hereunder), (ii) any transaction (or series of related transactions) which would result in the beneficial ownership (within the meaning of Section 13(d)(3) of the Exchange Act) of more than forty percent (40%) of the outstanding voting or non-voting membership interests of the Franchisee being held by any single Person or group of Affiliated Persons, (iii) any transaction (or series of related transactions) which would result in any of the initial Members listed on Appendix D owning less than fifty percent (50%) of the outstanding membership interests of the Franchisee held by such initial Member on the Execution Date, (iv) any transaction (or series of related transactions) which would result in the transfer of all or substantially all of the System assets to Persons other than the initial Members listed on Appendix D, or (v) any transaction (or series of related transactions) which would result in the acquisition of Control of the Franchisee, the System or the franchise granted hereunder or of a Controlling Interest in the Franchisee, the System or the franchise granted hereunder by any Person or group of Affiliated Persons; provided, however, that the requirements of this Section 10.1 will not be applicable with respect to any “**Permitted Transfers**” (as defined in Appendix E attached hereto and made a part hereof). The transactions described in clauses (i) through (v) of this Section 10.1.1 are herein referred to as “**Covered Transactions**”.

10.1.2 Application to the City for any approval required hereunder must be made at least forty-five (45) calendar days prior to the proposed effective date of the applicable Covered Transaction. Such application must be in writing and must contain a reasonably detailed description of all of the material terms of the Covered Transaction that are relevant to the City, including reasonably detailed information with respect to the ownership and control of the applicable transferee and the relevant financial, technical, and other qualifications of the transferee, including, without limitation, the following information:

- (i) any reports being provided to the shareholders of, or other investors in, the applicable transferor any filings with the Securities and Exchange Commission, in each case, that pertain to the Covered Transaction;
- (ii) a description of any changes in ownership of voting or non-voting equity interests of Members in the Franchisee (or of investors in the Members, to the extent relevant) that relate to such Covered Transaction;

(iii) other information that is necessary to provide an accurate understanding of the financial position of the Franchisee and the System before and after the Covered Transaction;

(iv) information regarding any potential impact of the Covered Transaction on the Services; and

(v) any material contracts that relate to the Covered Transaction as it affects the City and, upon reasonable request by the City, all material documents and other information related or referred to therein and which are necessary to understand the proposed Covered Transaction;

provided, however, that if the Franchisee believes that the requested information is confidential and proprietary, then the Franchisee may withhold such information if it provides the following documentation to the City: (a) specific identification of the nature of the information; (b) a statement attesting to the reason(s) the Franchisee believes the information is confidential; and (c) a statement that the documents are available at the Franchisee's designated offices for inspection by the City. Any such information so withheld shall be made available at the Franchisee's designated offices for inspection by the City.

10.2 City Action on Transfer

To the extent not prohibited by federal law, the City may, with respect to any Covered Transaction: (i) grant its approval thereof on an unconditional basis; (ii) grant its approval thereof subject to conditions; or (iii) deny its approval of the Covered Transaction, provided that the City may not be arbitrary and capricious in denying or conditioning any request for such approval or in the timing of its decision with respect to any request for such approval.

10.3 Waiver of Transfer Application Requirements

To the extent consistent with federal law, the City may waive in writing any requirement that information be submitted, as part of the transfer application covered by Section 10.1.2, without thereby waiving any rights the City may have to request such information after the application is filed.

10.4 Subsequent Approvals

The City's approval of a Covered Transaction described in Section 10.1.1 in one instance will not render unnecessary approval of any subsequent transaction.

10.5 Approval Does Not Constitute Waiver

Approval by the City of a transfer described in Section 10.1 will not constitute a waiver or release of any of the rights of the City under this Agreement, whether arising before or after

the date of the transfer, except that such transfer will be deemed to have been permitted for all purposes of this Agreement and, upon full assumption of the terms of this Agreement by an approved transferee, the transferor shall be fully released from any obligations accruing after the date of such assumption.

10.6 Managing Member

Titan Outdoor LLC (“Titan”) will be the managing member of CityBridge LLC (“Managing Member”). Titan shall not reduce its ownership interest below 20% nor relinquish or diminish its role as Managing Member at any time before the 4th anniversary of the effective date without prior written approval of DoITT. DoITT will not unreasonably withhold or condition approval if Titan would be replaced by a company of comparable expertise and financial wherewithal.

ARTICLE XI. LIABILITY

11.1 Definitions

“Claim” means any claim other than a Third Party Claim.

“Damages” means all losses, liabilities, costs, expenses, damages, including attorneys’ fees and disbursements, whether imposed, finally awarded, or negotiated.

“Indemnitees” the City, its agencies, departments, offices, affiliated municipal entities, officers, agents and employees.

“Indemnitors” means the Franchisee and its subsidiaries.

“Third Party Claims” occur if any third party makes any claim or brings any action, suit, or proceeding against any Indemnitee.

11.2 Liability and Indemnity

11.2.1 The Indemnitors assume all risks of (i) damage or injury to property or persons used or employed on or in connection with providing the Services; and (ii) damage or injury to any persons or property wherever located resulting from any action, failure to act, or operation under this Agreement. The Indemnitors shall indemnify and hold Indemnitees harmless for any Damages, to which it may be subject arising from or related to any Claim or Third Party Claim.

11.2.2 The liability and indemnity obligation of the Franchisee under Section 11.2.1 do not apply to any Damages to the extent caused by willful misconduct or gross negligence on the part of the City.

11.2.3 If the facts or law relating to any Damages preclude the City from being completely indemnified by the Franchisee, the Franchisee shall indemnify the City to the fullest extent permitted by law, subject to any limitation set forth in this Agreement.

11.2.4 Indemnification pursuant to Article 11 is independent of the Franchisee's obligations to obtain insurance as provided under this agreement.

11.3 City Liability

11.3.1 The Indemnitees are not liable to the Franchisee or any Affiliated Person for any Damages from Third Party Claims except direct Damages caused by the gross negligence or willful misconduct of an Indemnitee.

11.3.2 The Indemnitees have no liability to the Franchisee or any Affiliated Person for any Damages related to or arising from the design, installation, operation, maintenance, removal or upgrade of any part of the System by or on behalf of the Franchisee or the City, including in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Inalienable Property of the City, or the elimination, discontinuation, closing or demapping of any Inalienable Property of the City, except as set forth in Section 11.3.1.

11.4 Defense of Claim

11.4.1 The Indemnitors shall defend the Indemnitees against all Claims and Third Party Claims arising out of or relating to the risks, damages, and injuries described in Section 11.2.1.

11.4.2 The Indemnitors (through their insurance carrier(s) if appropriate) are responsible for any professionals' fees and expenses, including reasonable attorneys' fees and disbursements.

11.5 Intellectual Property Indemnification

11.5.1 The Franchisee shall defend, indemnify, and hold the City harmless from and against all Damages, to which it may be subject arising from or related to any Third Party Claim that any product, material, or work provided or used by the Franchisee in the provision of any of the Services, including any designs, drawings, reports, or Software infringes, dilutes, misappropriates, improperly discloses, or otherwise violates the copyright, patent, trademark, service mark, trade dress, rights of publicity, moral rights, trade secret, or any other intellectual property or proprietary right of any third party.

11.5.2 The Franchisee is not obligated to indemnify the City for Damages solely to the extent the Damages are based upon the failure of the City to comply with the terms of any license to which the DoITT General Counsel and the Assistant Commissioner for Franchises have been advised infringe upon a third party's rights.

11.5.3 The Franchisee shall not negotiate any settlement that prevents the City or the Franchisee from continuing to use the Design, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Structures, or the Software without the City's prior written consent, which consent shall not be unreasonably withheld or delayed.

11.5.4 If the City's use of the Design, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Structures, or Software under this Agreement becomes the subject of an infringement Claim; or in the Franchisee's opinion may become the subject of an infringement Claim, then the Franchisee shall, at its expense and at its option:

- (i) procure the right for the City to continue using the potentially infringing materials;
- (ii) modify the portion(s) of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Structures, or Software so that it is no longer includes the potentially infringing materials; or
- (iii) replace the potentially infringing materials with non-infringing materials or Software, but only if the modification or replacement does not materially change the design of the affected Structures or lessen the provision or quality of the Services.

11.6 No Claims Against Officers, Employees, or Agents

The Franchisee waives and shall not make any claim against any officer or employee of the City or an agent of the City, in their individual capacity, arising from or relating to any act performed or omitted in the lawful performance of this Agreement.

11.7 Limitation on Liability

11.7.1 Except with respect to the Franchisee's obligations to indemnify the City under Section 11.2 and warranties on non-infringement under Section 3.4(ii), and costs associated with unauthorized disclosure by the Franchisee of Personal Protected Information, neither the City nor the Franchisee are liable to the other for indirect, incidental, special, exemplary, punitive, or consequential damages, damages for loss of goodwill or profits, loss or destruction or inaccuracy of data, or other business loss, arising out of or resulting from performing their respective obligations under the Agreement, whether liability is under contract, tort, strict

liability, or other legal or equitable theory, even if previously advised of the possibility of such damages.

11.7.2 In the event of a lawful termination or cancellation of the Agreement, the City will not be liable for damages, loss of profits, expenses, specific performance or remuneration for future performance of any kind provided, however, that such limitation shall not be applicable in the event it is finally determined by a Court of competent jurisdiction (after all appeals have been exhausted or the period for any applicable appeal right has lapsed) that the City's termination or cancellation of the Agreement was not authorized or proper.

11.7.3 Neither party's liability for damages — other than tort liability, breach of contract, or infringement of a third-party's intellectual property —under any theory of liability or form of action including negligence will not exceed ten million dollars (\$10,000,000).

ARTICLE XII. INSURANCE

12.1 Types of Insurance

12.1.1 The Franchisee shall maintain one or more primary liability insurance policies that satisfy the requirements of this Section throughout the Term, any Holdover Period, and any time during which the Franchisee owns or maintains a PCS, or any part thereof, on, over, or under the Inalienable Property of the City. The Franchisee shall effect and maintain the following insurance.

12.1.2 The insurance policy(ies) must protect the City and the Franchisee from claims for property damage or bodily injury, including death, which may arise or relate to the Services. Coverage under this policy must be "occurrence" based rather than "claims- made," and will include, without limitation, the following types of coverage: premises operations, products and completed operations, contractual liability (including the tort liability of another assumed in a contract), broad form property damage, medical payments, independent contractors, personal injury (contractual exclusion deleted), cross liability, explosion, collapse and underground property, and incidental malpractice.

12.1.3 If the insurance policy contains an aggregate limit, it shall apply separately to this project, with coverage as broad as ISO Forms CG 0001 (1196 ed.).

12.1.4 The Commercial General Liability Insurance policy provided shall contain each of the following endorsements:

- (i) The Franchisee as "Named Insured."
- (ii) Commercial General Liability Insurance shall be in the amount of ten million dollars (\$10,000,000) aggregate and ten million dollars (\$10,000,000 per occurrence).;

- (iii) The City of New York, its officials, employees and agents as “Additional Insured”, with coverage at least as broad as the most recently issued ISO Form CG 2026.
- (iv) The condition of the policy titled “Duties in the Event of Occurrence, Claim or Suit” is amended per the following: to the extent that knowledge of an "occurrence", "claim", or "suit" is relevant to the City of New York as Additional Insured under this policy, knowledge by an agent, servant, official, or employee of the City of New York will not be considered knowledge on the part of the City of New York of the "occurrence", "claim", or "suit" unless the City receives notice as provided below.
- (v) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company is deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to the notice, demand or other writing will be addressed to Named Insured and to the City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1 Centre Street Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007.

12.1.5 The limit of coverage under this policy applicable to the City as Additional Insured is equal to the limit of coverage applicable to the Named Insured.

12.1.6 The Franchisee shall maintain, and require that each subcontractor maintains, Workers Compensation Insurance and Disability Benefits Insurance under the Laws of the State of New York for all employees providing services under this Agreement.

12.1.7 The Franchisee shall maintain, and require that each subcontractor maintains, employer's liability insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of employment under this Agreement.

12.1.8 The Franchisee shall maintain a comprehensive business automobile liability policy for liability arising out of or relating to any automobile including owned, non-owned, leased, and hired automobiles to be used in connection with this Agreement (ISO Form CA0001, ed. 6/92, code 1 "any auto"). Automobile liability insurance shall be in the amount of two million dollars (\$2,000,000) aggregate and one million dollars (\$1,000,000 per occurrence).

12.1.9 The Franchisee shall maintain a professional liability insurance policy covering breach of professional duty, including actual or alleged negligent acts, errors or omissions committed by the Franchisee, its agents or employees, arising out of the performance of professional services rendered to or for the City. The policy shall provide coverage for bodily injury, property damage and personal injury arising directly from any negligent act, error or

omission of the Franchisee in rendering professional services. If the professional liability insurance policy is written on a claims-made basis, such policy shall provide that the policy retroactive date coincides with or precedes the Franchisee's initial services under this Agreement and shall continue until the expiration or termination of the Agreement. The policy must contain no less than a two-year extended reporting period for acts or omissions that occurred but were not reported during the policy period.

12.1.10 All insurers waive their rights of subrogation against the City, its officials, employees and agents.

12.1.11 The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on indemnity in this Agreement as a matter of law.

12.2 General Requirements for Insurance Policies

12.2.1 The Franchisee shall maintain an insurance policy, only with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- VII or a Standard and Poor's rating of at least AA.

12.2.2. The Franchisee is solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy. Any self-insured retention must be reasonable and is subject to approval by the City.

12.2.3 The City's limits of coverage for all types of insurance required pursuant to Schedule E attached hereto shall be the greater of (i) the minimum limits set forth in the schedule or (ii) the limits provided to the Franchisee as Named Insured under all primary, excess and umbrella policies of that type of coverage.

12.2.4 All policies shall be endorsed to provide that the policy may not be cancelled, terminated, modified or changed unless thirty (30) days prior written notice is sent by the Insurance Company to the Named Insured (or First Named Insured, as appropriate) and DoITT at the address in Section 15.3.

12.2.5 Within 15 days of receipt by the City of any notice as described in Section 12.2.4, the Franchisee shall obtain and furnish to DoITT, with a copy to the Comptroller, replacement insurance policies in a form acceptable to DoITT and the Comptroller with evidence demonstrating that the premiums for such insurance have been paid.

12.3 Proof of Insurance

12.3.1 The Franchisee must, for each policy required under this Agreement, file a Certificate of Insurance with DoITT, accompanied by a duly executed "Certification by Broker" in the form attached as Appendix C.

12.3.2 The Franchisee shall provide the City with a copy of any policy required by this Article XII upon demand by the DoITT or the New York City Law Department.

12.4 Operations of the Franchisee

12.4.1 Acceptance by DoITT of a certificate does not excuse the Franchisee from securing a policy consistent with all provisions of this Article XII or of any liability arising from its failure to do so.

12.4.2 The Franchisee shall provide continuous insurance coverage in the manner, form, and limits required by this Agreement and may only perform Services during the effective period of all required coverage.

12.4.3 If any required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Franchisee shall immediately stop all Services, and shall not recommence Services until authorized in writing to do so by DoITT. However, if any of the Services are being provided by a subcontractor that maintains insurance satisfactory to the City that names the City as additional insured, then the Franchisee, acting by its subcontractor, may continue to provide such Services as directed by DoITT.

12.4.4 The Franchisee shall provide written notification of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of the Franchisee or its subcontractors to the appropriate insurance carriers promptly, but not later than 20 days after the event. The Franchisee's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Franchisee as Named Insured." The Franchisee's notice to the insurance carrier must contain the following information: the name of the Franchisee, the number of the policy, the date of the occurrence, the location (street address and borough) of the occurrence, and, to the extent known to the Franchisee, the identity of the persons or things injured, damaged or lost.

12.4.5 The Franchisee shall provide copies of any notices sent to an insurance carrier to the Comptroller and the DoITT. Notice to the Comptroller will be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street - Room 1222, New York, New York 10007. Notice to DoITT shall be sent to the address in Section 15.3.

12.4.6 If the Franchisee fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Franchisee shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

12.5 Subcontractor Insurance

The Franchisee shall require and ensure that each subcontractor maintain insurance that includes the City as Additional Insured under all policies covering Services performed by such subcontractor under this Agreement. The City's coverage as Additional Insured shall include the City's officials, employees and agents and be at least as broad as that provided to the Franchisee. The foregoing requirements shall not apply to insurance provided pursuant to Sections 12.1.6, 12.1.7, and 12.1.9.

12.6 Disposal

If under this Agreement the Franchisee is involved in the disposal of hazardous materials, the Franchisee shall dispose of the materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance for at least \$2,000,000 for losses arising from the disposal site.

12.7 Adjusted Insurance Coverage

The Franchisee shall adjust the minimum coverage of the liability insurance policy or policies required in this Article within three months of receiving written notice from the City that the City has reasonably determined that additional amounts or types of insurance are being commonly carried regarding systems of a size and nature similar to the System or other circumstances have arisen which make it reasonably prudent to obtain such additional amounts or types of insurance. The notice shall specify in reasonable detail why the City is requiring the additional amounts or types of insurance.

12.8 Other Remedies

The Franchisee's obligation to maintain insurance coverage in the minimum amounts does not relieve the Franchisee or subcontractors of any liability under this Agreement. The Franchisee acknowledges and accepts that the City is not precluded from exercising any other right or taking any actions available to the City pursuant to the Agreement or law.

ARTICLE XIII. SPECIFIC RIGHTS AND REMEDIES

13.1 Not Exclusive

The Franchisee acknowledges and accepts that the City has the specific rights and remedies set forth in this Article XIII, and that these rights and remedies are in addition to and, not in lieu of any other rights or remedies, existing or implied, now or hereafter available to the City pursuant to the Agreement or law in order to enforce the provisions of this Agreement. The Franchisee acknowledges and accepts that the rights and remedies are not exclusive, but every right and remedy may be exercised as determined appropriate by the City. Exercising or

waiving one or more rights or remedies does not constitute a waiver of the right to exercise at the same time or thereafter any other right or remedy. Delay or omission will not be construed as a waiver or acquiescence to any default.

13.2 Defaults

13.2.1 Any failure by the Franchisee to perform any of its obligations in accordance with the requirements of the Agreement constitutes a breach. Any breach that is not cured within the cure period specified corresponding to the breached obligation constitutes a "Default."

13.2.2 Subject to the provisions of Section 13.2.5, if no cure period is specified, the cure period is deemed to be ten (10) business days after notification by the City of the breach.

13.2.3 If the Franchisee is in Default, then the City may at its discretion and without further notice or an opportunity to be heard:

- (i) undertake withdrawal from the Security Fund;
- (ii) exercise the City's rights under the Performance Bond to the extent applicable
- (iii) pursue any rights the City may have against the Franchisee;
- (iv) assert a claim for money damages from the Franchisee as compensation for the Default (except to the extent that the City is entitled to—and has recovered—Liquidated Damages);
- (v) seek to restrain by injunction the continuation of the Default.

13.2.4 The Franchisee acknowledges and accepts that its failure to pay a finally adjudicated violation arising out of or related to the Services is deemed a breach of this Agreement. The cure period applicable to a breach under this subsection is fifteen (15) days after notification by the City that it is in breach of this subsection.

13.2.5 Notwithstanding anything in this Agreement to the contrary, no Default shall exist if a breach or Default is curable, and a cure period is provided therefor in this Section 13 or otherwise, but work to be performed, acts to be done, or conditions to be removed to effect such cure cannot, by their nature, reasonably be performed, done or removed within the cure period provided, so long as the (i) the Franchisee is undertaking continuous diligent efforts to cure the breach, and (ii) the Franchisee's efforts commenced prior to the cure period expiring.

13.3 Termination Defaults

13.3.1. "Termination Default" means any failure by the Franchisee to comply with the material terms and conditions of this Agreement, including the failures identified below:

- (i) A material failure to comply with the Franchisee's obligations to install Structures under this Agreement (including the specified timeframes).
- (ii) A material failure to comply with the Franchisee's obligations to maintain the PCS as described in this Agreement.
- (iii) Persistent or repeated failures to timely perform the Franchisee's obligations under this Agreement, including timely payment of Compensation that are not being disputed by the Franchisee in good faith.
- (iv) Failure to maintain the Security Fund under Article 7, and such failure continues for ten business days after notice.
- (v) If, in connection with this Agreement, the Franchisee (a) intentionally or recklessly makes a material false entry in the Records of the Franchisee or intentionally or recklessly makes a material false statement in the reports or other filings submitted to the City, or (b) makes multiple false entries that are material in the aggregate in the Records of the Franchisee or multiple false statements that are material in the aggregate in the reports or other filings submitted by or on behalf of the Franchisee to the City.
- (vi) If the Franchisee fails to maintain insurance coverage or otherwise materially breaches Article XII and such failure continues for ten business days after notice from the City to the Franchisee.
- (vii) If the Franchisee engages in a course of conduct intentionally designed to practice fraud or deceit upon the City.
- (viii) If the Franchisee, intentionally or as a result of gross negligence, engages or has engaged in any material misrepresentation to the City, either oral or written, in connection with the award of this franchise or the negotiation of this Agreement (or any amendment or modification of this Agreement) or in connection with any representation or warranty contained herein.
- (ix) The occurrence of any event relating to the financial status of the Franchisee which is reasonably likely to lead to the foreclosure or other similar judicial or non-judicial sale of all or any material part of the System, and the Franchisee fails to demonstrate to the reasonable satisfaction of DoITT within 20 business days after notice from the City to the Franchisee that such event will not lead to such foreclosure or other judicial or non-judicial sale. Such an event may include, without limitation: (a) uncured default extending beyond any time permitted to cure such default under any loan or any financing arrangement material to the System or the obligations of the Franchisee under this Agreement; (b) uncured default extending beyond any time permitted to cure such default under any

contract material to the System or the obligations of the Franchisee under this Agreement; or (c) uncured default extending beyond any time permitted to cure such default under any lease or mortgage covering all or any material part of the System.

- (x) If the Franchisee makes an unauthorized assignment or other transfer of interest or control of the Franchisee or the System (including an assignment for the benefit of creditors).
- (xi) If the Franchisee becomes insolvent, or petitions or applies to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official for it or any substantial part of its property or assets, including all or any part of the System.
- (xii) If a writ or warranty of attachment, execution, distraint, levy, possession or any similar process is issued by any tribunal against any material part of the Franchisee's property or assets.
- (xiii) If any creditor of the Franchisee petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Franchisee or of any material parts of the property or assets of the Franchisee, and a final order, judgment or decree is entered appointing a trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings which is unstayed for sixty (60) days (the sixty (60) day period will not apply if, as a result of the final order, judgment, or decree the Franchisee will be unable to perform its obligations under this Agreement.
- (xiv) A final order, judgment or decree is entered in any proceedings against the Franchisee decreeing the voluntary or involuntary dissolution of the Franchisee.

13.3.2 The Franchisee acknowledges that, subject to Section 1.4.1 of Attachment SRV, a Termination Default may exist under one or more provisions of the preceding Section 13.3.1 even if the defaults individually were the subject of liquidated damages and liquidated damages have been paid or were subsequently remediated by recourse to the Security Fund or by payment in satisfaction of a violation of the PPT Rules.

13.3.3 The City shall give the Franchisee reasonable notice of any events or circumstances that the City believes may give rise to a Termination Default under Section 13.3.1 should the events or circumstances continued.

13.3.4 If a Termination Default occurs, DoITT may at its option (in addition to any other remedy which the City may have under the Agreement), notify the Franchisee that the Agreement and the Franchise will terminate on the date specified in the notice (which date will

be no fewer than ten (10) days following the date of receipt of the notice), and the Agreement will be deemed expired on that date.

13.4. Expiration and Termination for Reasons Other Than Termination Default

13.4.1 If a condemnation occurs by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the System, the effect of which would materially frustrate or impede the ability of the Franchisee to carry out its obligations and the purposes of this Agreement — and the Franchisee fails to demonstrate to the reasonable satisfaction of DoITT within twenty (20) business days the Franchisee's ability to provide the Services would not be materially frustrated or impeded — then DoITT or Franchisee may, at its option, terminate this Agreement by notice within sixty (60) days after the expiration of said twenty (20) business day notice period.

13.4.2 If an employee or agent of the Franchisee is convicted (where such conviction is a final, non-appealable judgment) of any criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted under this Agreement, (iii) any act to be taken under this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Franchisee under this Agreement, and the conviction is a final, non-appealable judgment or the time to appeal the judgment has passed, the Franchisee must terminate its relationship with the employee, or agent or suspend its relationship pending final resolution of the matter. If Franchisee does not terminate or suspend its relationship with the employee or agent within five (5) days of final resolution of the matter, DoITT may, at its option, to the extent permitted by law, terminate this Agreement immediately by notice as set forth in Section 15.3.

13.4.3 If the Franchisee is convicted in connection with any alleged criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted under this Agreement, (iii) any act to be taken under this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Franchisee under this Agreement, then the City may, at its option, to the extent permitted by law, terminate this Agreement immediately by notice as set forth in Section 13.3.4.

13.4.4 Expiration. This Agreement, if not previously terminated pursuant to the terms of the Agreement, shall expire at the end of the scheduled Term.

13.5 Disposition of System

13.5.1 At the expiration or termination of this Agreement, the Franchisee shall remove all Structures from the Inalienable Property of the City, in accordance with Section 13.7

13.5.2 Notwithstanding the foregoing, at the expiration or termination of this

Agreement, the Franchisee, at the City's election, shall sell to the City or to the City's designee any and all portions of the System including all associated Equipment necessary for the proper functioning of such portion(s) of the System.

13.5.3 Disposition of Fiber

At the expiration or termination of this Agreement, the disposition of the Fiber shall be in accordance with Section 3.13 of this Agreement.

13.6 Price

13.6.1 The price to be paid to the Franchisee upon an acquisition pursuant to Section 13.5 shall be the fair value), with no value allocable to the franchise itself, which price shall be the fair value as provided in Section 363(h)(5) of the City Charter, as may be amended, or under any successor provision. Notwithstanding the preceding, in the case of a termination after a Termination Default, the last paragraph of Section II. A. 5 of the RFP shall apply.

13.6.2 The date of valuation for purposes of Section 13.5 shall be the date of expiration or termination of the Agreement. For the purpose of such valuation, the parties shall select a mutually agreeable independent appraiser to compute the purchase price in accordance with industry practice and standards. If the parties cannot agree on an appraiser in ten (10) days, the parties will seek an appraiser from the American Arbitration Association. The appraiser shall be instructed to make the appraisal as expeditiously as possible, but in no more than sixty (60) days and shall submit to both parties a written appraisal. The appraiser shall be afforded access to the Franchisee's Books and Records, as necessary to make the appraisal. The parties shall share equally the costs and expenses of the appraiser.

13.6.3 The City will notify the Franchisee, within thirty (30) days after receipt of the appraisal, of electing its rights pursuant to Section 13.5. If the City elects to make the purchase pursuant under Section 13.5, such purchase shall occur within a reasonable time.

13.7 Procedures for Transfer and Removal after Termination

13.7.1 DoITT may waive its rights under Section 13.5.2 for any one or more of the Public Communications Structures and require that the Franchisee, at its own cost and expense, remove any or all of the Structures on, over, or under the Inalienable Property and replace the sidewalk flags and curbs with the same materials as the adjacent flags and curbs and in compliance with the New York City Administrative Code, within 180 days of expiration of this Agreement, subject to extension by mutual agreement of the Franchisee and the City. DoITT shall notify the Franchisee of its intention to exercise its rights pursuant to this Section at least sixty (60) days prior to expiration.

13.7.2 The Franchisee shall cooperate with the City to effectuate an orderly transfer to the City (or the City's designee) of all records, contracts, leases, licenses, permits, rights-of-way,

and all other materials and information reasonably necessary to maintain and operate the System, to the extent it is transferred ("Post-Term System") pursuant to Section 13.5.2.

13.7.3 If, pursuant to Section 13.5, DoITT requires the Franchisee to remove any or all of the Structures, the following procedures apply:

- (i) the Franchisee shall restore all Inalienable Property of the City and any other property affected by the actions of the Franchisee under this Agreement to like new condition, including replacement of the sidewalk flags and curbs with the same materials as the adjacent flags, and in compliance with the New York City Administrative Code, and shall have received all applicable approvals from DoITT and any other applicable City approvals;
- (ii) the City may inspect the Inalienable Property after removal and the Franchisee is liable to the City for the cost of restoring the Inalienable Property of the City and other affected property; and
- (iii) the Security Fund, liability insurance and indemnity provisions of this Agreement, and the Performance Bond if applicable, shall remain in full force and effect during the entire period of removal of all or any of the Structures and/or restoration and associated repair of all Inalienable Property of the City or Other Affected Property, and for no fewer than 120 days thereafter, or for such longer periods as set forth in this Agreement.

13.7.4 If, in the reasonable judgment of DoITT, the Franchisee fails to commence removal or if the Franchisee fails to substantially complete removal of the Structures, including all associated repair and restoration of the Inalienable Property of the City or any other property in accordance with the time frames set forth in this 13.7, DoITT may, at its sole discretion authorize removal of any part of the System by the City, or a third party, at the Franchisee's cost and expense.

13.7.5 None of the declaration, connection, use, transfer or other actions by the City or DoITT under Article 13 constitutes a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

13.7.6 The City is not required to assume any of the obligations of collective bargaining agreements or any other employment contracts held by the Franchisee or any other obligations of the Franchisee or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

ARTICLE XIV. SUBSEQUENT ACTION

14.1 Procedure for Subsequent Invalidity

14.1.1 If any court, agency, commission, legislative body, or other authority of competent jurisdiction because of a change in law or otherwise:

- (i) declares this Agreement invalid, in whole or in part, or
- (ii) requires the City or the Franchisee to: (a) perform an act inconsistent with any provision of this Agreement or (b) cease performing any act required by this Agreement, then the Franchisee or the City, as the case may be, shall promptly notify the other party in writing.

14.1.2 Upon the occurrence of any event described in Section 14.1.1, the Franchisee and the City shall continue to comply with all provisions of this Agreement, including the affected provision, until the validity of the declaration or requirement is finally adjudicated or a court orders the Franchisee or the City to comply with the declaration or order, provided that either party may comply with any court order not stayed during the pendency of any appeal leading to final adjudication.

14.2 Agreement Documents

The Agreement is comprised of the following documents:

- (i) This document, titled “Franchise Agreement.”
- (ii) Attachments: (1) Services, and (2) Resiliency and Disaster Recovery.
- (iii) Exhibits: (1) Wi-Fi Terms of Service, (2) Wi-Fi Privacy Policy, (3) Service Level Agreement and Schedule of Liquidated Damages, (4) Siting Criteria, and (5) Structure Designs.
- (iv) Appendices: (1) Investigation Clause, (2) MacBride Principles, (3) Certification by Broker, (4) Initial Members of Franchisee, (5) Permitted Transfers, and (6) Franchisee Lender Provisions

ARTICLE XV. MISCELLANEOUS

15.1. Appendices, Exhibits, Schedules

The Attachments, Appendices, Exhibits, and Schedules referenced in Section 14.2 are, unless otherwise specified, a part of this Agreement. The procedures to approve any

subsequent amendment or modification to the Appendices, Exhibits and Schedules are the same as those applicable to any amendment or modification.

15.2 Merger

15.2.1 This Agreement and attachments, appendices, and exhibits contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

15.2.2 Any assumptions, exceptions or terms and conditions in the Franchisee's proposal documents that are not included in this document entitled "Agreement" are deemed inconsistent with the Agreement.

15.3 Notices

Unless otherwise expressly provided in this Agreement, every notice, order, petition, document, or other direction or communication to be served upon the City or the Franchisee will be in writing and sent by registered or certified mail, return receipt requested or by first class mail. The Franchisee will designate, by letter delivered to the City simultaneous with the Franchisee's execution of this Agreement, the address where it will receive these communications. Franchisee may from time to time designate other locations. Franchisee will send communications to the individual, agency or department designated in this Agreement, unless it is to "the City," in which case the communication will be sent to the Commissioner of DoITT at 255 Greenwich Street, 9th Floor, New York 10007. Franchisee will also send a required copy of each communication to Corporation Counsel, New York City Law Department, 100 Church Street, New York, New York 10007, Attn: Chief, Economic Development Division. Except as otherwise provided, mailing the notice, direction, or order is equivalent to direct personal notice deemed to be given when mailed. Any notice the Commissioner must give to the Franchisee pursuant to Section 13.2 for which a cure period is ten (10) days or fewer must be served by personal delivery, overnight mail service or facsimile transmission.

15.4 Coordination

The Franchisee and DoITT acknowledge and accept that this Agreement creates a relationship that requires extensive and ongoing long-term coordination between the parties. No later than ten (10) business days after the Commencement Date, DoITT and the Franchisee will each designate a project manager, as the individual responsible for coordinating with the other party regarding all matters that may arise during the Term relating to the permitting, installation, maintenance, and operation of the System. During the Term all notices must be sent to the Franchisee, other than a notice pursuant to Section 14.3, the notice will be sufficient if sent to the above designated individual or his or her representative by e-mail, facsimile, hand delivery, or mail, or to the extent oral notice is specifically permitted in this Agreement, communicated by telephone. Oral notice is only effective if (a) given to the person identified in

this Section 14.3 or a designee of the person whose designation is notified to the other party in writing and (b) followed reasonably promptly by written notice, which may be given by e-mail.

15.5 Publicity

DoITT's prior written approval is required before the Franchisee or its employees, servants, agents or independent contractors may, either during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media bearing on the work performed under this Agreement, provided however that Franchisee (and its employees, servants, agents or independent contractors) may engage, without DoITT's prior approval, in routine interactions with the press regarding ongoing operation of the System (ongoing operation of the System for these purposes does not include the rollout of new services or applications, significant service issues that may arise, and similar non-routine matters). If the Franchisee publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, DoITT will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the publication, or, in the event that only a portion of the publication deals with an aspect of performance under this Agreement, that portion of the publication.

15.6 General Representations, Warranties and Covenants of the Franchisee

15.6.1 The Franchisee makes the represents that:

- (i) The Franchisee is a validly existing entity in good standing under the laws of Delaware, and is duly authorized to do business in the State of New York and in the City.
- (ii) Appendix D sets forth a complete and accurate description of the organizational and ownership structure of the Franchisee and a complete and accurate list of all Persons who hold, directly or indirectly, an interest in the Franchisee of ten percent (10%) or greater.
- (iii) The Franchisee has all requisite power and authority to own or lease its properties and assets, to conduct its business as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered with or as contemplated here.
- (iv) The execution, delivery and performance of this Agreement is validly authorized by all necessary action by the Franchisee and the certified copies of authorizations for the execution and delivery of this Agreement provided to the City pursuant to Section 2.3.2 are true and correct.

- (v) This Agreement and all other agreements entered into in connection with the transactions contemplated here have been duly executed and delivered by the Franchisee and constitutes (or upon execution and delivery will constitute) the binding obligations of the Franchisee, and is enforceable (or upon execution and delivery will be enforceable).
- (vi) The Franchisee has obtained the authority to authorize, execute, and deliver this Agreement and to consummate the transactions contemplated here and no other proceedings or other actions are necessary by the Franchisee to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated here.
- (vii) Neither the execution and delivery of this Agreement by the Franchisee nor the performance of its obligations contemplated will:
 - (a) conflict with, materially breach, or constitute a material default under (1) any governing document of the Franchisee, or to the Franchisee's knowledge, any agreement among any Affiliated Persons or (2) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Franchisee is a party or by which it (or its properties or assets) is subject or bound;
 - (b) create, or give any Person the right to create, any material lien, charge, encumbrance, or security interest on the property and assets of the Franchisee; or
 - (c) terminate, modify, accelerate, or give any Person the right to terminate, modify or accelerate, any provision or term of any contract, arrangement, agreement, license agreement or commitments, except to the extent there would be no adverse impact on the financial assets and liabilities of the Franchisee or the System.
- (viii) The Franchisee paid all material franchise, permit, or other fees and charges to the City which became due prior to this Agreement under any franchise, permit, or other agreement.
- (ix) No Franchisee, or employee or agent of the Franchisee, has committed or been convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including without limitation bribery or fraud, arising out of or in connection with (a) this Agreement, (b) the award of the franchise granted pursuant to this Agreement, or (c) any act to be taken under this Agreement by the City, its officers, employees or agents, or (d) the business activities and services to be undertaken or provided under this Agreement.

15.6.2 The Franchisee shall promptly terminate its relationship with any employee or agent of the Franchisee, who is convicted (where the conviction is a final, non-appealable judgment or the time to appeal the judgment has passed) of any criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted under this Agreement, (iii) any act to be taken under this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Franchisee under this Agreement.

15.6.3 The Franchisee affirms it is not in arrears to The City of New York upon any debt, contract or taxes and that it is not a defaulter, as a surety or otherwise, upon any obligation to The City of New York, and has not been declared not responsible, or disqualified, by any agency of The City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Franchisee to receive a franchise or other public contracts.

15.6.4 No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Franchisee in this Agreement, in connection with any submission to DOITT or the Commissioner, in connection with the negotiation of this Agreement.

15.7 Binding Effect

This Agreement binds and benefits both parties and their successors and permitted transferees and assigns. All of this Agreement applies to the City and the Franchisee and their successors, transferees and assigns.

15.8 Comptroller Rights

Nothing in this Agreement can diminish compromise or abridge the powers, duties, and obligations of the Comptroller under the New York City Charter.

15.9 No Waiver; Cumulative Remedies

15.9.1 Neither party waives any right by failing to exercise that right. The rights and remedies in this Agreement are cumulative and not exclusive of any remedies provided by law, and nothing in this Agreement impairs the rights of the City or the Franchisee under applicable law, subject in each case to the terms and conditions of this Agreement.

15.9.2 A waiver of any right or remedy by the City or the Franchisee at any one time will not affect the exercise of that right or remedy or any other right or other remedy by the City or the Franchisee at any other time.

15.9.3 For any waiver of the City or the Franchisee to be effective, it must be in writing.

15.10 Partial Invalidity

15.10.1 The clauses and provisions of this Agreement are severable. If any clause or provision is declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, that provision is deemed a separate, distinct, and independent portion, and the declaration will not affect the validity of the remaining portions, which other portions continue in full force and effect, but only if the material obligations of the parties regarding advertising, Compensation, and the Services remain valid.

15.10.2 If any material obligation of the parties regarding Advertising, Compensation, or the Services is declared invalid, in whole or in part, and the declaration is not stayed within thirty (30) days by a court pending resolution of a legal challenge or appeal, the adversely affected party shall notify the other party in writing of the declaration of invalidity and the effect of the declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for the declaration of invalidity, provided. Any modifications will be subject to the appropriate City approvals and authorizations and compliance with all City procedures and processes. If the parties cannot come to an agreement modifying this Agreement within 120 days of such notice (which 120-day period will be tolled during any stay contemplated above), then this Agreement terminates with such consequences as would ensue if it had been terminated by the City pursuant to subsection 13.4.4.

15.11 Survival

Any provision which naturally survives the termination or expiration of this Agreement does so.

15.12 Headings and Construction

15.12.1 The headings in this Agreement are for reference only, do not form a part of this Agreement, and do not affect the construction or interpretation. Any reference by number is deemed to include both the singular and the plural, as the context may require.

15.12.2 Each party has participated in negotiating and drafting this Agreement. If an ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement.

15.13 No Subsidy

No public subsidy is provided to the Franchisee under this Agreement.

15.14 No Agency

The Franchisee will conduct the work to be performed under this Agreement as an independent contractor and not as an agent of the City.

15.15 Governing Law.

The Agreement is deemed executed in the City of New York, State of New York and will be governed, including validity, interpretation and effect and construed in accordance with the laws of the State of New York, as applicable to contracts entered into and to be performed entirely within the State.

15.16 Survival of Representations and Warranties

All representations and warranties in this Agreement will survive the Term.

15.17 Claims Under Agreement

15.17.1 The Franchisee acknowledges and accepts that, except to the extent inconsistent with law, all claims asserted by or against the City arising under or related to this Agreement will be heard and determined either in a court of the United States located in New York City (“Federal Court”) or in a court of the State of New York located in the City and County of New York (“New York State Court”).

15.17.2 If the City initiates any action against the Franchisee in Federal Court or in New York State Court, service of process may be made on the Franchisee as provided in Section 15.19.

15.17.3 With respect to any action between the City and the Franchisee in New York State Court, the Franchisee expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court outside of the City of New York; and (iii) to move for a change of venue to a court of the State of New York outside New York County.

15.17.4 With respect to any action between the City and the Franchisee in Federal Court, the Franchisee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

15.17.5 If the Franchisee commences any action against the City in a court located other than in the City and State of New York, then, upon request of the City, the Franchisee will either consent to transferring the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Franchisee shall consent to dismiss such action without prejudice and may reinstitute the action in a court of competent jurisdiction in the City of New York.

15.18 Modification

Except as otherwise provided in this Agreement, any Appendix, Exhibit or Schedule to this Agreement or applicable law, no provision of this Agreement nor any Appendix, Exhibit or Schedule to this Agreement will be amended or otherwise modified, except by a written instrument, duly executed by the City and the Franchisee, and, approved as required by applicable law.

15.19 Service of Process

If the City initiates any action against the Franchisee in Federal Court or in New York State Court, service of process may be made on the Franchisee either in person, wherever such Franchisee may be found, or by registered mail addressed to the Franchisee at the address set forth in this Agreement.

15.20 Compliance with Certain City Requirements

The Franchisee acknowledges, accepts, and shall comply with the City's "MacBride Principles" and the "Investigation Clause," which are attached as Appendix B and Appendix A, respectively.

15.21 Compliance with Law, Licenses

15.21.1 The Franchisee shall comply with all laws and City policies.

15.21.2 The Franchisee at its sole cost and expense shall obtain and shall comply with all requirements of any licenses and permits necessary for the provision of the Services from any governmental body having jurisdiction over the Franchisee regarding the Services.

15.22 Mitigation

If a breach of this Agreement occurs by any of the parties, the non-breaching party will act in good faith and exercise commercially reasonable efforts to mitigate any damages or losses that result from the breach. Notwithstanding the foregoing, nothing in this Section 15.22 shall limit the parties' right to indemnification under Article XI.

15.23 Unavoidable Delay

15.23.1 "Unavoidable Delay" means a delay in the performance of any obligation under this Agreement resulting from a strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; litigation arising from a challenge (by an entity other than the Franchisee or its Affiliates) to the City's authority to enter into this

agreement, to grant the franchise granted hereunder or to take any governmental action necessary to allow Franchisee to perform its obligations under the Agreement (“Litigation Delay”), fire, flood, similar severe weather related event, or similar act of providence; delay in a decision by a City agency or office (“City Delay” as described in subsection 15.23.4); third party utility power outage; or other similar causes or events to the extent that such causes or events are beyond the control of the party claiming an Unavoidable Delay.

15.23.2 As a condition of claiming, and continuing to claim, that one or more of its obligations under the Agreement are delayed under this Section, the claiming party must in each case demonstrate that it has taken and continues to take all reasonable actions to avoid or mitigate the delay.

15.23.3 The party claiming an Unavoidable Delay must notify the non-claiming party in writing of the occurrence of the events giving rise to the delay within five (5) business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the party claiming an Unavoidable Delay learns or should have learned of its occurrence.

15.23.4 A delay in a decision by a City office or agency, the approval of which is a condition to an occurrence, does not constitute a City Delay unless the delay is beyond the normal period in which the agency or office generally acts with respect to the type of decision being sought and only if the Franchisee has taken and continues to take all reasonable steps to pursue such decision (and in any event the period of Unavoidable Delay ends with the City agency’s or office’s final decision). In any event, City Delay shall include the City’s delay in repealing Section 6-06(c) and 6-06(d) of the PPT Rules beyond the Effective Date.

15.23.5 Financial incapacity of the Franchisee or its Affiliates does not constitute an Unavoidable Delay.

15.23.6 This Section applies to all of Franchisee’s performance obligations under the Agreement. Notwithstanding the foregoing, an Unavoidable Delay does not excuse the Franchisee’s payment obligation including the obligation to pay the Minimum Annual Guarantee, except with respect to City Delays and Litigation Delays to the extent provided in subsection 6.3.3.

15.24 Counterparts

This Agreement may be executed in one or more counterparts which, when taken together, constitute one and the same.

IN WITNESS WHEREOF, the party of the first part, by its Department of Information Technology and Telecommunications and its Deputy Mayor, duly authorized by the Charter of the City of New York, has caused the corporate name of the City to be hereunto signed and the corporate seal of said City to be hereunto affixed and the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

CITY OF NEW YORK
DEPARTMENT OF INFORMATION
TECHNOLOGY AND
TELECOMMUNICATIONS
255 Greenwich St.
New York, NY 10007

CITYBRIDGE, LLC
100 Park Avenue, 6th Floor
New York, NY 10017

Anne Roest, Commissioner Date

[NAME], [TITLE] Date

(Seal)
Attest: _____

CITY OF NEW YORK

Deputy Mayor Date

(Seal)
Attest: _____

Approved as to form and
certified as to legal authority:

Acting Corporation Counsel