

RESOLUTION

FRANCHISE AND CONCESSION REVIEW COMMITTEE

CITY OF NEW YORK

Cal. No. 1

In the matter of 1) approval of a proposed change in control of Cemusa NY, LLC (“Franchisee”), which, pursuant to an assignment from Cemusa Inc. (immediate parent of Franchisee), holds a non-exclusive franchise giving it the right to (a) install, operate and maintain bus shelters, automatic public toilets, and public service structures and install and maintain newsstands on the inalienable property of the City of New York (“City”) and (b) sell and place advertising as set forth in the franchise agreement and to derive revenue therefrom; and 2) approval of proposed amendments to the franchise agreement between the City, acting by and through its Department of Transportation (“DOT”), and Cemusa NY, LLC.

WHEREAS, pursuant to Authorizing Resolution 1004, (adopted by New York City Council on August 19, 2003), DOT issued a Request for Proposals (“RFP”) dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004, inviting qualified entities to submit proposals for a twenty-year franchise for the installation, operation and maintenance of bus shelters, self-cleaning automatic public toilets, and public service structures and for the installation and maintenance of newsstands and for the display of advertising thereon subject to certain limitations in the boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, to serve with a coordinated design the needs of residents of, and visitors to, the City; and

WHEREAS, on May 15, 2006, a franchise agreement granted to Cemusa Inc. pursuant to the RFP was approved by the Franchise and Concession Review Committee (“FCRC”); and

WHEREAS, on September 20, 2007, Cemusa Inc.’s interest in the franchise agreement was assigned to Cemusa NY, LLC as permitted by Section 11.1 of the franchise agreement; and

WHEREAS, on November 29, 2013, Cemusa NY, LLC petitioned DOT for the City’s approval of a proposed change in control of the Franchisee; and

WHEREAS, by such proposed change in control of the Franchisee, all of the shares of Corporación Europea de Mobiliario Urbano, S.A. (immediate parent of Cemusa Inc.) in Cemusa Inc. will be transferred to JC Decaux North America, Inc. ; and

WHEREAS, the City and the Franchisee desire amendments to the franchise agreement, in the form of an amended and restated franchise agreement, that will modify various sections including but not limited to: (a) an increase in the overseas markets for NYC & Company advertising; (b) the elimination of the City's option to return any or all of its share of advertising panels on the Coordinated Franchise Structures (as defined in the franchise agreement) for cash to be paid by the Franchisee to the City; (c) changes to the total number of bus shelters obligated to be installed by the Franchisee, including but not limited to specific bus shelters on 5th Avenue between 34th Street and 59th Street and the right of the City in certain circumstances to reciprocal shelters; (d) the obligation of the City to compensate Franchisee for depreciation of certain bus shelters in the event that an advertising Public Communications Structure or Public Pay Telephone is installed on 5th Avenue between 34th Street and 59th Street; and (e) clarification of the alternative compensation language that confirms the obligation of the Franchisee to exclude the value added tax ("VAT") from computation of the value owed to the City in alternative compensation; and

WHEREAS, the FCRC held a public hearing, on September 28, 2015, regarding the proposed change in control and proposed amendments to the franchise agreement, which was a full public proceeding in compliance with the requirements of the New York City Charter, and such hearing was closed on that date; and

NOW, THEREFORE, BE IT

RESOLVED, that the Franchise and Concession Review Committee does hereby approve the above described proposed change in control of the Franchisee and proposed amendments.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON:

SEPTEMBER 30, 2015

Date: _____

Signed _____

Title: Director of the Mayor's Office of Contract Services

RECOMMENDATION FOR APPROVAL OF CHANGE IN CONTROL AND AMENDED AND RESTATED FRANCHISE AGREEMENT MEMORANDUM COVER SHEET

(Attach, in the following order, FRFA Checklist and Narrative and "Responsibility Determination" form)

AGENCY NYC Department of Transportation	RECOMMENDED FRANCHISEE Name <u>Cemusa NY LLC</u> Address <u>420 Lexington Avenue, Suite 2533; New York, NY 10170</u> Telephone # <u>(212) 599-7990</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3944901</u>	FRANCHISE I.D. # 8412006FRANCH1
# VOTES required for proposed action = <u>5</u>		

DESCRIPTION OF FRANCHISE (Attach Proposed Resolution and Proposed Agreement)

Franchise to install, operate, and maintain bus stop shelters, self-cleaning automatic public toilets and public service structures and to install and maintain newsstands in the boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island

Borough(s) Location of Franchise Citywide **C.B.(s)** All

PUBLIC SERVICE TO BE PROVIDED

Bus stop shelters, public toilet facilities, newsstands and public service structures

SELECTION PROCEDURE

Request for Proposals Other _____

<p align="center">FRANCHISE AGREEMENT TERM</p> <p>Initial Term From <u>06 / 26 / 2006</u> To <u>06 / 25 / 2026</u></p> <p>Renewal Option(s) Term From <u> / / </u> To <u> / / </u> From <u> / / </u> To <u> / / </u></p>	<p align="center">SUBSIDIES TO FRANCHISEE <input checked="" type="checkbox"/> N/A</p> <p>\$ _____</p> <p>+ _____</p>
--	--

DCP determined the franchise would have land use impacts or implications. YES NO
 If YES, proposed franchise reviewed and approved pursuant to Sections 197-c and 197-d of the City Charter.

CPC approved on 10 / 09 / 1996

City Council approved on 12 / 19 / 1996 N/A

Law Department determined RFP/other solicitation document consistent with adopted authorizing resolution on 03 / 19 / 2004

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the franchisee to be responsible and approve the change in control and franchise amendments. This is to further certify that the change in control and franchise amendments were approved by the FCRC on ___/___/___ by a vote of ___ to ___.

Name Michelle Craven **Title** Senior Executive Director

Signature _____ **Date** / /

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for the change in control and franchise amendments.

Signature _____ **Date** / /
 City Chief Procurement Officer

**RECOMMENDATION FOR APPROVAL OF CHANGE IN CONTROL AND AMENDED
AND RESTATED FRANCHISE AGREEMENT MEMORANDUM**

Instructions: Check all applicable boxes and provide all applicable information requested below. If any requested date or information is unavailable, describe the reason it cannot be ascertained.

A. AUTHORIZING RESOLUTION (Attach copy)

1. Mayor's Office of Legislative Affairs transmitted proposed authorizing resolution to City Council on 08 / 09 / 2002.
2. City Council conducted public hearing on 07/22/2003, 7/21/2003, 06/27/2003, 10/29/2002, 09/17/2002
3. City Council adopted authorizing resolution on 8 /19 / 2003.

B. SOLICITATION/EVALUATION/AWARD

1. RFP/solicitation document issued on 03 / 26 / 2004. (Attach copy)
2. The Agency certifies that it complied with all the procedures for the solicitation, evaluation and/or award of the subject franchise as set forth in the applicable authorizing resolution and request for proposals, if applicable.

Basis for Award:

Instructions: Check applicable box below; attach a list of proposed franchisee's Board of Directors.

- Recommended franchisee is highest rated proposer and offered highest amount of revenue (overall or for the competition pool).
- Recommended franchisee was sole proposer or was determined to be only responsive proposer (overall or for the competition pool), and the and agency certifies that a sufficient number of other entities had a reasonable opportunity to propose, the recommended franchisee meets the minimum requirements of the RFP or other solicitation and award is in the best interest of the City. *Explain:*
- The subject franchise is a non-exclusive franchise and the recommended franchisee has been determined to be both technically qualified and responsible.
- Other *Describe:*

C. PUBLIC HEARING & APPROVAL

1. Agency filed proposed agreement with FCRC on 04 / 17 / 2006
2. Agency filed proposed amended and restated agreement with FCRC on 09 / 21 / 2015
3. Public Hearing Notice
 - a. Agency published, for at least 15 business days immediately prior to the public hearing, a public hearing notice and summary of the terms and conditions of the proposed agreement in the City Record from 09/04/15 - 09/28/15.
 - b. Agency provided written notice containing a summary of the terms and conditions of the proposed agreement to each affected CB and BP by 09 /11/15. (Check the applicable box below and provide the requested information)
 - Franchise relates to property in one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a

NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___ .

Franchise relates to property in more than one borough and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in The New York Post, a NYC daily, citywide newspaper on 09/ 12/ 2015 and 09 / 13 / 2015, and in The New York Daily News, also a NYC daily, citywide newspaper on 09 / 12 / 2015 and 09 / 13 / 2015. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by 09 / 11 / 2015.

Franchise relates to a bus route contained within one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___ .

Franchise relates to a bus route that crosses one or more borough boundaries and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, also a NYC daily, citywide newspaper on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by ___/___/___ . A notice was posted in the buses operating upon the applicable route.

b. Franchise relates to extension of the operating authority of a private bus company that receives a subsidy from the City and, as such, at least 1 business day prior to the public hearing the Agency published a public hearing notice in the City Record on ___/___/___ .

3. FCRC conducted a public hearing within 30 days of filing on 09 / 28 / 2015 .

NOTICE OF PUBLIC HEARING

NOTICE OF A SPECIAL FRANCHISE AND CONCESSION REVIEW COMMITTEE ("FCRC") PUBLIC HEARING to be held on Monday, September 28, 2015, commencing at 2:30 PM at 22 Reade Street, Borough of Manhattan relating to: 1) a proposed change in control of Cemusa NY, LLC ("Franchisee"), which, pursuant to an assignment from Cemusa Inc. (immediate parent of Franchisee), holds a non-exclusive franchise giving it the right to (a) install, operate and maintain bus shelters, automatic public toilets, and public service structures and install and maintain newsstands on the inalienable property of the City and (b) sell and place advertising as set forth in the franchise agreement and to derive revenue therefrom. In this transaction, all of the shares of Corporación Europea de Mobiliario Urbano, S.A. (immediate parent of Cemusa Inc.) in Cemusa Inc. would be transferred to JC Decaux North America, Inc., thereby resulting in a change in control of Franchisee (hereinafter referred to as the "2015 Change in Control"); and 2) proposed amendments to the franchise agreement, in the form of an amended and restated franchise agreement ("franchise agreement"), that will modify various sections including but not limited to: (a) an increase in overseas markets for NYC & COMPANY advertising; (b) the elimination of the City's option to return any or all of its share of advertising panels on the Coordinated Franchise Structures (as defined in the franchise agreement) for cash to be paid by the Franchisee to the City; (c) changes to the total number of bus shelters obligated to be installed by the Franchisee, including but not limited to specific bus shelters on 5th Avenue between 34th Street and 59th Street and the right of the City in certain circumstances to reciprocal shelters; (d) the obligation of the City to compensate Franchisee for depreciation of certain bus shelters in the event that an advertising Public Communications Structure or Public Pay Telephone is installed on 5th Avenue between 34th Street and 59th Street; and (e) clarification of the alternative compensation language that confirms the obligation of the Franchisee to exclude the value added tax ("VAT") from computation of the value owed to the City in alternative compensation.

A copy of the proposed franchise agreement, including an organizational and ownership structure chart ("organization chart") reflecting the proposed 2015 Change in Control will be available for viewing, by appointment, at the Department of Transportation, 55 Water Street, 9th floor, New York, NY 10041, commencing September 14, 2015 through September 28, 2015, between the hours of 10:00 AM to 4:00 PM, excluding Saturdays, Sundays and holidays. The proposed franchise agreement, including the proposed organization chart may also be obtained in hard copy or PDF form at no cost, by email request. Interested parties should contact Helena Morales by email at streetfurniture@dot.nyc.gov or by telephone at (212) 839-6550.

NOTE: Individuals requesting sign language interpreters or any other accommodation of disability at the public hearing should contact the Mayor's Office of Contract Services, Public

Hearing Unit, 253 Broadway, 9th Floor, New York, New York 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING. TDD users should call Verizon relay service.

The Hearing may be cablecast on NYCMedia channels.

Amended and Restated Franchise Agreement

FRANCHISE AGREEMENT

between

THE CITY OF NEW YORK

and

CEMUSA NY, LLC, INC.

Coordinated Street Furniture Franchise

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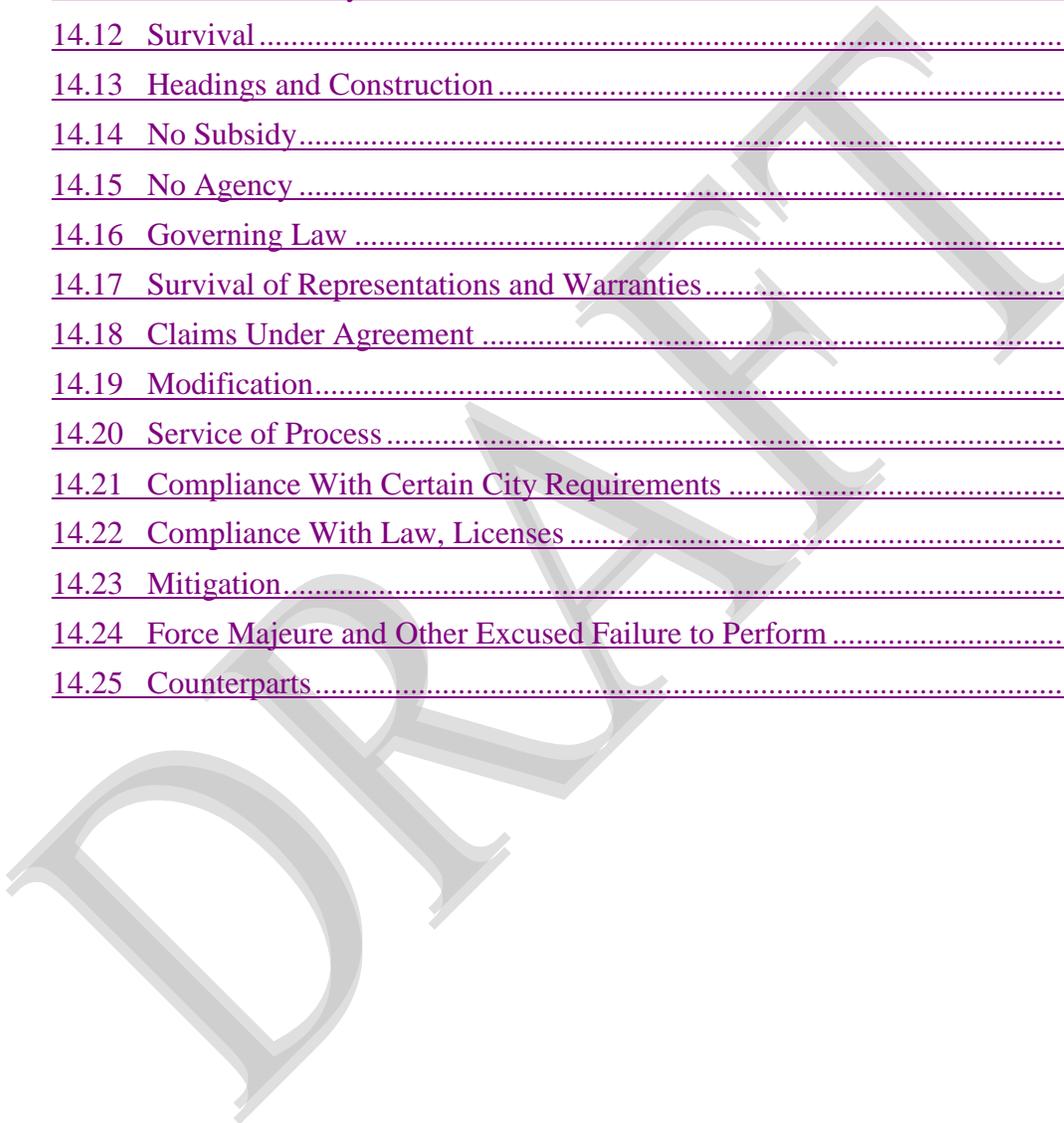
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AMENDED AND REPAIR SCHEDULE

Dated: 5/19/06

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AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, (this “Agreement”) executed as of the 19th day of May, 2015 ~~May, 2006~~ by and between **THE CITY OF NEW YORK** (as defined in Section 1 hereof, the “City”) acting by and through its DEPARTMENT OF TRANSPORTATION ~~DEPARTMENT OF TRANSPORTATION~~ (as defined in Section 1 hereof, “DOT”), having an address at 55 Water ~~40 Worth~~ Street, New York, New York 10041 ~~10013~~, and CEMUSA NY, LLC, INC., ~~CEMUSA NY, LLC, INC.~~, having a place of business at 420 Lexington Avenue, Suite 2533, New York, New York 10170 (as defined in Section 1 hereof, the “Company”).

WITNESSETH:

WHEREAS, pursuant to City Council Authorizing Resolution No. 1004 (passed by the New York City Council on August 19, 2003), attached as Exhibit A hereto, the DOT, on behalf of the City, has the authority to grant non-exclusive franchises for the occupation or use of the Inalienable Property of the City (as defined in Section 1 hereof, the “Inalienable Property of the City”) for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs (as each is hereinafter defined) and for the installation and maintenance of Newsstands (as hereinafter defined) (Bus Shelters, APTs, PSSs and Newsstands are collectively referred to herein as “Coordinated Franchise Structures”), including renewals thereof; and

WHEREAS, DOT issued a Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004, (as defined in Section 1 hereof, the “RFP”) inviting qualified entities to submit proposals for the design, construction, installation, operation and maintenance of Coordinated Franchise Structures on City streets to serve with a coordinated design the needs of residents of, and visitors to, the City; and

WHEREAS, Cemusa, Inc. ~~the Company~~ submitted to DOT its Proposal in response to the RFP; and

WHEREAS, DOT recommended Cemusa, Inc.’s ~~the Company’s~~ Proposal based on its assessment that it was the most beneficial proposal in the interest of the City; and

WHEREAS, on May 11, 2006, the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the “FCRC”) held a public hearing on the proposed grant of a franchise to Cemusa, Inc. ~~the Company~~ for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs and for the installation and maintenance of Newsstands, and associated equipment 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”); and

WHEREAS, the FCRC, at its duly constituted meeting held on May 15, 2006, and acting in accordance with its customary procedures, voted on and approved the grant to Cemusa, Inc. ~~the Company~~ of a franchise as contemplated by the RFP; and

WHEREAS, the potential environmental impacts of the action to be taken hereunder have been considered by the City and have been determined by the City to be fully consistent with those resulting from the ~~Council's~~~~Council's~~ approval of the authorization of DOT to grant a nonexclusive franchise for the installation, operation and maintenance of coordinated franchise structures, which include bus stop shelters, automatic public toilets, newsstands and other public service structures and Local Law 64 of 2003 (the newsstand legislation) which were reviewed and for which a negative declaration was issued finding that such actions will not result in any significant adverse environmental impacts, all in accordance with the New York State Environmental Quality Review Act (~~("SEQRA")~~), 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); and

WHEREAS, on June 26, 2006, Cemusa, Inc. and the City acting by and through its DOT entered into the Franchise Agreement for the Coordinated Street Furniture Franchise for the installation, operation and maintenance of Bus Shelters, APTs, and PSSs and for installation and maintenance of Newsstands (the "2006 Agreement"); and

WHEREAS, on September 20, 2007, the franchisee's interest in the 2006 Agreement was assigned to Cemusa NY, LLC; and

WHEREAS, on March 17, 2014, FCC Versia, S.A., Beta De Administración, S.A., JCDecaux Europe Holding and JCDecaux SA entered into an Agreement for the Sale and Purchase of CEMUSA – Corporación Europea de Mobiliario Urbano, S.A., pursuant to which all shares in Cemusa, Inc. shall be transferred from CEMUSA – Corporación Europea de Mobiliario Urbano, S.A. to JCDecaux North America, Inc. ("JCDecaux") (the transaction described herein being referred to hereinafter as the "2015 Change in Control"); and

WHEREAS, in accordance with the 2006 Agreement, on September 28, 2015, the FCRC held a public hearing to consider the 2015 Change in Control; and

WHEREAS, the FCRC, at a meeting held on September 30, 2015, and acting in accordance with its customary procedures, voted on and approved the 2015 Change in Control together with certain amendments, clarifications and provisions updating the 2006 Agreement, all as fully set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1

DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates

that another meaning is intended. In addition, all references to “install, operate and maintain,” “installation, operation and maintenance,” “install and maintain,” “installation and maintenance,” or any other variance therein, shall be deemed to include any construction, installation, operation, maintenance, repair, upgrading, renovation, removal, relocation, alteration, replacement or deactivation as appropriate, except that with respect to Newsstands, it shall not include operation.

~~1.1~~ 1.1 “ADA” shall have the meaning given in Section 3.7 hereof.

~~1.2~~ 1.2 “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 Company; (ii) each Person in which the Company has directly or indirectly, a Controlling Interest; (iii) each executive officer, director or general partner or limited partner holding an interest of 10% or more in the Company; and (iv) each Person directly or indirectly, controlling, controlled by or under common Control with the Company; provided that “Affiliate” or “Affiliated Person” shall in no event mean the City, any limited partner holding an interest of less than 10% of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliate or Affiliated Person.

~~1.3~~ 1.3 “Agreement” means this ~~Agreement~~agreement, together with the Appendices, Exhibits and Schedules attached hereto and all amendments or modifications thereof.

~~1.4~~ 1.4 “APT(s)” means automatic public toilets installed or to be installed by the Company pursuant to this Agreement.

~~1.5~~ 1.5 “Arbitrated Value” shall have the meaning given in Section 9.4.1(d) hereof.

~~1.6~~ 1.6 “Art Commission” means the Art Commission of the City of New York, or any successor thereto.

~~1.7~~ 1.7 “AVLC(s)” means automatic vehicle location and control systems.

~~1.8~~ 1.8 “Bus Shelter(s)” means structures intended as bus stop shelters (including seating, if installed) which provide meaningful protection from precipitation, wind, and sun, consisting of New Bus Shelters and Existing Bus Shelters.

~~1.9~~ 1.9 “BAFO” means ~~Cemusa Inc.’s~~the Company’s Best and Final Offer dated June 27, 2005.

~~1.10~~ 1.10 “Baseline In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

~~1.11~~ 1.11 “Build Start Date” shall have the meaning given in Section 2.4.6 hereof.

~~1.12~~ 1.12 “~~Cemusa In Kind Market(s)~~” shall have the meaning given in Section 9.1(a) hereof.

~~1.13~~ “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 thereof, or any successor thereto.

~~1.14~~ 1.13 Intentionally Deleted.

~~1.15~~ 1.14 “Commissioner” means the Commissioner of DOT, or his or her designee, or any successor in function to the Commissioner.

~~1.16~~ 1.15 “Company” means ~~Cemusa NY, LLC, CEMUSA, Inc.,~~ a Delaware limited liability company or ~~corporation,~~ whose principal place of business is located at 420 Lexington 645 North Michigan Avenue, Suite 2533, New York, New York 10170800, Chicago, Illinois 60611.

~~1.17~~ 1.16 “Comptroller” means the Comptroller of the City, the Comptroller’s designee, or any successor in function to the Comptroller.

~~1.18~~ 1.17 “Control” or “Controlling Interest” in a Person, in the assets comprising the System, in the Company or in the franchise granted herein means working control in whatever manner exercised, including without limitation, working control through ownership, management, or negative control (provided, however that negative control shall not be interpreted to include negative covenants that may be set forth in financing documentation or similar provisions that may be set forth in financing documentation), as the case may be, of such Person, the assets comprising the System, the Company or the franchise granted herein. A rebuttable presumption of the existence of Control or a Controlling Interest in a Person, in the assets comprising the System, in the Company or in the franchise granted herein shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public), of 10% or more of such Person, the assets comprising the System, the Company or the franchise granted herein. “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person or group of Persons.

~~1.19~~ 1.18 “Coordinated Franchise Structure(s)” means Bus Shelters, APTs, PSSs and Newsstands and any associated equipment, wiring, and/or cables that are attached to such Coordinated Franchise Structures (other than any such associated equipment, wiring, and/or cables that are owned by third parties) and the advertising panels, installed on, over and under the Inalienable Property of the City.

~~1.20~~ 1.19 “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).

~~1.21~~ 1.20 “Damages” shall have the meaning given in Section 12.1.1 hereof.

~~1.22~~ 1.21 “DOT” or the “Department” means the Department of Transportation of the City, its designee, or any successor thereto.

1.22 “Effective Date” means the effective date of the 2006 Agreement, which is June 26, 2006.

~~1.23—1.23~~ “Effective Date” means the later of the date on which this Agreement has been registered with the Comptroller as provided in Sections 375 and 93.p. of the City Charter or the expiration of the 30 day notice period provided under the Viacom Outdoor Agreement to the current party thereto; provided, that the City agrees to give such notice under the Viacom Outdoor Agreement no later than the date this Agreement is registered with the Comptroller.

1.24 “Electronic Inventory and Management Information System” or “EIMIS” means the software which constitutes a computerized inventory system for the Coordinated Franchise Structures and sites as further set forth in the RFP and the Proposal that includes, but is not limited to (a) database, mapping, and graphic capabilities for recording the location (by borough and community district), type, design and features of all installed Coordinated Franchise Structures and the location, features, and status of proposed sites for Coordinated Franchise Structures including sites that have been rejected and (b) capacity for contemporaneous two-way information sharing between DOT and the Company regarding the design, construction, installation, operation, and maintenance of the Coordinated Franchise Structures.

1.25 1.24 “Estimated In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

~~1.26~~ 1.25 “Escrow Agent” shall have the meaning given in Section 9.5(c) hereof.

1.26 “Escrow Agreement” shall have the meaning given in Section 9.5(c) hereof.

1.27 “Escrow Fund” shall have the meaning given in Section 9.5(c) hereof.

1.27 1.28 “Event of Force Majeure” means a delay due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the party claiming an Event of Force Majeure, provided in each case that such party has taken and continues to take all reasonable actions to avoid or mitigate such delay and provided that such party notifies the other party to this Agreement in writing of the occurrence of such 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 Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the party claiming Event of Force Majeure has taken and continues to take all reasonable steps to

pursue such decision. In no event will a government entity's final decision relating to the Company, this Agreement or the System, whether positive or negative, once made constitute an Event of Force Majeure (the term "final decision" in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). The financial incapacity of the Company shall not constitute an Event of Force Majeure.

~~1.28 1.29~~ "Existing Bus Shelters" means the existing Bus Shelters as of the Effective Date, as currently set forth on Schedule A attached hereto, which schedule for purposes of this Agreement shall be updated and finalized on or about the Effective Date by DOT in order to reflect relocation and similar activity since the date of this Agreement.

~~1.29 1.30~~ "Existing Bus Shelter Replacement Schedule" shall have the meaning given in Section 2.4.6(a)(i) hereof.

~~1.30 1.31~~ "Existing Newsstands" means the existing newsstands as of the Effective Date, as currently set forth on Schedule B attached hereto, which schedule for purposes of this Agreement shall be updated and finalized on or about the Effective Date by the New York City Department of Consumer Affairs.

~~1.31 1.32~~ "FCRC" means the Franchise and Concession Review Committee of the City, or any successor thereto.

~~1.32 1.33~~ "Franchise Fees" means the fees paid by the Company to the City as set forth in Section 9 hereof.

~~1.33 1.34~~ "Guarantor" shall mean JCDecaux SAFCC Versia, S.A.

~~1.34 1.35~~ "Guaranty" shall have the meaning given in Section 2.2 hereof.

~~1.35 1.36~~ "Historic Districts" means those districts so designated by Landmarks.

~~1.36 1.37~~ "Inalienable Property of the City" means the property designated in Section 383 of the Charter of The City of New York.

~~1.37 1.38~~ "Indemnitees" shall have the meaning given in Section 12.1.1 hereof.

~~1.38 1.39~~ "Installation Date" shall have the meaning given in Sections 2.4.6-(e) and 2.4.6(f) hereof.

1.40 "JCDecaux In-Kind Market(s)" shall have the meaning given in Section 9.1(a) hereof.

~~1.39 1.41~~ "Landmarks" shall mean the Landmarks Preservation Commission of the City of New York, or any successor thereto.

~~1.40~~ 1.42 “L/C Replenishment Period” shall have the meaning given in Section 7.8 hereof.

~~1.41~~ 1.43 “Letter of Credit” shall have the meaning given in Section 7.1(a) hereof.

~~1.42~~ 1.44 “Mayor” means the chief executive officer of the City or any designee thereof.

~~1.43~~ 1.45 “Media Plan” shall have the meaning given in Section 9.4(a) hereof.

~~1.44~~ 1.46 “New Bus Shelter(s)” means bus shelters installed or to be installed by the Company in conformity with the Plans and Specifications, which replace Existing Bus Shelters or are placed at DOT’s request at other locations, as contemplated in this Agreement, and shall also include Reciprocal Bus Shelters and Fifth Avenue Bus Shelters.

~~1.45~~ 1.47 “New Newsstand” means a Newsstand which is not a Replacement Newsstand as defined in Local Law 64 for the year 2003.

~~1.46~~ 1.48 “New Newsstand Operator” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates or will operate a New Newsstand in the City.

~~1.47~~ 1.49 “Newsstand(s)” means structures intended for selling and displaying newspapers, periodicals and convenience items installed or to be installed by the Company pursuant to this Agreement.

~~1.48~~ 1.50 “Newsstand Operator(s)” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates a Newsstand in the City.

~~1.49~~ 1.51 “NYCMDC” means the New York City Marketing Development Corporation, or successor thereto, acting as agent for the City. If there is no successor to NYCMDC, then DOT shall be deemed the successor thereto for purposes of this Agreement. As agent for the City all obligations of NYCMDC under this Agreement shall be binding on and enforceable against the City, and all benefits to NYCMDC under this Agreement shall accrue to, and be enforceable by, the City.

~~1.50~~ 1.52 “Other Affected Property” shall have meaning given in Section 13.7.1(a) ~~6.1~~ hereof.

~~1.51~~ 1.53 “Performance Bond” shall have the meaning given in Section 7.1(a) hereof.

~~1.52~~ 1.54 “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 shall not mean the City.

~~1.53~~ 1.55 “Plans and Specifications” shall mean the plans, specifications, and designs for the Coordinated Franchise Structures (other than the Existing Bus Shelters) to be installed by the Company pursuant to this Agreement, as approved by the Art Commission and Landmarks to the extent required by law and accepted by DOT, as may be modified from time to time pursuant to this Agreement, and all rights of copyright, patent, trademark, service mark, trade dress, and all other intellectual property rights of any kind arising out of, relating to, or embodied or incorporated in the Coordinated Franchise Structures; any reports, documents, data, drawings, sketches, mockups, models, photographs, images, and/or other materials of any kind and in any medium produced pursuant to this Agreement related to the design, structure and physical appearance of the Coordinated Franchise Structures, and any and all drafts and/or other preliminary materials in any format or medium related to such items. Nothing contained herein shall be construed as entitling the City to assert ownership rights or the licensed rights set forth in Sections 2.4.2 or 2.6 in any word marks or logos of the Company or its licensors.

~~1.54~~ 1.56 “Post Term System” shall have the meaning given in Section 13.6(a) hereof.

~~1.55—1.57~~ “PSS(s)” means public service structures such as trash receptacles, multi-rack news racks and information/computer kiosks that provide access to government or commercial activity (provided, however, that no internet connectivity shall be permitted) to be installed by the Company pursuant to this Agreement.

~~1.56~~ “Preliminary Plans and Specifications” means the plans and specifications and designs for the “New York City Line” of the Coordinated Franchise Structures, presented in the BAFO as the “Grimshaw 5” line, and shall include all modifications, improvements and further developments as may be required for presentation to the Art Commission and Landmarks.

~~1.57~~ 1.58 “Privileged Information” shall mean attorney-client communications or attorney work product entitled to privilege under New York State law.

~~1.58~~ 1.59 “Proposal” means the proposal dated September 14, 2004, the Response to Follow-Up Questions dated April 11, 2005, the ~~Company’s letter dated April 18, 2005, the~~ Best and Final Offer dated June 27, 2005 and ~~Cemusa Inc.’s~~ the Company’s letter dated July 7, 2005, each submitted by ~~Cemusa, Inc.~~ the Company in response to the RFP.

~~1.60~~ “PSS(s)” means public service structures such as trash receptacles, multi-rack news racks and information/computer kiosks that provide access to government or commercial activity (provided, however, that no Internet connectivity shall be permitted) to be installed by the Company pursuant to this Agreement.

~~1.61~~ “Public Communications Structure Franchise Agreement” or “PCSFA” means the Public Communications Structure Franchise Agreement between the City and CityBridge, LLC, executed December 19, 2014, as such PCSFA may be amended from time to time.

~~1.59~~ 1.62 “quarter” as used in Sections 4 and 9 of this Agreement shall mean three-month periods beginning on the Effective Date. For avoidance of doubt, if the Effective Date is

May 25, the quarters of the Term would end on August 24, November 24, February 24 and May 24.

~~1.60~~ 1.63 “Replacement Newsstand” means a Newsstand as defined in Local Law 64 for the year 2003.

~~1.61~~ 1.64 “Replacement Newsstand Schedule” shall have the meaning given in Section 2.4.6(d)(i) hereof.

~~1.62~~ 1.65 “Replenishment Period” shall have the meaning given in Section 6.7.

~~1.63~~ 1.66 “RFP” means the Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004.

~~1.64~~ 1.67 “Scroller(s)” shall mean a two-sided advertising display that contains a minimum of three posters per side, each containing an individual graphic, and that can display multiple campaigns on both sides by providing an opportunity to change an advertising poster at pre-determined time intervals by gradually moving another poster containing an individual graphic in place of the first, allowing for multiple advertisers to post advertising posters in one location (or allowing an advertiser the opportunity to post multiple creative executions in a series as part of one ad campaign) during the same posting period. For the purposes of Section 4 hereof, a Scroller shall not be counted as one panel but rather by the number of posters with individual graphics contained therein.

~~1.65~~ 1.68 “Security Fund” shall have the meaning given in Section 6.1 hereof.

~~1.66~~ 1.69 “Service(s)” means the installation, operation and maintenance of Coordinated Franchise Structures, provided, however, that with respect to Newsstands, Services shall mean installation and maintenance and shall not include operation.

~~1.67~~ 1.70 “Software” shall have the meaning given in Section 2.4.2(b) hereof.

~~1.68~~ 1.71 “Software Escrow Agent” shall have the meaning given in Section 2.4.2(e) hereof.

~~1.69~~ 1.72 “System” means all of the Coordinated Franchise Structures which are to be installed, operated and/or maintained by the Company pursuant to this Agreement and the EIMIS (together with associated data).

~~1.70~~ 1.73 “Term” means the term of the Agreement as described in Section 2.1 hereof.

~~1.71~~ 1.74 “Termination Default” shall have the meaning given in Section 13.2.1(a) hereof.

~~1.72~~ 1.75 “Vendex” means the City’s Vendor Information Exchange System, or any successor system established pursuant to law, rule or regulation.

~~1.73~~ 1.76 “Viacom Outdoor Agreement” means the contract dated March 20, 1985 by and between the City of New York and Miller Signs Associates, as last amended on January 25, 2005.

~~1.74~~ 1.77 “year” shall mean a period of 365 days, as distinguished from a calendar year.

SECTION 2

GRANT OF AUTHORITY

2.1 Term. This Agreement, and the franchise granted hereunder, shall commence upon the Effective Date, and shall continue for a term of 20 years from the Effective Date, unless this Agreement is earlier terminated as provided in this Agreement (the “Term”).

2.2 Submissions By the Company. The City acknowledges receipt from the Company of the following items and documents and hereby agrees that as of the date hereof each such item or document delivered by the Company is on its face in compliance with the terms and conditions of this Agreement and that the Company has fulfilled its contractual obligations thereto, provided, however, that this acknowledgement and agreement in no way releases any of the Company’s ongoing obligations as to such items under this Agreement: (i) evidence as described in Section 12 hereof of the Company’s insurance coverage, (ii) an opinion of the Company’s~~Company's~~ counsel dated as of the date this Agreement is executed by the Company, in a form reasonably satisfactory to the City, that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company, (iii) an IRS W-9 form certifying the Company’s tax identification number, (iv) a letter from the Company to the Department of Consumer Affairs certifying to the projected costs of the construction and installation of the New Newsstands, as described in Section 2.4.6(d)(iii) hereof, (v) organizational and authorizing documents as described in Sections 14.6.1 and 14.6.2 hereof, (vi) evidence that the Security Fund required pursuant to Section 6 hereof has been created, (vii) evidence that the Performance Bond required pursuant to Section 7 hereof has been created consisting of an original executed performance bond in the required amount and approved form, (viii) evidence that the Letter of Credit required pursuant to Section 7 hereof has been delivered, (ix) a guaranty from the Guarantor (“Guaranty”), and (x) fully completed and up-to-date questionnaires in connection with Vendex which have received a favorable review by the City.

~~2.3.2.3~~ Certain Actions by the Company.~~after the Effective Date.~~ Within five (5) business days of receipt by the Company of an invoice, the Company shall reimburse to the City all costs incurred by the City in publishing legally required notices with respect to the approvals and consents required for franchise granted by this Agreement.

~~2.4.2.4~~ Nature of Franchise; Effect of Termination.

2.4.1. Nature of Franchise. The City hereby grants the Company, in accordance with the terms and conditions of this Agreement, the RFP, the Proposal and the BAFO (the RFP, Proposal and BAFO are attached hereto and made a part hereof as Exhibits B, C, and D respectively), a non-exclusive franchise providing the right and consent to install, operate and maintain Bus Shelters, APTs, and PSSs and to install and maintain Newsstands on, over and under the Inalienable Property of the City. The exercise of such franchise is subject to all applicable laws, rules and regulations of the City, including with respect to the Newsstands, Local Law 64 for the year 2003 and with respect to multi-rack news racks, 19-128.1 of the Administrative Code. The Inalienable Property of the City does not include premises controlled by such entities as, including, but not limited to, the New York City Department of Education, the New York City Health and Hospitals Corporation, the Metropolitan Transportation Authority, the New York City Housing Authority, the New York City Off Track Betting Corporation, or the interior of any buildings owned, leased, or operated by the City, or any other City property not expressly included in Section 1.3736 herein.

2.4.2. Ownership.

(a) (a)—All Coordinated Franchise Structures are at all times during the Term of this Agreement, except as otherwise stated in this Agreement, the property of the Company, and the Company has responsibility therefore in accordance with the terms of this Agreement. The Company shall take ownership and be responsible for the operation and maintenance as described herein of the Existing Bus Shelters as of the Effective Date of this Agreement. No representations are or have been made by the City, or by any of its officers, agents, employees or representatives, as to the present physical condition, structural integrity, cost of operation or otherwise of the Existing Bus Shelters, and the Company acknowledges that it has inspected the same, is familiar with the “as is” condition thereof, and will hold the City harmless in connection therewith pursuant to Section 12.1.1 hereof, provided, however, the Company shall have no liability for Damages relating to any event that occurred prior to the Effective Date. Except as otherwise stated in this Agreement, during the Term hereof, the City has no ownership interest, or any obligations with respect to, the Coordinated Franchise Structures.

(b) (b)—The Company and/or Cemusa, Inc. has purchased sufficient licenses for all off-the-shelf software and hardware components reasonably necessary for the creation, maintenance, and operation of EIMIS and has secured for the City valid, non-exclusive, royalty-free, paid-up sublicenses, or equivalent rights to use, consistent with the terms and conditions of this Agreement for any proprietary software used by the Company and reasonably necessary for operation and (to the extent applicable) maintenance of EIMIS, and to the extent independent licenses are required, software pertaining to the operation and maintenance of APTs and PSSs (all such software referred to in this sentence, collectively referred to hereinafter as the “Software,” which for purposes of this Agreement will mean programs in object code format only together with any manuals and documentation). The licenses and sublicenses in the Software to be granted to the Company and/or the City in accordance with this Section 2.4.2(b) or Section 3.3(c) will be sufficient to allow the Company and/or City to (i) access, operate, and maintain the EIMIS, and all APTs and PSSs for the purposes contemplated by this Agreement

during the Term and (ii) address changing conditions as they apply to EIMIS, including without limitation, by requiring the applicable software vendors to create derivative works of the Software in customizing, adapting, configuring, optimizing and refining EIMIS consistent with the purposes of this Agreement.

~~(c)~~ ~~(e)~~—The Plans and Specifications and the Preliminary Plans and Specifications are the property of the Company or its licensors, as applicable. The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City, effective as of the date of the first to occur of the termination or expiration of this Agreement in accordance with its terms or the transfer of ownership of the Coordinated Franchise Structures to the City, an exclusive, irrevocable, royalty-free to the City, fully paid-up license (i) to use the Plans and Specifications, and the Preliminary Plans and Specifications to the extent incorporated in the Plans and Specifications, for the purpose of installing, maintaining and operating in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures) and (ii) to display, perform publicly, and reproduce the Plans and Specifications for purposes of installing, operating, and maintaining in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures). For avoidance of doubt, the license grant set forth in the immediately preceding sentence of this Section 2.4.2(c) shall immediately take effect in accordance with its terms whether or not the Company challenges such termination; provided, however, that nothing herein shall be interpreted as an admission by the Company that any such termination is appropriate. Furthermore, for all copyright and patent rights in the grants above, the terms of these licenses will be the longest term currently recognized for copyrights and patents, respectively, under United States law. For all other rights licensed in this Section, the term of the license is perpetual. Notwithstanding the foregoing, as of the Effective Date, nothing herein shall be construed as restricting the City’s ability to work during the Term with the Company and the Company’s licensor Grimshaw Industrial Design, LLC (“Grimshaw”) in furtherance of the purposes of this Agreement to coordinate the creation, installation, and maintenance of the Coordinated Franchise Structures. Further, as of the Effective Date, the Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City a non-exclusive, royalty-free license to display, reproduce, and perform publicly images of the Coordinated Franchise Structures in any medium for the term of copyright.

~~(d)~~ ~~(d)~~—The Company agrees that the Coordinated Franchise Structures installed by the Company in accordance with this Agreement shall be unique to the City, and the Company shall not, without the prior written permission of the City, install or cause or facilitate the installation of any such Coordinated Franchise Structures for any other client or other third party anywhere in the world. Additionally, the Company shall cause third parties that expressly licensed the Plans and Specifications, in whole or in part, to the Company, or third parties that otherwise participated in the creation of the Plans and Specifications –to execute documents to this effect.

~~(e)~~ ~~(e)~~—To the extent that this Agreement includes software licensed to the Company and/or the City (excluding “off-the-shelf” software) in connection with the creation, operation or maintenance of EIMIS, the Company agrees that (i) it shall cause its software vendor to enter into, and maintain in full force and effect a source code escrow agreement with an escrow agent (the “Software Escrow Agent”), which escrow agreement shall provide materially the same terms and conditions as follows, and (ii) all source code and related documentation for the licensed software shall be under escrow deposit pursuant to said escrow agreement. The Company shall cause its software vendor to provide 30 days prior written notice of a change of the Software Escrow Agent. The escrow agreement contemplated hereby must be in effect within 30 days of the Effective Date. Additionally,

~~(i)~~ ~~(i)~~—source code must be held by the Software Escrow Agent in trust for the City;

~~(ii)~~ ~~(ii)~~—all major updates (e.g., new versions and critical patches and fixes) must be escrowed as they are issued; minor updates may be escrowed in batches no less frequently than monthly;

~~(iii)~~ ~~(iii)~~—the Software Escrow Agent shall verify deposit of the source code and all updates and so notify the City;

~~(iv)~~ ~~(iv)~~—the City shall be permitted periodic testing of all source code held in escrow; and

~~(v)~~ ~~(v)~~—if the Company’s software vendor, any assignee or successor (x) becomes insolvent or ceases to exist as a business entity or (y) fails to perform its obligations under its agreement with the Company such that the Company fails to comply with its obligations with respect to EIMIS contained in this Agreement, 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 commentary for the installed release level of the product utilized by the City. 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 Company’s software vendor.

It is agreed that the Company shall provide to the City all information necessary for the City to comply with registration requirements, if any, of the Software Escrow Agent. The Company agrees to adhere to the obligations set forth in ~~any~~ agreement with the software vendor or the Software Escrow Agent as they relate to the deposit of Software in escrow. ~~The agreement with the Software Escrow Agent shall provide that the City shall have the opportunity to cure any default of the Company, at the sole cost and expense of the Company, that jeopardizes the ability of the City to access the escrowed source code as provided for under this Agreement.~~

The escrow agreement provisions set forth in this Section 2.4.2(e) shall apply with equal force to any software licensed to the City (excluding “off-the-shelf” software) by a subcontractor of the Company.

2.4.3. Warranties of Title. The Company represents and warrants that the Plans and Specifications and Software: (a) are original to the Company or validly licensed or sublicensed to the Company; (b) to the knowledge of the Company after reasonable inquiry, do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any law, rule, or regulation; and (c) do not constitute defamation or invasion of the right of privacy. The Company further represents and warrants that it has not granted any license(s), permit(s), interest(s), or right(s), exclusive or nonexclusive, to any party other than the City with respect to the Plans and Specifications and will not grant any such licenses unless such grants are necessary to perform the Company’s obligations under this Agreement.

2.4.4. Permits, Authorizations, Approvals, Consents and Licenses.

~~(a)~~ ~~(a)~~—Before installing any Coordinated Franchise Structure, the Company shall obtain at its sole cost and expense, any necessary permits, authorizations, approvals, consents, licenses, and certifications required for each Coordinated Franchise Structure, including, but not limited to: (i) pursuant to all City laws, rules and codes 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 DOT, Landmarks and the Art Commission, and any other agency of the City with jurisdiction over the property on which the Coordinated Franchise Structure is to be located; (iii) any necessary permits, authorizations, approvals, consents, licenses, and certifications required pursuant to any applicable state and federal laws, rules, regulations and policies, writs, decrees and judgments; and (iv) any necessary permits, authorizations, approvals, consents, licenses and certifications from Persons to use a building or other private property, easements, poles, and conduits.

~~(b)~~ ~~(b)~~—The Company agrees that fees paid to obtain any permits, consents, licenses, or any other forms of approval or authorization shall not be considered in any manner to be in the nature of a tax, or to be compensation for this franchise in lieu of the compensation described in Section 9 hereof.

2.4.5. Design of Coordinated Franchise Structures. The design of all Coordinated Franchise Structures installed pursuant to this Agreement (other than Existing Bus Shelters) shall be in compliance with all applicable laws, rules and regulations of the City and shall be subject to approval of the Art Commission and, to the extent required by law, Landmarks. Company shall make good faith efforts to obtain approval of the Art Commission and to the extent required by law, Landmarks. The Company shall submit an application signed by DOT (which application DOT agrees to sign in a form reasonably acceptable to DOT), to the Art Commission and, to the extent required by law, Landmarks, for review and approval of the Preliminary Plans and Specifications. In the event that changes to the Preliminary Plans and Specifications are required by the Art Commission or Landmarks for their approvals, the

Company at its sole cost and expense shall make such changes as are required to obtain such approval. Following such approval, the Preliminary Plans and Specifications as approved shall be the Plans and Specifications referred to in this Agreement and shall be the Plans and Specifications used to manufacture the Coordinated Franchise Structures. It is anticipated that street or sidewalk conditions at certain locations will require modifications of the size of individual Coordinated Franchise Structures (as distinct from modifications to the design of the Coordinated Franchise Structures overall). Such modifications to individual Coordinated Franchise Structures shall be made at the Company's sole cost and expense upon a determination by the City that such modifications are necessary or appropriate based on street or sidewalk conditions at such specified locations. Additionally,

~~(a)~~ ~~(a)~~—The Company shall design PSSs such that the public service provided is immediately apparent and shall not be obscured physically or visually by advertising;

~~(b)~~ ~~(b)~~—In consultation with DOT the Company shall prepare as part of the Plans and Specifications size variations of the Newsstands which all meet the dimensional requirements set forth in the RFP and shall comply with the Americans with Disability Act as further set forth in Section 3.7 hereof. Such variations must be approved by DOT in its reasonable discretion and must meet the following specifications: there must be Newsstand lengths of 8', 10' and 12' which must be able to be used interchangeably with Newsstand widths of 4', 5' and 6'. All Newsstands must be a standard height of 9'. Additionally, the Company shall make reasonable efforts to customize the interior of the Newsstand by permitting all Newsstand Operators to select customization options from a standardized group of customization alternatives offered by the Company;

~~(c)~~ ~~(c)~~—The Company shall design New Bus Shelters in a variety of sizes such that every Existing Bus Shelter may be replaced in accordance with the terms of this Agreement. New Bus Shelter designs shall provide for bus route maps, street maps, bus stop name identification, Guide-a-Ride canisters and other information. The New Bus Shelter designs shall also contemplate some form of passenger seating, such as a bench, that may or may not be required to be installed in every New Bus Shelter. Once during the Term at any time during such Term, the City may require the Company, and the Company shall at its sole cost and expense, install or remove such seating from each New Bus Shelter (this provision is not intended to limit the Company's obligation to maintain, including replacement where and when necessary, seating that has been installed and has become worn or damaged, in accordance with the maintenance obligations imposed upon the Company by this Agreement);

~~(d)~~ ~~(d)~~—As the City has determined that only one configuration (in lieu of standard and landmark) is appropriate, the Company shall only be required to design and install one configuration of New Bus Shelters, APTs and Newsstands during the Term, subject to the requirements on size variations set forth in this Agreement;

~~(e)~~ ~~(e)~~—Company shall at its sole cost and expense produce and install such signage as is requested from time to time by DOT. The obligation to produce as used in this Section is defined as the printing and reproduction of City-designed signage intended

specifically and exclusively for Bus Shelters (not including generic bus or transit route maps of the entire system); and

~~(f)~~ ~~(f)~~—The Company shall make appropriate staff available to represent itself and assist DOT during any informal or formal public review processes, including, but not limited to, presentations to a Community Board, review by the Art Commission or Landmarks, or a hearing in front of the FCRC.

2.4.6. Build out and Costs. The Company agrees to construct and install Coordinated Franchise Structures conforming to the Plans and Specifications, and in accordance with the timeframes set forth herein and in Appendix G annexed hereto, at its sole cost and expense, such cost and expense including, but not limited to, the costs of utility connections and infrastructure related thereto, and utilities consumed during the build-out. The Company's construction and installation obligations in this Section 2.4.6 shall be measured from the 60th day after the date of final approval by the Art Commission as set forth in Section 2.4.5 herein (such date shall be referred to as the "Build Start Date"). If the final Art Commission approval contemplated in this paragraph is received on different dates with respect to the New Bus Shelters, Newsstands or APTs, the term "Build Start Date" shall refer to the date of final approval of the Art Commission as it relates to the relevant Coordinated Franchise Structure. Prior to the installation of any Coordinated Franchise Structure, the Company shall provide to DOT for its approval photographs of the site and a site plan conforming to the siting criteria contained in the RFP. All site plans shall be prepared to scale, shall include all elements and dimensions relevant to the siting criteria, and shall be certified by a professional engineer or licensed architect.

~~(a)~~ ~~(a)~~—The Company shall remove Existing Bus Shelters and shall install New Bus Shelters in accordance with the following:

~~(i)~~ ~~(i)~~—The Company shall construct and install in locations as set forth in Schedule A attached hereto, and in such other locations as may be directed by DOT, at least 3300 New Bus Shelters by the fifth anniversary of the Build Start Date, with at least 650 New Bus Shelters in total having been installed by the first anniversary of the Build Start Date, at least 1350 New Bus Shelters in total having been installed by the second anniversary of the Build Start Date, at least 2000 New Bus Shelters in total having been installed by the third anniversary of the Build Start Date, at least 2650 New Bus Shelters in total having been installed by the fourth anniversary of the Build Start Date and at least 3300 New Bus Shelters having been installed by the fifth anniversary of the Build Start Date. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. In addition, the Company shall construct and install at the option of DOT in its sole discretion a maximum of 200 additional New Bus Shelters, where and when directed by DOT, provided, however, that (x) such option must be exercised in the first eighteen years of the Term, and (y) the total number of New Bus Shelters to be installed by the Company shall not exceed 3500 without the mutual consent of the Company and the City (said 3500 limit shall not include the Fifth Avenue Bus Shelters installed pursuant to Section 2.5.3.1, the Reciprocal Bus Shelters installed pursuant to Section 2.5.3.2 or the 30 New Bus Shelters installed pursuant to Section 9.17). The replacement

of Existing Bus Shelters at the locations set forth in Schedule A shall take place in accordance with a schedule to be proposed by the Company and approved by DOT (the “Existing Bus Shelter Replacement Schedule”) which shall be consistent with the overall construction and installation schedule contemplated by this Agreement and shall provide that each year 20% of replacements take place at locations allocated to NYCMDC as set forth in Exhibit H attached hereto. The Existing Bus Shelter Replacement Schedule shall include at a minimum, for each month of the build-out years, the location of each Existing Bus Shelter scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected date for installation. On notification from DOT that a site plan and photographs are required for a location other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and to install the New Bus Shelter provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature of the required changes. Notwithstanding any provision of this Agreement to the contrary, in the event that a particular Bus Shelter is removed but not returned to the same location (either by movement of the individual shelter or the route being relocated), the total number of shelters that count towards the 3500 limit shall be reduced by one.

~~(ii)~~ ~~(ii)~~—The Company shall dismantle, remove, and if necessary, dispose of Existing Bus Shelters, at its sole cost and expense, provided that no Existing Bus Shelter shall be removed unless and until DOT has either approved a site plan for a New Bus Shelter to replace it or determined that it will be removed but not replaced. A New Bus Shelter shall be installed in accordance with paragraph (i) of this subsection within five days of the removal of each Existing Bus Shelter, except where DOT has determined that the Existing Bus Shelter will not be replaced. All Existing Bus Shelters shall have been removed and replaced as required by the fifth anniversary of the Build Start Date. Should DOT require the removal of any Bus Shelter other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have five days from receipt of notice from DOT to effect the removal. Any site where a Bus Shelter is removed but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Bus Shelter and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

~~(b)~~ ~~(b)~~—Unless the City requires fewer APTs to be installed, the Company shall construct and install in locations as directed by the City, and in accordance with the time frames set forth in Appendix G annexed hereto, at least 10 APTs in total by the first anniversary of the Build Start Date and 20 APTs in total by the second anniversary of the Build Start Date, provided that the Company’s obligations set forth in this sentence shall be tolled during any time that access to the site selected by the City is blocked due to circumstances beyond the Company’s control. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of the City. To the extent that the City has not directed the Company

to install all 20 APTs by the second anniversary of the Build Start Date, in any year of the Term the City may direct the Company to install a maximum of 10 APTs with no more than 20 APTs installed during the Term.

~~(c)~~ ~~(e)~~—The Company shall construct and install, when and as directed by DOT in locations selected by DOT, PSSs consisting of trash receptacles, multi-rack newsracks, and information/computer kiosks in accordance with the time frames set forth in Appendix G annexed hereto, provided that the number of PSSs the Company shall be required to install in any given time period shall be reasonable under the circumstances existing at the time, including when considered in light of any concurrent obligations of the Company to install, maintain and, if applicable, relocate, other Coordinated Franchise Structures under this Agreement.

~~(d)~~ ~~(d)~~—Additionally, in accordance with the RFP, the Proposal and the BAFO:

~~(i)~~ ~~(i)~~—The Company shall be responsible at its sole cost and expense for the prompt dismantling and removal of any and all Existing Newsstands (unless, in each instance, the Newsstand Operator exercises its option under Section 20-241.1b of Title 20 of the City’s Administrative Code, or any successor provision thereto, to itself remove the Existing Newsstand) and the installation of Replacement Newsstands in accordance with a schedule to be provided by DOT from time to time (the “Replacement Newsstand Schedule”). The Replacement Newsstand Schedule shall be consistent with the overall installation timetable for Newsstands contemplated by Section 2.4.6(d)(iii). The Replacement Newsstand Schedule shall include the location of each Existing Newsstand scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected dates for removal of the Existing Newsstand and the installation of the Replacement Newsstand. On the date specified in the Replacement Newsstand Schedule (provided the City has given the relevant Newsstand Operator notice within the time period required by applicable law, if any, of the date for the removal of the Existing Newsstand), or a date mutually agreed to by the Company, and DOT, the Company shall remove the Existing Newsstand (unless the Newsstand Operator has already removed it) and install the Replacement Newsstand. Installation of each Replacement Newsstand must be completed in nine days from removal by the Company of the applicable Existing Newsstand (or from the date of notice to the Company that the Existing Newsstand has been removed by the Newsstand Operator).

~~(ii)~~ ~~(ii)~~—On notification from DOT that a site plan and photographs are required for a location other than as specified in the Replacement Newsstand Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and install the New Newsstand provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature of the required changes. Should DOT require the removal of any Newsstand, other than as specified in the Replacement Newsstand Schedule, the Company shall have five

days to effect the removal and restore the sidewalk. Any site where a Newsstand is removed by the Company but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Newsstand and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

~~(iii)~~ ~~(iii)~~—The Company shall construct and install in locations as set forth in Schedule B attached hereto, and in such other locations as may be directed by the City, ~~at least 330 Newsstands, which may include Replacement Newsstands and/or New Newsstands with at least 110 Newsstands, as selected by the City in its sole discretion, being installed by the first anniversary of the Build Start Date, with at least 220 Newsstands, as selected by the City in its sole discretion, being installed by the second anniversary of the Build Start Date, and at least 330 Newsstands being installed by the third anniversary of the Build Start Date.~~ The Company's obligations set forth in the preceding sentence shall, to the extent that the above time schedule cannot be met because access to any site is blocked due to circumstances outside the Company's control, be tolled during such time access is blocked. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. Additionally, the Company shall construct and install at the option of the City in its sole discretion additional New Newsstands necessary for operation under any new license issued throughout the Term by the Department of Consumer Affairs (or any successor thereto). All Newsstands constructed shall include, at the Company's sole cost and expense, necessary electric and telephone hook-ups and infrastructure required by the appropriate utility to establish a separate account for the Newsstand Operator's usage of electricity in the Newsstand. However, the New Newsstand Operators will be required to reimburse the Company for the costs and expenses of the construction and installation including costs associated with any interior electric and/or telephone hookups to the Newsstand, in accordance with Appendix B attached hereto, provided that the City shall not be responsible for reimbursement to the Company for the New Newsstands in the event that the Company does not receive such compensation from the New Newsstand Operators. Upon payment of the amount required, or the entry into an installment payment plan with the New Newsstand Operator(s) pursuant to Appendix B, Company shall provide the New Newsstand Operator(s) with either proof of payment or a letter stating that the New Newsstand Operator(s) has entered into an installment payment agreement with the Company.

~~(iv)~~ ~~(iv)~~—Under no circumstances will the Company be responsible or liable for the removal of any Newsstand Operator who does not cooperate in the Newsstand replacement process contemplated by or arising out of this Agreement. Additionally, the Company shall not have any obligations to any Indemnitee under Section 12.1.1 for any Damages relating to any claim against any Indemnitee made by or on behalf of a Newsstand Operator (a) challenging or contesting the right of the City to remove such Newsstand Operator's newsstand or claiming compensation arising from the removal thereof, (b) claiming any ownership rights in any newsstand, (c) alleging any violation of law or other wrongful conduct on the part of the City or its agents or contractors in connection with the removal of such Newsstand Operators' newsstands (other than any such conduct for which the Company is directly responsible and which is not carried out by the Company at the direction of the City),

and any similar claim that does not arise directly out of the performance by the Company of, or its failure to perform, its obligations under this Agreement.

~~(e)~~ ~~(e)~~—Upon installing any of the Coordinated Franchise Structures the Company shall send to DOT a photograph of the new installation showing the placement in context of such Coordinated Franchise Structure together with a request for DOT acceptance of the specified Coordinated Franchise Structure, which acceptance shall not be unreasonably withheld, conditioned or delayed. Such request shall set forth the date the Coordinated Franchise Structure was installed (such date shall be the “Installation Date” if the installation is accepted by DOT in accordance with Section 2.4.6(f) below).

~~(f)~~ ~~(f)~~—DOT shall inspect such new installation within 14 days of receipt of such photograph and request. Acceptance of the installation shall not constitute an approval of the structural integrity of the Coordinated Franchise Structures or of any utility connections. Should DOT accept the Coordinated Franchise Structure as being installed in accordance with the site plan it shall send the Company an acceptance notice within 14 days from inspection. Should DOT not accept the Coordinated Franchise Structure as being installed in conformity with the site plan it shall send the Company a rejection notice within 14 days from inspection specifying the problems which need correction and the Company shall have five days from receipt of notice from DOT (provided that in the case of APTs and Newsstands the Company’s obligations set forth in this sentence shall be tolled during any time that the Company’s access to the site is blocked due to circumstances outside its control) to make such corrections, except if local law requires otherwise in the case of Newsstands. Thereafter, the Company shall follow the procedures set forth in this Section 2.4.6 (the date such corrections are made shall be the Installation Date if such corrections are approved by DOT). If DOT sends a rejection notice as contemplated herein, the time between the date the Company sent its request for acceptance and the date DOT sent the rejection notice shall not count towards the assessment of liquidated damages.

~~(g)~~ ~~(g)~~—The procedure for accepting Newsstands shall be as set forth in this Section 2.4.6 unless superseded by Local Law 64 of the year 2003 or any other section of the New York City Administrative Code or the Rules of the City of New York.

~~(h)~~ ~~(h)~~—Except as otherwise set forth in this Agreement, failure to complete the timely construction and installation of any Coordinated Franchise Structure within the time specified shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto, or the exercise of any other remedy available to the City under this Agreement provided, however, that if DOT does not send a notice of acceptance or rejection of the installation of any Coordinated Franchise Structure within the time period set forth above, such delay shall not be counted against the Company for purposes of assessing liquidated damages or the exercise of any other remedy. It is agreed that the full amount of liquidated damages due prior to the 2015 Change in Control with respect to the construction, installation and maintenance of the Bus Shelters and Newsstands totaling \$1,687,988 has been collected by the City, and as of the date of this Agreement, no additional liquidated damages have been assessed by the City.

2.4.7. Effect of Expiration or Termination. Upon expiration or termination of this Agreement (and provided no new franchise of similar effect has been granted to the Company pursuant to the New York City Charter, any authorizing resolution, and any other applicable laws and rules in effect at the time) the franchise shall expire; all rights of the Company in the franchise shall cease with no value allocable to the franchise itself; and the rights of the City and the Company to the System, or any part thereof, shall be determined as provided in Section 13 hereof.

2.5-2.5 Conditions and Limitations on Franchise-.

2.5.1. Not Exclusive. Nothing in this Agreement shall affect the right of the City to grant to any Person other than the Company a franchise, consent or right to occupy and use the Inalienable Property of the City, or any part thereof, for the installation operation and/or maintenance of street furniture, including, but not limited to, bus shelters, public toilets, trash receptacles, multi-rack news racks, information/computer kiosks or newsstands, with or without advertising. Notwithstanding the above, (i) DOT shall not grant to any other Person a franchise to install bus shelters until DOT has issued to the Company 3500 permits for the installation of New Bus Shelters and (ii) DOT shall not grant to any other Person a franchise to install newsstands until DOT has issued to the Company 330 permits for the installation of Replacement and/or New Newsstands, provided, however, that should the City at any time issue a request for proposals for the installation, operation and/or maintenance of bus shelters and/or newsstands then DOT's agreement not to grant franchises as described in this sentence shall be conditional on the Company's prompt delivery to DOT of all materials required from the Company -that would be necessary for DOT to process and issue the necessary permits for the installation of the number of New Bus Shelters and/or Newsstands necessary to reach the 3500 and 330 figures described above, as the case may be. If the Company fails to promptly deliver the materials necessary for DOT to process and issue the necessary permits, the City may grant any Person a franchise notwithstanding the requisite number of permits, as provided in this Section 2.5.1, have not been issued; provided however that any such failure by the Company shall not constitute a breach or default under this Agreement. This Section 2.5.1 is not intended to affect the Company's right to install 3500 New Bus Shelters and 330 Replacement and/or New Newsstands and to place advertising thereon as set forth in this Agreement or any of the Company's other rights or obligations as set forth in this Agreement. Nothing in this Agreement shall affect the ability of the Company and the City to consider potential additional revenue generating opportunities that may be proposed by either party in the future with respect to the Coordinated Franchise Structures.

2.5.2. Sidewalk and Historic Pavement. No Coordinated Franchise Structure shall be designed so that it would result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Neither the installation, operation, maintenance nor removal of Bus Shelters, APTs, and PSSs nor the installation, maintenance and removal of Newsstands shall result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Nothing herein shall preclude the Company from installing a Coordinated Franchise Structure, including appurtenant utility connections, on a sidewalk or historic pavement by any means necessary. Prior to any such installation, the Company shall make a good faith effort to procure

sufficient quantities of those materials of which the sidewalk or historic pavement is comprised to repair, replace, or restore it to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure and in compliance with the New York City Administrative Code. If the City is the sole source of those materials of which the sidewalk or historic pavement is comprised, then it shall provide the Company, at the Company's expense, any such materials stored by the City. In the event that the installation, operation, maintenance or removal of any Bus Shelter, APT, or PSS or the installation, maintenance and removal of Newsstands results in damage to sidewalk or historic pavement, such sidewalk or historic pavement shall be restored to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure in accordance with the timeframes set forth in Appendix C and in compliance with the New York City Administrative Code at the sole cost and expense of the Company, using in-kind materials. The Company may request an extension of time to the timeframes referred to in the preceding sentence which may be granted by DOT in its sole discretion.

2.5.3. Location of Coordinated Franchise Structures. The Coordinated Franchise Structures shall be installed, removed and replaced by the Company in such locations and in such priority as directed by DOT in accordance with this Agreement, or, if not otherwise specifically set forth in this Agreement, in DOT's sole discretion, provided, however, that APTs shall be installed by the Company in such locations as directed by the City in its sole discretion. When practicable, DOT shall provide Company with an opportunity to comment on DOT's location decisions regarding Coordinated Franchise Structures in light of the Company's concerns regarding the revenue generating potential of locations. Nothing contained in this paragraph or Section 2.5.3.1 shall be construed to prevent DOT from changing a location set forth in Schedules ~~A, B, or X~~ if the City would otherwise have the right to order the relocation of the structure in accordance with ~~Sections~~Section 2.5.4.1 or 2.5.4.2 herein.

2.5.3.1. Fifth Avenue. The Company may construct, install and maintain fifteen (15) New Bus Shelters at locations designated by DOT between 34th street and 59th street on Fifth Avenue (the "Fifth Avenue Bus Shelters") as set forth in the attached Schedule X provided that in exchange for the right to install the Fifth Avenue Bus Shelters, the Company shall also be obligated to install an additional thirty (30) New Bus Shelters at locations designated by DOT (the "Reciprocal Bus Shelters"). The Fifth Avenue Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i). Provided that the Reciprocal Bus Shelters are equipped with adequate illumination pursuant to Section 3.1.5(d), the Company may, but shall not be required to provide electrical connections or advertising lightboxes for such Reciprocal Bus Shelters. The Reciprocal Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i).

2.5.3.2. Restrictions. Notwithstanding any provision of this Agreement to the contrary, in the event that an advertising Public Communications Structure or Public Pay Telephone (as such terms are defined in the PCSFA) is installed on Fifth Avenue between 34th street and 59th street pursuant to authorization from the City and such installation is not a replacement of an existing telephone installation installed or maintained pursuant to a now-expired public pay telephone franchise agreement on Fifth Avenue between 34th Street and 59th

Street (such an event shall be referred to as a “Fifth Avenue Installation”), prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, then the Company shall have no further obligation to install any additional Reciprocal Bus Shelters (but shall not be entitled to remove any Reciprocal Bus Shelters already installed) that it would otherwise be obligated to install pursuant to Section 2.5.3.1. Furthermore, in the event of a Fifth Avenue Installation prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, any Reciprocal Bus Shelters installed prior to such Fifth Avenue Installation shall be depreciated on a straight-line basis over a 20 year period. The yearly value of each Reciprocal Bus Shelter for the purpose of such depreciation shall be \$1250, which is derived by dividing the cost of the shelter (\$25,000) by 20. The formula to determine the unamortized amount for each respective Reciprocal Bus Shelter shall be as follows: \$1250 shall be multiplied by the difference between 20 and the difference between year 2026 (the year in which the Term ends) and the year such shelter was installed. For example, if the Reciprocal Bus Shelter was installed in 2021, that number (2021) would be subtracted from 2026 to get 5. Then 5 would be subtracted from 20 to get 15. The number 15 would then be multiplied by \$1250 to get the unamortized balance for that particular Reciprocal Bus Shelter (which would be \$18,750). In the event of a Fifth Avenue Installation, the Company shall be credited for the total unamortized amount of all amortized Reciprocal Bus Shelters as set forth in Section 9.1(a).

2.5.4. Removal, Replacement, Relocation, Reinstallation.

2.5.4.1. 2.5.4.1. ~~Public Utilities, Other.~~ The Company shall remove, replace, relocate or reinstall at its sole cost and expense, at the request of the City, Coordinated Franchise Structures which interfere with the construction, maintenance or repairs of public utilities, public works or public improvements. The Company shall not be responsible for the costs and expenses of any removal, replacement, relocation and/or reinstallation requested by the City except as set forth in the preceding sentence or as expressly required elsewhere in this Agreement, including, but not limited to, Section 2.5.4.2 hereof. Nothing in this Agreement shall abrogate the right of the City to change the grades or lines of any Inalienable Property of the City, or perform any public works or public improvements, or any street widening project, or any other capital project of any description. In the event that the Company refuses or neglects to so remove, replace, relocate or reinstall such Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City including, but not limited to repair and restoration costs, arising out of the performance of such work.

2.5.4.2. 2.5.4.2. ~~Public Use, Other.~~ The City shall have the right at any time to inspect the Coordinated Franchise Structures and order the removal, replacement, relocation or reinstallation of any of the Coordinated Franchise Structures at the sole cost and expense of the Company upon a determination in the City’s sole discretion that any of the Coordinated Franchise Structures, unreasonably interferes or will unreasonably interfere with the use of a street by the public, constitutes a public nuisance, creates a security concern, or is, or has otherwise become inappropriate at a particular location, or that such removal,

replacement, relocation or reinstallation is necessary to address changing conditions. In the event that the Company fails to so remove, replace, relocate or reinstall any of the Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City, including but not limited to repair and restoration costs. If a Coordinated Franchise Structure is required to be removed and/or relocated because the City mistakenly identified a location listed on Schedule A or Schedule B as Inalienable Property of the City, the City shall require the Company to remove and/or relocate such Coordinated Franchise Structure and shall pay to the Company the costs incurred in connection with such removal and/or relocation and for any other costs or damages incurred by the Company, including but not limited to repair and restoration costs.

~~2.5.4.3.~~ 2.5.4.3. ~~Notification.~~ In the event the Commissioner determines that all or any of the Coordinated Franchise Structures should be removed, replaced, relocated or reinstalled pursuant to this Section 2.5, the Company shall perform such work in accordance with the timeframes set forth in Appendix G attached hereto.

~~2.5.4.4.~~ 2.5.4.4. ~~Emergency.~~ Notwithstanding the foregoing, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may, at the sole cost and expense of the Company, with such notice, if any, as is practicable to the Company given the nature of the emergency, take such action as the Commissioner deems necessary to alleviate the emergency, including but not limited to removing, replacing, relocating or reinstalling all or any portion of the System and have repair and restoration work performed. The Commissioner may, if he or she determines that the System or any portion of the System can be safely reinstalled and maintained, require the Company to do so at its sole cost and expense.

2.5.5. No Waiver. Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of the City or of the City's right to require the Company to secure the appropriate permits or authorizations for Coordinated Franchise Structure installation.

2.5.6. No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property of the City. In the event that all or part of the Inalienable Property of the City is eliminated, discontinued, closed or demapped, all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property of the City, or any part thereof so eliminated, discontinued, closed or demapped, shall cease upon the effective date of such elimination, discontinuance, closing or demapping. If said elimination, discontinuance, closing or demapping is undertaken for the benefit of any private Person, the City shall make reasonable efforts to condition its consent to said elimination, discontinuance, closing or demapping on the agreement of said private Person to: (i) grant the Company the right to continue to occupy and use said Inalienable Property of the City; or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the Coordinated Franchise Structures.

2.6-2.6 Other Structures-:

~~(a)~~ ~~(a)~~—The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant), will grant to the City such rights as may be necessary for the purposes of constructing, installing, operating, and maintaining street furniture and structures other than the Coordinated Franchise Structures as described in and subject to the provisions of Sections 2.6-(b) and 2.6(c) below. Such grants shall be made and take effect at the earliest time necessary to effectuate the purposes of this Section 2.6.

~~(b)~~ ~~(b)~~—If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by the Company and/or Grimshaw for the Coordinated Franchise Structures, and if such street furniture is to bear advertising in any form (all such street furniture referred to as “Ad-Bearing Street Furniture”), the City shall (i) retain the services of Grimshaw and the Company to perform such creation and/or design of the Ad-Bearing Street Furniture and (ii) pay to the Company 5% of any advertising revenue (calculated in the same manner as Gross Revenues are calculated under this Agreement) that the City actually receives from the sale of advertising on such Ad-Bearing Street Furniture during such time as advertising is displayed on the Ad-Bearing Street Furniture (for the remainder of the Term of this Agreement or for 7 years, whichever is longer). In such event, the Company will be solely responsible for standard per-diem and expense reimbursement payments to Grimshaw. Payments due the Company pursuant to this paragraph shall be made reasonably promptly after the City’s receipt of the advertising revenue. Pursuant to a separate agreement between Grimshaw and the Company, which is attached hereto as Exhibit J (the “Grimshaw Agreement”), Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Ad-Bearing Street Furniture for its design services to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City); provided that the City shall be obligated to make all such payments in the event the third party fails to do so), or, if previously paid by the Company, reimbursed to the Company by the City.

~~(c)~~ ~~(e)~~—If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by Company and/or Grimshaw for the Coordinated Franchise Structures, but such street furniture does not bear advertising in any form (“Non-Ad-Bearing Street Furniture”), then the City shall retain the services of Grimshaw to perform such creation and/or design of the Non-Ad-Bearing Street Furniture to perform creation and/or design services in connection therewith. Pursuant to the Grimshaw Agreement, Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Non-Ad-Bearing Street Furniture for such design services, plus Grimshaw’s standard per-diem and expense reimbursement, to be paid by the City (or a third party designated by the City; provided that the

City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Non-Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event any Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture (during the Term of this Agreement), the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) for the term specified therein. In the event Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture within the seven-year period immediately following the Term of this Agreement, the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) from the time of such conversion through the remainder of that seven-year period.

~~(d)~~ ~~(d)~~—No street furniture created pursuant to the provisions of this Section 2.6 may be installed anywhere other than New York City without the express written permission of the Company and Grimshaw.

~~(e)~~ ~~(e)~~—The Company shall not have any obligations under Section 12.1.1, or Section 12.1.6 except as expressly set forth therein, to any Indemnitee for any Damages relating to the matters contemplated pursuant to this Section 2.6.

~~(f)~~ ~~(f)~~—The Company agrees that it will not agree to any amendment to Sections 4.2, 4.4, 5.1, 5.2, 7.4, the last two sentences of Section 10.1, and 12.13 of the Grimshaw Agreement, or to the defined terms used in those sections, that adversely affects the City's rights under any of those sections without the City's prior written consent.

SECTION 3

SERVICE

3.1.3.1 Operations.

3.1.1. Bus Shelters. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the Effective Date and thereafter throughout the Term the Company shall be responsible for the following cleaning and maintenance requirements:

~~(a)~~ ~~(a)~~—All maintenance of the Bus Shelters, including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse from the Bus Shelters, must occur on at least two nonconsecutive days each week; promptly clearing and removing debris, snow and ice from the ground in and around the Bus Shelters up to three feet on each side of the Bus Shelter and to the Curb on the Curb-side of the Bus Shelter (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover). The Company shall comply with the regulations for snow

removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. A copy of section 16-123 is attached hereto as Exhibit E.

~~(b)~~ ~~(b)~~—Inspections on at least two nonconsecutive days each week for damage, debris and unsafe conditions.

~~(c)~~ ~~(e)~~—Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.2. APTs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of an APT and thereafter throughout the Term the Company shall make the APTs available for use to the public at a nominal amount of \$0.25 per use between the hours of eight a.m. to eight p.m. daily, unless longer hours are otherwise directed by DOT in its reasonable discretion. Additionally, every APT must provide an emergency alarm system that allows for two-way communication for activation by the user and transmission to an operations center and the police and fire department. A smoke and fire alarm system with an automatic door opening device must be provided. An emergency access portal, in addition to the user door, must be provided to allow access to the interior by police or other emergency services. All APTs must contain a self-activating system that communicates contemporaneously all significant maintenance and operations problems to an operations center. The Company shall be responsible for the following cleaning and maintenance requirements:

~~(a)~~ ~~(a)~~—All maintenance of the APTs including, but not limited to, preventative maintenance, cleaning, removing graffiti, dirt, stickers and refuse, and restocking dispensers on a daily basis, promptly clearing and removing debris, snow and ice from the ground in and around the APTs up to three feet on each side of the APT and to the Curb on the Curb-side of the APT (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover), prompt response to self activating maintenance and operating warning systems, and ensuring comfortable interior temperature, ventilation and illumination between the hours of eight a.m. and eight p.m. daily unless longer hours are otherwise directed by DOT in its reasonable discretion. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time.

~~(b)~~ ~~(b)~~—Daily inspections of the APTs for damage, debris, and unsafe conditions.

~~(c)~~ ~~(e)~~—Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.3. PSSs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a PSS and thereafter throughout the Term the Company shall be responsible for:

(a) ~~(a)~~—All maintenance of the PSSs, including, but not limited to, preventative maintenance, cleaning, and removing graffiti, dirt, stickers and refuse (provided, however, that the Company shall not be responsible for the removal of refuse from free standing trash receptacles) on at least two nonconsecutive days of the week. Company shall remove snow as necessary to ensure continued access to the PSSs.

(b) ~~(b)~~—Two inspections weekly on non-consecutive days of the PSSs for damage, debris, and unsafe conditions and for information kiosks, proper functioning of the information systems including any hardware and software.

(c) ~~(c)~~—Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.4. Newsstands. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a Newsstand and thereafter throughout the Term:

(a) ~~(a)~~—the Company shall be responsible for all maintenance of the exterior of the Replacement and New Newsstands, in cooperation with the Newsstand Operators including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse on the exterior of the Newsstand on at least two nonconsecutive days each week, promptly clearing and removing debris, snow and ice from the ground in and around the Newsstands up to three feet on each side of the Newsstand and to the Curb on the Curb-side of the Newsstand (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover) and daily inspections of the Newsstands for damage, debris, and unsafe conditions. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. The Company shall also be responsible for inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing; provided, however,

(b) ~~(b)~~—the Company shall not be responsible for (i) operating the Newsstand as a newsstand, (ii) cleaning Newsstand interiors, (iii) any condition on the exterior of the Newsstand that can be reasonably demonstrated to the satisfaction of DOT by the Company to have been caused solely by the Newsstand Operator provided, however, the City may require the Company to address any such condition at the City's sole cost and expense; (iv)

the cost of any telephone, other communication, or electricity usage by a Newsstand Operator; or
(v) any other utility cost that is not necessary to the franchise; and

~~(c)~~ ~~(e)~~—The Company is prohibited from deriving revenue from the operation of the Newsstand as a newsstand.

3.1.5. Other. The Company shall

~~(a)~~ ~~(a)~~—promptly and diligently, and in all cases within the minimum standards and timeframes set forth on Appendix C attached hereto, maintain, replace or repair any parts or components of the Coordinated Franchise Structures which are broken, deteriorated or damaged, regardless of the nature, cause or frequency of such conditions using materials and methods for such maintenance, repair and replacement that comply with all applicable federal, state and local laws, rules and regulations; and

~~(b)~~ ~~(b)~~—collect refuse or recyclables from any trash receptacles incorporated within or on Coordinated Franchise Structures, provided, however, that the Company shall not be responsible for the collection of refuse or recyclables from free standing trash receptacles installed as PSSs; and

~~(c)~~ ~~(e)~~—maintain and repair the sidewalk immediately under and three feet on each side of the Coordinated Franchise Structure in its proper condition, or, if necessary restored thereto at the Company's sole cost and expense. On the side of the Coordinated Franchise Structure nearest the Curb, Company's responsibility of maintenance and repair shall extend to, and include, the Curb. Notwithstanding the foregoing, the Company shall not be responsible for the creation of new pedestrian curbs within the area for which it is responsible for maintenance and repair; and

~~(d)~~ ~~(d)~~—provide and maintain adequate illumination for all Coordinated Franchise Structures, except trash receptacles and multi-rack newsracks, between dusk and daylight, or whenever artificial lighting is required for the protection, safety and welfare of the public (provided that where there is no existing electrical connection to a Bus Shelter location and where adding an electrical connection would be impractical because the necessary utility connections are unusually inaccessible, then the phrase "adequate illumination" shall mean courtesy lighting powered by solar panel); and

~~(e)~~ ~~(e)~~—remove broken glass, such that the structure is made safe, within 24 hours after the Company becomes aware of the problem, (the glass shall be replaced when practicable within 24 hours of the Company becoming aware of the problem but in no event later than 48 hours after becoming aware of the problem); and

~~(f)~~ ~~(i)~~~~(f)~~ ~~(i)~~ complete repairs, replacement of parts, or removal of the structure or components thereof as necessary to ensure public safety of the Coordinated Franchise Structure, within 24 hours (subject to the time frames for the replacement of glass set forth in Section 3.1.5(e)) of the time the Company becomes aware of the problem, including without limitation by oral or written notice from DOT that repair, replacement or removal is

necessary to ensure public safety. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 24 hours of receipt of permit, provided that the Company submits a complete application for such permit without delay. The Company shall make the structure safe while permits are pending; and

~~(ii)~~ ~~(ii)~~—complete repairs, replacement of parts or removals not covered by the preceding clause (i), within 5 days of the time the Company becomes aware of the problem, ~~unless a permit is required~~. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 5 days of receipt of permit, provided that the Company submits a complete application for such permit without delay; and

~~(g)~~ ~~(g)~~—If the Company removes a Coordinated Franchise Structure pursuant to Section 3.1.5-(f) and such Coordinated Franchise Structure is to be replaced at the same location, such replacement will take place within the time frames set forth in Appendix G. If a permit is required, the time period shall be measured from the date of receipt of permit, provided that the Company submits a complete application for such permit without delay.

~~(h)~~ ~~(h)~~—If the Company fails to make replacement, complete repairs, or effectuate removals, as required herein, then DOT may, in addition to any other rights and remedies set forth in this Agreement, and without any further notice, make replacement and repairs, or effectuate removals, at the sole cost and expense of the Company.

3.2 Automatic Vehicle Location and Control System. The Company shall cooperate with DOT, MTA New York City Transit, or any other agencies to make the Bus Shelters available for the installation of wiring and equipment and the ongoing maintenance of AVLCS as such systems are developed. The Company is not responsible for the acquisition, installation, or maintenance of AVLCS equipment or for associated costs and will have no ownership interest in, or responsibility for, the AVLCS. However, the Company shall cooperate in its design, installation and maintenance and shall provide access to the Bus Stop Shelters to permit AVLCS installation and maintenance, and ensuring (assuming adequate instruction from all applicable governmental and quasi-governmental entities) that routine maintenance of the Bus Stop Shelters does not interfere with the AVLCS.

3.3.3.3 Electronic Inventory and Management Information System and Recordkeeping.

~~(a)~~ ~~(a)~~—Within 20 days of the Effective Date and thereafter throughout the Term, the Company shall at its sole cost and expense, and as more fully set forth in the RFP and Proposal, install and maintain an Electronic Inventory and Management Information System for the Coordinated Franchise Structures incorporating state-of-the-art technology. If at any time during the Term DOT determines in its reasonable discretion that EIMIS is failing to meet the requirements of the preceding sentence or is inadequate for its purposes then DOT may direct the Company to make such necessary modifications to EIMIS as it deems necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

~~(i)~~ ~~(i)~~—to the extent necessary the EIMIS, any part thereof, or any software necessary for its operation shall be installed and maintained by the Company on DOT provided personal computers providing for access by authorized DOT users. DOT shall make appropriate information technology personnel available to coordinate the installation of the EIMIS on its equipment and/or network as appropriate.

~~(ii)~~ ~~(ii)~~—the EIMIS shall not run primarily on the DOT's equipment or network and DOT shall not be responsible for management, maintenance or assuring access to the system. All such requirements shall be the responsibility of the Company.

~~(iii)~~ ~~(iii)~~—within 20 days of the Effective Date, the Company shall provide full access to the EIMIS (and training thereon reasonably satisfactory to DOT) to no less than ten authorized personnel of the City through the Internet using any standard Internet browser providing access to the World Wide Web pursuant to the license agreement between the Company and The Siroky Group Inc. attached hereto as Exhibit K. Such access shall be provided through standard Internet security protocols through a secure server. In addition, the City shall have access, through the same means, for a reasonable number of additional users—to allow read-only access to conduct searches of the EIMIS and to allow 311 operators (or operators under a successor system) to enter and review the status of complaints received.

~~(iv)~~ ~~(iv)~~—the EIMIS shall provide at minimum: two-way information sharing between the City and the Company for the recording and processing of complaints from the public and the City, plotting street furniture structures on city maps, graphic navigation, color coding of structures, incident recording and reports, financial information regarding costs, revenues, advertising value by location and structure type, advertising panels displaying Public Service Advertising and NYCMDC Advertising, back-up maintenance and data protection protocols, and a help-menu function for assisting with system operation. The City shall make appropriate 311 personnel available to coordinate the creation of an interface between EIMIS and the 311 system.

~~(v)~~ ~~(v)~~—the EIMIS shall be available to authorized users 24 hours per day, seven days a week. In the event of lost access, it shall be restored within six hours of notification by the City.

~~(b)~~ ~~(b)~~—Commencing on the Effective Date and thereafter throughout the Term, the Company shall maintain records, in a form satisfactory to the Commissioner and which shall be in a format which is downloadable to commercially available software, demonstrating compliance with the maintenance and operating requirements set forth in Section 3.1 herein, Appendix C attached hereto and the RFP, Proposal and BAFO. Such records shall be available for inspection by the City at all times upon reasonable written advance notice and copies thereof, whether in paper, electronic or other form, shall be provided to DOT promptly upon request. Not later than 30 calendar days after the Effective Date, the Company shall submit to DOT a detailed description of all proposed recordkeeping procedures that will document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto. If DOT determines in its reasonable discretion that such proposed recordkeeping procedures are insufficiently detailed or otherwise unlikely to

adequately document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto, DOT may direct the Company to adopt such modifications to the proposed recordkeeping procedures as it deems reasonably necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

~~(c)~~ ~~(e)~~—The Company shall be permitted, at any time during the Term, to replace the software and related components then constituting the EIMIS with alternative software and related components (which may be proprietary to the Company or an Affiliate of the Company), at its sole cost and expense, provided that the features of the replacement EIMIS are substantially equivalent or superior to the EIMIS being replaced. In such event, the Company shall grant to the City all necessary licenses and sublicenses as contemplated by Section 2.4.2(b), and shall escrow or cause to be escrowed the source code as required by Section 2.4.2(e). In addition, if such software is proprietary to the Company or an Affiliate of the Company, the Company shall grant to the City all necessary licenses to operate the EIMIS as contemplated by this Agreement following the Term, on a perpetual, royalty-free basis. Furthermore, all right, title, and interest in all data collected by the EIMIS and all other information necessary for the City to maintain and operate the Coordinated Franchise Structures will become the sole and exclusive property of the City without any compensation to the Company after the termination or expiration of this Agreement and the Company and its software vendor shall return any and all such data to the City in a format accessible and usable by the City without the use of the Company's and/or software vendor's software; provided, however, that the Company may retain and use for its own business purposes a copy of such data, and the City shall grant to the Company any necessary license in this regard.

3.4.3.4 Performance Standards and Corrective Actions.

~~(a)~~ ~~(a)~~—If the Company has failed to comply with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, then the Company shall pay liquidated damages as set forth on Appendix A attached hereto.

~~(b)~~ ~~(b)~~—If notwithstanding compliance with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, complaints that the Coordinated Franchise Structures are unsafe or unclean or in disrepair increase by 20% or more during any six month period as compared to the previous six month period, the Commissioner may require the Company, at its sole cost and expense, to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as he or she deems appropriate to ensure that the Coordinated Franchise Structures are maintained in a clean and safe condition and in good repair.

~~(c)~~ ~~(e)~~—In addition to any other term, condition or requirement of this Agreement, except and to the extent caused by relocation requirements imposed by the City, the Company shall not have more than ten percent of any one type of its Coordinated Franchise Structures out of service at any given time; provided that the foregoing requirement with respect to APTs shall be twenty percent and shall not be in effect until at least five APTs have been installed by the Company. Failure to comply with this Section 3.4(c) shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto.

3.5-3.5 Complaint Handling Procedures.

~~(a)~~ ~~(a)~~—Within 30 days after the Effective Date of this Agreement, subject to the reasonable approval of DOT, the Company shall establish and maintain prompt and efficient complaint handling procedures for handling complaints received directly from the public and for handling complaints forwarded to the Company by the City, which procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section 3.5. Such procedures shall be set forth in writing and copies thereof shall be maintained at the Company's office and shall be available to the public and the Commissioner upon request.

~~(b)~~ ~~(b)~~—All Coordinated Franchise Structures shall have on them a conspicuously posted notice advising the public that they may direct complaints and comments to 311.

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

~~(d)~~ ~~(d)~~—The Company shall record all complaints received on the telephone line, through EIMIS, or from any other source in the manner set forth in Section 3.6 hereof and shall diligently and promptly investigate each complaint. If such complaint is reasonably determined to be accurate, the condition shall be cured within the timeframes set forth in Appendix C attached hereto.

~~(e)~~ ~~(e)~~—The Company shall provide to DOT a reasonable and adequate explanation describing corrective steps taken by the Company in response to any complaint or reasons why no corrective steps were taken.

~~(f)~~ ~~(f)~~—In the event that a complaint has not been diligently and promptly investigated and/or the underlying problem has not been cured by the Company to the satisfaction of the Commissioner within the periods set forth above, the Commissioner may (i) order the Company in writing to take appropriate action to investigate such complaint and/or cure the problem, as the case may be and (ii) if the Company fails to take appropriate action accordingly, investigate and cure the underlying problem at the Company's sole cost and expense.

3.6 Complaint Record Keeping. The Company shall maintain written, accurate and complete records of all complaints that shall be available to DOT through EIMIS or, at DOT's reasonable advance request, in written form. Such records shall indicate: (i) the specific Coordinated Franchise Structure, including its identifying number and its exact location, for which the complaint was made; (ii) the type of complaint; (iii) the date and time of complaint; (iv) if the complaint is in written form, the name, address, and telephone number of the Person filing the complaint; (v) the Company's action to address the complaint; and (vi) to the extent applicable the date of resolution of the complaint. All such records shall be retained by the

Company throughout the Term. The EIMIS shall provide DOT a means by which it can search for complaints by location and/or time period, and shall produce statistical reports, at DOT's request, by type of complaint, location of complaint, type of structure, and time period.

3.7 Americans with Disabilities Act. In connection with its obligations under this Agreement the Company, at its sole cost and expense, agrees to comply with the applicable provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA"), the Architectural and Transportation Barriers Compliance Board Guidelines, and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

3.8 No Discrimination. The Company shall not discriminate in the provision of Services on the basis of race, creed, color, national origin, sex, age, handicap, marital status, or real or perceived sexual orientation.

3.9 Continuity of Service. In the event the Company, with the consent of the City as required and in accordance with the provisions of Section 11 hereof, sells or otherwise transfers the System, or any part thereof, or Control thereof to any Person, or to the City or the City's assignee, or in the event the franchise terminates, the Company shall transfer the System, or such relevant part, in an orderly manner in order to maintain continuity of Service.

SECTION 4

ADVERTISING ADVERTISING

4.1.4.1 Introduction.

(a) (a)—In consideration of the Company's performance of the Services, ~~and~~ payment by the Company of the Franchise Fees, the City hereby grants to the Company the exclusive right throughout the Term to sell and place advertising on the Coordinated Franchise Structures that are the subject of this Agreement and subject to the specifications, terms, reservations and restrictions of this Agreement, and to collect revenues generated by such advertising.

(b) (b)—The Company expressly acknowledges that it is receiving a non-exclusive franchise and that the City, either itself or through third parties, may design, construct, install, operate and maintain street furniture, including, but not limited to, bus stop shelters, automatic public toilets, trash receptacles, multi-rack news racks, information/computer kiosks, and newsstands, that contain advertising on them from which the Company would not be entitled to collect revenue.

4.2 Defined Terms. For the purposes of this Section 4, the following terms, phrases, words and their derivations shall have the meaning set forth herein, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular

number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in Section 1.

~~(a)~~ ~~(a)~~—“advertising” shall mean any printed matter or electronic display including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual message or information, but in no event shall include the textual information that is required to be posted on a Coordinated Franchise Structure by federal, state and local law, rule or regulation, or this Agreement.

~~(b)~~ ~~(b)~~—“alcohol advertising” shall mean advertising, the purpose or effect of which is to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or to promote the use or sale of an alcohol product.

~~(c)~~ ~~(c)~~—“NYCMDC Advertising” shall mean advertising reasonably determined by NYCMDC to be within its corporate purpose including, but not limited to, commercial advertisements, advertising promoting New York City, and public service advertisements, but NYCMDC Advertising shall not include “spot market advertising”.

~~(d)~~ ~~(d)~~—“tobacco advertising” shall mean advertising, which bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance which contains tobacco, including, but not limited to, cigarettes; cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

~~(e)~~ ~~(e)~~—“Olympic Period” shall mean the period starting four weeks prior to the commencement of the Olympics and ending two weeks after the end of the Olympics.

~~(f)~~ ~~(f)~~—“prohibited advertising” shall mean advertising that is false and/or misleading, which promotes unlawful conduct or illegal goods, services or activities, or that is otherwise unlawful or obscene as determined by DOT, including but not limited to advertising that constitutes public display of offensive sexual material in violation of Penal Law 245.11.

~~(g)~~ ~~(g)~~—“Public Service Advertising” shall mean 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 DOT in its sole discretion.

~~(h)~~ ~~(h)~~—“spot market advertising” shall mean advertising sold by NYCMDC to commercial advertisers (whether for cash, trade or barter) in a manner unrelated to any broader sponsorship or partnership arrangement between such advertiser and NYCMDC or the City and unrelated to any event, sponsorship or support efforts, or intergovernmental

agreements of NYCMDC or the City. For the purposes of this definition of “spot market advertising”, intergovernmental agreements shall mean agreements between the City and/or NYCMDC and other governmental or quasi-governmental entities.

(i) “electronic cigarette advertising” shall mean advertising of an electronic device that delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.

4.3.4.3 Advertising Specifications-.

4.3.1. Generally. Advertising shall be permitted on the Coordinated Franchise Structures except that advertising shall not be permitted on the interior of Newsstands or APTs, or as otherwise prohibited herein. Advertising is not permitted on PSSs except that the name or logo of a sponsoring entity shall be permitted on the exterior of trash receptacles and information/computer kiosks. No advertising shall be permitted on APTs in parks, except that advertising shall be permitted on APTs located on sidewalks adjacent to parks. The design, dimensions, and location of advertising on all Coordinated Franchise Structures shall be in accordance with the terms of this Agreement including Appendix D. The Company shall be entitled to utilize the full amount of advertising space set forth on Appendix D (notwithstanding that the dimension specifications on Appendix D are expressed as “maximum advertising”).

4.3.2. Dimensions/Specifications. All advertising, or the name or logo of a sponsoring entity, shall contain the features and conform to the basic dimensions set forth in Appendix D attached hereto, and made part hereof, provided, however, that modifications to advertising dimensions may be necessitated by location specific modifications to individual Coordinated Franchise Structures as set forth in Section 2.4.5 herein. Notwithstanding any provision of this Agreement to the contrary, except for the modifications at individual locations contemplated in the proviso to the immediately preceding sentence, the Company shall not be required to modify the basic dimensions set forth on Appendix D attached hereto.

4.4.4.4 Restrictions-.

4.4.1. Prohibitions. Tobacco and electronic cigarette advertising and prohibited advertising is not permitted. Alcohol advertising within 250 feet of any school, day care center, or house of worship is not permitted.

4.4.2. Other Media. Electronic media will be permitted on a case by case basis and, except for backlighting of printed posters (the Company shall be permitted to use backlighting of advertising on Coordinated Franchise Structures except where prohibited by rules or regulations of Landmarks), will be subject (except as may otherwise be permitted by the City) to the applicable zoning regulations for property adjacent to the site, and shall be subject to all applicable approvals by City agencies. Audio advertising will not be permitted, provided, however, an audio component used in connection with an information/computer kiosk may be permitted in the sole discretion of DOT. The Company shall be permitted to install 250 Scrollers

on Coordinated Franchise Structures when and where the Company deems most advantageous in its sole discretion. Any other multimedia, or other non traditional form or type of advertising, including additional Scrollers, shall be permitted only on a case by case basis, as determined by the Commissioner and shall be subject to any applicable approvals by City agencies.

4.4.3. Viacom Outdoor Agreement. The Company ~~has acknowledged~~acknowledges receipt from the City of the Viacom Outdoor Agreement and ~~has agreed~~agrees that it ~~has taken~~shall take such actions as are reasonably necessary to comply with the revenue sharing obligations set forth in Section 4.10 therein.

4.4.4. Public Service Advertising. In each year of the Term, the Company shall provide 2.5% of the total number of panels then available to the Company, to be evenly distributed among the various Coordinated Franchise Structures and evenly distributed throughout the City, at no cost to the City or NYCMDC for Public Service Advertising. The first panel locations for Public Service Advertising shall be as set forth in Exhibit H attached hereto which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided for Public Service Advertising during the Term in accordance with this Section 4.4. The Company shall assist DOT and/or NYCMDC in its efforts to inform City agencies of the availability of such Public Service Advertising and in the coordination of requests by such agencies for the use of such space. NYCMDC will coordinate with City agencies for use of the Public Service Advertising panels. The City agrees to consider, in good faith, any proposal made by the Company to postpone the use of the Public Service Advertising space provided for in this Section, or to return that space to the Company, during times of full occupancy for other advertising campaigns in order to maximize revenue generation opportunities; provided that nothing in this sentence shall be interpreted to require the City to forego its rights to receive the Public Service Advertising space that it is entitled to pursuant to this Section.

4.4.5. NYCMDC Advertising. In each year of the Term, in addition to the advertising inventory provided for Public Service Advertising pursuant to Section 4.4.4 herein, the Company shall provide advertising space to NYCMDC for NYCMDC Advertising at no cost to the City or NYCMDC consisting of 20% of the total number of panels then available to the Company under this Agreement. Such space shall be distributed fairly throughout the City and shall represent a corresponding percentage of the value of the advertising space available to the Company under this Agreement as set forth in Exhibit H attached hereto, which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided to NYCMDC during the Term in accordance with this Section 4.4.

4.4.6. New Structures, ~~Return, Other.~~

~~(a)~~ (a)—No later than 90 days prior to the expiration of each year of the Term, additional panels that have become available to the Company in the preceding 12 months shall be allocated by mutual agreement between the Company and NYCMDC as follows for the following year of the Term:

~~(i) (i)~~—2.5% of such new panels shall be allocated to Public Service Advertising to be evenly distributed as to value and geography among the newly available panels; and

~~(ii) (ii)~~—20% of such new panels shall be allocated to NYCMDC Advertising to be evenly distributed as to value and geography among the newly available panels.

~~(b) — If the City opts with respect to any year to return some but not all of the Public Service Advertising or the NYCMDC Advertising pursuant to Section 4.4.6(f) hereof, the specific locations of the panels shall reflect an even geographical distribution throughout the City unless otherwise agreed between the Company and NYCMDC.~~

~~(b) (e)~~—The Company agrees to consider, in good faith, any proposal made by DOT or NYCMDC to exchange locations of the NYCMDC Advertising inventory previously agreed upon. Notwithstanding the preceding, the City shall have a yearly option, to be exercised on or before the 90th day prior to the expiration of each year of the Term (subject to the Company’s reasonable approval as to locations, based on availability), to exchange with the Company no more than 5% of the locations (provided that no more than 1% may be exchanged per borough in any given year and all such exchanges shall be within the same borough) of the NYCMDC Advertising inventory previously agreed upon on a comparable value basis, effective the following year of the Term.

~~(c) (d)~~—The administration of NYCMDC Advertising and Public Service Advertising, including but not limited to posting, planning, installation, maintenance, removal and reporting shall be performed by the Company at no cost to the City or NYCMDC (except that the advertising posters shall be provided to or at the direction of the Company at no expense to the Company), shall be implemented in accordance with the same standards and best practices and utilization of the same materials and methods as used by the Company for displays of its paying commercial clients, which shall include, at a minimum: sufficient lead time for planning, a copy change every four weeks, location lists with spotted maps provided to NYCMDC and DOT 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 NYCMDC and DOT within 6 weeks of the posting completion. In programming the NYCMDC Advertising and Public Service Advertising, NYCMDC shall provide the Company with a monthly inventory of the NYCMDC Advertising and Public Service Advertising locations and the advertising campaign requested at each location.

~~(d) (e)~~—For the purposes of this Section 4.4.6 an exclusive advertising campaign shall be any campaign whereby the Company agrees to limit its rights to enter into advertising agreements with entities that compete with a particular advertiser. If the Company wishes to enter into an exclusive advertising campaign that would limit not just the Company’s rights but also NYCMDC’s rights under this Agreement to use panels for NYCMDC Advertising, then provided the Company has given NYCMDC the notice described below in this paragraph NYCMDC agrees to cooperate in good faith to address any potential issues that may

arise out of an accommodation by NYCMDC 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. NYCMDC has no obligation beyond such good faith cooperation to accommodate any such exclusivity commitment sought by the Company. The notice to NYCMDC 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.

~~(f) — Additionally, the City shall have a yearly option, to be exercised no later than the 90th day prior to the expiration of each year of the Term, to return to the Company any or all of the advertising space reserved for Public Service Advertising and NYCMDC Advertising effective the following year of the Term. DOT will be compensated for this returned advertising space in accordance with Section 9.6.2 hereof.~~

4.4.7. Alternative Compensation. In addition to the advertising panels provided for Public Service Advertising and NYCMDC Advertising, the Company shall be required to provide to NYCMDC certain advertising space pursuant to Section 9.4 hereof.

~~4.4.8. Olympics. Should any Olympics be awarded to the City during the Term. Should any Olympics be awarded to the City during the Term:~~

~~(a) (a) — the City, at its sole discretion, may require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period;~~

~~(b) (b) — the City, at its sole discretion, may impose restrictions on the parties who may advertise on the Coordinated Franchise Structures and/or the nature of the advertising during the Olympic Period;~~

~~(c) (c) — the City or its designated representative may assume control of advertising sales and placement during the Olympic Period;~~

~~(d) (d) — the Company shall continue to comply with all other terms of this Agreement, except as expressly set forth herein.~~

4.4.9. Removal. Any material displayed or placed in violation of Section 4 shall be removed by the Company within 48 hours of notice from DOT and any material displayed or placed in violation of Section 4.4.1 shall be removed by the Company within 24 hours of notice from DOT. If the Company fails to do so, the City shall have the right to remove such material without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work.

4.5.4.5 Maintenance of Advertising.

~~(a)~~ ~~(a)~~—The Company shall maintain the advertising on Coordinated Franchise Structures in a clean and attractive condition at all times and be responsible for the cost of any power consumption used, electrical or otherwise, including the cost of any power consumption used in connection with NYCMDC Advertising and Public Service Advertising.

~~(b)~~ ~~(b)~~—All advertising display panels must be safe, secure and sturdy, and shall be maintained as such throughout the Term. In the event the Commissioner deems a display panel or any part thereof to be unsafe, insecure or not sturdy, or to otherwise pose a threat to public safety, the Company shall remove such panel without delay upon receipt of notice from DOT. If the Company fails to do so, the City shall have the right to remove such panel without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work. In the event any panel is removed in accordance with this Section 4.5, the Company shall take all steps necessary to maintain the full function of the structure. A replacement panel may be installed, at the Company's sole cost and expense, only with the express, prior written approval of the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed.

4.6 Future Compliance. The Company shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted with respect to advertising.

4.7 Change in Local Law. If there is a change in local New York City law, rule or regulation restricting alcohol advertising (a "Local Alcohol Advertising Restriction") such that the Company can demonstrate to the City a loss in revenue, then:

~~(a)~~ ~~(a)~~—If the Company can show that its Gross Revenues have declined in any or all of the eight quarters beginning in the quarter in which the restriction imposed by the Local Alcohol Advertising Restriction took effect (the "Restriction Effective Date") (as compared with the Company's Gross Revenues during the corresponding quarter of the 12 month period prior to the Restriction Effective Date), then the Cash Component applicable to any such quarters shall be reduced by the product of (i) .5 and (ii) the decline in the Company's Gross Revenues attributable to the Local Alcohol Advertising Restriction during such applicable quarter. If the reduction contemplated by the preceding sentence is greater than the Cash Component applicable to such quarter pursuant to Section 9.5 hereof (after all other adjustments pursuant to Section 9 hereof), then all subsequent payments of the cash portion of the Franchise Fee shall be reduced until the full amount of the adjustment calculated in accordance with this Section 4.7(a) has been deducted, provided, however, that in no event shall any reductions be rolled over for more than seven quarters.

~~(b)~~ ~~(b)~~—The adjustments set forth in Section 4.7(a) shall be in the nature of a deferral, not an offset. Accordingly, the Company shall repay to the City all amounts (without interest) deducted in accordance with Section 4.7(a) in 12 equal quarterly payments

beginning on the date of the first regularly scheduled payment under Section 9.5 occurring after the last deferral allowed in Section 4.7(a) hereof.

~~(c)~~ ~~(e)~~—Notwithstanding the foregoing, this Section 4.7 shall have no force or effect if there is a Local Alcohol Advertising Restriction after the 17th year of the Term. If any of the payments to be made to the City pursuant to Section 4.7(b) above would, by its terms, be payable after the expiration of this Agreement, then the balance of such amount deferred shall be paid no later than 30 days after start of the last quarter of the last year of the Term. In the event that this Agreement is terminated in accordance with its terms, Company shall pay back any amounts deferred within 30 days of such termination.

For the avoidance of doubt, an example of the calculation of the adjustments to the Franchise Fee contemplated by this Section 4.7 is set forth on Schedule 4.7 to this Agreement.

~~(d)~~ ~~(d)~~—Any adjustment to the Cash Component made pursuant to this Section 4.7 shall not be taken into consideration for purposes of comparing the Cash Component to 50% of Gross Revenues in accordance with Sections 9.2, 9.3 and 9.5.

SECTION 5

CONSTRUCTION AND TECHNICAL REQUIREMENTS

5.1 General Requirements. The Company agrees to construct and install the Coordinated Franchise Structures in accordance with the Plans and Specifications and each of the terms set forth in this Agreement governing construction and installation of the Coordinated Franchise Structures, the siting criteria in the RFP, the Proposal and BAFO.

5.2 Identification of Coordinated Franchise Structure. The Company shall have displayed on each Coordinated Franchise Structure a unique identifying number (which shall be tracked via EIMIS) and a visible sign that shall comply with Section 3.5-(b) herein.

5.3 Quality. The Company agrees to comply with all applicable sections of the building, plumbing and electrical codes of the City and the National Electrical Safety Code and where the nature of any work to be done in connection with the installation, operation and maintenance or deactivation of the System requires that such work be done by an electrician and/or plumber, the Company agrees to employ and utilize only licensed electricians and plumbers. All such work shall be performed using quality workmanship and construction methods in a safe, thorough and reliable manner using state of the art building materials of good and durable quality and all such work shall be done in accordance with all applicable law, rules and regulations. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, is harmful to the public health or safety, then the Company shall, at its sole cost and expense, promptly correct all such conditions, provided, however, that to the extent the harmful condition was caused by the City's gross negligence or intentional misconduct, the Company shall correct such harmful condition at the City's sole cost and expense.

5.4 Structures. In connection with the installation, operation, and maintenance of any and all Coordinated Franchise Structures, the Company shall, at its own cost and expense, take commercially reasonable measures to protect any and all structures belonging to the City and all designated landmarks, and all other structures within any Historic District from damage that may be caused to such structures and landmarks as a result of the installation, operation or maintenance performed thereon by, or on behalf of the Company. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure, designated landmarks, structures in an Historic District or any part of the Inalienable Property of the City that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

5.5 No Obstruction.

5.5. —In connection with the installation, operation, and maintenance of the Coordinated Franchise Structures, the Company shall use commercially reasonable efforts to minimize the extent to which the use of the streets or other Inalienable Property of the City is disrupted, and shall use commercially reasonable efforts not to obstruct the use of such streets and/or Inalienable Property of the City, including, but not limited to, pedestrian travel. Sidewalk clearance must be maintained at all times so as to insure a free pedestrian passage in accordance with Appendix 3 of the RFP and any applicable laws, rules and regulations unless prior consent has been obtained from the Commissioner in his/her sole discretion.

5.6 Safety Precautions. The Company shall, at its own cost and expense, undertake appropriate efforts and any other actions as otherwise directed by DOT to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the Curb, and suitable and sufficient lighting.

5.7 Power Outages. In the event that any type of power outage occurs, to the extent the source of such outage is under the direct and exclusive control of the Company, the Company shall restore service within 24 hours at all Coordinated Franchise Structure locations so affected. If the source of a power outage is not under the direct and exclusive control of the Company, the Company shall undertake commercially reasonable efforts to restore service at all affected Coordinated Franchise Structure locations and shall notify the responsible party and the Commissioner within 24 hours.

SECTION 6

SECURITY FUND

6.1 General Requirement. The Company shall, in accordance with Section 2.2 herein, deposit with DOT a security deposit (the “Security Fund”) in the amount of \$5,000,000.00, which may consist of a certified check, bank check or wire transfer payable to the “City of New York,” or other cash equivalent acceptable to DOT. Interest shall accrue in an interest bearing bank account for the benefit of the Company and shall be paid annually to the Company on each anniversary of the Effective Date.

DOT shall be entitled, as authorized by law, to charge and collect from the Company for any reasonable administrative expenses, custodial charges, or other similar expenses, as may result from the operation of this Security Fund.

The Company shall maintain \$5,000,000 in the Security Fund at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period), unless within such one year period DOT notifies the Company that the Security Fund shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Security Fund provides security; provided that only such portion of the Security Fund as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Any amounts remaining in the Security Fund that are not being retained in accordance with this paragraph shall be promptly returned to the Company.

6.2 Scope of Security Fund. The Security Fund shall secure the City up to the full face amount of such Security Fund for any purpose set forth in Section 6.3 hereof.

6.3 Security Fund Purposes. The Security Fund shall serve as security for the faithful performance by the Company of all terms, conditions and obligations of this Agreement, including, but not limited to:

(a) (a)—any loss or damage to any municipal structure or Inalienable Property of the City, for which the Company would be responsible under this Agreement, during the course of any installation, operation, and maintenance of the System;

(b) (b)—any costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement;

(c) (c)—the removal of all or any part of the System, for which the Company would be responsible under this Agreement, from the Inalienable Property of the City, pursuant to this Agreement;

(d) (d)—any expenditure, damage, or loss incurred by the City resulting from the Company's failure to comply with any rules, regulations, orders, permits and other directives of the City and the Commissioner issued pursuant to this Agreement; and

(e) (e)—the payment of any other amounts which become due to the City from the Company pursuant to this Agreement, including, but not limited to payment of compensation set forth in Section 9 hereof and liquidated damages.

6.4 Withdrawals From or Claims Under the Security Fund. In accordance with Section 6.3 herein, this Section 6.4, and Section 13 hereof, DOT may make withdrawals from the Security Fund of such amounts as are necessary to satisfy (to the degree possible) the Company's obligations under this Agreement that are not otherwise satisfied and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to satisfy its

obligations. DOT may not seek recourse against the Security Fund for any costs, losses or damages for which DOT has previously been compensated through a withdrawal from the Security Fund, recourse to the Performance Bond or the Guaranty, draw down against the Letter of Credit, or otherwise through payment or reimbursement by the Company.

6.5 Use. In performing any of the Company's obligations under this Agreement using the Security Fund the City, if applicable, shall obtain competition to the maximum extent practicable under the circumstances.

6.6 Notice of Withdrawals. Within 48 hours after any withdrawals from the Security Fund, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any withdrawals by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The withdrawal of the amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Company.

6.7 Replenishment. Until the expiration of one year after the end of the Term or during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c), within 30 days after receipt of notice (the "Replenishment Period") from DOT that any amount has been withdrawn from the Security Fund as provided in this Section 6, the Company shall restore the Security Fund to the amount specified in Section 6.1 herein, provided that the Company is not contesting, in good faith, the withdrawal. If the Company fails to replenish the appropriate amount within the Replenishment Period and does not contest the withdrawal before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the Replenishment Period until such replenishment is made. If the withdrawal is contested, then upon the entry of a final, non-appealable, court order or judgment determining the propriety of the withdrawal, DOT, or the Company as applicable, shall refund or replenish the appropriate amount to the Security Fund. If either DOT or the Company has not refunded or made the required replenishment to the Security Fund within 30 days of the entry of a final non-appealable court order or judgment, interest on the amount not refunded or replenished shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the Replenishment Period to the date the applicable amounts are actually refunded or replenished. Such interest shall be payable to the party entitled thereto.

6.8 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Security Fund required by this Section 6 subject to the limitations set forth in the last sentence of Section 6.4 and in Section 13.5(b).

SECTION 7

PERFORMANCE BOND AND LETTER OF CREDIT

7.1.7.1 General Requirement.

~~(a)~~ ~~(a)~~—The Company shall, in accordance with Section 2.2 herein, provide DOT with a surety performance bond (the “Performance Bond”) in the amount of \$5,000,000 and an unconditional and irrevocable Letter of Credit (the “Letter of Credit”) in the amount of \$96,000,000 and such Performance Bond and Letter of Credit shall be in place (subject to the reductions in the amount of the Letter of Credit contemplated in Section 7.4 and substitution contemplated in Section 7.1(b) or 7.2(c)) at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period) unless within such one year period DOT notifies the Company that the Performance Bond or Letter of Credit shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Performance Bond or Letter of Credit provides security; provided that only such portion of the Performance Bond or Letter of Credit as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Within 20 days’ notice from the City of the amount subject to such outstanding litigation or claim, the Company shall provide the City with a replacement Performance Bond and/or Letter of Credit in such amount to be retained in accordance with the provisions of this Section 7. To the extent that the claim can be satisfied from the Letter of Credit or the Performance Bond, the City shall elect either the Letter of Credit or the Performance Bond.

~~(b)~~ ~~(b)~~—If at any time during the Term the Performance Bond is (i) to be cancelled by the surety company, (ii) expires by its terms and the surety gives notice 90 days prior to such expiration that the Performance Bond will not remain in effect, or (iii) is no longer in effect for any reason, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, provide DOT with a replacement performance bond acceptable to DOT (which Performance Bond shall be acceptable if in the form of Exhibit F and the surety is acceptable to DOT). If the Company cannot obtain a replacement because it is not then commercially available, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, substitute a Letter of Credit for such Performance Bond for up to three months. If a Performance Bond is still not available 30 days before the end of such 3 month period, the Company shall increase the Security Fund by the full face amount of the Performance Bond before the expiration of the substitute Letter of Credit in lieu of maintaining a Performance Bond in accordance with this Section 7. The circumstances described in this paragraph shall not constitute a breach or default under this Agreement by virtue of the Company having failed to maintain the Performance Bond in accordance with the terms of this Agreement provided that the Company timely complies with the obligations to substitute the Letter of Credit and increase the Security Fund in accordance herewith. The Company shall provide proof that the Performance Bond is in effect for the full face value on or about each anniversary of the Effective Date or upon reasonable demand by DOT.

7.2.7.2 Form:

~~(a)~~ ~~(a)~~—The Performance Bond shall be in a form and from an institution reasonably satisfactory to the City provided that a form of Performance Bond that

matches the form set forth in Exhibit F shall be deemed satisfactory to the City. The “City of New York acting by and through the Department of Transportation” shall serve as the sole obligee under the Performance Bond. The attorney-in-fact who signs the performance bond must file with the bond a certified copy of his/her power of attorney to sign the bond.

~~(b)~~ ~~(b)~~—The Letter of Credit, prior to the reduction to \$5 million as contemplated in Section 7.4 below, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IA shall be deemed satisfactory to the City (“Pre-Build Out L/C”). The Letter of Credit, once the amount is reduced to \$5 million and thereafter for the remainder of the Term, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IB shall be deemed satisfactory to the City (“Post Build-Out L/C”). The “City of New York acting by and through the Department of Transportation” shall be named as a beneficiary in both the Pre Build-Out L/C and the Post Build-Out L/C. The original Letter of Credit shall be deposited with DOT and DOT shall serve as the holder of such letter. ~~,-~~ The Post Build-Out L/C shall contain the following endorsement:

“It is a condition of this Letter of Credit that it shall be deemed automatically renewed for consecutive additional periods of one year each from the present and each future expiration date hereof unless and until at least ninety (90) days prior to any such date the Bank shall notify the Beneficiary and the Principal in writing of its intention not to renew this Letter of Credit for any such additional period.”

~~(c)~~ ~~(e)~~—In the event that the Company intends to change the issuing bank of the Post Build-Out L/C, the Company shall provide written notification to the City of such proposed change, including the name of the proposed new issuing bank. Upon receipt of such notification, and provided that the new issuing bank is reasonably acceptable to the City, the City and the Company shall sign a written communication to the issuing bank of the then existing Post Build-Out L/C instructing such bank not to renew the existing Post Build-Out L/C and allow it to expire in accordance with its terms. In the event that the Company does not provide a replacement Post Build-Out L/C before the existing Post Build-Out L/C has thirty (30) days to run before it is set to expire, the City may draw down on the Post Build-Out L/C in accordance with Section 7.5-(b) of this Agreement.

7.3.7.3 Scope.

~~(a)~~ ~~(a)~~—The Performance Bond shall serve as security for any loss or damage, in kind replacement, and/or repairs of, Sidewalks and Historic Pavement during the course of any installation, operation, maintenance or removal, of all or any part of the System by the Company.

~~(b)~~ ~~(b)~~—The Letter of Credit shall serve as security for the Company’s performance under this Agreement as such performance is described in Section 6.3 herein.

7.4 Letter of Credit Reduction. The amount of the Letter of Credit required to be provided by the Company shall be reduced on a yearly basis on or about the 90th day after each anniversary of the Effective Date, by an amount equal to the number of Coordinated Franchise Structures for which the ~~Installation Date~~ has occurred during the preceding year of the Term, multiplied by the dollar amount applicable to each such Coordinated Franchise Structure set forth in Schedule 7.4, provided that in no event shall the amount of the Letter of Credit be reduced below \$5,000,000. The Company shall deliver to the City a replacement Letter of Credit on or about each such 90th day following the anniversary of the Effective Date in a face amount calculated in accordance with this Section 7.4.

7.5.7.5 Drawdown Against the Letter of Credit.

~~(a)~~ ~~(a)~~—In accordance with Section 7.3 herein, this Section 7.5, and Section 13 hereof, DOT may drawdown against the Letter of Credit such amounts as are necessary to satisfy (to the degree possible) the Company's obligations under this Agreement not otherwise met and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to meet its obligations. ~~DOT~~ may not seek recourse against the Letter of Credit for any costs, losses or damages for which DOT has previously been compensated through a drawdown against the Letter of Credit, recourse to the Performance Bond or the Guaranty, withdrawal from the Security Fund or otherwise through payment or reimbursement by the Company.

~~(b)~~ ~~(b)~~—In addition to its right to drawdown on the Letter of Credit for any of the reasons set forth in Section 6.3 hereof, DOT may drawdown in full on the Letter of Credit at any time such Letter of Credit has less than thirty (30) days to run before it is scheduled to expire and no replacement or renewal Letter of Credit has been given in its place. In the event of a drawdown for such reason, DOT will hold the proceeds as cash security (paying to itself any interest earned) in lieu of a Letter of Credit (with DOT having the right to make withdrawals for the same purposes as drawdowns are permitted on the Letter of Credit) until a replacement Letter of Credit is put in place, at which time such drawdown proceeds will be returned to the Company less any proper withdrawals and any reasonable transaction expenses. All amounts so held in cash will be subject to annual reduction in accordance with Section 7.4, and the excess cash held by the City following such annually scheduled reduction shall promptly be returned to the Company. In the event of the drawdown contemplated in this Section 7.5(b), no breach or default shall exist under this Agreement by virtue of the Company having failed to maintain the Letter of Credit in accordance with the terms of this Agreement. In the event of a drawdown on the Letter of Credit as contemplated by this Section 7.5(b), and until such time as a replacement Letter of Credit is obtained in accordance with this Section 7.5(b), the replenishment obligations of the Company with respect to the moneys held by the City following such drawdown as cash security shall correspond to the replenishment obligations (and rights, including the Company's right to contest any withdrawals therefrom) of the Company applicable to the Security Fund under Section 6.7.

7.6 Use. In performing any of the Company's obligations under this Agreement using the Letter of Credit the City shall obtain competition, if applicable, to the maximum extent practicable under the circumstances.

7.7 Notice of Drawdown. Within 48 hours after any drawdown against the Letter of Credit or any claim with respect to the Performance Bond, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any drawdowns or claims by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The drawdown against the Letter of Credit or a satisfied claim with respect to the Performance Bond shall constitute a credit against the amount of the applicable liability of the Company.

7.8 Replenishment. Until the expiration of one year after the Term, during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c), within 30 days after receipt of notice (the "L/C Replenishment Period") from DOT that at least \$500,000 (cumulatively or in a single instance) has been drawn down against the Letter of Credit, the Company shall obtain a replacement or additional letter of credit such that the total amount available under the letter(s) of credit obtained shall be restored to the amount required in this Section 7, provided that the Company is not contesting, in good faith, the drawdown, or any portion thereof (provided that the Company shall replenish any uncontested portions if greater than \$500,000). Nothing herein shall prohibit the Company from contesting any drawdown, including any drawdown less than \$500,000. The amount referenced in the immediately preceding sentence shall be reduced proportionately in accordance with the Letter of Credit reductions contemplated by Section 7.4, to a minimum of \$100,000. If the Company fails to obtain a replacement or additional letter of credit in the appropriate amount within the L/C Replenishment Period and does not contest the drawdown before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the L/C Replenishment Period until such replacement or additional letter of credit is obtained. If the drawdown is contested, then upon the entry of a final non-appealable court order or judgment determining the propriety of the drawdown, DOT, or the Company as applicable, shall refund or replenish the appropriate amount, or obtain a replacement or additional letter of credit, as appropriate. If either DOT or the Company has not refunded or made the required replenishment, or obtained a replacement or additional letter of credit, as appropriate, within 30 days of the entry of a final non-appealable court order or judgment, interest on the appropriate amount shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the L/C Replenishment Period to the date the applicable amounts are actually refunded or replenished, or an additional or replacement letter of credit is obtained, as appropriate. Such interest shall be payable to the party entitled thereto.

7.9 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Performance Bond or the Letter of Credit required by this Section 7 subject to the limitations set forth in the last sentence of Section 7.5(a) and Section 13.5(b).

7.10 Cancellation Upon Replacement. In the event the Company provides a replacement or substitute Letter of Credit or a replacement Performance Bond pursuant to the provisions of this Section 7, the City shall, as soon as practicable and in no event later than 30 days after such replacement or substitute Letter of Credit or replacement Performance Bond is

delivered to the City or to a third party for the benefit of the City, return to the issuing bank such Letter of Credit and/or to the Company or surety such Performance Bond that was replaced or substituted, and shall notify, in writing, the Company and/or the surety of such return. Additionally, the City hereby agrees that upon delivery of the replacement or substitute Letter of Credit or replacement Performance Bond to the City, the City shall have no further rights (including, without limitation, the right to make claims or demands) against any Letter of Credit and/or Performance Bond that has been replaced or substituted as described above.

SECTION 8

EMPLOYMENT AND PURCHASING—Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or any other terms, conditions or privileges of employment. The Company 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 Company, shall use commercially reasonable efforts, at its own cost and expense, to recruit, educate, train and employ residents of the City, for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the System. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. The Company shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company.

8.3 ———Obligation to Use Domestic and Local Contractors and Subcontractors. The Company certifies that at least eighty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly, of the Coordinated Franchise Structures shall be within the United States and that at least fifty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly of the Coordinated Franchise Structures shall be within the City of New York.

8.4 ———No Discrimination. The Company shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. The Company agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the Term.

SECTION 9

COMPENSATION AND OTHER PAYMENTS

9.1 Defined Terms. For the purposes of this Agreement, the following terms, phrases and words shall have the meaning set forth in this Section 9.1, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in Sections 1 or 4 herein. References in this Section 9 to “commercial advertising” provided to NYCMDC as compensation to the City shall be understood to refer to space for advertising to be provided to NYCMDC (including New York City Promotional Advertising) for use consistent with its corporate purpose in accordance with this Section 9.

(a) ~~(a)~~—“Alternative Compensation” means one of the two compensation components of the Guaranteed Minimum. Alternative Compensation for each year of the Term shall have a market value as set forth in Column B of Schedule C attached hereto (subject to adjustment as contemplated by this Section 9), and shall consist of commercial advertising which shall be provided to NYCMDC by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest~~provided to NYCMDC~~ on the inventory described below, which shall be used by NYCMDC consistent with NYCMDC’s corporate purpose (but not for “spot market advertising”); provided, however, that \$2,500,000 of Alternative Compensation listed in Column B of Schedule C for the first year of the Term shall consist of the amenities contemplated by Section 9.17 and not commercial advertising. The inventory referred to in the immediately preceding sentence shall consist of out-of-home advertising media (e.g. billboards, ~~stadium signage~~, transit terminals, shopping centers, street furniture and advertising time on any form of electronic media) outside of New York City (i) then owned or controlled by the Company or any other entity which is more than 50% owned directly or indirectly by JCDecaux SA, by Cemusa Corporacion Europea de Mobiliario Urbano, S.A. (the “Parent”), or a successor in interest to JCDecaux SA (a “JCDecaux In-Kind Company”),~~the Parent,~~ and (ii) over which JCDecaux SA~~the Parent~~ or such successor in interest exercises operational control—(the “JCDecaux Cemusa In-Kind Markets”). Alternative Compensation shall be valued at the prevailing market rates actually charged to commercial customers buying comparable amounts of the Company’s advertising space in the applicable JCDecaux Cemusa In-Kind Market in accordance with the valuation methodology described in Section 9.4.1. Notwithstanding anything to the contrary in this Agreement, in determining whether the value of Alternative Compensation has the market value set forth in Column B of Schedule C, the amount of any value added tax due shall not be included, provided, however, the total unamortized value for Reciprocal Bus Shelters, if any, calculated in accordance with Section 2.5.3.2 above, may be deducted from the Alternative Compensation in year 19 of the Term, and year 20 if necessary. Commercial advertising provided as Alternative Compensation shall be ~~provided~~implemented pursuant to Sections 4.4.6(d) and 9.4 herein unless otherwise noted herein.

~~(b)~~ ~~(b)~~—“Cash Component” means one of the two compensation components of the Guaranteed Minimum, consists of cash, and is as set forth in Column A of Schedule C attached hereto.

~~(c)~~ ~~(e)~~—“Gross Revenues” means all revenues (from whatever source derived, and without any 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 Company, its subsidiaries, affiliates, or any third parties directly or indirectly retained by the Company to generate revenue (not including amounts paid or obligated to be paid to such third parties by or on behalf of the Company or any subsidiary or affiliate of the Company), as a result of the installation of the Coordinated Franchise Structures and, including without limitation, the display of advertising thereon. In addition to any revenues generated in the form of monetary receipts, Gross Revenues shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the Company may receive. In the event that the Company provides any advertising space pursuant to any transaction which is not an arm’s-length 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 Company’s including or grouping advertising on the Coordinated Franchise Structures with other assets in the Company’s inventory or otherwise), the amount to be included in Gross Revenues with respect to such transaction will be the fair market value of the advertising space as if such advertising space were provided pursuant to an arm’s-length transaction. Notwithstanding anything to the contrary in this definition, Gross Revenues shall not include any sales taxes or other taxes imposed by law which the Company is obligated to collect, or any Public Service Advertising, NYCMDC Advertising or Alternative Compensation. Gross Revenues shall not include Scroller Gross Revenues in years 1 through 5 of the Term and PSS Gross Revenues during the Term. The Company will not divert or recharacterize revenue that would otherwise have been considered Gross Revenues for purposes of this Agreement.

~~(d)~~ ~~(d)~~—“Guaranteed Minimum” for any given year of the Term shall consist of the Cash Component set forth in Schedule C and the Alternative Compensation set forth in Schedule C, subject to adjustment as expressly set forth in Section 9.

~~(e)~~ ~~(e)~~—“New York City Promotional Advertising” means advertising which in at least substantial portion on its face promotes New York City, including by promoting, for example: travel to New York City; doing business in New York City; arts, entertainment and cultural institutions located in New York City; or life in or living in New York City.

~~(f)~~ ~~(f)~~—“PSS Gross Revenues” shall mean revenue generated by PSSs calculated in the same manner as Gross Revenues. PSS Gross Revenues shall be paid in accordance with Schedule D.

~~(g)~~ ~~(g)~~—“Scroller Gross Revenues” shall mean revenue generated by Scrollers calculated in the same manner as Gross Revenues.

9.2 Compensation. As compensation for the franchise, commencing on the Effective Date and as set forth in this Section 9, the Company shall pay and/or provide (as the case may be) to the City with respect to each year of the Term (subject to the remaining provisions of this Section 9):

the greater of:

(i) ~~(i)~~ 50% of Gross Revenues for such year of the Term;

or

(ii) ~~(ii)~~ the Cash Component for such year of the Term;

plus

the Alternative Compensation for such year of the Term

as the Franchise Fee; provided however that, in any year of the Term in which 50% of Gross Revenues is greater than the Cash Component, ~~the Cash Component will be increased and the Alternative Compensation will be reduced by the actual amount of the positive difference obtained by subtracting the amount of the Cash Component (as set forth in Schedule C for such year, i.e., prior to any adjustment)-~~ from 50% of Gross Revenues for such year; provided further however that the Alternative Compensation shall not be reduced by, nor the Cash Component increased by, an amount which would reduce Alternative Compensation below the amount set forth in Column C of Schedule C for such year. The adjustments to the Alternative Compensation contemplated in this Section 9.2 shall be made in the year of the Term following the year of the Term to which they apply, due to the inability to adjust Alternative Compensation retroactively.

For the avoidance of doubt, several examples of the calculation of the Franchise Fee in a variety of circumstances are set forth on Schedule 9.2 to this Agreement.

9.3 Advance Payment. Within five business days of the Effective Date, the Company shall pay to the City \$50,000,000 in cash as the first installment of the advance payment of the Cash Component for the first four years of the Term. Within five business days of receipt by the Company from DOT of the necessary permits for installation by the Company of the 200th Coordinated Franchise Structure (not including PSSs), the Company shall pay to the City \$68,460,000 in cash as the second and last installment of the advance payment of the Cash Component for the first four years of the Term. Should 50% of the Gross Revenues for any of the first four years of the Term be more than the Cash Component for that year, the Company shall make payment of the excess amount in cash within 45 days of the end of that year of the Term. The Alternative Compensation shall be paid to the City in accordance with the terms of this Section 9.

9.4.9.4 Alternative Compensation Planning.

(a) The Company and NYCMDC shall consider NYCMDC advertising campaigns for each year of the Term in mutually agreed JCDecaux In-Kind Markets. As a baseline media plan, and throughout each year of the Term, the parties shall consider advertising campaigns in each agreed upon market, taking into account that market practice and market availability may vary according to location and over time. The Company agrees to make commercially reasonable efforts or the Company shall cause JCDecaux SA or its successor in interest to make commercially reasonable efforts to concentrate advertising campaigns within no more than twelve (12) countries in which JCDecaux In-Kind Markets are present in each year of the Term having a minimum value of at least five-hundred thousand dollars (\$500,000.00) per country during each year of the Term. For purposes of this Section 9, a “market” may include, depending on local market sales practice, all or any portion of a country in which a JCDecaux In-Kind Company is present. The parties shall have an initial meeting(a) — The Company and NYCMDC shall consider two four week advertising campaigns, with 100% penetration, in each of the Cemusa In Kind Markets then available as the baseline media plan for Alternative Compensation for each year of the Term. The parties shall meet annually at least 180 days prior to the end of each year of the Term to mutually agree in good faith on a baseline media plan (which may be either the baseline media plan referred to above or a modified version thereof in accordance with the remaining provisions of this Section 9.4) for the advertising campaigns to be made available to NYCMDC by the Company or caused by the Company to be made available by JCDecaux SA or its successor in interest (including the particular JCDecauxCemusa In-Kind Markets to be included, the specific campaign in each such market, the preferred format, the intended value assigned to each campaign, and the schedule for placement) which is to constitute the Alternative Compensation due to the City on Schedule C for the next succeeding year. The parties shall confer regularly and at least monthly throughout each year of the Term to review, update and modify the baseline media plan provided only that the Company shall make available the amount of Alternative Compensation set forth in Schedule C within each year of the Term. Nothing—(provided, however, nothing herein shall limit the ability of NYCMDC and the Company to plan campaigns through mutual agreement beyond the next succeeding year (to the extent such planning is commercially reasonable) of the Term (the “Media Plan”). If the parties are unable to agree, then NYCMDC shall propose a placement program each month which shall be subject to the approval of the Company, not to be unreasonably withheld, and in the event of reasonable objections by the Company (such as the Company being obligated to provide the requested space to a third party for the applicable period)year of the Term); NYCMDC shall make reasonable adjustments to its proposal to meet the Company’s objections. Once NYCMDC makes such adjustment, the Media Plan shall be final, subject to further adjustment pursuant to Section 9. The parties acknowledge that NYCMDC may not be able to determine valuation to its satisfaction prior to the time set forth in Section 9.4.1.

Notwithstanding the foregoing, thereafter the Company and NYCMDC may mutually agree to revise the agreed Media Plan at any time, except that such revisions to placement in any given market shall be on a space available basis. For the first year of the Term, the parties shall agree on a Media Plan prior to the Effective Date to the extent possible, or as soon as possible thereafter.

(b) At the time the Media Plan is agreed to with respect to any month of any year of the Term, NYCMDC shall designate specific markets (or parts thereof) that may be relinquished in the event the amount of Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to such year of the Term. Such adjustment will be made to the agreed upon Media Plan.

9.4.1. Valuation of Alternative Compensation. No later than 90 days prior to the end of each year of the Term, NYCMDC shall notify the Company if NYCMDC believes that the value of the Media Plan for the following year of the Term is less than the amount set forth on Schedule C for such year. In such event, NYCMDC may retain an international media agency reasonably acceptable to the Company (provided that WPP, Interpublic, Dentsu, Publicis, and Omnicom shall be acceptable) with expertise in media buying and planning in each of the JCDecauxCemusa In-Kind Markets to determine the value of the Media Plan created pursuant to Section 9.4. The value determined by the media agency (the “Estimated In-Kind Value”) in any given year shall be compared against the Alternative Compensation amount as set forth in Schedule C attached hereto for that same year (Such amount set forth on Schedule C, after any adjustment required pursuant to Section 9.2, the “Baseline In-Kind Value”). If the adjustment to the Alternative Compensation required by Section 9.2 is not determinable at the time the valuation contemplated by this Section 9.4.1 is finalized, then such valuation and resulting adjustment to the Media Plan, if any, shall be recalculated when the adjustment to the Alternative Compensation becomes known.

(a) (a)—To the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on additional advertising campaigns to be provided by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest to NYCMDC in JCDecauxCemusa In-Kind Markets, ~~(but, unless such denomination is impossible, such additional campaigns must consist of four week advertising campaigns, with 100% penetration),~~ such that the Estimated In-Kind Value plus the value of these additional campaigns equals the Baseline In-Kind Value for such year; ~~provided that in no event will the Company be obligated to provide more than three four week advertising campaigns with 100% penetration in any Cemusa In-Kind Market unless it is necessary to exceed this limitation in order for the Company to deliver the full Baseline In-Kind Value.~~

(b) (b)—To the extent the Estimated In-Kind Value is more than 115% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on advertising campaigns to be relinquished by NYCMDC in JCDecaux In-Kind Markets, Cemusa In-Kind Markets ~~(but, unless such denomination is impossible, such reduction must consist of four week advertising campaigns, with 100% penetration),~~ such that the Estimated In-Kind Value minus the value of the campaigns to be relinquished equals the Baseline In-Kind Value for such year.

(c) (e)—To the extent the Estimated In-Kind Value is less than or equal to 115% of the Baseline In-Kind Value for such year but more than or equal to 85% of the Baseline In-Kind Value for such year, there shall be no change to the Media Plan for that year resulting from the performance of the valuation contemplated by this Section 9.4.1.

~~(d)~~ ~~(d)~~—However, to the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company may, within 20 days notice of the Estimated In-Kind Value, choose to dispute the Estimated In-Kind Value. If the parties are not able to successfully resolve their differences within 10 business days after the Company gives notice to the City that it is disputing the Estimated In-Kind Value, then the parties shall immediately thereupon submit their dispute with respect to the value of the Media Plan to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) or any successor organization thereto. The determination of the AAA arbitrator shall be limited to determining the value of the Media Plan and shall be final and binding upon the parties. The AAA shall select one arbitrator who shall be an individual with at least twenty years’ experience in the field of commercial marketing and advertising. Because of the time-sensitive nature of the required calculation, the arbitrator shall, to the extent reasonably possible, hold a hearing to consider the submissions of the parties within one week of the arbitrator’s appointment and to render the decision within 10 business days of the close of the arbitration hearing and final submission of all materials in support of the positions of the parties. In rendering the decision, the arbitrator shall consider the criteria set forth in Section 9.1(a). The parties agree that in the event that arbitration is invoked, both parties shall proceed as expeditiously as possible under the circumstances to conclude the arbitration, including the timely submission of any supporting materials and appearance at arbitration hearings. Each party shall bear its own legal fees and expenses, but the cost of the arbitration shall be borne equally by the parties. The arbitrator shall have no power to vary or modify the provisions of this Agreement and the arbitrator’s jurisdiction is limited accordingly. The arbitration contemplated hereby shall be conducted in New York, New York. Following the arbitrator’s determination, the parties will increase or decrease the number of ~~two four week advertising~~ campaigns ~~with 100% penetration~~ in mutually agreed JCDecauxCemusa In-Kind Markets in the same manner as contemplated in Sections 9.4.1(a) and (b) based upon the arbitrator’s determination as to the value of the Media Plan (such determination, the “Arbitrated Value”).

9.4.2. Exchanging Markets; Less Than 100% Penetration.

~~(a)~~ ~~(a)~~—As part of the process contemplated in Section 9.4(a), and subject to the Company’s or NYCMDC’s, as the case may be, reasonable approval based on availability, NYCMDC or the Company may exchange or the Company may cause JCDecaux SA or its successor in interest to exchange comparable~~four week~~ advertising campaigns ~~with 100% penetration~~ in one JCDecauxCemusa In-Kind Market for comparable~~four week~~ advertising campaigns ~~with 100% penetration~~ of equivalent value in a different JCDecauxCemusa In-Kind Market; ~~provided that in any given Cemusa In Kind Market in any given year of the Term NYCMDC may not run more than three four week advertising campaigns with 100% penetration.~~ Solely for purposes of this Section 9.4.2, “equivalent value” shall be determined by reference to the Company’s rate cards in the applicable markets. ~~References to “100% penetration” in this Agreement mean 100% penetration as such term is generally understood in the out of home advertising industry.~~

~~(b)~~—~~NYCMDC shall not be entitled to run advertising campaigns of less than four weeks duration or less than 100% penetration unless such is necessary to achieve~~

~~in a practical manner the full market value of Alternative Compensation (as determined in accordance with Section 9.4.1) the Company is obligated to provide under this Agreement in a particular year of the Term (i.e., if there is an amount of Alternative Compensation left over that is too small to equal in value a four week marketing campaign of 100% penetration in any of the Cemusa In Kind Markets).~~

9.4.3. Alternative Compensation Content. NYCMDC shall program the Alternative Compensation on behalf of the City. No more than 50% of the Alternative Compensation to be programmed by NYCMDC pursuant to this Section 9.4 shall consist of advertising that is not New York City Promotional Advertising. Furthermore, in any given ~~JCDecauxCemusa~~ In-Kind Market, NYCMDC may program panels for an existing advertiser-client of the Company in that ~~JCDecauxCemusa~~ In-Kind Market only if such advertising is New York City Promotional Advertising. NYCMDC shall at all times during the Term give the Company 10 business days notice prior to entering into agreements with marketing partners for campaigns involving use of Alternative Compensation panels. The notice shall contain information as to the identity of the marketing partner, length of time, the geographic reach and the number of panels involved in the proposed campaign. In addition, the content and creative for such marketing partnerships shall be provided to the Company within a reasonable time after receipt of that information by NYCMDC. NYCMDC and the Company shall cooperate in good faith to address any potential issues that may arise out of the execution of such advertising campaigns.

9.4.4. No Carryover; No Cash Conversion. Subject to Section 9.4.5,- Alternative Compensation shall not be convertible into cash under any circumstances; except, however, that if the Alternative Compensation is not provided by the Company in accordance with this Agreement, nothing herein shall prevent the City from pursuing all remedies available to it at law, equity or in this Agreement. Additionally, Alternative Compensation to be provided in a particular year of the Term must be used in such year and may not be carried over into any subsequent year of the Term.

9.4.5. Major Markets Requirement. In the event that JCDecaux In-Kind Markets do not include at least 18 cities with populations of at least 500,000 people (“Major Markets”) for any year of the Term and the City is not able to reasonably satisfy its Alternative Compensation requirements through the use of non-Major Markets acceptable to NYCMDC, the Company hereby agrees that the City shall have the option, to be exercised no later than the last day of such year of the Term, to compel the Company to provide or compel the Company to cause JCDecaux SA or its successor in interest to provide Alternative Compensation, all or part of which may be converted into cash, at the option of the the City (the “Alternative Compensation Conversion Option”), to the City in such market or in such markets that are substantially equivalent with respect to the designated market area (the “DMA”) of such Major Market(s) that are no longer part of the JCDecaux In-Kind Markets. If the City exercises its Alternative Compensation Conversion Option, the City shall receive cash in the amount of the Alternative Compensation for such year multiplied by a fraction, the numerator of which shall be the difference between the amount of Alternative Compensation for such year and the amount of Alternative Compensation delivered (or planned to be delivered by the end of the relevant year

of the Term) and the denominator of which shall be the amount of the Alternative Compensation for such year, as listed in Column B of Schedule C.

9.4.6. Adjustments to Alternative Compensation Under Section 9.2. In the event the amount of the Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to any year of the Term, such adjustment will be implemented by reducing the Media Plan. The value of the campaigns to be relinquished by NYCMDC shall be established by reference to (a) the Arbitrated Value for such year, (b) the Estimated In-Kind Value for such year if there is no Arbitrated Value, or (c) the valuations assigned to each JCDecauxCemusa In-Kind Market in the Media Plan for such year, if there is no Estimated In-Kind Value.

9.5-9.5 Payments.-.

(a) (a)—Beginning with the fifth year of the Term (it being understood and agreed that the cash portion of the Franchise Fee payable with respect to the first four years of the Term shall be paid in accordance with Section 9.3 herein), within 30 days after the end of each of the first three quarters of each year of the Term, the Company shall pay to the City in cash the greater of (i) one fourth of the Cash Component for such year or (ii) 50% of Gross Revenues for that quarter. Beginning with the fifth year of the Term, within 30 days after the end of the fourth quarter of each year of the Term, the Company shall pay the excess, if any, of the full cash payment due to the City under Section 9.2 for such year of the Term (after all applicable adjustments contemplated by Section 9 and Section 4.7) over the amounts already paid by the Company on a quarterly basis with respect to such year under the preceding sentence. If the sum of the payments made by the Company in accordance with this Section 9.5(a) with respect to any year of the Term exceeds the cash portion of the Franchise Fee due to the City under Section 9.2 for such year (after all applicable adjustments contemplated by Section 9 and Section 4.7), the Company shall be entitled to take the excess as a credit against the next cash payment or payments due to the City under this Section 9, unless there is no such next payment scheduled (i.e., the Term has expired or terminated), in which case such excess shall be payable by the City to the Company within 30 days (if the amount is less than \$100,000) or 90 days (if the amount is equal to or greater than \$100,000) of invoice therefor.

(b) (b)—Within 30 days after any termination of this Agreement, the Company shall pay to the City in cash the appropriate pro rata amount (based on the number of days in the partial year and using 365 days in a full year) of the cash portion of the Franchise Fee for the elapsed portion of such year which has not previously been paid pursuant to Sections 9.3 or 9.5(a) and any other amounts owed to the City pursuant to this Agreement. Additionally, the Company shall deliver the pro rata amount of any Alternative Compensation agreed to pursuant to Section 9.4 herein for such year and not previously delivered.

(c) (e)—Beginning with the fifth year of the Term, and for each year of the Term thereafter, no later than 45 days from the anniversary of the Effective Date, the Company shall deposit with the escrow agent (the “Escrow Agent”) under an escrow agreement to be entered into among the Company, such Escrow Agent and the City (the “Escrow Agreement”), which Escrow Agreement shall be substantially in the form attached hereto as

Exhibit L, the greater of (i) the Cash Component for that year of the Term or (ii) the cash portion of the Franchise Fee paid by the Company for the immediately preceding year of the Term, minus, in each case, any amounts deposited in escrow the prior year pursuant to this Section 9.5(c) and then remaining in escrow (the amount deposited in escrow in accordance with this Section 9.5(c), the “Escrow Fund”). Each payment required to be made pursuant to Sections 9.5(a) and 9.5(b) shall be made from the Escrow Fund provided that if the Escrow Fund is at any time insufficient to make such payments, the Company shall make such payments directly.

~~(d)~~ ~~(d)~~—In addition, no later than the first day of the fourth year of the Term, the Company shall cause the establishment with the Escrow Agent of an additional, separate escrow account (the “Supplemental Escrow Account~~”~~”), pursuant to the Escrow Agreement. The Supplemental Escrow Account shall be unfunded until required to be funded in accordance with the terms of this Section 9.5(d). Funds on deposit in the Supplemental Escrow Account from time to time as required herein are referred to as the “Supplemental Escrow Fund.” During the Term, the Supplemental Escrow Fund shall be increased (by deposit of additional funds by or at thedirection of the Company) or decreased (by payment to or at the direction of the Company by ~~the~~ Escrow Agent), within 10 business days, as follows:

~~(i)~~ ~~(i)~~—At any time after the third year of the Term when the Net Worth (hereinafter defined) of the Guarantor is less than 125 million Euros the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term and the following year of the Term or (y) two times the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

~~(ii)~~ ~~(ii)~~—At any time after the fourth year of the Term when the Net Worth of the Guarantor is between 125 million Euros and 150 million Euros, the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term or (y) the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

~~(iii)~~ ~~(iii)~~—At any time when the Net Worth of the Guarantor is 150 million Euros or greater, or after the 19th year of the Term, the Supplemental Escrow Fund shall be 0.

Solely for purposes of this Section 9.5(d), “Net Worth” shall mean total assets of the Guarantor, minus total liabilities of the Guarantor, calculated in accordance with generally accepted accounting principles, as reflected in the most recent audited annual financial statements of the Guarantor required to be delivered to the City pursuant to Section 10.6.3.

~~(e)~~ ~~(e)~~—All interest earned on the Escrow Fund and Supplemental Escrow Fund shall accrue to the Company or the Guarantor, as applicable, and be payable to or at the direction of the Company at the end of each quarter of the Term.

9.6.9.6 Revisions to Franchise Fee. ~~The Franchise Fee may be revised as follows. The Franchise Fee may be revised as follows:~~

9.6.1. PSS. Should DOT exercise its option to require the Company to install, maintain and operate PSSs as set forth in Section 2.4.6(c) herein, the cash portion of the Franchise Fee shall be adjusted as set forth on Schedule D attached hereto.

~~9.6.2. NYCMDC Advertising/Public Service Advertising. Should the City exercise its yearly option to return to the Company advertising space reserved for NYCMDC Advertising or Public Service Advertising as set forth in Section 4.4.6(f) herein, the cash portion of the Franchise Fee shall be adjusted as set forth on Schedule D attached hereto.~~

9.6.2. Scrollers. Should the Company install any Scroller before year six of the Term, the cash portion of the Franchise Fee prior to year six of the Term shall be increased by an amount equal to 50% of Scroller Gross Revenues.

9.6.3. Olympics. Should the City exercise its option to require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period as set forth in Section 4.4.8 herein, the Company shall deduct from the cash portion of the Franchise Fee to be paid for the quarter immediately following the Olympic Period the following amount:

the average Gross Revenue, for the same eight weeks as the Olympic Period, of the three years preceding the Olympics, multiplied by 1.2.

9.7 Credits. The parties acknowledge that the cash portion of the Franchise Fee payable by the Company each year has been determined by the Company based on certain assumptions of the Company regarding revenue generation from advertising as permitted under this Agreement. Accordingly:

9.7.1. Bus Shelters. If at any time the number of Bus Shelters is reduced to fewer than 3300 Bus Shelters through no fault of the Company, then NYCMDC and the Company shall promptly mutually designate Bus Shelters in the same geographic area to the extent possible, which are allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 Bus Shelters. To the extent that the Company is thereafter able to install additional Bus Shelters, the Bus Shelters shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 Bus Shelters.

9.7.2. New Bus Shelters. If by the fifth anniversary of the Build Start Date the Company is unable to install at least 3300 New Bus Shelters within the time frames for such installation provided for in this Agreement due to the fault of the City, then NYCMDC and the Company shall promptly mutually designate New Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 New Bus Shelters (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC for reversion, on a one-for-one basis, in lieu of New Bus Shelters). To the extent that the Company

thereafter is able to install additional New Bus Shelters, the New Bus Shelters (or Existing Bus Shelters, as the case may be) shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 New Bus Shelters.

9.7.3. Newsstands. If, through no fault of the Company, (a) at any time after the end of the first year of the Term the number of Newsstands is reduced to fewer than 110 New or Replacement Newsstands, (b) at any time after the end of the second year of the Term the number of Newsstands is reduced to fewer than 220 New or Replacement Newsstands, or (c) at any time after the end of the third year of the Term the number of Newsstands is reduced to fewer than 330 New or Replacement Newsstands, then NYCMDC and the Company shall promptly mutually designate Replacement Newsstands and/or New Newsstands and/or Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon (which may be on Replacement Newsstands and/or New Newsstands and/or Bus Shelters but excluding Bus Shelters which the Company controls the advertising on pursuant to Sections 9.7.1 and 9.7.2 herein) such that the Company controls the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term, provided, that for purposes of the foregoing reversion, (i) Replacement Newsstands and New Newsstands shall be the first to revert on a one to one basis, (ii) if NYCMDC has no remaining Newsstands available to it, then New Bus Shelters shall revert (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC in lieu of New Bus Shelters) and (iii) if NYCMDC has no remaining New Bus Shelters, then Existing Bus Shelters shall revert. In designating Bus Shelters for reversion in accordance with this Section 9.7.3, the parties shall make such reversion on the basis of 1.5 Bus Shelters reverting for every 1 Newsstand. To the extent that the Company is thereafter able to install additional Newsstands, the Existing Bus Shelters, New Bus Shelters and Newsstands shall be re-allocated as set forth in Exhibit H attached hereto, in the reverse order that they reverted to the Company in accordance with this Section 9.7.3, by the next advertising cycle, so that the Company shall at all times control the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term.

9.7.4. Cash Option. At the City's option, in lieu of part or all of the reversion of Bus Shelters, Replacement Newsstands and/or New Newsstands contemplated by Sections 9.7.1, 9.7.2, and 9.7.3 herein, the City may choose to have the Company deduct from the cash portion of the Franchise Fee the product of (a) the revenue value associated with the applicable Coordinated Franchise Structure(s), as set forth in Table A of Appendix 5 of the Proposal (increasing annually to adjust for inflation at the higher of (i) 2.5% per year or (ii) the rate of inflation reflected in the Consumer Price Index for All Urban Consumers (CPI-U), subject to a cap of 3% per year), (b) the number of Coordinated Franchise Structures that would be required to compensate the Company in accordance with Sections 9.7.1, 9.7.2, and 9.7.3 herein, and (c)

the number of advertising panels on the applicable Coordinated Franchise Structure set forth in such Appendix 5, Table C.

9.7.5. Cash or Alternative Compensation Set-Off. In the event that there are insufficient Coordinated Franchise Structures allocated to NYCMDC at any time to effectuate the reversions as contemplated by Sections 9.7.1, 9.7.2 and 9.7.3, then any such shortfalls shall be made up by a deduction by the Company from the cash portion of the Franchise Fee of the amount in cash calculated in accordance with Section 9.7.4, or, in the Company's sole discretion, by a reduction in an equivalent amount of Alternative Compensation.

9.7.6. Inability to Mutually Designate Coordinated Franchise Structures For Reversion. If the Company and NYCMDC are unable to mutually designate, in good faith, the appropriate Coordinated Franchise Structures for reversion to the Company under the circumstances described in Sections 9.7.1, 9.7.2 or 9.7.3, the reversion of Coordinated Franchise Structures to the Company contemplated in such Sections shall occur automatically, with the Coordinated Franchise Structures allocated to NYCMDC that are located nearest to the applicable unavailable Coordinated Franchise Structures reverting to the Company and with respect to Sections 9.7.2 and 9.7.3 in accordance with the priorities and ratios for such reversion set forth in Sections 9.7.2 and 9.7.3.

9.7.7. Absence of Identified Locations. In the event that the reversion of Coordinated Franchise Structures allocated to NYCMDC contemplated by Sections 9.7.1, 9.7.2 or 9.7.3 is to take place with respect to New Bus Shelters or Newsstands as to which no specific location for installation had been previously agreed to between the Company and the City, such reversion shall take place in proportion to the overall geographic distribution of the then installed Bus Shelters or Newsstands, as applicable (other than those allocated to NYCMDC Advertising).

9.7.8. No Default. No failure by the Company to install Coordinated Franchise Structures that gives rise to a right of the Company to reversion of Coordinated Franchise Structures from NYCMDC pursuant to Sections 9.7.1, 9.7.2 or 9.7.3 shall constitute a breach or default under this Agreement or give rise to the obligation to pay liquidated damages.

9.7.9. Performance at the Cost of the City. In the event the Company is required to perform an obligation under this Agreement which is to be performed at the City's cost or expense, as specifically set forth in this Agreement, the Company shall be permitted to delay such performance until it receives written authorization from DOT. All reasonable costs and expenses expended by the Company in performance of such obligation shall be reimbursed to the Company by the City reasonably promptly after submission of invoices therefor.

9.8-9.8 Reports and Records-.

9.8.1. Monthly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues, and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 10 business days of the end of each calendar month during the Term.

9.8.2. Quarterly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each quarter of the Term.

9.8.3. Yearly. The Company shall submit to DOT a detailed income and expense statement, reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each year of the Term. In addition, the Company shall submit a certification from JCDecaux, SA that no bundling of franchise advertising assets with non-franchise assets has occurred that would reduce the City's franchise compensation below that which it would have been had the franchise assets been sold unbundled for their fair market value.

9.8.4. Third Party Agreements. All agreements entered into by the Company in connection with the Coordinated Franchise Structures shall provide that such agreements and all records and documents related thereto shall be made available to the City upon request. Additionally, all agreements entered into by the Company in connection with advertising on the Coordinated Franchise Structures shall include a provision requiring that upon expiration or sooner termination of this Agreement, the City shall have the option of assuming all the Company's rights and obligations under such agreement.

9.8.5. Access to Third Party Agreements. The Company shall make available to the City, at its office located in the City, all third party agreements entered into by the Company in connection with the Coordinated Franchise Structures and comprehensive itemized records of all revenues received in a format reasonably acceptable to DOT and in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to this Section 9 is being paid to the City upon request, during regular business hours and upon reasonable prior notice to the Company. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

9.9 Reservation of Rights. No acceptance of any compensation by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement, subject to Section 13.5(b). All amounts paid shall be subject to audit and recomputation by the City.

9.10-9.10 Other Payments-.

9.10.1. City Incurred Cost. If the City incurs any costs or expenses pursuant to this Agreement for (a) work that should have been performed by the Company, or (b) work performed by the City which the Company could not perform, but the costs and expenses for which the Company is liable, the Company shall, within 30 days of receipt of an invoice from the City, pay to the City the amount so incurred.

9.10.2. Future Costs. In the event of a Default by the Company under this Agreement, the Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 enforcement of remedies including termination for a Termination Default. Before any reimbursable work is performed, the City will advise the Company 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 Company, or the Company brings an action against the City, and the Company finally prevails, then the Company 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 Company contests the charges, it shall pay any uncontested amounts. The Commissioner 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 Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 Company. Before any reimbursable work is performed, the City will advise the Company that the City will be incurring the services of third parties pursuant to the preceding sentence. The Company expressly agrees that the payments made pursuant to this Section 9.10.2 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 Company pursuant to any other provision of this Section 9.

9.11.9.11 Limitations on Credits or Deductions-:

~~(a)~~ ~~(a)~~—The Company expressly acknowledges and agrees that:

~~(i)~~ ~~(i)~~—The compensation and other payments to be made or Services to be provided pursuant to this Section 9 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which the Company or any Affiliated Person shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company;

~~(ii)~~ ~~(ii)~~—Except as may be expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made or Services to be provided pursuant to this Agreement from or against any City or other governmental taxes of

general applicability (other than income taxes) or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency;

~~(iii)~~ ~~(iii)~~—Except as expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of compensation or other payments to be made or Services to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons; and

~~(iv)~~ ~~(iv)~~—Except as may be expressly permitted by this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made or Services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

~~(b)~~ ~~(b)~~—Nothing contained in this Section 9.11 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement or costs that it may incur in connection therewith as an ordinary expense of doing business and accordingly, from deducting said payments from gross income in any City, state or federal tax return.

9.12 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date until received at a rate per year equal to the greater of (i) the then applicable Prime Rate plus ~~2%,%~~ or (ii) 7%.

9.13 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement shall be made to the New York City Department of Transportation, Director of Accounts Payable, ~~55 Water40 Worth~~ Street, 9th Floor, New York, New York ~~1004140043~~ or as otherwise directed by DOT.

9.14 Report Certification. All compensation reports furnished by the Company pursuant to Section 9.8 herein shall be certified by the chief financial officer of the Company to be correct and in accordance with the books of account and records of the Company.

9.15 Continuing Obligation and Holdover. In the event the Company continues to operate all or any part of the System, including the placement of advertising, and the collection of revenue related thereto, after the expiration or termination of this Agreement, then the Company shall continue to comply with all provisions of this Agreement as if the Agreement was still in force and effect, including, without limitation, all compensation and other payment provisions of this Agreement as well as the maintenance of the Security Fund, the Letter of Credit, the Performance Bond, and the Guaranty throughout the period of such continued

operation, provided that any such continued operation and compliance with this Agreement shall in no way 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 available to the City as a result of such continued operation after the term of this Agreement, including, but not limited to, damages and restitution and injunctive relief. If the Company fails to make such payments, DOT may withdraw such amounts from the Security Fund or the Letter of Credit.

9.16 Energy Costs. The Company shall be responsible for any and all electrical costs, or other costs for energy or power, used for, by or in connection with any and all of the Coordinated Franchise Structures, except as otherwise provided in Sections 2.4.6 and 3.1.4(b) herein.

9.17 Amenities. DOT at its option may require during the first five years of the Term that the Company provide certain amenities to the Coordinated Franchise Structures, the value of which shall not exceed \$2,500,000 in the aggregate. - Such amenities may include, but are not limited to solar panels, battery recycling containers, -installation of water fountains in APTs and support of the integration of new technology. Notwithstanding the foregoing, the City acknowledges that the Company shall have satisfied its obligation to install amenities under the 2006 Agreement by constructing, installing and maintaining 30 New Bus Shelters at locations to be determined by DOT, and which shall not include Reciprocal Bus Shelters or Fifth Avenue Bus Shelters.

SECTION 10

OVERSIGHT AND REGULATION

10.1 Confidentiality. To the extent permissible under applicable law, the City shall protect from disclosure any trade secret materials or otherwise confidential information submitted to or made available by the Company to the City under this Agreement provided that the Company timely notifies the City of, and clearly labels, the information which the Company deems to be trade secret materials or otherwise confidential information as such. Such notification and labeling shall be the sole responsibility of the Company.

In the event that the City becomes legally compelled to disclose the trade secret materials or otherwise confidential information of the Company, it shall provide the Company with prompt written notice of such requirement so that the Company may seek a protective order or other remedy. In the event that such protective order or other remedy is not obtained, the City agrees to furnish only that portion of such information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information.

Notwithstanding the foregoing, this Section 10.1 shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this Agreement, or (ii) was available publicly without a breach of an obligation of confidentiality by a third party, or (iii) was learned from a third party who was not under an obligation of confidentiality.

The Company expressly acknowledges and agrees that neither DOT nor the City of New York will have any obligation or liability to the Company in the event of disclosure of materials, including materials labeled by the Company as trade secret materials, or otherwise confidential information.

10.2 Oversight. DOT shall have the right at all times to oversee, regulate and inspect periodically the installation, operation, and maintenance of the System, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to demonstrate, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Company is in compliance with this Agreement. The Company shall retain such records for not less than 6 years following expiration or termination of this Agreement.

10.3 State-of-the-Art. State-of-the-art construction methods and building materials must be integrated into the Coordinated Franchise Structures as they become available at the sole cost and expense of the Company. Nothing in this Section requires the Company to replace or reinstall a Coordinated Franchise Structure solely for the purpose of complying with this Section.

10.4 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 such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its powers, including, but not limited to, its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

10.5 Office in New York City. The Company shall have and maintain an office in the City where all books and records referenced in, and pertaining to, this Agreement shall be maintained and where the Company's accounting, billing, and clerical functions pertaining to this Agreement shall be performed.

10.6.10.6 Reports.

10.6.1. Financial Reports. In the event the City has a good faith reason to believe that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into consideration the guaranty of Guarantor), the Company shall submit to DOT, upon its request, a complete set of the latest general purpose financial statements for a specified past fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from an independent Certified Public Accountant ("CPA") who performed a review of the statements in accordance, with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, not later than 20 business days from the date such financial statements become available to the Company from its CPA. All such statements shall be accurate and complete in all material respects. In the event the City reviews such financial statements and determines in its reasonable discretion that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into account the Guaranty), the City may require the

Company to submit, and obtain the Commissioner's approval of, a plan setting forth the steps the Company will take to continue to be able to comply with this Agreement.

10.6.2. Other Reports. Upon the written request of the Commissioner, the Company shall promptly submit to DOT or the City, any non-Privileged Information reasonably related to the Company's obligations under this Agreement, its business and operations, or those of any Affiliated Person, with respect to the System or its operations, or any Service, in such form and containing such information as the Commissioner shall specify in writing. Such information or report shall be accurate and complete in all material respects. The Commissioner or the City may provide notice to the Company in writing, as set forth in Section 14.5 hereof with regard to the adequacy or inadequacy of such reports pursuant to the requirements of this Section 10.6.

10.6.3. Guarantor Financials Statements. The Company shall cause Guarantor to yearly submit to DOT a complete set of the latest general purpose financial statements for the prior fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from the independent Certified Public Accountant ("CPA") who performed a review of the statements in accordance with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, not later than 20 business days from the date such financial statements become available to the Guarantor from its CPA. All such financial statements shall be accurate and complete in all material respects.

10.7.10.7 Books and Reports/Audits.

10.7.1. Books and Records. Throughout the Term the Company shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Company with respect to the System in a manner that allows the City to determine whether the Company is in compliance with the Agreement. Should the City reasonably determine that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section. All financial books and records which are maintained in accordance with generally accepted accounting principles shall be deemed to be acceptable under this Section. The Company shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.

10.7.2. Right of Inspection. The City, the Commissioner and the Comptroller, or their designated representatives, shall have the right upon written demand with reasonable notice to the Company under the circumstances to inspect, examine or audit during normal business hours all documents, records or other information which pertain to the Company or any Affiliated Person related to the Company's obligations under this Agreement. All such documents shall be made available at the Company's New York City office. All such documents shall be retained by the Company for a minimum of six years following expiration or termination of this Agreement. All such documents and information that are identified by the Company as trade secret materials or otherwise confidential information shall be treated as such in accordance with Section 10.1 hereof, and the City shall make reasonable efforts to limit access to the alleged

trade secret materials or otherwise confidential information to those individuals who require the information in the exercise of the City's rights under this Agreement. In the event any information the City claims the right to inspect pursuant to this Section 10.7.2 constitutes Privileged Information, then the Company will not be required to disclose such information and the City shall instead have the right to review a reasonably detailed log of the Privileged Information. The City shall not share any information obtained through the ~~City's~~ audit and inspection rights under this Section 10.7.2 or otherwise under this Agreement with any media agency retained pursuant to Section 9.4.1. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

10.8 Compliance with "Investigations Clause". The Company agrees to comply in all respects with the City's "Investigations Clause," a copy of which is attached as Exhibit G hereto.

SECTION 11

RESTRICTION AGAINST ASSIGNMENT AND OTHER TRANSFERS

11.1 Transfer of Interest. Except as provided in this Section 11, neither the franchise granted herein nor any rights or obligations of the Company in the System or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, without the prior written consent of the City, pursuant to Section 11.3 hereof. In the event any transfer of interest which requires consent of the City takes place without such consent, such transfer shall constitute a Termination Default and the City may exercise any rights it may have under this Agreement. ~~Notwithstanding anything contained herein to the contrary, the City hereby consents to the Company's assignment of the Agreement to Cemusa NY, LLC, a wholly owned subsidiary of the Company, provided that Cemusa NY, LLC satisfies the City's VENDEX and other City's responsibility procedures, and further provided that Cemusa NY, LLC agrees in writing to assume all responsibilities and obligations under the Agreement.~~

11.2 Transfer of Control or Ownership. Notwithstanding any other provision of this Agreement, except as provided in this Section 11, no change in Control of the Company or the franchise granted herein shall occur after the Effective Date, by act of the Company, by act of any Person holding control of the Company or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City. The requirements of Section 11.3 hereof shall also apply whenever any change is proposed of 10% or more of the direct ownership of Cemusa, Inc. (the "Parent"), the Company, ~~Cemusa NY, LLC~~, or the franchise granted herein (but nothing herein shall be construed as suggesting that a proposed change of less than 10% does not require consent of the City acting pursuant to Section 11.3 hereof if it would in fact result in a change in Control of Parent, the Company, Cemusa NY, LLC, or the franchise granted herein), and any other event which could result in a change in Control of the Company. For the avoidance of doubt, nothing in this Section 11 shall prohibit, restrict or subject to any approval a change in Control of any entity that Controls, directly or indirectly, the Parent, and such change

in Control of any entity that Controls, directly or indirectly, the Parent shall not constitute a change in Control of the Parent, the Company, or the franchise granted hereby for purposes of this Section 11.2, or any transfer of any interest to which Section 11.1 applies.

11.3 Petition. The Company shall promptly notify the Commissioner of any proposed action requiring the consent of the City pursuant to Sections 11.1 or 11.2 herein by submitting to the City, pursuant to Section 14.5 hereof, a petition either (a) requesting the approval of the Commissioner and submission by the Commissioner of a petition to the FCRC and approval thereof by the FCRC or (b) requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each such petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Company's argument as to why such action would not involve a change in Control of the Company, the System or the franchise, or a transfer of interest in the franchise granted herein or any rights or obligations of the Company in the System or pursuant to this Agreement and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Company in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Company that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval.

11.4 Consideration of the Petition. The Commissioner and the FCRC, as the case may be, may take such actions as it deems appropriate in considering the petition and determining whether consent is needed or should be granted. In considering the petition, the Commissioner and the FCRC, as the case may be, may inquire into: (i) the qualifications of each Person involved in the proposed action; (ii) all matters relevant to whether the relevant Person(s) will adhere to all applicable provisions of this Agreement; (iii) the effect of the proposed action on competition; and (iv) all other matters it deems relevant in evaluating the petition. After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the Commissioner and the FCRC may review the Company's performance under the terms and conditions of this Agreement. The Company shall provide all requested assistance to the Commissioner and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

11.5 Permitted Encumbrances. Nothing in this Section shall be deemed to prohibit any mortgage, lien, security interest, or pledge being granted to any banking or lending institution which is a secured creditor of the Company or any of its Affiliates with respect to any stock of the Company or any of its Affiliates, any rights granted pursuant to this Agreement, or any rights of the Company or any of its Affiliates in the System, including the assets of the Company and its Affiliates which comprise the System, provided that any such mortgage, lien, security interest or pledge shall be subject to the interests of the City as franchisor under this Agreement (and, in the case of any newsstand, any rights of the newsstand operator hereunder or under applicable

law), including without limitation the ~~City's~~City's right of approval with respect to any transfer of the franchise rights hereunder.

11.6 Subcontracts. The Company agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of DOT, provided that if the proposed subcontractor is not required to comply with VENDEX such prior written approval shall not be required. Two copies of each such proposed subcontract requiring approval shall be submitted to DOT with the Company's written request for approval. All such subcontracts shall contain provisions specifying:

~~(a)~~ (a)—That the work performed by the subcontractor must be in accordance with the terms of this Agreement;

~~(b)~~ (b)—That nothing contained in the subcontract shall impair the rights of DOT or the City;

~~(c)~~ (c)—That nothing contained in the subcontract, or under this Agreement, shall create any contractual relation between the subcontractor and DOT or the City.

The Company agrees that it is fully responsible under this Agreement for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it. The Company shall not in any way be relieved of any responsibility under this Agreement by any subcontract. All subcontracts submitted by the Company to the City for approval in accordance with this Section 11.6 shall be approved (or reasons for failure to approve shall be provided) as soon as reasonably practicable in view of the time sensitive nature of the obligations of the Company under this Agreement.

11.7 Consent Not a Waiver. The grant or waiver of any one or more consents under this Section 11 shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section 11.

SECTION 12

LIABILITY AND INSURANCE

12.1.12.1 Liability and Indemnity.

12.1.1. Company. The Company shall indemnify, defend and hold the City, its officers, agents and employees (the "Indemnitees") harmless from any and all liabilities, suits, damages, claims and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or asserted against any of the Indemnitees arising out of the Company's performance of, or its failure to perform, its obligations under this Agreement, including, but not limited to the design, installation, operation and maintenance of the System, or any part thereof, provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 12.1.1 shall not apply

to any Damages to the extent arising out of any willful misconduct or gross negligence of the City, its officers, employees, or agents. This Section shall supersede the indemnification provisions of section 19-128.1 of the New York City Administrative Code or any Rules promulgated thereunder, with respect to multi-rack newsracks. Insofar as the facts and law relating to any Damages would preclude the City from being completely indemnified by the Company, the City shall be partially indemnified by the Company to the fullest extent provided by law, except to the extent such Damages arise out of any willful misconduct or gross negligence of any Indemnitee. This indemnification is independent of the Company's obligations to obtain insurance as provided under this agreement.

12.1.2. City. The Company will not be liable for any Damages to the extent arising from the gross negligence or willful misconduct of any Indemnitee.

12.1.3. No Liability for Public Work, Etc. The Indemnitees shall have no liability to the Company for any Damages as a result of or in connection with the installation, operation and maintenance, of any part of the System by or on behalf of the Company or the City 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, unless and to the extent such Damages are due to the gross negligence or willful misconduct of any Indemnitee. To the extent practicable under the circumstances, the Company shall be consulted prior to any such activity and shall be given the opportunity to perform such work itself, but the City shall have no liability to the Company, except as expressly set forth above, in the event it does not so consult the Company. All costs to install, operate and maintain the System or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company; except to the extent such Damages arise out of any willful misconduct or gross negligence of the Indemnitees.

12.1.4. No Liability for Damages. None of the Indemnitees shall have any liability to the Company for any Damages as a result of the proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 12.1.4 shall not apply to any liabilities, suits, damages (other than special, incidental, consequential or punitive damages), penalties, claims, costs, and expenses to the extent arising out of any willful misconduct or gross negligence of the Indemnitees.

12.1.5. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 12.1.1 herein, then upon demand by City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for or approved by the Company's insurance carrier (if the defense of such claim, action or proceeding is provided by the insurance carrier) or by the Company's attorneys. The foregoing notwithstanding, in the event an Indemnitee believes additional representation is needed, such Indemnitee may engage its own attorneys to assist such Indemnitee's defense of such claim, action or proceeding, as the case may be, at its sole cost and expense. The Indemnitees shall not settle any claim with respect to which the Company is required to indemnify the Indemnitees

pursuant to Section 12.1.1 without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.

12.1.6. Intellectual Property Indemnification. The Company shall defend, indemnify and hold the City harmless from and against any and all Damages, to which it may be subject because of or related to any claim that the Plans and Specifications and/or the Preliminary Plans and Specifications, the Coordinated Franchise Structures, any intellectual property of the Company incorporated in the Ad-Bearing Street Furniture/ and/or Non-Ad-Bearing Street Furniture (to the extent such are designed during the Term of this Agreement) 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; provided, however, that the Company shall not be obligated to indemnify the City for any Damages to the extent such Damages arise out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and Specifications, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. This indemnification is independent of the Company's obligations to obtain insurance as provided under this Agreement. Furthermore, the Company shall defend and settle at its sole expense all suits or proceedings brought against Company arising out of the foregoing. No such settlement, however, shall be made that prevents the City or the Company from continuing to use the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software without the City's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event an injunction or order shall be obtained against the City's use of Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software under this Agreement by reason of the allegations, or if in the Company's opinion the Plans and Specifications, and the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software is likely to become the subject of a claim of infringement or violation of a copyright, trade secret or other proprietary right of a third party, or if the City's ability to enjoy use of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software has become materially disrupted by a claim of a third party, the Company shall at its expense, and at its option: (i) procure the right to allow the City to continue using the alleged infringing material; or (ii) modify the applicable portion(s) of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software so that it becomes non-infringing, or replace the infringing materials or Software with non-infringing materials or Software, but only if the modification or replacement does not materially change the design of the affected Coordinated Franchise Structures; provided, however, that the Company shall not be obligated to take the actions described in clauses (i) and (ii) if the injunction, order or claim in question arises out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and

Specifications-, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. The modifications discussed in the previous sentence are subject to the City's prior written approval. The obligations to indemnify pursuant to this Section 12.1.6 shall survive the expiration or termination of this Agreement.

12.1.7. No Claims Against Officers, Employees, or Agents. Company agrees not to make any claim against any officer or employee of the City or officer or employee of an agent of the City, in their individual capacity, for, or on account of, anything done or omitted in connection with this Agreement. Nothing contained in this Agreement shall be construed to hold the City liable for any lost profits, or any consequential damages incurred by Company or any Person acting or claiming by, through or under Company.

12.2.12.2 Insurance.

12.2.1. Types of Insurance. The Company shall continuously maintain one or more liability insurance policies meeting the requirements of this Section 12.2 throughout the Term and thereafter until completion of removal of the System, or any part thereof, on, over, or under the Inalienable Property of the City including all reasonably associated repair of the Inalienable Property of the City or any other property to the extent such removal and or restoration is required pursuant to this Agreement. The Company has provided Proof of Insurance pursuant to Section 12.2.3(a) hereof, and shall effect and maintain the following types of insurance as indicated in Schedule E attached hereto (with the minimum limits and special conditions specified in Schedule E attached hereto). Such insurance shall be issued by companies that meet the standards of Section 12.2.2(a) hereof and shall be primary (and non--contributing) to any insurance or self-insurance maintained by the City.

(a) ~~(a)~~—The Company shall provide a Commercial General Liability Insurance policy covering the Company as Named Insured and the City as an Additional Insured. Coverage for the City as Additional Insured shall specifically include the City's officials, employees and agents, and shall be at least as broad as Insurance Services Office ("ISO") Form CG 2010 (11/85 ed.) (No later edition of ISO Form CG 2010, and no more limited form or endorsement, is acceptable.) This policy shall protect the City and the Company from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Agreement. Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (1/96 ed.), must be "occurrence" based rather than "claims-made", and shall 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. If such insurance contains an aggregate limit, it shall apply separately to this Project.

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

~~(i)~~ ~~(i)~~—The City of New York together with its officials, employees and agents is an Additional Insured with coverage as broad as ISO Forms CG 2010 (11/85 ed.) and CG 0001 (1/96 ed.); and

~~(ii)~~ ~~(ii)~~—The Duties in the Event of Occurrence, Claim or Suit condition of the policy is amended per the following: if and insofar as knowledge of an “occurrence”, “claim”, or “suit” is relevant to the City of New York as Additional Insured under this policy, such 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 following position shall have received notice thereof from such agent, servant, official, or employee: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

~~(iii)~~ ~~(iii)~~—Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall 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; and

~~(iv)~~ ~~(iv)~~—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.

~~(b)~~ ~~(b)~~—The Company shall provide, and ensure that each subcontractor provides, Workers Compensation Insurance and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Agreement.

~~(c)~~ ~~(c)~~—The Company shall provide, and ensure that each subcontractor provides, Employers Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his/her employment under this Agreement.

~~(d)~~ ~~(d)~~—The Company shall provide a Comprehensive Business Automobile Liability policy for liability arising out of 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”).

~~(e)~~ ~~(e)~~—The Company shall provide a Professional Liability Insurance Policy covering Breach of Professional Duty, including actual or alleged negligent acts, errors or omissions committed by the Company, 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. 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 Company’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 three-year extended reporting period for acts or omissions that occurred but were not reported during the policy period.

~~(f) (f)~~—All insurers shall waive their rights of subrogation against the City, its officials, employees and agents.

~~(g) (g)~~—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 given as a matter of law.

~~(h) (h)~~—The Company shall provide such other types of insurance, at such minimum limits, as are specified in Schedule E attached hereto.

12.2.2. General Requirements for Insurance Policies.

~~(a) (a)~~—All required insurance policies shall be maintained 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, unless prior written approval is obtained from the Mayor's Office of Operations.

~~(b) (b)~~—The Company shall be 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.

~~(c) (c)~~—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 such schedule or (ii) the limits provided to the Company as Named Insured under all primary, excess and umbrella policies of that type of coverage.

~~(d) (d)~~—Except for insurance required pursuant to Sections 12.2.1(b) and 12.2.1(c) herein, all policies shall be endorsed to provide that the policy may not be cancelled, terminated, modified or changed unless 30 days prior written notice is sent by the Insurance Company to the Named Insured (or First Named Insured, as appropriate), the Commissioner, and to Comptroller, attn: Office of Contract Administration, Municipal Building, Room 1005, New York, New York 10007.

~~(e) (e)~~—Within 15 days of receipt by the City of any notice as described in 12.2.2(d) hereof, the Company shall obtain and furnish to DOT, with a copy to the Comptroller, replacement insurance policies in a form acceptable to DOT and the Comptroller together with evidence demonstrating that the premiums for such insurance have been paid.

12.2.3. Proof of Insurance.

~~(a)~~ ~~(a)~~—The Company has, for each policy required under this Agreement, filed a Certificate of Insurance with the Commissioner pursuant to Section 12.2.6 hereof.

~~(b)~~ ~~(b)~~—All Certificates of Insurance shall be in a form acceptable to the City and shall certify the issuance and effectiveness of the Types of Insurance specified in Schedule E, each with the specified Minimum Limits and Special Conditions.

~~(c)~~ ~~(c)~~—Certificates of Insurance confirming renewals of, or changes to, insurance shall be submitted to the Commissioner not less than 30 Days prior to the expiration date of coverage of policies required under this Agreement. Such Certificates of Insurance shall comply with the requirements of Sections 12.2.3(a) and 12.2.3(b) herein.

~~(d)~~ ~~(d)~~—The Company shall be obligated to provide the City with a copy of any policy required by this Section 12 upon the demand for such policy by the Commissioner or the New York City Law Department.

12.2.4. Operations of the Company.

~~(a)~~ ~~(a)~~—Acceptance by the Commissioner of a certificate hereunder does not excuse the Company from securing a policy consistent with all provisions of this Section 12 or of any liability arising from its failure to do so.

~~(b)~~ ~~(b)~~—The Company shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to perform Services only during the effective period of all required coverage.

~~(c)~~ ~~(c)~~—In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Company shall immediately stop all Services, and shall not recommence Services until authorized in writing to do so by the Commissioner. Notwithstanding the above, if any or all of the Services are being provided by a subcontractor that maintains insurance satisfactory to the City that names the City as additional insured, and such insurance is in full force and effect and remains in full force and effect during the period of the lapse, then the Company, acting through its subcontractor, may continue to provide such Services as directed by DOT.

~~(d)~~ ~~(d)~~—The Company shall notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of the Company or its subcontractors, promptly, but not later than 20 days after such event. The Company'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 Company as Named Insured." The Company's notice to the insurance carrier shall contain the following information: the name of the Company, 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 Company, the identity of the persons or things injured, damaged or lost. Additionally,

~~(i)~~ ~~(i)~~—At the time notice is provided to the insurance carrier(s), the Company shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street —Room 1222, New York, New York 10007. Notice to the Commissioner shall be sent to the address set forth in Schedule E attached hereto; and

~~(ii)~~ ~~(ii)~~—If the Company fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Company 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.

12.2.5. Subcontractor Insurance. The Company shall ensure that each subcontractor name 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 Company. The foregoing requirements shall not apply to insurance provided pursuant to Sections 12.2.1(b) and 12.2.1(c) herein.

12.2.6. Insurance Notices, Filings, Submissions. Wherever reference is made in Section 12.2 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Schedule E attached hereto. In the event no address is set forth in such schedule, such documents are to be sent to the Commissioner's address as provided in Section 14.45 hereof.

12.2.7. Disposal. If pursuant to this Agreement the Company is involved in the disposal of hazardous materials, the Company shall dispose such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least \$2,000,000 for losses arising from such disposal site.

12.2.8. Adjusted Insurance Coverage. The Company agrees to adjust the minimum coverage of the liability insurance policy or policies required in this Section 12.2 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 with respect to 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. Such notice shall specify in reasonable detail why the City is requiring such additional amounts or types of insurance.

12.2.9. Other Remedies. Insurance coverage in the minimum amounts provided for herein shall not relieve the Company or subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

SECTION 13

DEFAULTS/DEFAULTS AND REMEDIES; TERMINATION/TERMINATION

13.1.13.1 Defaults.

(a) ~~(a)~~—In the event any requirement listed in Appendix A is not performed to the standard set forth in Appendix A and this Agreement, the Company shall be obligated to pay the liquidated damages described in Appendix A. The Company agrees that any failure to perform such requirements to such standard shall result in injuries to the City and its residents, businesses and institutions the compensation for which will be difficult to ascertain. Accordingly the Company agrees that the liquidated damages in the amounts set forth in Appendix A are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. Liquidated damages payable by the Company under this Agreement shall cease to accrue following expiration or termination of this Agreement for any reason, but shall accrue or be imposed during any holdover period.

(b) ~~(b)~~—In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement, which breach or default is not cured within the specific cure period provided for in this Agreement (each such breach or default referred to herein as a “Default”), then the City may:

(i) ~~(i)~~—cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

(ii) ~~(ii)~~—make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

(iii) ~~(iii)~~—draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

(iv) ~~(iv)~~—pursue any rights the City may have under the Guaranty;

(v) ~~(v)~~—seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

(vi) ~~(vi)~~—seek to restrain by injunction the continuation of the Default;

(vii) ~~(vii)~~—and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

~~(c)~~ ~~(e)~~—In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement for which breach or default a specific time period to cure is not expressly identified in this Agreement, and, except as provided in the last paragraph of this Section 13.1(c) below, which breach or default is not cured within ten days after notice from the City (each such breach or default also referred to herein as a “Default”), then the City may:

~~(i)~~ ~~(i)~~—cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

~~(ii)~~ ~~(ii)~~—make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

~~(iii)~~ ~~(iii)~~—draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

~~(iv)~~ ~~(iv)~~—pursue any rights the City may have under the Guaranty;

~~(v)~~ ~~(v)~~—seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

~~(vi)~~ ~~(vi)~~—seek to restrain by injunction the continuation of the Default;

~~(vii)~~ ~~(vii)~~—and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

Notwithstanding the above, the 10-day cure period is not applicable to (x) any matters contemplated by Section 2.5.4.4 herein, (y) any breach of the Company’s obligations set forth in Section 3.1.5(e) herein (with respect to its obligation to remove broken glass within 24 hours), 3.1.5(f)(1) herein, or 4.4.9 herein (with respect to the obligation to remove material in violation of Section 4.4.1 herein), or (z) the breach of any other obligation of the Company which adversely impacts public safety, and the City may exercise any of the rights enumerated in this paragraph arising from such breach.

~~(d)~~ ~~(d)~~—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 Company shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

~~(e)~~ ~~(e)~~—The rights and remedies described in the preceding subsections (b) and (c) shall not be exclusive (except as specifically set forth therein with regard to liquidated damages), but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any liability under this Agreement. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City. The provisions of this Section 13.1(e) shall at all times be subject to Section 13.5(b).

13.2.13.2 Termination Defaults.

13.2.1. Definition of Termination Default.

~~(a)~~ ~~(a)~~—Any failure by the Company to comply with the material terms and conditions of this Agreement, as such failures are described in the following subsections (i) through (xiv) shall be a “Termination Default” hereunder:

~~(i)~~ ~~(i)~~—material failure to comply with the Company’s obligations to install Coordinated Franchise Structures in accordance with this Agreement (including the specified timeframes);

~~(ii)~~ ~~(ii)~~—material failure to comply with the Company’s obligations to maintain the Coordinated Street Furniture as described in this Agreement;

~~(iii)~~ ~~(iii)~~—persistent or repeated failures to timely pay amounts due hereunder that are not being disputed by the Company in good faith, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

~~(iv)~~ ~~(iv)~~—persistent or repeated failures to timely abide by the Company’s obligations under this Agreement, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

~~(v)~~ ~~(v)~~—if the Company fails to maintain in effect the Letter of Credit in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.5(b)), and such failure continues for ten business days after notice;

~~(vi)~~ ~~(vi)~~—if the Company fails to maintain in effect the Performance Bond in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.1(b),); and such failure continues for ten business days after notice;

~~(vii)~~ ~~(vii)~~—if the Company fails to replenish the Security Fund as required under the provisions of Section 6 herein and such failure continues for ten business days after notice;

~~(viii)~~ ~~(viii)~~—if the Company fails to establish or maintain the Escrow Fund or to cause the establishment or maintenance of the Supplemental Escrow Fund as required under the provisions of Section 9.5 herein and such failure continues for ten business days after notice;

~~(ix)~~ ~~(ix)~~—if, in connection with this Agreement, the Company (x) intentionally or recklessly makes a material false entry in the books of account of the Company or intentionally or recklessly makes a material false statement in the reports or other filings submitted to the City, or (y) makes multiple false entries that are material in the aggregate in the books of account of the Company or multiple false statements that are material in the aggregate in the reports or other filings submitted to the City;

~~(x)~~ ~~(x)~~—if the Company fails to maintain insurance coverage or otherwise materially breaches Section 12.2 herein and such failure continues for ten business days after notice from the City to the Company;

~~(xi)~~ ~~(xi)~~—if the Company engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;

~~(xii)~~ ~~(xii)~~—if the Company, 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;

~~(xiii)~~ ~~(xiii)~~—the occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other similar judicial or non judicial sale of all or any material part of the System, and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner within 20 business days after notice from the City to the Company that such event will not lead to such foreclosure or other judicial or non judicial sale. Such an event may include, without limitation: (a) default under any loan or any financing arrangement material to the System or the obligations of the Company under this Agreement; (b) default under any contract material to the System or the obligations of the Company under this Agreement; or (c) default under any lease or mortgage covering all or any material part of the System;

~~(xiv)~~ ~~(xiv)~~—if: (aa) the Company shall make an assignment or other transfer of interest of the Company or the System, or there is any change in Control, in each case prohibited by or in violation of Section 11, or if the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any part of the System; (bb) a writ or warranty of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (cc) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings which is unstayed for 60 days (provided that the 60 day period shall not apply if as a result of such final order, judgment or decree the Company will be unable to perform its obligations under this Agreement); or (dd) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company;

~~(xv)~~ ~~(xv)~~—the Company sets a charge for use of the APTs that exceeds the maximum permitted charge hereunder.

~~(b)~~ ~~(b)~~—Relation To Other Defaults. The Company acknowledges that a Termination Default may exist pursuant to one or more of the provisions of the preceding subsection 13.2.1(a) even if such defaults on an individual basis have subsequently been cured after their original occurrence, were the subject of liquidated damages and such liquidated damages have been paid, or were subsequently remediated by recourse to the Security Fund, Letter of Credit, Performance Bond or Guaranty or by collection of judicially awarded damages.

~~(c)~~ ~~(c)~~—Prior Notice of Certain Events. The City shall give the Company reasonable notice of the existence of any events or circumstances —that the City reasonably believes would give rise to a Termination Default under Section 13.2(a)(i)-(iv) if such events or circumstances were to continue.

~~(d)~~ ~~(d)~~—Remedies of the City for Termination Defaults. In the event of a Termination Default, the City may (in addition to any other remedy which the City may have under Section 13.1 hereof) at its option, give to the Company a notice, in accordance with Section 14.5 hereof, stating that this Agreement and the franchise granted hereunder shall terminate on the date specified in such notice (which date shall not be less than ten days from the giving of the notice), and this Agreement and the franchise granted hereunder shall terminate on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the franchise granted herein.

13.3.13.3 Expiration and Termination for Reasons Other Than Termination Default.

~~(a)~~ ~~(a)~~ — Termination for Reasons Other Than Termination Default.

~~(i)~~ ~~(i)~~ — In the event of the condemnation by 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 Company to carry out its obligations and the purposes of this Agreement and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner, within 20 business days after notice that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Company, then and in such event the City may, at its option, to the extent permitted by law, terminate this Agreement by notice within 60 days after the expiration of the foregoing 20 business day notice period as set forth in Section 14.5 hereof.

~~(ii)~~ ~~(ii)~~ — In the event the Company shall fail to promptly (A) terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: ~~(i)~~ this Agreement, ~~(ii)~~ the award of the franchise granted pursuant to this Agreement, ~~(iii)~~ any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or ~~(iv)~~ the business activities and services to be undertaken or provided by the Company pursuant to this Agreement or (B) suspend pending final resolution of the matter its relationship with any Affiliated Person, any employee or agent of the Company who is indicted 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 pursuant to this Agreement, ~~(iii)~~ any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or ~~(iv)~~ the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

~~(iii)~~ ~~(iii)~~ — In the Event that the Company is indicted 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 pursuant to this Agreement, ~~(iii)~~ any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or ~~(iv)~~ the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

~~(b)~~ ~~(b)~~ — Expiration. — This Agreement, if not previously terminated pursuant to the terms of the Agreement, shall ~~expired~~expire at the end of the scheduled Term.

13.4.13.4 Disposition of System-.

13.4.1. Expiration. Upon expiration of this Agreement, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option, to be exercised at least 60 days prior to the expiration, Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 180 days of expiration of this Agreement, which the Company agrees to undertake and complete.

13.4.2. After Termination Upon Termination Default. In the event of any termination of this Agreement due to a Termination Default by the Company, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option to be exercised within 30 days of the date of termination, the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.4.3. After Termination For Reason Other Than A Termination Default. In the event of any termination of this Agreement by the City in accordance with Section 13.3(a), within 30 days of the date of such termination, at the City's option (a) the City may purchase from the Company the System, or any portion thereof, at a purchase price determined by calculating 100% of the actual cost of fabricating and installing the structures, less depreciation on a straight line basis using an annual depreciation of 10% starting from the initial Installation Date of the applicable Coordinated Franchise Structure; or (b) the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore their site to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.5.13.5 Effect of Expiration or Termination-.

(a) (a) — For Reason Other Than A Termination Default. Following expiration or sooner termination of this Agreement pursuant to Section 13.3(a), the Company shall not be obligated to pay the Franchise Fee, other than in accordance with Section 9.5(b) herein. The City shall refund to the Company within 30 days of the date of such termination, any portion of the Advance Payment which, had the Advance Payment been payable over the first four years of the Term in accordance with the annual amounts set forth on Schedule C, would not yet have become payable to the City in accordance with the terms of Section 9.5 herein.

~~(b)~~ ~~(b)~~—Upon a Termination Default. Following termination of this Agreement upon a Termination Default, except with respect to the Company’s indemnification obligations for third-party claims under Section 12.1, any amounts that may be owed pursuant to Section 4.7 for amounts deferred but not repaid, or any unpaid compensation accrued through the date of termination, the maximum amount of damages that the Company may be liable for in connection with this Agreement (whether as liquidated damages, actual contract damages, or under any theory of recovery whatsoever) shall be limited to, subject to the City’s mitigation of damages obligations as set forth in Section 14.23 hereof, the greater of:

~~(i)~~ ~~(i)~~—the Cash Component for the first three years after any judgment is entered against the Company (or what would have been the last three years of the Term if judgment is entered after what would have been the 16th year of the Term); or

~~(ii)~~ ~~(ii)~~—three times the cash portion of the Franchise Fee owed to the City for the last year of the Term before this Agreement was terminated after adjusting for inflation in the amount of 2.5% per year up to the date the judgment is entered,

plus the full amount of the Security Fund, recourse to the Performance Bond and the full amount of the Letter of Credit then required pursuant to this Agreement.

13.6 Procedures for Transfer After Expiration or Termination. Upon the acquisition of the System by the City or the City’s designee pursuant to Section 13.4 herein, the Company shall:

~~(a)~~ ~~(a)~~—cooperate with the City to effectuate an orderly transfer to the City (or the City’s designee) of all records and information reasonably necessary to maintain and operate the System being transferred (such part of the System referred to hereafter as the “Post Term System”); and

~~(b)~~ ~~(b)~~—at the City’s option promptly supply the Commissioner with all existing records, contracts, leases, licenses, permits, rights-of-way, and any other materials necessary for the City or its designee to operate and maintain the Post Term System.

~~13.7.13.7~~ Removal Upon Expiration or Termination.

13.7.1. Removal Procedures. If, upon expiration or any termination of this Agreement, all or any part of the Coordinated Franchise Structures is to be removed pursuant to this Section 13, the following procedures shall apply:

~~(a)~~ ~~(a)~~—in removing the System, or part thereof, the Company shall restore all Inalienable Property of the City and any other property affected by the actions of the Company under this Agreement (“Other Affected Property”) to its condition as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, and shall have received all applicable approvals from DOT and any other applicable City approvals;

~~(b)~~ ~~(b)~~ —the City shall have the right to inspect and approve the condition of such Inalienable Property of the City after removal and, to the extent that the City reasonably determines that said Inalienable Property of the City and Other Affected Property have not been restored to its condition, as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, the Company shall be liable to the City for the cost of restoring the Inalienable Property of the City and Other Affected Property to said condition; and

~~(c)~~ ~~(e)~~ —the Security Fund, Performance Bond, Letter of Credit, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal of all or any of the Coordinated Franchise Structures and/or restoration and associated repair of all Inalienable Property of the City or Other Affected Property, and for not less than 120 days thereafter, or for such longer periods as set forth in this Agreement.

13.7.2. Failure to Commence or Complete Removal. If, in the reasonable judgment of the Commissioner, the Company fails to commence removal or if the Company fails to substantially complete such removal, 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 Section 13, the Commissioner may, at his or her sole discretion authorize removal of the System, or part thereof, at the Company's cost and expense, by another Person or remove such System, or part thereof, at the Company's cost and expense, itself.

13.7.3. No Condemnation. None of the declaration, connection, use, transfer or other actions by the City or the Commissioner under this Section 13 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

13.7.4. Other Provisions. The City and the Company shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that the Company hereby waives its rights, if any, to relocation costs that may be provided by law and except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

SECTION 14

MISCELLANEOUS

14.1 Appendices, Exhibits, Schedules. The Appendices, Exhibits and Schedules to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are except as otherwise specified in said Appendices, Exhibits and Schedules and in Schedule F, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any

subsequent amendment or modification to said Appendices, Exhibits and Schedules shall be the same as those applicable to any amendment or modification hereof.

14.2 Order of Governance. The following order of governance shall prevail in the event of a conflict between this Agreement and any attachments hereto: 1. Authorizing Resolution; 2. this Agreement; 3. the Schedules, Appendices and Exhibits attached hereto, excluding, however, the BAFO, Proposal and the RFP; 4. BAFO; 5. Proposal; 6. RFP.

14.3 Coordination. The Company and DOT acknowledge and agree that the nature of the relationship created by this Agreement requires extensive and ongoing long-term coordination between the parties. Accordingly, no later than ten business days after the Effective Date, the City shall designate a director of Coordinated Franchise Structures and the Company shall designate the Director of Inter-governmental Relations, as the individual responsible for coordinating with the other party with respect to all matters that may arise from time to time, including matters arising under Section 2.4.4, in the course of the Term relating to the installation, maintenance, and operation of the System. When at any time during the Term of this Agreement any notice is required to be sent to the Company, other than a notice pursuant to Section 14.5 hereof, such notice shall 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. Any such oral notice shall only be effective if (a) given to the person identified in this Section 14.3 or a designee of such person whose designation is notified to the other party hereto in writing and (b) followed reasonably promptly by written notice, which may for such purposes be given by e-mail.

14.4 Publicity. The prior written approval of DOT is required before the Company or any of its employees, servants, agents or independent contractors may, at any time, 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 of communication bearing on the work performed or data collected under this Agreement. If the Company publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, DOT shall 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, such portion of the publication.

14.5 Notices. All notices required to be given to the City or the Company pursuant to Sections 1.27, 6.6, 7.1, 7.2-(c), 7.7, 9.4.1, 9.4.1(d), 10.6.2, 11.3, 12.1.5, 13.2.1(b), 13.2.1(c), 13.2.1(d), 13.3(a), 13.4.1, 13.4.2, 14.10, and 14.11 shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by overnight mail, by fax, or by personal delivery to the address or facsimile number listed below, or to such other location or person as any party may designate in writing from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to “the City^{2,22}” in which case such communication shall be sent to:

If to the City:

The Commissioner of DOT at ~~55 Water~~^{40 Worth} Street, New York, New York
10041+0013;

DRAFT

with a copy to

General Counsel, New York City Department of Transportation, 55 Water40
Worth Street, New York, New York 10041+0013

If to the Company:

Cemusa NY, LLCCEMUSA, Inc. at 420 Lexington Avenue, Suite 2533, New York, NY 10170 or+0470or fax # 212-599-7999, Attention: Director of Inter-governmental Relations;

with a copy to

Greenberg TraurigDLA Piper Rudnick Gray Cary, LLP, MetLife Building, 200
Park Avenue+251 Ave of the Americas, New York, New York, 10166+0020, or fax # 212-805-
9299835-6001, Attention: Edward C. WallaceAnthony P. Coles

Except as otherwise provided herein, the mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when mailed or when received if transmitted by facsimile. Any notice required to be given to the Company pursuant to Section 13 herein for which a cure period is ten days or less, which requires action to be taken within ten days or less, or notifies the Company of an event or action that will occur in 10 days or less must be given by personal delivery, overnight mail service or facsimile transmission.

14.6 General Representations, Warranties and Covenants of the Company. In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City), as set forth in Sections 14.6.1 and 14.6.2 as of the date of this AgreementEffective Date.

14.6.1. Organization, Standing and Power. The Company is an entity of the type described in Appendix E attached hereto, validly existing and in good standing under the laws of the State specified in Appendix E attached hereto and is duly authorized to do business in the State of New York and in the City. Appendix E attached hereto represents a complete and accurate description of the organizational and ownership structure of the Company and a complete and accurate list of all Persons which hold, directly or indirectly, a 10% interest in the Company, and all entities in which the Company, directly or indirectly, holds a 10% or greater interest. The Company 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 in connection with or as contemplated hereby. The Company is qualified to do business and is in good standing in the State of New York.

14.6.2. Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the certified copies of authorizations for the execution and delivery of this Agreement provided to the City pursuant to Section 2.2 herein are true and correct. This Agreement and all other agreements, if any entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms. The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Neither the execution and delivery of this Agreement by the Company nor the performance of its obligations contemplated hereby will:

(a) ~~(a)~~—conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of the Company or to the Company’s knowledge, any agreement among the owners of the Company, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;

(b) ~~(b)~~—result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of the Company except permitted encumbrances under Section 11.5 herein; or

(c) ~~(c)~~—terminate, breach or cause a default under any provision or term of any contract, arrangement, agreement, license or commitment to which the Company is a party, except for any event specified herein or in (a) or (b) above, which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company or the System.

14.6.3. Fees. The Company has paid all material franchise, permit, or other fees and charges to the City which have become due prior to the date of this Agreement pursuant to any franchise, permit, or other agreement.

14.6.4. Criminal Acts Representation. Neither the Company nor, any Affiliated Person or any employee or agent of the Company, has committed and/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 (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided pursuant to this Agreement.

14.6.5. Criminal Acts Covenant. The Company shall promptly terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement.

14.6.6. Relationship with the City. The Company affirms and declares that 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 Company to receive a franchise or other public contracts.

14.6.7. Misrepresentation. No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, in connection with any submission to DOT or the Commissioner, including the Proposal, in connection with the negotiation of this Agreement.

14.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement shall apply to the City and the Company and their successors and assigns.

14.8 Comptroller Rights. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

14.9 Remedies. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of Termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City.

14.10 No Waiver; ÷ Cumulative Remedies. No failure on the part of the City or the Company to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City or the

Company, as applicable under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City or the Company, as applicable at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City or the Company, as applicable at any other time. In order for any waiver of the City or the Company, as applicable to be effective, it must be in writing. The failure of the City to take any action regarding a Default or a Termination Default by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such Default or Termination Default.

14.11 Partial Invalidity. The clauses and provisions of this Agreement are intended to be 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, such provision shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are not undermined. If, however, the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are undermined as a result of any clause or provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other party in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity, provided, however, that any such modifications shall be subject to all 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 (which 120-day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences as would ensue if it had been terminated by the City pursuant to Section 13.3(a).

In addition, in the event any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing applicable federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part), the adversely affected party shall notify the other party in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such

change, provided, however, that any such modifications shall be subject to all City approvals and authorizations and compliance with all City procedures and processes.

14.12 Survival. Any provision of this Agreement which should naturally survive the termination or expiration of this Agreement shall be deemed to do so.

14.13 Headings and Construction. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder” and “hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term “may” is permissive; the terms “shall,” “must,” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

~~14.14.14.14 No Subsidy. No public subsidy is provided to the Company pursuant to this Agreement.~~ No public subsidy is provided to the Company pursuant to this Agreement.

14.15 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

14.16 Governing Law. This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, irrespective of conflict of laws principles, as applicable to contracts entered into and to be performed entirely within the State.

14.17 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive the Term.

14.18 Claims Under Agreement. The City and the Company agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall 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”). To effect this Agreement and intent, the Company agrees that:

(a) (a)—If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 14.20 hereof,

(b) (b)—With respect to any action between the City and the Company in New York State Court; the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non convenience; (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;

~~(c)~~ ~~(e)~~—With respect to any action between the City and the Company in Federal Court, the Company 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; and

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

14.19 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 shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and, approved as required by applicable law.

14.20 Service of Process. If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its address as set forth in this Agreement, or to such other address as the Company may provide to the City in writing.

14.21 Compliance With Certain City Requirements. The Company agrees to comply in all respects with the City’s “MacBride Principles”, a copy of which is attached at Appendix F hereto. The Company agrees to comply in all respects with VENDEX, as the same may be amended from time to time.

~~14.22.~~14.22 Compliance With Law, Licenses.

~~(a)~~ ~~(a)~~—The Company at its sole cost and expense shall comply with all applicable City, state and federal laws, regulations and policies.

~~(b)~~ ~~(b)~~—The Company at its sole cost and expense shall obtain all licenses and permits that are necessary for the provision of the Services from, and comply with all rules and regulations of any governmental body having jurisdiction over the Company with respect to the Services.

14.23 Mitigation. In the event of a breach of this Agreement by any of the parties hereto, the other parties will act in good faith and exercise commercially reasonable efforts to mitigate any damages or losses that result from such breach. Notwithstanding the foregoing,

nothing contained in this Section 14.23 shall limit in any respect the parties' right to indemnification pursuant to Section 12 herein.

14.24 Force Majeure and Other Excused Failure to Perform. Neither party shall be liable (including, without limitation, for payment of liquidated damages) for failure to perform any of its obligations, covenants, or conditions contained in this Agreement when such failure is caused by the occurrence of an Event of Force Majeure, and such party's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period. Notwithstanding anything to the contrary set forth in this Agreement, to the extent that the Company is unable to timely perform any of its obligations, covenants, or conditions contained in this Agreement due to the fault of the City, the Company's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period.

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

IN WITNESS WHEREOF, the party of the first part, by its Deputy Mayor, duly authorized by the Charter of The City of New York, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and by its Commissioner of The New York City Department of Transportation, duly authorized, has caused its name to be hereunto signed 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.

THE CITY OF NEW YORK

By: _____
Deputy Mayor of The City of New York

THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

By: _____
Commissioner

Approved as to form,
Certified as to Legal Authority

Acting Corporation Counsel

CEMUSA NY, LLC

By: _____
Name: _____
Title: _____

Attest: _____
City Clerk

~~THE CITY OF NEW YORK~~

By: _____
Deputy Mayor of The City of New York

~~THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION~~

By: _____
Commissioner

Approved as to form,
Certified as to Legal Authority

Acting Corporation Counsel

~~CEMUSA, INC.~~

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest: _____

City Clerk

CITY OF NEW YORK)
) ss:
STATE OF NEW YORK)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, Deputy Mayor of the City of New York, party to the above instrument, personally appeared before me in said State on the ___ day of _____, 20152006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as Deputy Mayor of the City of New York.

Given under my hand and seal, this ___ day of _____, 20152006.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, Commissioner of The New York City Department of Transportation, party to the above instrument, personally appeared before me in said State on the _____ day of _____, ~~2015~~2006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that she executed the same as his free act and deed in her capacity as Commissioner of The New York City Department of the Transportation.

Given under my hand and seal, this ____ day of _____, ~~2015~~2006.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK _____)
_____) SS:
STATE OF NEW YORK _____)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, _____ of CEMUSA, INC., party to the above instrument, personally appeared before me in said State on the ____ day of _____, 2006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as _____ of CEMUSA, INC.

Given under my hand and seal, this ____ day of _____, 2006.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, _____ of CEMUSA ~~NY, LLC, INC.~~, party to the above instrument, personally appeared before me in said State on the ____ day of _____, ~~2015~~2006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as _____ of CEMUSA, INC.

Given under my hand and seal, this ____ day of _____, ~~2015~~2006.

Notary Public

My Commission Expires: _____

Amended and Restated Franchise Agreement

between

THE CITY OF NEW YORK

and

CEMUSA NY, LLC

Coordinated Street Furniture Franchise

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AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, (this "Agreement") executed as of the _____ day of _____, 2015 by and between **THE CITY OF NEW YORK** (as defined in Section 1 hereof, the "City") acting by and through its **DEPARTMENT OF TRANSPORTATION** (as defined in Section 1 hereof, "DOT"), having an address at 55 Water Street, New York, New York 10041, and **CEMUSA NY, LLC**, having a place of business at 420 Lexington Avenue, Suite 2533, New York, New York 10170 (as defined in Section 1 hereof, the "Company").

WITNESSETH:

WHEREAS, pursuant to City Council Authorizing Resolution No. 1004 (passed by the New York City Council on August 19, 2003), attached as Exhibit A hereto, the DOT, on behalf of the City, has the authority to grant non-exclusive franchises for the occupation or use of the Inalienable Property of the City (as defined in Section 1 hereof, the "Inalienable Property of the City") for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs (as each is hereinafter defined) and for the installation and maintenance of Newsstands (as hereinafter defined) (Bus Shelters, APTs, PSSs and Newsstands are collectively referred to herein as "Coordinated Franchise Structures"), including renewals thereof; and

WHEREAS, DOT issued a Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004, (as defined in Section 1 hereof, the "RFP") inviting qualified entities to submit proposals for the design, construction, installation, operation and maintenance of Coordinated Franchise Structures on City streets to serve with a coordinated design the needs of residents of, and visitors to, the City; and

WHEREAS, Cemusa, Inc. submitted to DOT its Proposal in response to the RFP; and

WHEREAS, DOT recommended Cemusa, Inc.'s Proposal based on its assessment that it was the most beneficial proposal in the interest of the City; and

WHEREAS, on May 11, 2006, the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the "FCRC") held a public hearing on the proposed grant of a franchise to Cemusa, Inc. for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs and for the installation and maintenance of Newsstands, and associated equipment 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"); and

WHEREAS, the FCRC, at its duly constituted meeting held on May 15, 2006, and acting in accordance with its customary procedures, voted on and approved the grant to Cemusa, Inc. of a franchise as contemplated by the RFP; and

WHEREAS, the potential environmental impacts of the action to be taken hereunder have been considered by the City and have been determined by the City to be fully consistent with those resulting from the Council's approval of the authorization of DOT to grant a nonexclusive

franchise for the installation, operation and maintenance of coordinated franchise structures, which include bus stop shelters, automatic public toilets, newsstands and other public service structures and Local Law 64 of 2003 (the newsstand legislation) which were reviewed and for which a negative declaration was issued finding that such actions will not result in any significant adverse environmental impacts, all in accordance with the New York State Environmental Quality Review Act (“SEQRA”), 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); and

WHEREAS, on June 26, 2006, Cemusa, Inc. and the City acting by and through its DOT entered into the Franchise Agreement for the Coordinated Street Furniture Franchise for the installation, operation and maintenance of Bus Shelters, APTs, and PSSs and for installation and maintenance of Newsstands (the “2006 Agreement”); and

WHEREAS, on September 20, 2007, the franchisee’s interest in the 2006 Agreement was assigned to Cemusa NY, LLC; and

WHEREAS, on March 17, 2014, FCC Versia, S.A., Beta De Administración, S.A., JCDecaux Europe Holding and JCDecaux SA entered into an Agreement for the Sale and Purchase of CEMUSA – Corporación Europea de Mobiliario Urbano, S.A., pursuant to which all shares in Cemusa, Inc. shall be transferred from CEMUSA – Corporación Europea de Mobiliario Urbano, S.A. to JCDecaux North America, Inc. (“JCDecaux”) (the transaction described herein being referred to hereinafter as the “2015 Change in Control”); and

WHEREAS, in accordance with the 2006 Agreement, on September 28, 2015, the FCRC held a public hearing to consider the 2015 Change in Control; and

WHEREAS, the FCRC, at a meeting held on September 30, 2015, and acting in accordance with its customary procedures, voted on and approved the 2015 Change in Control together with certain amendments, clarifications and provisions updating the 2006 Agreement, all as fully set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1

DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. In addition, all references to “install, operate and maintain,” “installation, operation and maintenance,” “install and maintain,” “installation and maintenance,” or any other variance therein, shall be deemed to include any construction, installation,

operation, maintenance, repair, upgrading, renovation, removal, relocation, alteration, replacement or deactivation as appropriate, except that with respect to Newsstands, it shall not include operation.

1.1 “ADA” shall have the meaning given in Section 3.7 hereof.

1.2 “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 Company; (ii) each Person in which the Company has directly or indirectly, a Controlling Interest; (iii) each executive officer, director or general partner or limited partner holding an interest of 10% or more in the Company; and (iv) each Person directly or indirectly, controlling, controlled by or under common Control with the Company; provided that “Affiliate” or “Affiliated Person” shall in no event mean the City, any limited partner holding an interest of less than 10% of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliate or Affiliated Person.

1.3 “Agreement” means this Agreement, together with the Appendices, Exhibits and Schedules attached hereto and all amendments or modifications thereof.

1.4 “APT(s)” means automatic public toilets installed or to be installed by the Company pursuant to this Agreement.

1.5 “Arbitrated Value” shall have the meaning given in Section 9.4.1(d) hereof.

1.6 “Art Commission” means the Art Commission of the City of New York, or any successor thereto.

1.7 “AVLC(s)” means automatic vehicle location and control systems.

1.8 “Bus Shelter(s)” means structures intended as bus stop shelters (including seating, if installed) which provide meaningful protection from precipitation, wind, and sun, consisting of New Bus Shelters and Existing Bus Shelters.

1.9 “BAFO” means Cemusa Inc.’s Best and Final Offer dated June 27, 2005.

1.10 “Baseline In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

1.11 “Build Start Date” shall have the meaning given in Section 2.4.6 hereof.

1.12 “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 thereof, or any successor thereto.

1.13 Intentionally Deleted.

1.14 “Commissioner” means the Commissioner of DOT, or his or her designee, or any successor in function to the Commissioner.

1.15 “Company” means Cemusa NY, LLC, a Delaware limited liability company, whose principal place of business is located at 420 Lexington Avenue, Suite 2533, New York, New York 10170.

1.16 “Comptroller” means the Comptroller of the City, the Comptroller’s designee, or any successor in function to the Comptroller.

1.17 “Control” or “Controlling Interest” in a Person, in the assets comprising the System, in the Company or in the franchise granted herein means working control in whatever manner exercised, including without limitation, working control through ownership, management, or negative control (provided, however that negative control shall not be interpreted to include negative covenants that may be set forth in financing documentation or similar provisions that may be set forth in financing documentation), as the case may be, of such Person, the assets comprising the System, the Company or the franchise granted herein. A rebuttable presumption of the existence of Control or a Controlling Interest in a Person, in the assets comprising the System, in the Company or in the franchise granted herein shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public), of 10% or more of such Person, the assets comprising the System, the Company or the franchise granted herein. “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person or group of Persons.

1.18 “Coordinated Franchise Structure(s)” means Bus Shelters, APTs, PSSs and Newsstands and any associated equipment, wiring, and/or cables that are attached to such Coordinated Franchise Structures (other than any such associated equipment, wiring, and/or cables that are owned by third parties) and the advertising panels, installed on, over and under the Inalienable Property of the City.

1.19 “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).

1.20 “Damages” shall have the meaning given in Section 12.1.1 hereof.

1.21 “DOT” or the “Department” means the Department of Transportation of the City, its designee, or any successor thereto.

1.22 “Effective Date” means the effective date of the 2006 Agreement, which is June 26, 2006.

1.23 “Electronic Inventory and Management Information System” or “EIMIS” means the software which constitutes a computerized inventory system for the Coordinated Franchise

Structures and sites as further set forth in the RFP and the Proposal that includes, but is not limited to (a) database, mapping, and graphic capabilities for recording the location (by borough and community district), type, design and features of all installed Coordinated Franchise Structures and the location, features, and status of proposed sites for Coordinated Franchise Structures including sites that have been rejected and (b) capacity for contemporaneous two-way information sharing between DOT and the Company regarding the design, construction, installation, operation, and maintenance of the Coordinated Franchise Structures.

1.24 “Estimated In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

1.25 “Escrow Agent” shall have the meaning given in Section 9.5(c) hereof.

1.26 “Escrow Agreement” shall have the meaning given in Section 9.5(c) hereof.

1.27 “Escrow Fund” shall have the meaning given in Section 9.5(c) hereof.

1.28 “Event of Force Majeure” means a delay due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the party claiming an Event of Force Majeure, provided in each case that such party has taken and continues to take all reasonable actions to avoid or mitigate such delay and provided that such party notifies the other party to this Agreement in writing of the occurrence of such 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 Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity’s final decision relating to the Company, this Agreement or the System, whether positive or negative, once made constitute an Event of Force Majeure (the term “final decision” in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). The financial incapacity of the Company shall not constitute an Event of Force Majeure.

1.29 “Existing Bus Shelters” means the existing Bus Shelters as of the Effective Date, as currently set forth on Schedule A attached hereto.

1.30 “Existing Bus Shelter Replacement Schedule” shall have the meaning given in Section 2.4.6(a)(i) hereof.

1.31 “Existing Newsstands” means the existing newsstands as of the Effective Date, as currently set forth on Schedule B attached hereto.

1.32 “FCRC” means the Franchise and Concession Review Committee of the City, or any successor thereto.

1.33 “Franchise Fees” means the fees paid by the Company to the City as set forth in Section 9 hereof.

1.34 “Guarantor” shall mean JCDecaux SA.

1.35 “Guaranty” shall have the meaning given in Section 2.2 hereof.

1.36 “Historic Districts” means those districts so designated by Landmarks.

1.37 “Inalienable Property of the City” means the property designated in Section 383 of the Charter of The City of New York.

1.38 “Indemnitees” shall have the meaning given in Section 12.1.1 hereof.

1.39 “Installation Date” shall have the meaning given in Sections 2.4.6(e) and 2.4.6(f) hereof.

1.40 “JCDecaux In-Kind Market(s)” shall have the meaning given in Section 9.1(a) hereof.

1.41 “Landmarks” shall mean the Landmarks Preservation Commission of the City of New York, or any successor thereto.

1.42 “L/C Replenishment Period” shall have the meaning given in Section 7.8 hereof.

1.43 “Letter of Credit” shall have the meaning given in Section 7.1(a) hereof.

1.44 “Mayor” means the chief executive officer of the City or any designee thereof

1.45 “Media Plan” shall have the meaning given in Section 9.4(a) hereof.

1.46 “New Bus Shelter(s)” means bus shelters installed or to be installed by the Company in conformity with the Plans and Specifications, which replace Existing Bus Shelters or are placed at DOT’s request at other locations, as contemplated in this Agreement, and shall also include Reciprocal Bus Shelters and Fifth Avenue Bus Shelters.

1.47 “New Newsstand” means a Newsstand which is not a Replacement Newsstand as defined in Local Law 64 for the year 2003.

1.48 “New Newsstand Operator” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates or will operate a New Newsstand in the City.

1.49 “Newsstand(s)” means structures intended for selling and displaying newspapers, periodicals and convenience items installed or to be installed by the Company pursuant to this Agreement.

1.50 “Newsstand Operator(s)” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates a Newsstand in the City.

1.51 “NYCMDC” means the New York City Marketing Development Corporation, or successor thereto, acting as agent for the City. If there is no successor to NYCMDC, then DOT shall be deemed the successor thereto for purposes of this Agreement. As agent for the City all obligations of NYCMDC under this Agreement shall be binding on and enforceable against the City, and all benefits to NYCMDC under this Agreement shall accrue to, and be enforceable by, the City.

1.52 “Other Affected Property” shall have meaning given in Section 13.7.1(a) hereof.

1.53 “Performance Bond” shall have the meaning given in Section 7.1(a) hereof.

1.54 “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 shall not mean the City.

1.55 “Plans and Specifications” shall mean the plans, specifications, and designs for the Coordinated Franchise Structures (other than the Existing Bus Shelters) to be installed by the Company pursuant to this Agreement, as approved by the Art Commission and Landmarks to the extent required by law and accepted by DOT, as may be modified from time to time pursuant to this Agreement, and all rights of copyright, patent, trademark, service mark, trade dress, and all other intellectual property rights of any kind arising out of, relating to, or embodied or incorporated in the Coordinated Franchise Structures; any reports, documents, data, drawings, sketches, mockups, models, photographs, images, and/or other materials of any kind and in any medium produced pursuant to this Agreement related to the design, structure and physical appearance of the Coordinated Franchise Structures, and any and all drafts and/or other preliminary materials in any format or medium related to such items. Nothing contained herein shall be construed as entitling the City to assert ownership rights or the licensed rights set forth in Sections 2.4.2 or 2.6 in any word marks or logos of the Company or its licensors.

1.56 “Post Term System” shall have the meaning given in Section 13.6(a) hereof.

1.57 “Preliminary Plans and Specifications” means the plans and specifications and designs for the “New York City Line” of the Coordinated Franchise Structures, presented in the BAFO as the “Grimshaw 5” line, and shall include all modifications, improvements and further developments as may be required for presentation to the Art Commission and Landmarks.

1.58 “Privileged Information” shall mean attorney-client communications or attorney work product entitled to privilege under New York State law.

1.59 “Proposal” means the proposal dated September 14, 2004, the Response to Follow-Up Questions dated April 11, 2005, the Best and Final Offer dated June 27, 2005 and Cemusa Inc.’s letter dated July 7, 2005, each submitted by Cemusa, Inc. in response to the RFP.

1.60 “PSS(s)” means public service structures such as trash receptacles, multi-rack news racks and information/computer kiosks that provide access to government or commercial activity (provided, however, that no Internet connectivity shall be permitted) to be installed by the Company pursuant to this Agreement.

1.61 “Public Communications Structure Franchise Agreement” or “PCSFA” means the Public Communications Structure Franchise Agreement between the City and CityBridge, LLC, executed December 19, 2014, as such PCSFA may be amended from time to time.

1.62 “quarter” as used in Sections 4 and 9 of this Agreement shall mean three-month periods beginning on the Effective Date. For avoidance of doubt, if the Effective Date is May 25, the quarters of the Term would end on August 24, November 24, February 24 and May 24.

1.63 “Replacement Newsstand” means a Newsstand as defined in Local Law 64 for the year 2003.

1.64 “Replacement Newsstand Schedule” shall have the meaning given in Section 2.4.6(d)(i) hereof.

1.65 “Replenishment Period” shall have the meaning given in Section 6.7.

1.66 “RFP” means the Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004.

1.67 “Scroller(s)” shall mean a two-sided advertising display that contains a minimum of three posters per side, each containing an individual graphic, and that can display multiple campaigns on both sides by providing an opportunity to change an advertising poster at pre-determined time intervals by gradually moving another poster containing an individual graphic in place of the first, allowing for multiple advertisers to post advertising posters in one location (or allowing an advertiser the opportunity to post multiple creative executions in a series as part of one ad campaign) during the same posting period. For the purposes of Section 4 hereof, a Scroller shall not be counted as one panel but rather by the number of posters with individual graphics contained therein.

1.68 “Security Fund” shall have the meaning given in Section 6.1 hereof.

1.69 “Service(s)” means the installation, operation and maintenance of Coordinated Franchise Structures, provided, however, that with respect to Newsstands, Services shall mean installation and maintenance and shall not include operation.

1.70 “Software” shall have the meaning given in Section 2.4.2(b) hereof.

1.71 “Software Escrow Agent” shall have the meaning given in Section 2.4.2(e) hereof.

1.72 “System” means all of the Coordinated Franchise Structures which are to be installed, operated and/or maintained by the Company pursuant to this Agreement and the EIMIS (together with associated data).

1.73 “Term” means the term of the Agreement as described in Section 2.1 hereof.

1.74 “Termination Default” shall have the meaning given in Section 13.2.1(a) hereof.

1.75 “Vendex” means the City’s Vendor Information Exchange System, or any successor system established pursuant to law, rule or regulation.

1.76 “Viacom Outdoor Agreement” means the contract dated March 20, 1985 by and between the City of New York and Miller Signs Associates, as last amended on January 25, 2005.

1.77 “year” shall mean a period of 365 days, as distinguished from a calendar year.

SECTION 2

GRANT OF AUTHORITY

2.1 Term. This Agreement, and the franchise granted hereunder, shall commence upon the Effective Date, and shall continue for a term of 20 years from the Effective Date, unless this Agreement is earlier terminated as provided in this Agreement (the “Term”).

2.2 Submissions By the Company. The City acknowledges receipt from the Company of the following items and documents and hereby agrees that as of the date hereof each such item or document delivered by the Company is on its face in compliance with the terms and conditions of this Agreement and that the Company has fulfilled its contractual obligations thereto, provided, however, that this acknowledgement and agreement in no way releases any of the Company’s ongoing obligations as to such items under this Agreement: (i) evidence as described in Section 12 hereof of the Company’s insurance coverage, (ii) an opinion of the Company’s counsel dated as of the date this Agreement is executed by the Company, in a form reasonably satisfactory to the City, that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company, (iii) an IRS W-9 form certifying the Company’s tax identification number, (iv) a letter from the Company to the Department of Consumer Affairs certifying to the projected costs of the construction and installation of the New Newsstands, as described in Section 2.4.6(d)(iii) hereof, (v) organizational and authorizing documents as described in Sections 14.6.1 and 14.6.2 hereof, (vi) evidence that the Security Fund required pursuant to Section 6 hereof has been created, (vii) evidence that the Performance Bond required pursuant to Section 7 hereof has been created consisting of an original executed performance bond in the required amount and approved form, (viii) evidence that the Letter of Credit required pursuant to Section 7 hereof has been delivered, (ix) a guaranty from the Guarantor (“Guaranty”), and (x) fully completed and up-to-date questionnaires in connection with Vendex which have received a favorable review by the City.

2.3 Certain Actions by the Company. Within five (5) business days of receipt by the Company of an invoice, the Company shall reimburse to the City all costs incurred by the City in publishing legally required notices with respect to the approvals and consents required for this Agreement.

2.4 Nature of Franchise; Effect of Termination.

2.4.1. Nature of Franchise. The City hereby grants the Company, in accordance with the terms and conditions of this Agreement, the RFP, the Proposal and the BAFO (the RFP, Proposal and BAFO are attached hereto and made a part hereof as Exhibits B, C, and D respectively), a non-exclusive franchise providing the right and consent to install, operate and maintain Bus Shelters, APTs, and PSSs and to install and maintain Newsstands on, over and under the Inalienable Property of the City. The exercise of such franchise is subject to all applicable laws, rules and regulations of the City, including with respect to the Newsstands, Local Law 64 for the year 2003 and with respect to multi-rack news racks, 19-128.1 of the Administrative Code. The Inalienable Property of the City does not include premises controlled by such entities as, including, but not limited to, the New York City Department of Education, the New York City Health and Hospitals Corporation, the Metropolitan Transportation Authority, the New York City Housing Authority, the New York City Off Track Betting Corporation, or the interior of any buildings owned, leased, or operated by the City, or any other City property not expressly included in Section 1.37 herein.

2.4.2. Ownership.

(a) All Coordinated Franchise Structures are at all times during the Term of this Agreement, except as otherwise stated in this Agreement, the property of the Company, and the Company has responsibility therefore in accordance with the terms of this Agreement. The Company shall take ownership and be responsible for the operation and maintenance as described herein of the Existing Bus Shelters as of the Effective Date of this Agreement. No representations are or have been made by the City, or by any of its officers, agents, employees or representatives, as to the present physical condition, structural integrity, cost of operation or otherwise of the Existing Bus Shelters, and the Company acknowledges that it has inspected the same, is familiar with the "as is" condition thereof, and will hold the City harmless in connection therewith pursuant to Section 12.1.1 hereof, provided, however, the Company shall have no liability for Damages relating to any event that occurred prior to the Effective Date. Except as otherwise stated in this Agreement, during the Term hereof, the City has no ownership interest, or any obligations with respect to, the Coordinated Franchise Structures.

(b) The Company and/or Cemusa, Inc. has purchased sufficient licenses for all off-the-shelf software and hardware components reasonably necessary for the creation, maintenance, and operation of EIMIS and has secured for the City valid, non-exclusive, royalty-free, paid-up sublicenses, or equivalent rights to use, consistent with the terms and conditions of this Agreement for any proprietary software used by the Company and reasonably necessary for operation and (to the extent applicable) maintenance of EIMIS, and to the extent independent licenses are required, software pertaining to the operation and maintenance of APTs

and PSSs (all such software referred to in this sentence, collectively referred to hereinafter as the “Software,” which for purposes of this Agreement will mean programs in object code format only together with any manuals and documentation). The licenses and sublicenses in the Software to be granted to the Company and/or the City in accordance with this Section 2.4.2(b) or Section 3.3(c) will be sufficient to allow the Company and/or City to (i) access, operate, and maintain the EIMIS, and all APTs and PSSs for the purposes contemplated by this Agreement during the Term and (ii) address changing conditions as they apply to EIMIS, including without limitation, by requiring the applicable software vendors to create derivative works of the Software in customizing, adapting, configuring, optimizing and refining EIMIS consistent with the purposes of this Agreement.

(c) The Plans and Specifications and the Preliminary Plans and Specifications are the property of the Company or its licensors, as applicable. The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City, effective as of the date of the first to occur of the termination or expiration of this Agreement in accordance with its terms or the transfer of ownership of the Coordinated Franchise Structures to the City, an exclusive, irrevocable, royalty-free to the City, fully paid-up license (i) to use the Plans and Specifications, and the Preliminary Plans and Specifications to the extent incorporated in the Plans and Specifications, for the purpose of installing, maintaining and operating in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures) and (ii) to display, perform publicly, and reproduce the Plans and Specifications for purposes of installing, operating, and maintaining in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures). For avoidance of doubt, the license grant set forth in the immediately preceding sentence of this Section 2.4.2(c) shall immediately take effect in accordance with its terms whether or not the Company challenges such termination; provided, however, that nothing herein shall be interpreted as an admission by the Company that any such termination is appropriate. Furthermore, for all copyright and patent rights in the grants above, the terms of these licenses will be the longest term currently recognized for copyrights and patents, respectively, under United States law. For all other rights licensed in this Section, the term of the license is perpetual. Notwithstanding the foregoing, as of the Effective Date, nothing herein shall be construed as restricting the City’s ability to work during the Term with the Company and the Company’s licensor Grimshaw Industrial Design, LLC (“Grimshaw”) in furtherance of the purposes of this Agreement to coordinate the creation, installation, and maintenance of the Coordinated Franchise Structures. Further, as of the Effective Date, the Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City a non-exclusive, royalty-free license to display, reproduce, and perform publicly images of the Coordinated Franchise Structures in any medium for the term of copyright.

(d) The Company agrees that the Coordinated Franchise Structures installed by the Company in accordance with this Agreement shall be unique to the City, and the Company shall not, without the prior written permission of the City, install or cause or facilitate the installation of any such Coordinated Franchise Structures for any other client or other third

party anywhere in the world. Additionally, the Company shall cause third parties that expressly licensed the Plans and Specifications, in whole or in part, to the Company, or third parties that otherwise participated in the creation of the Plans and Specifications to execute documents to this effect.

(e) To the extent that this Agreement includes software licensed to the Company and/or the City (excluding “off-the-shelf” software) in connection with the creation, operation or maintenance of EIMIS, the Company agrees that (i) it shall cause its software vendor to enter into, and maintain in full force and effect a source code escrow agreement with an escrow agent (the “Software Escrow Agent”), which escrow agreement shall provide materially the same terms and conditions as follows, and (ii) all source code and related documentation for the licensed software shall be under escrow deposit pursuant to said escrow agreement. The Company shall cause its software vendor to provide 30 days prior written notice of a change of the Software Escrow Agent. The escrow agreement contemplated hereby must be in effect within 30 days of the Effective Date. Additionally,

(i) source code must be held by the Software Escrow Agent in trust for the City;

(ii) all major updates (e.g., new versions and critical patches and fixes) must be escrowed as they are issued; 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 shall be permitted periodic testing of all source code held in escrow; and

(v) if the Company’s software vendor, any assignee or successor (x) becomes insolvent or ceases to exist as a business entity or (y) fails to perform its obligations under its agreement with the Company such that the Company fails to comply with its obligations with respect to EIMIS contained in this Agreement, 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 commentary for the installed release level of the product utilized by the City. 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 Company’s software vendor.

It is agreed that the Company shall provide to the City all information necessary for the City to comply with registration requirements, if any, of the Software Escrow Agent. The Company agrees to adhere to the obligations set forth in any agreement with the software vendor or the Software Escrow Agent as they relate to the deposit of Software in escrow. The agreement with the Software Escrow Agent shall provide that the City shall have the opportunity to cure any default of the Company, at the sole cost and expense of the Company,

that jeopardizes the ability of the City to access the escrowed source code as provided for under this Agreement.

The escrow agreement provisions set forth in this Section 2.4.2(e) shall apply with equal force to any software licensed to the City (excluding “off-the-shelf” software) by a subcontractor of the Company.

2.4.3. Warranties of Title. The Company represents and warrants that the Plans and Specifications and Software: (a) are original to the Company or validly licensed or sublicensed to the Company; (b) to the knowledge of the Company after reasonable inquiry, do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any law, rule, or regulation; and (c) do not constitute defamation or invasion of the right of privacy. The Company further represents and warrants that it has not granted any license(s), permit(s), interest(s), or right(s), exclusive or nonexclusive, to any party other than the City with respect to the Plans and Specifications and will not grant any such licenses unless such grants are necessary to perform the Company’s obligations under this Agreement.

2.4.4. Permits, Authorizations, Approvals, Consents and Licenses.

(a) Before installing any Coordinated Franchise Structure, the Company shall obtain at its sole cost and expense, any necessary permits, authorizations, approvals, consents, licenses, and certifications required for each Coordinated Franchise Structure, including, but not limited to: (i) pursuant to all City laws, rules and codes 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 DOT, Landmarks and the Art Commission, and any other agency of the City with jurisdiction over the property on which the Coordinated Franchise Structure is to be located; (iii) any necessary permits, authorizations, approvals, consents, licenses, and certifications required pursuant to any applicable state and federal laws, rules, regulations and policies, writs, decrees and judgments; and (iv) any necessary permits, authorizations, approvals, consents, licenses and certifications from Persons to use a building or other private property, easements, poles, and conduits.

(b) The Company agrees that fees paid to obtain any permits, consents, licenses, or any other forms of approval or authorization shall not be considered in any manner to be in the nature of a tax, or to be compensation for this franchise in lieu of the compensation described in Section 9 hereof.

2.4.5. Design of Coordinated Franchise Structures. The design of all Coordinated Franchise Structures installed pursuant to this Agreement (other than Existing Bus Shelters) shall be in compliance with all applicable laws, rules and regulations of the City and shall be subject to approval of the Art Commission and, to the extent required by law, Landmarks. Company shall make good faith efforts to obtain approval of the Art Commission and to the extent required by law, Landmarks. The Company shall submit an application signed by DOT (which application DOT agrees to sign in a form reasonably acceptable to DOT), to the

Art Commission and, to the extent required by law, Landmarks, for review and approval of the Preliminary Plans and Specifications. In the event that changes to the Preliminary Plans and Specifications are required by the Art Commission or Landmarks for their approvals, the Company at its sole cost and expense shall make such changes as are required to obtain such approval. Following such approval, the Preliminary Plans and Specifications as approved shall be the Plans and Specifications referred to in this Agreement and shall be the Plans and Specifications used to manufacture the Coordinated Franchise Structures. It is anticipated that street or sidewalk conditions at certain locations will require modifications of the size of individual Coordinated Franchise Structures (as distinct from modifications to the design of the Coordinated Franchise Structures overall). Such modifications to individual Coordinated Franchise Structures shall be made at the Company's sole cost and expense upon a determination by the City that such modifications are necessary or appropriate based on street or sidewalk conditions at such specified locations. Additionally,

(a) The Company shall design PSSs such that the public service provided is immediately apparent and shall not be obscured physically or visually by advertising;

(b) In consultation with DOT the Company shall prepare as part of the Plans and Specifications size variations of the Newsstands which all meet the dimensional requirements set forth in the RFP and shall comply with the Americans with Disability Act as further set forth in Section 3.7 hereof. Such variations must be approved by DOT in its reasonable discretion and must meet the following specifications: there must be Newsstand lengths of 8', 10' and 12' which must be able to be used interchangeably with Newsstand widths of 4', 5' and 6'. All Newsstands must be a standard height of 9'. Additionally, the Company shall make reasonable efforts to customize the interior of the Newsstand by permitting all Newsstand Operators to select customization options from a standardized group of customization alternatives offered by the Company;

(c) The Company shall design New Bus Shelters in a variety of sizes such that every Existing Bus Shelter may be replaced in accordance with the terms of this Agreement. New Bus Shelter designs shall provide for bus route maps, street maps, bus stop name identification, Guide-a-Ride canisters and other information. The New Bus Shelter designs shall also contemplate some form of passenger seating, such as a bench, that may or may not be required to be installed in every New Bus Shelter. Once during the Term at any time during such Term, the City may require the Company, and the Company shall at its sole cost and expense, install or remove such seating from each New Bus Shelter (this provision is not intended to limit the Company's obligation to maintain, including replacement where and when necessary, seating that has been installed and has become worn or damaged, in accordance with the maintenance obligations imposed upon the Company by this Agreement);

(d) As the City has determined that only one configuration (in lieu of standard and landmark) is appropriate, the Company shall only be required to design and install one configuration of New Bus Shelters, APTs and Newsstands during the Term, subject to the requirements on size variations set forth in this Agreement;

(e) Company shall at its sole cost and expense produce and install such signage as is requested from time to time by DOT. The obligation to produce as used in this Section is defined as the printing and reproduction of City-designed signage intended specifically and exclusively for Bus Shelters (not including generic bus or transit route maps of the entire system); and

(f) The Company shall make appropriate staff available to represent itself and assist DOT during any informal or formal public review processes, including, but not limited to, presentations to a Community Board, review by the Art Commission or Landmarks, or a hearing in front of the FCRC.

2.4.6. Build out and Costs. The Company agrees to construct and install Coordinated Franchise Structures conforming to the Plans and Specifications, and in accordance with the timeframes set forth herein and in Appendix G annexed hereto, at its sole cost and expense, such cost and expense including, but not limited to, the costs of utility connections and infrastructure related thereto, and utilities consumed during the build-out. The Company's construction and installation obligations in this Section 2.4.6 shall be measured from the 60th day after the date of final approval by the Art Commission as set forth in Section 2.4.5 herein (such date shall be referred to as the "Build Start Date"). If the final Art Commission approval contemplated in this paragraph is received on different dates with respect to the New Bus Shelters, Newsstands or APTs, the term "Build Start Date" shall refer to the date of final approval of the Art Commission as it relates to the relevant Coordinated Franchise Structure. Prior to the installation of any Coordinated Franchise Structure, the Company shall provide to DOT for its approval photographs of the site and a site plan conforming to the siting criteria contained in the RFP. All site plans shall be prepared to scale, shall include all elements and dimensions relevant to the siting criteria, and shall be certified by a professional engineer or licensed architect.

(a) The Company shall remove Existing Bus Shelters and shall install New Bus Shelters in accordance with the following:

(i) The Company shall construct and install in locations as set forth in Schedule A attached hereto, and in such other locations as may be directed by DOT, at least 3300 New Bus Shelters by the fifth anniversary of the Build Start Date, with at least 650 New Bus Shelters in total having been installed by the first anniversary of the Build Start Date, at least 1350 New Bus Shelters in total having been installed by the second anniversary of the Build Start Date, at least 2000 New Bus Shelters in total having been installed by the third anniversary of the Build Start Date, at least 2650 New Bus Shelters in total having been installed by the fourth anniversary of the Build Start Date and at least 3300 New Bus Shelters having been installed by the fifth anniversary of the Build Start Date. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. In addition, the Company shall construct and install at the option of DOT in its sole discretion a maximum of 200 additional New Bus Shelters, where and when directed by DOT, provided, however, that (x) such option must be exercised in the first eighteen years of the Term, and (y) the total number of New Bus Shelters to be installed by the Company shall not exceed 3500 without the mutual consent of the

Company and the City (said 3500 limit shall not include the Fifth Avenue Bus Shelters installed pursuant to Section 2.5.3.1, the Reciprocal Bus Shelters installed pursuant to Section 2.5.3.2 or the 30 New Bus Shelters installed pursuant to Section 9.17). The replacement of Existing Bus Shelters at the locations set forth in Schedule A shall take place in accordance with a schedule to be proposed by the Company and approved by DOT (the “Existing Bus Shelter Replacement Schedule”) which shall be consistent with the overall construction and installation schedule contemplated by this Agreement and shall provide that each year 20% of replacements take place at locations allocated to NYCMDC as set forth in Exhibit H attached hereto. The Existing Bus Shelter Replacement Schedule shall include at a minimum, for each month of the build-out years, the location of each Existing Bus Shelter scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected date for installation. On notification from DOT that a site plan and photographs are required for a location other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and to install the New Bus Shelter provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature of the required changes. Notwithstanding any provision of this Agreement to the contrary, in the event that a particular Bus Shelter is removed but not returned to the same location (either by movement of the individual shelter or the route being relocated), the total number of shelters that count towards the 3500 limit shall be reduced by one.

(ii) The Company shall dismantle, remove, and if necessary, dispose of Existing Bus Shelters, at its sole cost and expense, provided that no Existing Bus Shelter shall be removed unless and until DOT has either approved a site plan for a New Bus Shelter to replace it or determined that it will be removed but not replaced. A New Bus Shelter shall be installed in accordance with paragraph (i) of this subsection within five days of the removal of each Existing Bus Shelter, except where DOT has determined that the Existing Bus Shelter will not be replaced. All Existing Bus Shelters shall have been removed and replaced as required by the fifth anniversary of the Build Start Date. Should DOT require the removal of any Bus Shelter other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have five days from receipt of notice from DOT to effect the removal. Any site where a Bus Shelter is removed but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Bus Shelter and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

(b) Unless the City requires fewer APTs to be installed, the Company shall construct and install in locations as directed by the City, and in accordance with the time frames set forth in Appendix G annexed hereto, at least 10 APTs in total by the first anniversary of the Build Start Date and 20 APTs in total by the second anniversary of the Build Start Date, provided that the Company’s obligations set forth in this sentence shall be tolled during any time that access to the site selected by the City is blocked due to circumstances beyond the

Company's control. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of the City. To the extent that the City has not directed the Company to install all 20 APTs by the second anniversary of the Build Start Date, in any year of the Term the City may direct the Company to install a maximum of 10 APTs with no more than 20 APTs installed during the Term.

(c) The Company shall construct and install, when and as directed by DOT in locations selected by DOT, PSSs consisting of trash receptacles, multi-rack newsracks, and information/computer kiosks in accordance with the time frames set forth in Appendix G annexed hereto, provided that the number of PSSs the Company shall be required to install in any given time period shall be reasonable under the circumstances existing at the time, including when considered in light of any concurrent obligations of the Company to install, maintain and, if applicable, relocate, other Coordinated Franchise Structures under this Agreement.

(d) Additionally, in accordance with the RFP, the Proposal and the BAFO:

(i) The Company shall be responsible at its sole cost and expense for the prompt dismantling and removal of any and all Existing Newsstands (unless, in each instance, the Newsstand Operator exercises its option under Section 20-241.1b of Title 20 of the City's Administrative Code, or any successor provision thereto, to itself remove the Existing Newsstand) and the installation of Replacement Newsstands in accordance with a schedule to be provided by DOT from time to time (the "Replacement Newsstand Schedule"). The Replacement Newsstand Schedule shall be consistent with the overall installation timetable for Newsstands contemplated by Section 2.4.6(d)(iii). The Replacement Newsstand Schedule shall include the location of each Existing Newsstand scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected dates for removal of the Existing Newsstand and the installation of the Replacement Newsstand. On the date specified in the Replacement Newsstand Schedule (provided the City has given the relevant Newsstand Operator notice within the time period required by applicable law, if any, of the date for the removal of the Existing Newsstand), or a date mutually agreed to by the Company, and DOT, the Company shall remove the Existing Newsstand (unless the Newsstand Operator has already removed it) and install the Replacement Newsstand. Installation of each Replacement Newsstand must be completed in nine days from removal by the Company of the applicable Existing Newsstand (or from the date of notice to the Company that the Existing Newsstand has been removed by the Newsstand Operator).

(ii) On notification from DOT that a site plan and photographs are required for a location other than as specified in the Replacement Newsstand Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and install the New Newsstand provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature

of the required changes. Should DOT require the removal of any Newsstand, other than as specified in the Replacement Newsstand Schedule, the Company shall have five days to effect the removal and restore the sidewalk. Any site where a Newsstand is removed by the Company but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Newsstand and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

(iii) The Company shall construct and install in locations as set forth in Schedule B attached hereto, and in such other locations as may be directed by the City, at least 330 Newsstands, which may include Replacement Newsstands and/or New Newsstands with at least 110 Newsstands, as selected by the City in its sole discretion, being installed by the first anniversary of the Build Start Date, with at least 220 Newsstands, as selected by the City in its sole discretion, being installed by the second anniversary of the Build Start Date, and at least 330 Newsstands being installed by the third anniversary of the Build Start Date. The Company's obligations set forth in the preceding sentence shall, to the extent that the above time schedule cannot be met because access to any site is blocked due to circumstances outside the Company's control, be tolled during such time access is blocked. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. Additionally, the Company shall construct and install at the option of the City in its sole discretion additional New Newsstands necessary for operation under any new license issued throughout the Term by the Department of Consumer Affairs (or any successor thereto). All Newsstands constructed shall include, at the Company's sole cost and expense, necessary electric and telephone hook-ups and infrastructure required by the appropriate utility to establish a separate account for the Newsstand Operator's usage of electricity in the Newsstand. However, the New Newsstand Operators will be required to reimburse the Company for the costs and expenses of the construction and installation including costs associated with any interior electric and/or telephone hookups to the Newsstand, in accordance with Appendix B attached hereto, provided that the City shall not be responsible for reimbursement to the Company for the New Newsstands in the event that the Company does not receive such compensation from the New Newsstand Operators. Upon payment of the amount required, or the entry into an installment payment plan with the New Newsstand Operator(s) pursuant to Appendix B, Company shall provide the New Newsstand Operator(s) with either proof of payment or a letter stating that the New Newsstand Operator(s) has entered into an installment payment agreement with the Company.

(iv) Under no circumstances will the Company be responsible or liable for the removal of any Newsstand Operator who does not cooperate in the Newsstand replacement process contemplated by or arising out of this Agreement. Additionally, the Company shall not have any obligations to any Indemnitee under Section 12.1.1 for any Damages relating to any claim against any Indemnitee made by or on behalf of a Newsstand Operator (a) challenging or contesting the right of the City to remove such Newsstand Operator's newsstand or claiming compensation arising from the removal thereof, (b) claiming any ownership rights in any newsstand, (c) alleging any violation of law or other wrongful conduct on the part of the City or its agents or contractors in connection with the removal of such Newsstand Operators' newsstands (other than any such conduct for which the Company is

directly responsible and which is not carried out by the Company at the direction of the City), and any similar claim that does not arise directly out of the performance by the Company of, or its failure to perform, its obligations under this Agreement.

(e) Upon installing any of the Coordinated Franchise Structures the Company shall send to DOT a photograph of the new installation showing the placement in context of such Coordinated Franchise Structure together with a request for DOT acceptance of the specified Coordinated Franchise Structure, which acceptance shall not be unreasonably withheld, conditioned or delayed. Such request shall set forth the date the Coordinated Franchise Structure was installed (such date shall be the "Installation Date" if the installation is accepted by DOT in accordance with Section 2.4.6(f) below).

(f) DOT shall inspect such new installation within 14 days of receipt of such photograph and request. Acceptance of the installation shall not constitute an approval of the structural integrity of the Coordinated Franchise Structures or of any utility connections. Should DOT accept the Coordinated Franchise Structure as being installed in accordance with the site plan it shall send the Company an acceptance notice within 14 days from inspection. Should DOT not accept the Coordinated Franchise Structure as being installed in conformity with the site plan it shall send the Company a rejection notice within 14 days from inspection specifying the problems which need correction and the Company shall have five days from receipt of notice from DOT (provided that in the case of APTs and Newsstands the Company's obligations set forth in this sentence shall be tolled during any time that the Company's access to the site is blocked due to circumstances outside its control) to make such corrections, except if local law requires otherwise in the case of Newsstands. Thereafter, the Company shall follow the procedures set forth in this Section 2.4.6 (the date such corrections are made shall be the Installation Date if such corrections are approved by DOT). If DOT sends a rejection notice as contemplated herein, the time between the date the Company sent its request for acceptance and the date DOT sent the rejection notice shall not count towards the assessment of liquidated damages.

(g) The procedure for accepting Newsstands shall be as set forth in this Section 2.4.6 unless superseded by Local Law 64 of the year 2003 or any other section of the New York City Administrative Code or the Rules of the City of New York.

(h) Except as otherwise set forth in this Agreement, failure to complete the timely construction and installation of any Coordinated Franchise Structure within the time specified shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto, or the exercise of any other remedy available to the City under this Agreement provided, however, that if DOT does not send a notice of acceptance or rejection of the installation of any Coordinated Franchise Structure within the time period set forth above, such delay shall not be counted against the Company for purposes of assessing liquidated damages or the exercise of any other remedy. It is agreed that the full amount of liquidated damages due prior to the 2015 Change in Control with respect to the construction, installation and maintenance of the Bus Shelters and Newsstands totaling \$1,687,988 has been collected by the City, and as of the date of this Agreement, no additional liquidated damages have been assessed by the City.

2.4.7. Effect of Expiration or Termination. Upon expiration or termination of this Agreement (and provided no new franchise of similar effect has been granted to the Company pursuant to the New York City Charter, any authorizing resolution, and any other applicable laws and rules in effect at the time) the franchise shall expire; all rights of the Company in the franchise shall cease with no value allocable to the franchise itself; and the rights of the City and the Company to the System, or any part thereof, shall be determined as provided in Section 13 hereof.

2.5 Conditions and Limitations on Franchise.

2.5.1. Not Exclusive. Nothing in this Agreement shall affect the right of the City to grant to any Person other than the Company a franchise, consent or right to occupy and use the Inalienable Property of the City, or any part thereof, for the installation operation and/or maintenance of street furniture, including, but not limited to, bus shelters, public toilets, trash receptacles, multi-rack news racks, information/computer kiosks or newsstands, with or without advertising. Notwithstanding the above, (i) DOT shall not grant to any other Person a franchise to install bus shelters until DOT has issued to the Company 3500 permits for the installation of New Bus Shelters and (ii) DOT shall not grant to any other Person a franchise to install newsstands until DOT has issued to the Company 330 permits for the installation of Replacement and/or New Newsstands, provided, however, that should the City at any time issue a request for proposals for the installation, operation and/or maintenance of bus shelters and/or newsstands then DOT's agreement not to grant franchises as described in this sentence shall be conditional on the Company's prompt delivery to DOT of all materials required from the Company that would be necessary for DOT to process and issue the necessary permits for the installation of the number of New Bus Shelters and/or Newsstands necessary to reach the 3500 and 330 figures described above, as the case may be. If the Company fails to promptly deliver the materials necessary for DOT to process and issue the necessary permits, the City may grant any Person a franchise notwithstanding the requisite number of permits, as provided in this Section 2.5.1, have not been issued; provided however that any such failure by the Company shall not constitute a breach or default under this Agreement. This Section 2.5.1 is not intended to affect the Company's right to install 3500 New Bus Shelters and 330 Replacement and/or New Newsstands and to place advertising thereon as set forth in this Agreement or any of the Company's other rights or obligations as set forth in this Agreement. Nothing in this Agreement shall affect the ability of the Company and the City to consider potential additional revenue generating opportunities that may be proposed by either party in the future with respect to the Coordinated Franchise Structures.

2.5.2. Sidewalk and Historic Pavement. No Coordinated Franchise Structure shall be designed so that it would result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Neither the installation, operation, maintenance nor removal of Bus Shelters, APTs, and PSSs nor the installation, maintenance and removal of Newsstands shall result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Nothing herein shall preclude the Company from installing a Coordinated Franchise Structure, including appurtenant utility connections, on a sidewalk or historic pavement by any means necessary. Prior to any such installation, the Company shall make a good faith effort to procure

sufficient quantities of those materials of which the sidewalk or historic pavement is comprised to repair, replace, or restore it to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure and in compliance with the New York City Administrative Code. If the City is the sole source of those materials of which the sidewalk or historic pavement is comprised, then it shall provide the Company, at the Company's expense, any such materials stored by the City. In the event that the installation, operation, maintenance or removal of any Bus Shelter, APT, or PSS or the installation, maintenance and removal of Newsstands results in damage to sidewalk or historic pavement, such sidewalk or historic pavement shall be restored to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure in accordance with the timeframes set forth in Appendix C and in compliance with the New York City Administrative Code at the sole cost and expense of the Company, using in-kind materials. The Company may request an extension of time to the timeframes referred to in the preceding sentence which may be granted by DOT in its sole discretion.

2.5.3. Location of Coordinated Franchise Structures. The Coordinated Franchise Structures shall be installed, removed and replaced by the Company in such locations and in such priority as directed by DOT in accordance with this Agreement, or, if not otherwise specifically set forth in this Agreement, in DOT's sole discretion, provided, however, that APTs shall be installed by the Company in such locations as directed by the City in its sole discretion. When practicable, DOT shall provide Company with an opportunity to comment on DOT's location decisions regarding Coordinated Franchise Structures in light of the Company's concerns regarding the revenue generating potential of locations. Nothing contained in this paragraph or Section 2.5.3.1 shall be construed to prevent DOT from changing a location set forth in Schedules A, B or X if the City would otherwise have the right to order the relocation of the structure in accordance with Sections 2.5.4.1 or 2.5.4.2 herein.

2.5.3.1. Fifth Avenue. The Company may construct, install and maintain fifteen (15) New Bus Shelters at locations designated by DOT between 34th street and 59th street on Fifth Avenue (the "Fifth Avenue Bus Shelters") as set forth in the attached Schedule X provided that in exchange for the right to install the Fifth Avenue Bus Shelters, the Company shall also be obligated to install an additional thirty (30) New Bus Shelters at locations designated by DOT (the "Reciprocal Bus Shelters"). The Fifth Avenue Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i). Provided that the Reciprocal Bus Shelters are equipped with adequate illumination pursuant to Section 3.1.5(d), the Company may, but shall not be required to provide electrical connections or advertising lightboxes for such Reciprocal Bus Shelters. The Reciprocal Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i).

2.5.3.2. Restrictions. Notwithstanding any provision of this Agreement to the contrary, in the event that an advertising Public Communications Structure or Public Pay Telephone (as such terms are defined in the PCSFA) is installed on Fifth Avenue between 34th street and 59th street pursuant to authorization from the City and such installation is not a replacement of an existing telephone installation installed or maintained pursuant to a now-expired public pay telephone franchise agreement on Fifth Avenue between 34th Street and 59th

Street (such an event shall be referred to as a “Fifth Avenue Installation”), prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, then the Company shall have no further obligation to install any additional Reciprocal Bus Shelters (but shall not be entitled to remove any Reciprocal Bus Shelters already installed) that it would otherwise be obligated to install pursuant to Section 2.5.3.1. Furthermore, in the event of a Fifth Avenue Installation prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, any Reciprocal Bus Shelters installed prior to such Fifth Avenue Installation shall be depreciated on a straight-line basis over a 20 year period. The yearly value of each Reciprocal Bus Shelter for the purpose of such depreciation shall be \$1250, which is derived by dividing the cost of the shelter (\$25,000) by 20. The formula to determine the unamortized amount for each respective Reciprocal Bus Shelter shall be as follows: \$1250 shall be multiplied by the difference between 20 and the difference between year 2026 (the year in which the Term ends) and the year such shelter was installed. For example, if the Reciprocal Bus Shelter was installed in 2021, that number (2021) would be subtracted from 2026 to get 5. Then 5 would be subtracted from 20 to get 15. The number 15 would then be multiplied by \$1250 to get the unamortized balance for that particular Reciprocal Bus Shelter (which would be \$18,750). In the event of a Fifth Avenue Installation, the Company shall be credited for the total unamortized amount of all amortized Reciprocal Bus Shelters as set forth in Section 9.1(a).

2.5.4. Removal, Replacement, Relocation, Reinstallation.

2.5.4.1. Public Utilities, Other. The Company shall remove, replace, relocate or reinstall at its sole cost and expense, at the request of the City, Coordinated Franchise Structures which interfere with the construction, maintenance or repairs of public utilities, public works or public improvements. The Company shall not be responsible for the costs and expenses of any removal, replacement, relocation and/or reinstallation requested by the City except as set forth in the preceding sentence or as expressly required elsewhere in this Agreement, including, but not limited to, Section 2.5.4.2 hereof. Nothing in this Agreement shall abrogate the right of the City to change the grades or lines of any Inalienable Property of the City, or perform any public works or public improvements, or any street widening project, or any other capital project of any description. In the event that the Company refuses or neglects to so remove, replace, relocate or reinstall such Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City including, but not limited to repair and restoration costs, arising out of the performance of such work.

2.5.4.2. Public Use, Other. The City shall have the right at any time to inspect the Coordinated Franchise Structures and order the removal, replacement, relocation or reinstallation of any of the Coordinated Franchise Structures at the sole cost and expense of the Company upon a determination in the City’s sole discretion that any of the Coordinated Franchise Structures, unreasonably interferes or will unreasonably interfere with the use of a street by the public, constitutes a public nuisance, creates a security concern, or is, or has otherwise become inappropriate at a particular location, or that such removal, replacement,

relocation or reinstallation is necessary to address changing conditions. In the event that the Company fails to so remove, replace, relocate or reinstall any of the Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City, including but not limited to repair and restoration costs. If a Coordinated Franchise Structure is required to be removed and/or relocated because the City mistakenly identified a location listed on Schedule A or Schedule B as Inalienable Property of the City, the City shall require the Company to remove and/or relocate such Coordinated Franchise Structure and shall pay to the Company the costs incurred in connection with such removal and/or relocation and for any other costs or damages incurred by the Company, including but not limited to repair and restoration costs.

2.5.4.3. Notification. In the event the Commissioner determines that all or any of the Coordinated Franchise Structures should be removed, replaced, relocated or reinstalled pursuant to this Section 2.5, the Company shall perform such work in accordance with the timeframes set forth in Appendix G attached hereto.

2.5.4.4. Emergency. Notwithstanding the foregoing, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may, at the sole cost and expense of the Company, with such notice, if any, as is practicable to the Company given the nature of the emergency, take such action as the Commissioner deems necessary to alleviate the emergency, including but not limited to removing, replacing, relocating or reinstalling all or any portion of the System and have repair and restoration work performed. The Commissioner may, if he or she determines that the System or any portion of the System can be safely reinstalled and maintained, require the Company to do so at its sole cost and expense.

2.5.5. No Waiver. Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of the City or of the City's right to require the Company to secure the appropriate permits or authorizations for Coordinated Franchise Structure installation.

2.5.6. No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property of the City. In the event that all or part of the Inalienable Property of the City is eliminated, discontinued, closed or demapped, all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property of the City, or any part thereof so eliminated, discontinued, closed or demapped, shall cease upon the effective date of such elimination, discontinuance, closing or demapping. If said elimination, discontinuance, closing or demapping is undertaken for the benefit of any private Person, the City shall make reasonable efforts to condition its consent to said elimination, discontinuance, closing or demapping on the agreement of said private Person to: (i) grant the Company the right to continue to occupy and use said Inalienable Property of the City; or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the Coordinated Franchise Structures.

2.6 Other Structures.

(a) The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant), will grant to the City such rights as may be necessary for the purposes of constructing, installing, operating, and maintaining street furniture and structures other than the Coordinated Franchise Structures as described in and subject to the provisions of Sections 2.6(b) and 2.6(c) below. Such grants shall be made and take effect at the earliest time necessary to effectuate the purposes of this Section 2.6.

(b) If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by the Company and/or Grimshaw for the Coordinated Franchise Structures, and if such street furniture is to bear advertising in any form (all such street furniture referred to as “Ad-Bearing Street Furniture”), the City shall (i) retain the services of Grimshaw and the Company to perform such creation and/or design of the Ad-Bearing Street Furniture and (ii) pay to the Company 5% of any advertising revenue (calculated in the same manner as Gross Revenues are calculated under this Agreement) that the City actually receives from the sale of advertising on such Ad-Bearing Street Furniture during such time as advertising is displayed on the Ad-Bearing Street Furniture (for the remainder of the Term of this Agreement or for 7 years, whichever is longer). In such event, the Company will be solely responsible for standard per-diem and expense reimbursement payments to Grimshaw. Payments due the Company pursuant to this paragraph shall be made reasonably promptly after the City’s receipt of the advertising revenue. Pursuant to a separate agreement between Grimshaw and the Company, which is attached hereto as Exhibit J (the “Grimshaw Agreement”), Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Ad-Bearing Street Furniture for its design services to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City); provided that the City shall be obligated to make all such payments in the event the third party fails to do so), or, if previously paid by the Company, reimbursed to the Company by the City.

(c) If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by Company and/or Grimshaw for the Coordinated Franchise Structures, but such street furniture does not bear advertising in any form (“Non-Ad-Bearing Street Furniture”), then the City shall retain the services of Grimshaw to perform such creation and/or design of the Non-Ad-Bearing Street Furniture to perform creation and/or design services in connection therewith. Pursuant to the Grimshaw Agreement, Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Non-Ad-Bearing Street Furniture for such design services, plus Grimshaw’s standard per-diem and expense reimbursement, to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Non-Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the

actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event any Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture (during the Term of this Agreement), the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) for the term specified therein. In the event Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture within the seven-year period immediately following the Term of this Agreement, the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) from the time of such conversion through the remainder of that seven-year period.

(d) No street furniture created pursuant to the provisions of this Section 2.6 may be installed anywhere other than New York City without the express written permission of the Company and Grimshaw.

(e) The Company shall not have any obligations under Section 12.1.1, or Section 12.1.6 except as expressly set forth therein, to any Indemnitee for any Damages relating to the matters contemplated pursuant to this Section 2.6.

(f) The Company agrees that it will not agree to any amendment to Sections 4.2, 4.4, 5.1, 5.2, 7.4, the last two sentences of Section 10.1, and 12.13 of the Grimshaw Agreement, or to the defined terms used in those sections, that adversely affects the City's rights under any of those sections without the City's prior written consent.

SECTION 3

SERVICE

3.1 Operations.

3.1.1. Bus Shelters. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the Effective Date and thereafter throughout the Term the Company shall be responsible for the following cleaning and maintenance requirements:

(a) All maintenance of the Bus Shelters, including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse from the Bus Shelters, must occur on at least two nonconsecutive days each week; promptly clearing and removing debris, snow and ice from the ground in and around the Bus Shelters up to three feet on each side of the Bus Shelter and to the Curb on the Curb-side of the Bus Shelter (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover). The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. A copy of section 16-123 is attached hereto as Exhibit E.

(b) Inspections on at least two nonconsecutive days each week for damage, debris and unsafe conditions.

(c) Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.2. APTs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of an APT and thereafter throughout the Term the Company shall make the APTs available for use to the public at a nominal amount of \$0.25 per use between the hours of eight a.m. to eight p.m. daily, unless longer hours are otherwise directed by DOT in its reasonable discretion. Additionally, every APT must provide an emergency alarm system that allows for two-way communication for activation by the user and transmission to an operations center and the police and fire department. A smoke and fire alarm system with an automatic door opening device must be provided. An emergency access portal, in addition to the user door, must be provided to allow access to the interior by police or other emergency services. All APTs must contain a self-activating system that communicates contemporaneously all significant maintenance and operations problems to an operations center. The Company shall be responsible for the following cleaning and maintenance requirements:

(a) All maintenance of the APTs including, but not limited to, preventative maintenance, cleaning, removing graffiti, dirt, stickers and refuse, and restocking dispensers on a daily basis, promptly clearing and removing debris, snow and ice from the ground in and around the APTs up to three feet on each side of the APT and to the Curb on the Curb-side of the APT (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover), prompt response to self activating maintenance and operating warning systems, and ensuring comfortable interior temperature, ventilation and illumination between the hours of eight a.m. and eight p.m. daily unless longer hours are otherwise directed by DOT in its reasonable discretion. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time.

(b) Daily inspections of the APTs for damage, debris, and unsafe conditions.

(c) Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.3. PSSs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a PSS and thereafter throughout the Term the Company shall be responsible for:

(a) All maintenance of the PSSs, including, but not limited to, preventative maintenance, cleaning, and removing graffiti, dirt, stickers and refuse (provided, however, that the Company shall not be responsible for the removal of refuse from free standing trash receptacles) on at least two nonconsecutive days of the week. Company shall remove snow as necessary to ensure continued access to the PSSs.

(b) Two inspections weekly on non-consecutive days of the PSSs for damage, debris, and unsafe conditions and for information kiosks, proper functioning of the information systems including any hardware and software.

(c) Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.4. Newsstands. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a Newsstand and thereafter throughout the Term:

(a) the Company shall be responsible for all maintenance of the exterior of the Replacement and New Newsstands, in cooperation with the Newsstand Operators including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse on the exterior of the Newsstand on at least two nonconsecutive days each week, promptly clearing and removing debris, snow and ice from the ground in and around the Newsstands up to three feet on each side of the Newsstand and to the Curb on the Curb-side of the Newsstand (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover) and daily inspections of the Newsstands for damage, debris, and unsafe conditions. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. The Company shall also be responsible for inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing; provided, however,

(b) the Company shall not be responsible for (i) operating the Newsstand as a newsstand, (ii) cleaning Newsstand interiors, (iii) any condition on the exterior of the Newsstand that can be reasonably demonstrated to the satisfaction of DOT by the Company to have been caused solely by the Newsstand Operator provided, however, the City may require the Company to address any such condition at the City's sole cost and expense; (iv) the cost of any telephone, other communication, or electricity usage by a Newsstand Operator; or (v) any other utility cost that is not necessary to the franchise; and

(c) The Company is prohibited from deriving revenue from the operation of the Newsstand as a newsstand.

3.1.5. Other. The Company shall

(a) promptly and diligently, and in all cases within the minimum standards and timeframes set forth on Appendix C attached hereto, maintain, replace or repair any parts or components of the Coordinated Franchise Structures which are broken, deteriorated or damaged, regardless of the nature, cause or frequency of such conditions using materials and methods for such maintenance, repair and replacement that comply with all applicable federal, state and local laws, rules and regulations; and

(b) collect refuse or recyclables from any trash receptacles incorporated within or on Coordinated Franchise Structures, provided, however, that the Company shall not be responsible for the collection of refuse or recyclables from free standing trash receptacles installed as PSSs; and

(c) maintain and repair the sidewalk immediately under and three feet on each side of the Coordinated Franchise Structure in its proper condition, or, if necessary restored thereto at the Company's sole cost and expense. On the side of the Coordinated Franchise Structure nearest the Curb, Company's responsibility of maintenance and repair shall extend to, and include, the Curb. Notwithstanding the foregoing, the Company shall not be responsible for the creation of new pedestrian curbs within the area for which it is responsible for maintenance and repair; and

(d) provide and maintain adequate illumination for all Coordinated Franchise Structures, except trash receptacles and multi-rack newsracks, between dusk and daylight, or whenever artificial lighting is required for the protection, safety and welfare of the public (provided that where there is no existing electrical connection to a Bus Shelter location and where adding an electrical connection would be impractical because the necessary utility connections are unusually inaccessible, then the phrase "adequate illumination" shall mean courtesy lighting powered by solar panel); and

(e) remove broken glass, such that the structure is made safe, within 24 hours after the Company becomes aware of the problem, (the glass shall be replaced when practicable within 24 hours of the Company becoming aware of the problem but in no event later than 48 hours after becoming aware of the problem); and

(f) (i) complete repairs, replacement of parts, or removal of the structure or components thereof as necessary to ensure public safety of the Coordinated Franchise Structure, within 24 hours (subject to the time frames for the replacement of glass set forth in Section 3.1.5(e)) of the time the Company becomes aware of the problem, including without limitation by oral or written notice from DOT that repair, replacement or removal is necessary to ensure public safety. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 24 hours of receipt of permit, provided that the Company submits a complete application for such permit without delay. The Company shall make the structure safe while permits are pending; and

(ii) complete repairs, replacement of parts or removals not covered by the preceding clause (i), within 5 days of the time the Company becomes aware of the problem, unless a permit is required. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 5 days of receipt of permit, provided that the Company submits a complete application for such permit without delay; and

(g) If the Company removes a Coordinated Franchise Structure pursuant to Section 3.1.5(f) and such Coordinated Franchise Structure is to be replaced at the same location, such replacement will take place within the time frames set forth in Appendix G. If a permit is required, the time period shall be measured from the date of receipt of permit, provided that the Company submits a complete application for such permit without delay.

(h) If the Company fails to make replacement, complete repairs, or effectuate removals, as required herein, then DOT may, in addition to any other rights and remedies set forth in this Agreement, and without any further notice, make replacement and repairs, or effectuate removals, at the sole cost and expense of the Company.

3.2 Automatic Vehicle Location and Control System. The Company shall cooperate with DOT, MTA New York City Transit, or any other agencies to make the Bus Shelters available for the installation of wiring and equipment and the ongoing maintenance of AVLCS as such systems are developed. The Company is not responsible for the acquisition, installation, or maintenance of AVLCS equipment or for associated costs and will have no ownership interest in, or responsibility for, the AVLCS. However, the Company shall cooperate in its design, installation and maintenance and shall provide access to the Bus Stop Shelters to permit AVLCS installation and maintenance, and ensuring (assuming adequate instruction from all applicable governmental and quasi-governmental entities) that routine maintenance of the Bus Stop Shelters does not interfere with the AVLCS.

3.3 Electronic Inventory and Management Information System and Recordkeeping.

(a) Within 20 days of the Effective Date and thereafter throughout the Term, the Company shall at its sole cost and expense, and as more fully set forth in the RFP and Proposal, install and maintain an Electronic Inventory and Management Information System for the Coordinated Franchise Structures incorporating state-of-the-art technology. If at any time during the Term DOT determines in its reasonable discretion that EIMIS is failing to meet the requirements of the preceding sentence or is inadequate for its purposes then DOT may direct the Company to make such necessary modifications to EIMIS as it deems necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

(i) to the extent necessary the EIMIS, any part thereof, or any software necessary for its operation shall be installed and maintained by the Company on DOT provided personal computers providing for access by authorized DOT users. DOT shall make appropriate information technology personnel available to coordinate the installation of the EIMIS on its equipment and/or network as appropriate.

(ii) the EIMIS shall not run primarily on the DOT's equipment or network and DOT shall not be responsible for management, maintenance or assuring access to the system. All such requirements shall be the responsibility of the Company.

(iii) within 20 days of the Effective Date, the Company shall provide full access to the EIMIS (and training thereon reasonably satisfactory to DOT) to no less than ten authorized personnel of the City through the Internet using any standard Internet browser providing access to the World Wide Web pursuant to the license agreement between the Company and The Siroky Group Inc. attached hereto as Exhibit K. Such access shall be provided through standard Internet security protocols through a secure server. In addition, the City shall have access, through the same means, for a reasonable number of additional users to allow read-only access to conduct searches of the EIMIS and to allow 311 operators (or operators under a successor system) to enter and review the status of complaints received.

(iv) the EIMIS shall provide at minimum: two-way information sharing between the City and the Company for the recording and processing of complaints from the public and the City, plotting street furniture structures on city maps, graphic navigation, color coding of structures, incident recording and reports, financial information regarding costs, revenues, advertising value by location and structure type, advertising panels displaying Public Service Advertising and NYCMDC Advertising, back-up maintenance and data protection protocols, and a help-menu function for assisting with system operation. The City shall make appropriate 311 personnel available to coordinate the creation of an interface between EIMIS and the 311 system.

(v) the EIMIS shall be available to authorized users 24 hours per day, seven days a week. In the event of lost access, it shall be restored within six hours of notification by the City.

(b) Commencing on the Effective Date and thereafter throughout the Term, the Company shall maintain records, in a form satisfactory to the Commissioner and which shall be in a format which is downloadable to commercially available software, demonstrating compliance with the maintenance and operating requirements set forth in Section 3.1 herein, Appendix C attached hereto and the RFP, Proposal and BAFO. Such records shall be available for inspection by the City at all times upon reasonable written advance notice and copies thereof, whether in paper, electronic or other form, shall be provided to DOT promptly upon request. Not later than 30 calendar days after the Effective Date, the Company shall submit to DOT a detailed description of all proposed recordkeeping procedures that will document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto. If DOT determines in its reasonable discretion that such proposed recordkeeping procedures are insufficiently detailed or otherwise unlikely to adequately document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto, DOT may direct the Company to adopt such modifications to the proposed recordkeeping procedures as it deems reasonably necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

(c) The Company shall be permitted, at any time during the Term, to replace the software and related components then constituting the EIMIS with alternative software and related components (which may be proprietary to the Company or an Affiliate of the Company), at its sole cost and expense, provided that the features of the replacement EIMIS are substantially equivalent or superior to the EIMIS being replaced. In such event, the Company shall grant to the City all necessary licenses and sublicenses as contemplated by Section 2.4.2(b), and shall escrow or cause to be escrowed the source code as required by Section 2.4.2(e). In addition, if such software is proprietary to the Company or an Affiliate of the Company, the Company shall grant to the City all necessary licenses to operate the EIMIS as contemplated by this Agreement following the Term, on a perpetual, royalty-free basis. Furthermore, all right, title, and interest in all data collected by the EIMIS and all other information necessary for the City to maintain and operate the Coordinated Franchise Structures will become the sole and exclusive property of the City without any compensation to the Company after the termination or expiration of this Agreement and the Company and its software vendor shall return any and all such data to the City in a format accessible and usable by the City without the use of the Company's and/or software vendor's software; provided, however, that the Company may retain and use for its own business purposes a copy of such data, and the City shall grant to the Company any necessary license in this regard.

3.4 Performance Standards and Corrective Actions.

(a) If the Company has failed to comply with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, then the Company shall pay liquidated damages as set forth on Appendix A attached hereto.

(b) If notwithstanding compliance with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, complaints that the Coordinated Franchise Structures are unsafe or unclean or in disrepair increase by 20% or more during any six month period as compared to the previous six month period, the Commissioner may require the Company, at its sole cost and expense, to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as he or she deems appropriate to ensure that the Coordinated Franchise Structures are maintained in a clean and safe condition and in good repair.

(c) In addition to any other term, condition or requirement of this Agreement, except and to the extent caused by relocation requirements imposed by the City, the Company shall not have more than ten percent of any one type of its Coordinated Franchise Structures out of service at any given time; provided that the foregoing requirement with respect to APTs shall be twenty percent and shall not be in effect until at least five APTs have been installed by the Company. Failure to comply with this Section 3.4(c) shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto.

3.5 Complaint Handling Procedures.

(a) Within 30 days after the Effective Date of this Agreement, subject to the reasonable approval of DOT, the Company shall establish and maintain prompt and

efficient complaint handling procedures for handling complaints received directly from the public and for handling complaints forwarded to the Company by the City, which procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section 3.5. Such procedures shall be set forth in writing and copies thereof shall be maintained at the Company's office and shall be available to the public and the Commissioner upon request.

(b) All Coordinated Franchise Structures shall have on them a conspicuously posted notice advising the public that they may direct complaints and comments to 311.

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

(d) The Company shall record all complaints received on the telephone line, through EIMIS, or from any other source in the manner set forth in Section 3.6 hereof and shall diligently and promptly investigate each complaint. If such complaint is reasonably determined to be accurate, the condition shall be cured within the timeframes set forth in Appendix C attached hereto.

(e) The Company shall provide to DOT a reasonable and adequate explanation describing corrective steps taken by the Company in response to any complaint or reasons why no corrective steps were taken.

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

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

3.7 Americans with Disabilities Act. In connection with its obligations under this Agreement the Company, at its sole cost and expense, agrees to comply with the applicable provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. 12132 (“ADA”), the Architectural and Transportation Barriers Compliance Board Guidelines, and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

3.8 No Discrimination. The Company shall not discriminate in the provision of Services on the basis of race, creed, color, national origin, sex, age, handicap, marital status, or real or perceived sexual orientation.

3.9 Continuity of Service. In the event the Company, with the consent of the City as required and in accordance with the provisions of Section 11 hereof, sells or otherwise transfers the System, or any part thereof, or Control thereof to any Person, or to the City or the City’s assignee, or in the event the franchise terminates, the Company shall transfer the System, or such relevant part, in an orderly manner in order to maintain continuity of Service.

SECTION 4

ADVERTISING

4.1 Introduction.

(a) In consideration of the Company’s performance of the Services, and payment by the Company of the Franchise Fees, the City hereby grants to the Company the exclusive right throughout the Term to sell and place advertising on the Coordinated Franchise Structures that are the subject of this Agreement and subject to the specifications, terms, reservations and restrictions of this Agreement, and to collect revenues generated by such advertising.

(b) The Company expressly acknowledges that it is receiving a non-exclusive franchise and that the City, either itself or through third parties, may design, construct, install, operate and maintain street furniture, including, but not limited to, bus stop shelters, automatic public toilets, trash receptacles, multi-rack news racks, information/computer kiosks, and newsstands, that contain advertising on them from which the Company would not be entitled to collect revenue.

4.2 Defined Terms. For the purposes of this Section 4, the following terms, phrases, words and their derivations shall have the meaning set forth herein, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in Section 1.

(a) “advertising” shall mean any printed matter or electronic display including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual message or information, but in no event shall include the textual information that is required to be posted on a Coordinated Franchise Structure by federal, state and local law, rule or regulation, or this Agreement.

(b) “alcohol advertising” shall mean advertising, the purpose or effect of which is to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or to promote the use or sale of an alcohol product.

(c) “NYCMDC Advertising” shall mean advertising reasonably determined by NYCMDC to be within its corporate purpose including, but not limited to, commercial advertisements, advertising promoting New York City, and public service advertisements, but NYCMDC Advertising shall not include “spot market advertising”.

(d) “tobacco advertising” shall mean advertising, which bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance which contains tobacco, including, but not limited to, cigarettes; cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

(e) “Olympic Period” shall mean the period starting four weeks prior to the commencement of the Olympics and ending two weeks after the end of the Olympics.

(f) “prohibited advertising” shall mean advertising that is false and/or misleading, which promotes unlawful conduct or illegal goods, services or activities, or that is otherwise unlawful or obscene as determined by DOT, including but not limited to advertising that constitutes public display of offensive sexual material in violation of Penal Law 245.11.

(g) “Public Service Advertising” shall mean 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 DOT in its sole discretion.

(h) “spot market advertising” shall mean advertising sold by NYCMDC to commercial advertisers (whether for cash, trade or barter) in a manner unrelated to any broader sponsorship or partnership arrangement between such advertiser and NYCMDC or the City and unrelated to any event, sponsorship or support efforts, or intergovernmental agreements of NYCMDC or the City. For the purposes of this definition of “spot market advertising”, intergovernmental agreements shall mean agreements between the City and/or NYCMDC and other governmental or quasi-governmental entities.

(i) “electronic cigarette advertising” shall mean advertising of an electronic device that delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not

include any product approved by the food and drug administration for sale as a drug or medical device.

4.3 Advertising Specifications.

4.3.1. Generally. Advertising shall be permitted on the Coordinated Franchise Structures except that advertising shall not be permitted on the interior of Newsstands or APTs, or as otherwise prohibited herein. Advertising is not permitted on PSSs except that the name or logo of a sponsoring entity shall be permitted on the exterior of trash receptacles and information/computer kiosks. No advertising shall be permitted on APTs in parks, except that advertising shall be permitted on APTs located on sidewalks adjacent to parks. The design, dimensions, and location of advertising on all Coordinated Franchise Structures shall be in accordance with the terms of this Agreement including Appendix D. The Company shall be entitled to utilize the full amount of advertising space set forth on Appendix D (notwithstanding that the dimension specifications on Appendix D are expressed as “maximum advertising”).

4.3.2. Dimensions/Specifications. All advertising, or the name or logo of a sponsoring entity, shall contain the features and conform to the basic dimensions set forth in Appendix D attached hereto, and made part hereof, provided, however, that modifications to advertising dimensions may be necessitated by location specific modifications to individual Coordinated Franchise Structures as set forth in Section 2.4.5 herein. Notwithstanding any provision of this Agreement to the contrary, except for the modifications at individual locations contemplated in the proviso to the immediately preceding sentence, the Company shall not be required to modify the basic dimensions set forth on Appendix D attached hereto.

4.4 Restrictions.

4.4.1. Prohibitions. Tobacco and electronic cigarette advertising and prohibited advertising is not permitted. Alcohol advertising within 250 feet of any school, day care center, or house of worship is not permitted.

4.4.2. Other Media. Electronic media will be permitted on a case by case basis and, except for backlighting of printed posters (the Company shall be permitted to use backlighting of advertising on Coordinated Franchise Structures except where prohibited by rules or regulations of Landmarks), will be subject (except as may otherwise be permitted by the City) to the applicable zoning regulations for property adjacent to the site, and shall be subject to all applicable approvals by City agencies. Audio advertising will not be permitted, provided, however, an audio component used in connection with an information/computer kiosk may be permitted in the sole discretion of DOT. The Company shall be permitted to install 250 Scrollers on Coordinated Franchise Structures when and where the Company deems most advantageous in its sole discretion. Any other multimedia, or other non traditional form or type of advertising, including additional Scrollers, shall be permitted only on a case by case basis, as determined by the Commissioner and shall be subject to any applicable approvals by City agencies.

4.4.3. Viacom Outdoor Agreement. The Company has acknowledged receipt from the City of the Viacom Outdoor Agreement and has agreed that it has taken such actions as

are reasonably necessary to comply with the revenue sharing obligations set forth in Section 4.10 therein.

4.4.4. Public Service Advertising. In each year of the Term, the Company shall provide 2.5% of the total number of panels then available to the Company, to be evenly distributed among the various Coordinated Franchise Structures and evenly distributed throughout the City, at no cost to the City or NYCMDC for Public Service Advertising. The first panel locations for Public Service Advertising shall be as set forth in Exhibit H attached hereto which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided for Public Service Advertising during the Term in accordance with this Section 4.4. The Company shall assist DOT and/or NYCMDC in its efforts to inform City agencies of the availability of such Public Service Advertising and in the coordination of requests by such agencies for the use of such space. NYCMDC will coordinate with City agencies for use of the Public Service Advertising panels. The City agrees to consider, in good faith, any proposal made by the Company to postpone the use of the Public Service Advertising space provided for in this Section, or to return that space to the Company, during times of full occupancy for other advertising campaigns in order to maximize revenue generation opportunities; provided that nothing in this sentence shall be interpreted to require the City to forego its rights to receive the Public Service Advertising space that it is entitled to pursuant to this Section.

4.4.5. NYCMDC Advertising. In each year of the Term, in addition to the advertising inventory provided for Public Service Advertising pursuant to Section 4.4.4 herein, the Company shall provide advertising space to NYCMDC for NYCMDC Advertising at no cost to the City or NYCMDC consisting of 20% of the total number of panels then available to the Company under this Agreement. Such space shall be distributed fairly throughout the City and shall represent a corresponding percentage of the value of the advertising space available to the Company under this Agreement as set forth in Exhibit H attached hereto, which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided to NYCMDC during the Term in accordance with this Section 4.4.

4.4.6. New Structures, Other.

(a) No later than 90 days prior to the expiration of each year of the Term, additional panels that have become available to the Company in the preceding 12 months shall be allocated by mutual agreement between the Company and NYCMDC as follows for the following year of the Term:

(i) 2.5% of such new panels shall be allocated to Public Service Advertising to be evenly distributed as to value and geography among the newly available panels; and

(ii) 20% of such new panels shall be allocated to NYCMDC Advertising to be evenly distributed as to value and geography among the newly available panels.

(b) The Company agrees to consider, in good faith, any proposal made by DOT or NYCMDC to exchange locations of the NYCMDC Advertising inventory previously agreed upon. Notwithstanding the preceding, the City shall have a yearly option, to be exercised on or before the 90th day prior to the expiration of each year of the Term (subject to the Company's reasonable approval as to locations, based on availability), to exchange with the Company no more than 5% of the locations (provided that no more than 1% may be exchanged per borough in any given year and all such exchanges shall be within the same borough) of the NYCMDC Advertising inventory previously agreed upon on a comparable value basis, effective the following year of the Term.

(c) The administration of NYCMDC Advertising and Public Service Advertising, including but not limited to posting, planning, installation, maintenance, removal and reporting shall be performed by the Company at no cost to the City or NYCMDC (except that the advertising posters shall be provided to or at the direction of the Company at no expense to the Company), shall be implemented in accordance with the same standards and best practices and utilization of the same materials and methods as used by the Company for displays of its paying commercial clients, which shall include, at a minimum: sufficient lead time for planning, a copy change every four weeks, location lists with spotted maps provided to NYCMDC and DOT 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 NYCMDC and DOT within 6 weeks of the posting completion. In programming the NYCMDC Advertising and Public Service Advertising, NYCMDC shall provide the Company with a monthly inventory of the NYCMDC Advertising and Public Service Advertising locations and the advertising campaign requested at each location.

(d) For the purposes of this Section 4.4.6 an exclusive advertising campaign shall be any campaign whereby the Company agrees to limit its rights to enter into advertising agreements with entities that compete with a particular advertiser. If the Company wishes to enter into an exclusive advertising campaign that would limit not just the Company's rights but also NYCMDC's rights under this Agreement to use panels for NYCMDC Advertising, then provided the Company has given NYCMDC the notice described below in this paragraph NYCMDC agrees to cooperate in good faith to address any potential issues that may arise out of an accommodation by NYCMDC 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. NYCMDC has no obligation beyond such good faith cooperation to accommodate any such exclusivity commitment sought by the Company. The notice to NYCMDC 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.

4.4.7. Alternative Compensation. In addition to the advertising panels provided for Public Service Advertising and NYCMDC Advertising, the Company shall be required to provide to NYCMDC certain advertising space pursuant to Section 9.4 hereof.

4.4.8. Olympics. Should any Olympics be awarded to the City during the Term:

(a) the City, at its sole discretion, may require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period;

(b) the City, at its sole discretion, may impose restrictions on the parties who may advertise on the Coordinated Franchise Structures and/or the nature of the advertising during the Olympic Period;

(c) the City or its designated representative may assume control of advertising sales and placement during the Olympic Period;

(d) the Company shall continue to comply with all other terms of this Agreement, except as expressly set forth herein.

4.4.9. Removal. Any material displayed or placed in violation of Section 4 shall be removed by the Company within 48 hours of notice from DOT and any material displayed or placed in violation of Section 4.4.1 shall be removed by the Company within 24 hours of notice from DOT. If the Company fails to do so, the City shall have the right to remove such material without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work.

4.5 Maintenance of Advertising.

(a) The Company shall maintain the advertising on Coordinated Franchise Structures in a clean and attractive condition at all times and be responsible for the cost of any power consumption used, electrical or otherwise, including the cost of any power consumption used in connection with NYCMDC Advertising and Public Service Advertising.

(b) All advertising display panels must be safe, secure and sturdy, and shall be maintained as such throughout the Term. In the event the Commissioner deems a display panel or any part thereof to be unsafe, insecure or not sturdy, or to otherwise pose a threat to public safety, the Company shall remove such panel without delay upon receipt of notice from DOT. If the Company fails to do so, the City shall have the right to remove such panel without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work. In the event any panel is removed in accordance with this Section 4.5, the Company shall take all steps necessary to maintain the full function of the structure. A replacement panel may be installed, at the Company's sole cost and expense, only with the express, prior written approval of the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed.

4.6 Future Compliance. The Company shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted with respect to advertising.

4.7 Change in Local Law. If there is a change in local New York City law, rule or regulation restricting alcohol advertising (a “Local Alcohol Advertising Restriction”) such that the Company can demonstrate to the City a loss in revenue, then:

(a) If the Company can show that its Gross Revenues have declined in any or all of the eight quarters beginning in the quarter in which the restriction imposed by the Local Alcohol Advertising Restriction took effect (the “Restriction Effective Date”) (as compared with the Company’s Gross Revenues during the corresponding quarter of the 12 month period prior to the Restriction Effective Date), then the Cash Component applicable to any such quarters shall be reduced by the product of (i) .5 and (ii) the decline in the Company’s Gross Revenues attributable to the Local Alcohol Advertising Restriction during such applicable quarter. If the reduction contemplated by the preceding sentence is greater than the Cash Component applicable to such quarter pursuant to Section 9.5 hereof (after all other adjustments pursuant to Section 9 hereof), then all subsequent payments of the cash portion of the Franchise Fee shall be reduced until the full amount of the adjustment calculated in accordance with this Section 4.7(a) has been deducted, provided, however, that in no event shall any reductions be rolled over for more than seven quarters.

(b) The adjustments set forth in Section 4.7(a) shall be in the nature of a deferral, not an offset. Accordingly, the Company shall repay to the City all amounts (without interest) deducted in accordance with Section 4.7(a) in 12 equal quarterly payments beginning on the date of the first regularly scheduled payment under Section 9.5 occurring after the last deferral allowed in Section 4.7(a) hereof.

(c) Notwithstanding the foregoing, this Section 4.7 shall have no force or effect if there is a Local Alcohol Advertising Restriction after the 17th year of the Term. If any of the payments to be made to the City pursuant to Section 4.7(b) above would, by its terms, be payable after the expiration of this Agreement, then the balance of such amount deferred shall be paid no later than 30 days after start of the last quarter of the last year of the Term. In the event that this Agreement is terminated in accordance with its terms, Company shall pay back any amounts deferred within 30 days of such termination.

For the avoidance of doubt, an example of the calculation of the adjustments to the Franchise Fee contemplated by this Section 4.7 is set forth on Schedule 4.7 to this Agreement.

(d) Any adjustment to the Cash Component made pursuant to this Section 4.7 shall not be taken into consideration for purposes of comparing the Cash Component to 50% of Gross Revenues in accordance with Sections 9.2, 9.3 and 9.5.

SECTION 5

CONSTRUCTION AND TECHNICAL REQUIREMENTS

5.1 General Requirements. The Company agrees to construct and install the Coordinated Franchise Structures in accordance with the Plans and Specifications and each of the terms set forth in this Agreement governing construction and installation of the Coordinated Franchise Structures, the siting criteria in the RFP, the Proposal and BAFO.

5.2 Identification of Coordinated Franchise Structure. The Company shall have displayed on each Coordinated Franchise Structure a unique identifying number (which shall be tracked via EIMIS) and a visible sign that shall comply with Section 3.5(b) herein.

5.3 Quality. The Company agrees to comply with all applicable sections of the building, plumbing and electrical codes of the City and the National Electrical Safety Code and where the nature of any work to be done in connection with the installation, operation and maintenance or deactivation of the System requires that such work be done by an electrician and/or plumber, the Company agrees to employ and utilize only licensed electricians and plumbers. All such work shall be performed using quality workmanship and construction methods in a safe, thorough and reliable manner using state of the art building materials of good and durable quality and all such work shall be done in accordance with all applicable law, rules and regulations. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, is harmful to the public health or safety, then the Company shall, at its sole cost and expense, promptly correct all such conditions, provided, however, that to the extent the harmful condition was caused by the City's gross negligence or intentional misconduct, the Company shall correct such harmful condition at the City's sole cost and expense.

5.4 Structures. In connection with the installation, operation, and maintenance of any and all Coordinated Franchise Structures, the Company shall, at its own cost and expense, take commercially reasonable measures to protect any and all structures belonging to the City and all designated landmarks, and all other structures within any Historic District from damage that may be caused to such structures and landmarks as a result of the installation, operation or maintenance performed thereon by, or on behalf of the Company. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure, designated landmarks, structures in an Historic District or any part of the Inalienable Property of the City that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

5.5 No Obstruction.

In connection with the installation, operation, and maintenance of the Coordinated Franchise Structures, the Company shall use commercially reasonable efforts to minimize the extent to which the use of the streets or other Inalienable Property of the City is disrupted, and shall use commercially reasonable efforts not to obstruct the use of such streets and/or

Inalienable Property of the City, including, but not limited to, pedestrian travel. Sidewalk clearance must be maintained at all times so as to insure a free pedestrian passage in accordance with Appendix 3 of the RFP and any applicable laws, rules and regulations unless prior consent has been obtained from the Commissioner in his/her sole discretion.

5.6 Safety Precautions. The Company shall, at its own cost and expense, undertake appropriate efforts and any other actions as otherwise directed by DOT to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the Curb, and suitable and sufficient lighting.

5.7 Power Outages. In the event that any type of power outage occurs, to the extent the source of such outage is under the direct and exclusive control of the Company, the Company shall restore service within 24 hours at all Coordinated Franchise Structure locations so affected. If the source of a power outage is not under the direct and exclusive control of the Company, the Company shall undertake commercially reasonable efforts to restore service at all affected Coordinated Franchise Structure locations and shall notify the responsible party and the Commissioner within 24 hours.

SECTION 6

SECURITY FUND

6.1 General Requirement. The Company shall, in accordance with Section 2.2 herein, deposit with DOT a security deposit (the "Security Fund") in the amount of \$5,000,000.00, which may consist of a certified check, bank check or wire transfer payable to the "City of New York," or other cash equivalent acceptable to DOT. Interest shall accrue in an interest bearing bank account for the benefit of the Company and shall be paid annually to the Company on each anniversary of the Effective Date.

DOT shall be entitled, as authorized by law, to charge and collect from the Company for any reasonable administrative expenses, custodial charges, or other similar expenses, as may result from the operation of this Security Fund.

The Company shall maintain \$5,000,000 in the Security Fund at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period), unless within such one year period DOT notifies the Company that the Security Fund shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Security Fund provides security; provided that only such portion of the Security Fund as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Any amounts remaining in the Security Fund that are not being retained in accordance with this paragraph shall be promptly returned to the Company.

6.2 Scope of Security Fund. The Security Fund shall secure the City up to the full face amount of such Security Fund for any purpose set forth in Section 6.3 hereof.

6.3 Security Fund Purposes. The Security Fund shall serve as security for the faithful performance by the Company of all terms, conditions and obligations of this Agreement, including, but not limited to:

(a) any loss or damage to any municipal structure or Inalienable Property of the City, for which the Company would be responsible under this Agreement, during the course of any installation, operation, and maintenance of the System;

(b) any costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement;

(c) the removal of all or any part of the System, for which the Company would be responsible under this Agreement, from the Inalienable Property of the City, pursuant to this Agreement;

(d) any expenditure, damage, or loss incurred by the City resulting from the Company's failure to comply with any rules, regulations, orders, permits and other directives of the City and the Commissioner issued pursuant to this Agreement; and

(e) the payment of any other amounts which become due to the City from the Company pursuant to this Agreement, including, but not limited to payment of compensation set forth in Section 9 hereof and liquidated damages.

6.4 Withdrawals From or Claims Under the Security Fund. In accordance with Section 6.3 herein, this Section 6.4, and Section 13 hereof, DOT may make withdrawals from the Security Fund of such amounts as are necessary to satisfy (to the degree possible) the Company's obligations under this Agreement that are not otherwise satisfied and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to satisfy its obligations. DOT may not seek recourse against the Security Fund for any costs, losses or damages for which DOT has previously been compensated through a withdrawal from the Security Fund, recourse to the Performance Bond or the Guaranty, draw down against the Letter of Credit, or otherwise through payment or reimbursement by the Company.

6.5 Use. In performing any of the Company's obligations under this Agreement using the Security Fund the City, if applicable, shall obtain competition to the maximum extent practicable under the circumstances.

6.6 Notice of Withdrawals. Within 48 hours after any withdrawals from the Security Fund, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any withdrawals by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The withdrawal of the amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Company.

6.7 Replenishment. Until the expiration of one year after the end of the Term or during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c),

within 30 days after receipt of notice (the “Replenishment Period”) from DOT that any amount has been withdrawn from the Security Fund as provided in this Section 6, the Company shall restore the Security Fund to the amount specified in Section 6.1 herein, provided that the Company is not contesting, in good faith, the withdrawal. If the Company fails to replenish the appropriate amount within the Replenishment Period and does not contest the withdrawal before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the Replenishment Period until such replenishment is made. If the withdrawal is contested, then upon the entry of a final, non-appealable, court order or judgment determining the propriety of the withdrawal, DOT, or the Company as applicable, shall refund or replenish the appropriate amount to the Security Fund. If either DOT or the Company has not refunded or made the required replenishment to the Security Fund within 30 days of the entry of a final non-appealable court order or judgment, interest on the amount not refunded or replenished shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the Replenishment Period to the date the applicable amounts are actually refunded or replenished. Such interest shall be payable to the party entitled thereto.

6.8 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Security Fund required by this Section 6 subject to the limitations set forth in the last sentence of Section 6.4 and in Section 13.5(b).

SECTION 7

PERFORMANCE BOND AND LETTER OF CREDIT

7.1 General Requirement.

(a) The Company shall, in accordance with Section 2.2 herein, provide DOT with a surety performance bond (the “Performance Bond”) in the amount of \$5,000,000 and an unconditional and irrevocable Letter of Credit (the “Letter of Credit”) in the amount of \$96,000,000 and such Performance Bond and Letter of Credit shall be in place (subject to the reductions in the amount of the Letter of Credit contemplated in Section 7.4 and substitution contemplated in Section 7.1(b) or 7.2(c)) at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period) unless within such one year period DOT notifies the Company that the Performance Bond or Letter of Credit shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Performance Bond or Letter of Credit provides security; provided that only such portion of the Performance Bond or Letter of Credit as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Within 20 days’ notice from the City of the amount subject to such outstanding litigation or claim, the Company shall provide the City with a replacement Performance Bond and/or Letter of Credit in such amount to be retained in accordance with the provisions of this Section 7. To the extent that the claim can be satisfied

from the Letter of Credit or the Performance Bond, the City shall elect either the Letter of Credit or the Performance Bond.

(b) If at any time during the Term the Performance Bond is (i) to be cancelled by the surety company, (ii) expires by its terms and the surety gives notice 90 days prior to such expiration that the Performance Bond will not remain in effect, or (iii) is no longer in effect for any reason, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, provide DOT with a replacement performance bond acceptable to DOT (which Performance Bond shall be acceptable if in the form of Exhibit F and the surety is acceptable to DOT). If the Company cannot obtain a replacement because it is not then commercially available, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, substitute a Letter of Credit for such Performance Bond for up to three months. If a Performance Bond is still not available 30 days before the end of such 3 month period, the Company shall increase the Security Fund by the full face amount of the Performance Bond before the expiration of the substitute Letter of Credit in lieu of maintaining a Performance Bond in accordance with this Section 7. The circumstances described in this paragraph shall not constitute a breach or default under this Agreement by virtue of the Company having failed to maintain the Performance Bond in accordance with the terms of this Agreement provided that the Company timely complies with the obligations to substitute the Letter of Credit and increase the Security Fund in accordance herewith. The Company shall provide proof that the Performance Bond is in effect for the full face value on or about each anniversary of the Effective Date or upon reasonable demand by DOT.

7.2 Form.

(a) The Performance Bond shall be in a form and from an institution reasonably satisfactory to the City provided that a form of Performance Bond that matches the form set forth in Exhibit F shall be deemed satisfactory to the City. The “City of New York acting by and through the Department of Transportation” shall serve as the sole obligee under the Performance Bond. The attorney-in-fact who signs the performance bond must file with the bond a certified copy of his/her power of attorney to sign the bond.

(b) The Letter of Credit, prior to the reduction to \$5 million as contemplated in Section 7.4 below, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IA shall be deemed satisfactory to the City (“Pre-Build Out L/C”). The Letter of Credit, once the amount is reduced to \$5 million and thereafter for the remainder of the Term, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IB shall be deemed satisfactory to the City (“Post Build-Out L/C”). The “City of New York acting by and through the Department of Transportation” shall be named as a beneficiary in both the Pre Build-Out L/C and the Post Build-Out L/C. The original Letter of Credit shall be deposited with DOT and DOT shall serve as the holder of such letter, The Post Build-Out L/C shall contain the following endorsement:

“It is a condition of this Letter of Credit that it shall be deemed automatically renewed for consecutive additional periods of one year each from the present and each future expiration date hereof unless and until at least ninety (90) days prior to any such date the Bank shall notify the Beneficiary and the Principal in writing of its intention not to renew this Letter of Credit for any such additional period.”

(c) In the event that the Company intends to change the issuing bank of the Post Build-Out L/C, the Company shall provide written notification to the City of such proposed change, including the name of the proposed new issuing bank. Upon receipt of such notification, and provided that the new issuing bank is reasonably acceptable to the City, the City and the Company shall sign a written communication to the issuing bank of the then existing Post Build-Out L/C instructing such bank not to renew the existing Post Build-Out L/C and allow it to expire in accordance with its terms. In the event that the Company does not provide a replacement Post Build-Out L/C before the existing Post Build-Out L/C has thirty (30) days to run before it is set to expire, the City may draw down on the Post Build-Out L/C in accordance with Section 7.5(b) of this Agreement.

7.3 Scope.

(a) The Performance Bond shall serve as security for any loss or damage, in kind replacement, and/or repairs of, Sidewalks and Historic Pavement during the course of any installation, operation, maintenance or removal, of all or any part of the System by the Company.

(b) The Letter of Credit shall serve as security for the Company’s performance under this Agreement as such performance is described in Section 6.3 herein.

7.4 Letter of Credit Reduction. The amount of the Letter of Credit required to be provided by the Company shall be reduced on a yearly basis on or about the 90th day after each anniversary of the Effective Date, by an amount equal to the number of Coordinated Franchise Structures for which the Installation Date has occurred during the preceding year of the Term, multiplied by the dollar amount applicable to each such Coordinated Franchise Structure set forth in Schedule 7.4, provided that in no event shall the amount of the Letter of Credit be reduced below \$5,000,000. The Company shall deliver to the City a replacement Letter of Credit on or about each such 90th day following the anniversary of the Effective Date in a face amount calculated in accordance with this Section 7.4.

7.5 Drawdown Against the Letter of Credit.

(a) In accordance with Section 7.3 herein, this Section 7.5, and Section 13 hereof, DOT may drawdown against the Letter of Credit such amounts as are necessary to satisfy (to the degree possible) the Company’s obligations under this Agreement not otherwise met and to- reimburse the City for costs, losses or damages incurred as the result of the Company’s failure(s) to meet its obligations. DOT may not seek recourse against the Letter of Credit for any costs, losses or damages for which DOT has previously been compensated

through a drawdown against the Letter of Credit, recourse to the Performance Bond or the Guaranty, withdrawal from the Security Fund or otherwise through payment or reimbursement by the Company.

(b) In addition to its right to drawdown on the Letter of Credit for any of the reasons set forth in Section 6.3 hereof, DOT may drawdown in full on the Letter of Credit at any time such Letter of Credit has less than thirty (30) days to run before it is scheduled to expire and no replacement or renewal Letter of Credit has been given in its place. In the event of a drawdown for such reason, DOT will hold the proceeds as cash security (paying to itself any interest earned) in lieu of a Letter of Credit (with DOT having the right to make withdrawals for the same purposes as drawdowns are permitted on the Letter of Credit) until a replacement Letter of Credit is put in place, at which time such drawdown proceeds will be returned to the Company less any proper withdrawals and any reasonable transaction expenses. All amounts so held in cash will be subject to annual reduction in accordance with Section 7.4, and the excess cash held by the City following such annually scheduled reduction shall promptly be returned to the Company. In the event of the drawdown contemplated in this Section 7.5(b), no breach or default shall exist under this Agreement by virtue of the Company having failed to maintain the Letter of Credit in accordance with the terms of this Agreement. In the event of a drawdown on the Letter of Credit as contemplated by this Section 7.5(b), and until such time as a replacement Letter of Credit is obtained in accordance with this Section 7.5(b), the replenishment obligations of the Company with respect to the moneys held by the City following such drawdown as cash security shall correspond to the replenishment obligations (and rights, including the Company's right to contest any withdrawals therefrom) of the Company applicable to the Security Fund under Section 6.7.

7.6 Use. In performing any of the Company's obligations under this Agreement using the Letter of Credit the City shall obtain competition, if applicable, to the maximum extent practicable under the circumstances.

7.7 Notice of Drawdown. Within 48 hours after any drawdown against the Letter of Credit or any claim with respect to the Performance Bond, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any drawdowns or claims by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The drawdown against the Letter of Credit or a satisfied claim with respect to the Performance Bond shall constitute a credit against the amount of the applicable liability of the Company.

7.8 Replenishment. Until the expiration of one year after the Term, during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c), within 30 days after receipt of notice (the "L/C Replenishment Period") from DOT that at least \$500,000 (cumulatively or in a single instance) has been drawn down against the Letter of Credit, the Company shall obtain a replacement or additional letter of credit such that the total amount available under the letter(s) of credit obtained shall be restored to the amount required in this Section 7, provided that the Company is not contesting, in good faith, the drawdown, or any portion thereof (provided that the Company shall replenish any uncontested portions if greater than \$500,000). Nothing herein shall prohibit the Company from contesting any drawdown,

including any drawdown less than \$500,000. The amount referenced in the immediately preceding sentence shall be reduced proportionately in accordance with the Letter of Credit reductions contemplated by Section 7.4, to a minimum of \$100,000. If the Company fails to obtain a replacement or additional letter of credit in the appropriate amount within the L/C Replenishment Period and does not contest the drawdown before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the L/C Replenishment Period until such replacement or additional letter of credit is obtained. If the drawdown is contested, then upon the entry of a final non-appealable court order or judgment determining the propriety of the drawdown, DOT, or the Company as applicable, shall refund or replenish the appropriate amount, or obtain a replacement or additional letter of credit, as appropriate. If either DOT or the Company has not refunded or made the required replenishment, or obtained a replacement or additional letter of credit, as appropriate, within 30 days of the entry of a final non-appealable court order or judgment, interest on the appropriate amount shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the L/C Replenishment Period to the date the applicable amounts are actually refunded or replenished, or an additional or replacement letter of credit is obtained, as appropriate. Such interest shall be payable to the party entitled thereto.

7.9 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Performance Bond or the Letter of Credit required by this Section 7 subject to the limitations set forth in the last sentence of Section 7.5(a) and Section 13.5(b).

7.10 Cancellation Upon Replacement. In the event the Company provides a replacement or substitute Letter of Credit or a replacement Performance Bond pursuant to the provisions of this Section 7, the City shall, as soon as practicable and in no event later than 30 days after such replacement or substitute Letter of Credit or replacement Performance Bond is delivered to the City or to a third party for the benefit of the City, return to the issuing bank such Letter of Credit and/or to the Company or surety such Performance Bond that was replaced or substituted, and shall notify, in writing, the Company and/or the surety of such return. Additionally, the City hereby agrees that upon delivery of the replacement or substitute Letter of Credit or replacement Performance Bond to the City, the City shall have no further rights (including, without limitation, the right to make claims or demands) against any Letter of Credit and/or Performance Bond that has been replaced or substituted as described above.

SECTION 8

EMPLOYMENT AND PURCHASING Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or any other terms, conditions or privileges of employment. The Company 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 Company, shall use commercially reasonable efforts, at its own cost and expense, to recruit, educate, train and employ residents of the City, for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the System. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. The Company shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company.

8.3 Obligation to Use Domestic and Local Contractors and Subcontractors. The Company certifies that at least eighty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly, of the Coordinated Franchise Structures shall be within the United States and that at least fifty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly of the Coordinated Franchise Structures shall be within the City of New York.

8.4 No Discrimination. The Company shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. The Company agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the Term.

SECTION 9

COMPENSATION AND OTHER PAYMENTS

9.1 Defined Terms. For the purposes of this Agreement, the following terms, phrases and words shall have the meaning set forth in this Section 9.1, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms

used in the definition of any other term shall have their meaning as otherwise defined in Sections 1 or 4 herein. References in this Section 9 to “commercial advertising” provided to NYCMDC as compensation to the City shall be understood to refer to space for advertising to be provided to NYCMDC (including New York City Promotional Advertising) for use consistent with its corporate purpose in accordance with this Section 9.

(a) “Alternative Compensation” means one of the two compensation components of the Guaranteed Minimum. Alternative Compensation for each year of the Term shall have a market value as set forth in Column B of Schedule C attached hereto (subject to adjustment as contemplated by this Section 9), and shall consist of commercial advertising which shall be provided to NYCMDC by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest on the inventory described below, which shall be used by NYCMDC consistent with NYCMDC’s corporate purpose (but not for “spot market advertising”); provided, however, that \$2,500,000 of Alternative Compensation listed in Column B of Schedule C for the first year of the Term shall consist of the amenities contemplated by Section 9.17 and not commercial advertising. The inventory referred to in the immediately preceding sentence shall consist of out-of-home advertising media (e.g. billboards, transit terminals, shopping centers, street furniture and advertising time on any form of electronic media) outside of New York City (i) then owned or controlled by the Company or any other entity which is more than 50% owned directly or indirectly by JCDecaux SA, or a successor in interest to JCDecaux SA (a “JCDecaux In-Kind Company”), and (ii) over which JCDecaux SA or such successor in interest exercises operational control (the “JCDecaux In-Kind Markets”). Alternative Compensation shall be valued at the prevailing market rates actually charged to commercial customers buying comparable amounts of the Company’s advertising space in the applicable JCDecaux In-Kind Market in accordance with the valuation methodology described in Section 9.4.1. Notwithstanding anything to the contrary in this Agreement, in determining whether the value of Alternative Compensation has the market value set forth in Column B of Schedule C, the amount of any value added tax due shall not be included, provided, however, the total unamortized value for Reciprocal Bus Shelters, if any, calculated in accordance with Section 2.5.3.2 above, may be deducted from the Alternative Compensation in year 19 of the Term, and year 20 if necessary. Commercial advertising provided as Alternative Compensation shall be provided pursuant to Sections 4.4.6(d) and 9.4 herein unless otherwise noted herein.

(b) “Cash Component” means one of the two compensation components of the Guaranteed Minimum, consists of cash, and is as set forth in Column A of Schedule C attached hereto.

(c) “Gross Revenues” means all revenues (from whatever source derived, and without any 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 Company, its subsidiaries, affiliates, or any third parties directly or indirectly retained by the Company to generate revenue (not including amounts paid or obligated to be paid to such third parties by or on behalf of the Company or any subsidiary or affiliate of the Company), as a result of the installation of the Coordinated Franchise Structures and, including without limitation, the

display of advertising thereon. In addition to any revenues generated in the form of monetary receipts, Gross Revenues shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the Company may receive. In the event that the Company provides any advertising space pursuant to any transaction which is not an arm's-length 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 Company's including or grouping advertising on the Coordinated Franchise Structures with other assets in the Company's inventory or otherwise), the amount to be included in Gross Revenues with respect to such transaction will be the fair market value of the advertising space as if such advertising space were provided pursuant to an arm's-length transaction. Notwithstanding anything to the contrary in this definition, Gross Revenues shall not include any sales taxes or other taxes imposed by law which the Company is obligated to collect, or any Public Service Advertising, NYCMDC Advertising or Alternative Compensation. Gross Revenues shall not include Scroller Gross Revenues in years 1 through 5 of the Term and PSS Gross Revenues during the Term. The Company will not divert or recharacterize revenue that would otherwise have been considered Gross Revenues for purposes of this Agreement.

(d) "Guaranteed Minimum" for any given year of the Term shall consist of the Cash Component set forth in Schedule C and the Alternative Compensation set forth in Schedule C, subject to adjustment as expressly set forth in Section 9.

(e) "New York City Promotional Advertising" means advertising which in at least substantial portion on its face promotes New York City, including by promoting, for example: travel to New York City; doing business in New York City; arts, entertainment and cultural institutions located in New York City; or life in or living in New York City.

(f) "PSS Gross Revenues" shall mean revenue generated by PSSs calculated in the same manner as Gross Revenues. PSS Gross Revenues shall be paid in accordance with Schedule D.

(g) "Scroller Gross Revenues" shall mean revenue generated by Scrollers calculated in the same manner as Gross Revenues.

9.2 Compensation. As compensation for the franchise, commencing on the Effective Date and as set forth in this Section 9, the Company shall pay and/or provide (as the case may be) to the City with respect to each year of the Term (subject to the remaining provisions of this Section 9):

the greater of:

- (i) 50% of Gross Revenues for such year of the Term; or
- (ii) the Cash Component for such year of the Term;

plus

the Alternative Compensation for such year of the Term

as the Franchise Fee; provided however that, in any year of the Term in which 50% of Gross Revenues is greater than the Cash Component, the Cash Component will be increased and the Alternative Compensation will be reduced by the actual amount of the positive difference obtained by subtracting the amount of the Cash Component (as set forth in Schedule C for such year, i.e., prior to any adjustment) from 50% of Gross Revenues for such year; provided further however that the Alternative Compensation shall not be reduced by, nor the Cash Component increased by, an amount which would reduce Alternative Compensation below the amount set forth in Column C of Schedule C for such year. The adjustments to the Alternative Compensation contemplated in this Section 9.2 shall be made in the year of the Term following the year of the Term to which they apply, due to the inability to adjust Alternative Compensation retroactively.

For the avoidance of doubt, several examples of the calculation of the Franchise Fee in a variety of circumstances are set forth on Schedule 9.2 to this Agreement.

9.3 Advance Payment. Within five business days of the Effective Date, the Company shall pay to the City \$50,000,000 in cash as the first installment of the advance payment of the Cash Component for the first four years of the Term. Within five business days of receipt by the Company from DOT of the necessary permits for installation by the Company of the 200th Coordinated Franchise Structure (not including PSSs), the Company shall pay to the City \$68,460,000 in cash as the second and last installment of the advance payment of the Cash Component for the first four years of the Term. Should 50% of the Gross Revenues for any of the first four years of the Term be more than the Cash Component for that year, the Company shall make payment of the excess amount in cash within 45 days of the end of that year of the Term. The Alternative Compensation shall be paid to the City in accordance with the terms of this Section 9.

9.4 Alternative Compensation Planning.

(a) The Company and NYCMDC shall consider NYCMDC advertising campaigns for each year of the Term in mutually agreed JCDecaux In-Kind Markets. As a baseline media plan, and throughout each year of the Term, the parties shall consider advertising campaigns in each agreed upon market, taking into account that market practice and market availability may vary according to location and over time. The Company agrees to make commercially reasonable efforts or the Company shall cause JCDecaux SA or its successor in interest to make commercially reasonable efforts to concentrate advertising campaigns within no more than twelve (12) countries in which JCDecaux In-Kind Markets are present in each year of the Term having a minimum value of at least five-hundred thousand dollars (\$500,000.00) per country during each year of the Term. For purposes of this Section 9, a "market" may include, depending on local market sales practice, all or any portion of a country in which a JCDecaux In-Kind Company is present. The parties shall have an initial meeting annually at least 180 days prior to the end of each year of the Term to mutually agree in good faith on a baseline media plan

(which may be either the baseline media plan referred to above or a modified version thereof in accordance with the remaining provisions of this Section 9.4) for the advertising campaigns to be made available to NYCMDC by the Company or caused by the Company to be made available by JCDecaux SA or its successor in interest (including the particular JCDecaux In-Kind Markets to be included, the specific campaign in each such market, the preferred format, the intended value assigned to each campaign, and the schedule for placement) which is to constitute the Alternative Compensation due to the City on Schedule C for the next succeeding year. The parties shall confer regularly and at least monthly throughout each year of the Term to review, update and modify the baseline media plan provided only that the Company shall make available the amount of Alternative Compensation set forth in Schedule C within each year of the Term. Nothing herein shall limit the ability of NYCMDC and the Company to plan campaigns through mutual agreement beyond the next succeeding year (to the extent such planning is commercially reasonable) of the Term (the "Media Plan"). If the parties are unable to agree, then NYCMDC shall propose a placement program each month which shall be subject to the approval of the Company, not to be unreasonably withheld, and in the event of reasonable objections by the Company (such as the Company being obligated to provide the requested space to a third party for the applicable period) NYCMDC shall make reasonable adjustments to its proposal to meet the Company's objections. Once NYCMDC makes such adjustment, the Media Plan shall be final, subject to further adjustment pursuant to Section 9. The parties acknowledge that NYCMDC may not be able to determine valuation to its satisfaction prior to the time set forth in Section 9.4.1. Notwithstanding the foregoing, thereafter the Company and NYCMDC may mutually agree to revise the agreed Media Plan at any time, except that such revisions to placement in any given market shall be on a space available basis. For the first year of the Term, the parties shall agree on a Media Plan prior to the Effective Date to the extent possible, or as soon as possible thereafter.

(b) At the time the Media Plan is agreed to with respect to any month of any year of the Term, NYCMDC shall designate specific markets (or parts thereof) that may be relinquished in the event the amount of Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to such year of the Term. Such adjustment will be made to the agreed upon Media Plan.

9.4.1. Valuation of Alternative Compensation. No later than 90 days prior to the end of each year of the Term, NYCMDC shall notify the Company if NYCMDC believes that the value of the Media Plan for the following year of the Term is less than the amount set forth on Schedule C for such year. In such event, NYCMDC may retain an international media agency reasonably acceptable to the Company (provided that WPP, Interpublic, Dentsu, Publicis, and Omnicom shall be acceptable) with expertise in media buying and planning in each of the JCDecaux In-Kind Markets to determine the value of the Media Plan created pursuant to Section 9.4. The value determined by the media agency (the "Estimated In-Kind Value") in any given year shall be compared against the Alternative Compensation amount as set forth in Schedule C attached hereto for that same year (Such amount set forth on Schedule C, after any adjustment required pursuant to Section 9.2, the "Baseline In-Kind Value"). If the adjustment to the Alternative Compensation required by Section 9.2 is not determinable at the time the valuation contemplated by this Section 9.4.1 is finalized, then such valuation and resulting adjustment to

the Media Plan, if any, shall be recalculated when the adjustment to the Alternative Compensation becomes known.

(a) To the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on additional advertising campaigns to be provided by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest to NYCMDC in JCDecaux In-Kind Markets, such that the Estimated In-Kind Value plus the value of these additional campaigns equals the Baseline In-Kind Value for such year.

(b) To the extent the Estimated In-Kind Value is more than 115% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on advertising campaigns to be relinquished by NYCMDC in JCDecaux In-Kind Markets, such that the Estimated In-Kind Value minus the value of the campaigns to be relinquished equals the Baseline In-Kind Value for such year.

(c) To the extent the Estimated In-Kind Value is less than or equal to 115% of the Baseline In-Kind Value for such year but more than or equal to 85% of the Baseline In-Kind Value for such year, there shall be no change to the Media Plan for that year resulting from the performance of the valuation contemplated by this Section 9.4.1.

(d) However, to the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company may, within 20 days notice of the Estimated In-Kind Value, choose to dispute the Estimated In-Kind Value. If the parties are not able to successfully resolve their differences within 10 business days after the Company gives notice to the City that it is disputing the Estimated In-Kind Value, then the parties shall immediately thereupon submit their dispute with respect to the value of the Media Plan to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) or any successor organization thereto. The determination of the AAA arbitrator shall be limited to determining the value the Media Plan and shall be final and binding upon the parties. The AAA shall select one arbitrator who shall be an individual with at least twenty years’ experience in the field of commercial marketing and advertising. Because of the time-sensitive nature of the required calculation, the arbitrator shall, to the extent reasonably possible, hold a hearing to consider the submissions of the parties within one week of the arbitrator’s appointment and to render the decision within 10 business days of the close of the arbitration hearing and final submission of all materials in support of the positions of the parties. In rendering the decision, the arbitrator shall consider the criteria set forth in Section 9.1(a). The parties agree that in the event that arbitration is invoked, both parties shall proceed as expeditiously as possible under the circumstances to conclude the arbitration, including the timely submission of any supporting materials and appearance at arbitration hearings. Each party shall bear its own legal fees and expenses, but the cost of the arbitration shall be borne equally by the parties. The arbitrator shall have no power to vary or modify the provisions of this Agreement and the arbitrator’s jurisdiction is limited accordingly. The arbitration contemplated hereby shall be conducted in New York, New York. Following the arbitrator’s determination, the parties will increase or decrease the number of campaigns in mutually agreed JCDecaux In-Kind Markets in the same manner as contemplated in Sections 9.4.1(a) and (b)

based upon the arbitrator's determination as to the value of the Media Plan (such determination, the "Arbitrated Value").

9.4.2. Exchanging Markets.

(a) As part of the process contemplated in Section 9.4(a), and subject to the Company's or NYCMDC's, as the case may be, reasonable approval based on availability, NYCMDC or the Company may exchange or the Company may cause JCDecaux SA or its successor in interest to exchange comparable advertising campaigns in one JCDecaux In-Kind Market for comparable advertising campaigns of equivalent value in a different JCDecaux In-Kind Market. Solely for purposes of this Section 9.4.2, "equivalent value" shall be determined by reference to the Company's rate cards in the applicable markets.

9.4.3. Alternative Compensation Content. NYCMDC shall program the Alternative Compensation on behalf of the City. No more than 50% of the Alternative Compensation to be programmed by NYCMDC pursuant to this Section 9.4 shall consist of advertising that is not New York City Promotional Advertising. Furthermore, in any given JCDecaux In-Kind Market, NYCMDC may program panels for an existing advertiser-client of the Company in that JCDecaux In-Kind Market only if such advertising is New York City Promotional Advertising. NYCMDC shall at all times during the Term give the Company 10 business days notice prior to entering into agreements with marketing partners for campaigns involving use of Alternative Compensation panels. The notice shall contain information as to the identity of the marketing partner, length of time, the geographic reach and the number of panels involved in the proposed campaign. In addition, the content and creative for such marketing partnerships shall be provided to the Company within a reasonable time after receipt of that information by NYCMDC. NYCMDC and the Company shall cooperate in good faith to address any potential issues that may arise out of the execution of such advertising campaigns.

9.4.4. No Carryover; No Cash Conversion. Subject to Section 9.4.5, Alternative Compensation shall not be convertible into cash under any circumstances; except, however, that if the Alternative Compensation is not provided by the Company in accordance with this Agreement, nothing herein shall prevent the City from pursuing all remedies available to it at law, equity or in this Agreement. Additionally, Alternative Compensation to be provided in a particular year of the Term must be used in such year and may not be carried over into any subsequent year of the Term.

9.4.5. Major Markets Requirement. In the event that JCDecaux In-Kind Markets do not include at least 18 cities with populations of at least 500,000 people ("Major Markets") for any year of the Term and the City is not able to reasonably satisfy its Alternative Compensation requirements through the use of non-Major Markets acceptable to NYCMDC, the Company hereby agrees that the City shall have the option, to be exercised no later than the last day of such year of the Term, to compel the Company to provide or compel the Company to cause JCDecaux SA or its successor in interest to provide Alternative Compensation, all or part of which may be converted into cash, at the option of the the City (the "Alternative Compensation Conversion Option"), to the City in such market or in such markets that are substantially equivalent with respect to the designated market area (the "DMA") of such Major

Market(s) that are no longer part of the JCDecaux In-Kind Markets. If the City exercises its Alternative Compensation Conversion Option, the City shall receive cash in the amount of the Alternative Compensation for such year multiplied by a fraction, the numerator of which shall be the difference between the amount of Alternative Compensation for such year and the amount of Alternative Compensation delivered (or planned to be delivered by the end of the relevant year of the Term) and the denominator of which shall be the amount of the Alternative Compensation for such year, as listed in Column B of Schedule C.

9.4.6. Adjustments to Alternative Compensation Under Section 9.2. In the event the amount of the Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to any year of the Term, such adjustment will be implemented by reducing the Media Plan. The value of the campaigns to be relinquished by NYCMDC shall be established by reference to (a) the Arbitrated Value for such year, (b) the Estimated In-Kind Value for such year if there is no Arbitrated Value, or (c) the valuations assigned to each JCDecaux In-Kind Market in the Media Plan for such year, if there is no Estimated In-Kind Value.

9.5 Payments.

(a) Beginning with the fifth year of the Term (it being understood and agreed that the cash portion of the Franchise Fee payable with respect to the first four years of the Term shall be paid in accordance with Section 9.3 herein), within 30 days after the end of each of the first three quarters of each year of the Term, the Company shall pay to the City in cash the greater of (i) one fourth of the Cash Component for such year or (ii) 50% of Gross Revenues for that quarter. Beginning with the fifth year of the Term, within 30 days after the end of the fourth quarter of each year of the Term, the Company shall pay the excess, if any, of the full cash payment due to the City under Section 9.2 for such year of the Term (after all applicable adjustments contemplated by Section 9 and Section 4.7) over the amounts already paid by the Company on a quarterly basis with respect to such year under the preceding sentence. If the sum of the payments made by the Company in accordance with this Section 9.5(a) with respect to any year of the Term exceeds the cash portion of the Franchise Fee due to the City under Section 9.2 for such year (after all applicable adjustments contemplated by Section 9 and Section 4.7), the Company shall be entitled to take the excess as a credit against the next cash payment or payments due to the City under this Section 9, unless there is no such next payment scheduled (i.e., the Term has expired or terminated), in which case such excess shall be payable by the City to the Company within 30 days (if the amount is less than \$100,000) or 90 days (if the amount is equal to or greater than \$100,000) of invoice therefor.

(b) Within 30 days after any termination of this Agreement, the Company shall pay to the City in cash the appropriate pro rata amount (based on the number of days in the partial year and using 365 days in a full year) of the cash portion of the Franchise Fee for the elapsed portion of such year which has not previously been paid pursuant to Sections 9.3 or 9.5(a) and any other amounts owed to the City pursuant to this Agreement. Additionally, the Company shall deliver the pro rata amount of any Alternative Compensation agreed to pursuant to Section 9.4 herein for such year and not previously delivered.

(c) Beginning with the fifth year of the Term, and for each year of the Term thereafter, no later than 45 days from the anniversary of the Effective Date, the Company shall deposit with the escrow agent (the “Escrow Agent”) under an escrow agreement to be entered into among the Company, such Escrow Agent and the City (the “Escrow Agreement”), which Escrow Agreement shall be substantially in the form attached hereto as Exhibit L, the greater of (i) the Cash Component for that year of the Term or (ii) the cash portion of the Franchise Fee paid by the Company for the immediately preceding year of the Term, minus, in each case, any amounts deposited in escrow the prior year pursuant to this Section 9.5(c) and then remaining in escrow (the amount deposited in escrow in accordance with this Section 9.5(c), the “Escrow Fund”). Each payment required to be made pursuant to Sections 9.5(a) and 9.5(b) shall be made from the Escrow Fund provided that if the Escrow Fund is at any time insufficient to make such payments, the Company shall make such payments directly.

(d) In addition, no later than the first day of the fourth year of the Term, the Company shall cause the establishment with the Escrow Agent of an additional, separate escrow account (the “Supplemental Escrow Account”, pursuant to the Escrow Agreement. The Supplemental Escrow Account shall be unfunded until required to be funded in accordance with the terms of this Section 9.5(d). Funds on deposit in the Supplemental Escrow Account from time to time as required herein are referred to as the “Supplemental Escrow Fund.” During the Term, the Supplemental Escrow Fund shall be increased (by deposit of additional funds by or at the, direction of the Company) or decreased (by payment to or at the direction of the Company by Escrow Agent), within 10 business days, as follows:

(i) At any time after the third year of the Term when the Net Worth (hereinafter defined) of the Guarantor is less than 125 million Euros the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term and the following year of the Term or (y) two times the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

(ii) At any time after the fourth year of the Term when the Net Worth of the Guarantor is between 125 million Euros and 150 million Euros, the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term or (y) the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

(iii) At any time when the Net Worth of the Guarantor is 150 million Euros or greater, or after the 19th year of the Term, the Supplemental Escrow Fund shall be 0.

Solely for purposes of this Section 9.5(d), “Net Worth” shall mean total assets of the Guarantor, minus total liabilities of the Guarantor, calculated in accordance with generally accepted accounting principles, as reflected in the most recent audited annual financial statements of the Guarantor required to be delivered to the City pursuant to Section 10.6.3.

(e) All interest earned on the Escrow Fund and Supplemental Escrow Fund shall accrue to the Company or the Guarantor, as applicable, and be payable to or at the direction of the Company at the end of each quarter of the Term.

9.6 Revisions to Franchise Fee. The Franchise Fee may be revised as follows:

9.6.1. PSS. Should DOT exercise its option to require the Company to install, maintain and operate PSSs as set forth in Section 2.4.6(c) herein, the cash portion of the Franchise Fee shall be adjusted as set forth on Schedule D attached hereto.

9.6.2. Scrollers. Should the Company install any Scroller before year six of the Term, the cash portion of the Franchise Fee prior to year six of the Term shall be increased by an amount equal to 50% of Scroller Gross Revenues.

9.6.3. Olympics. Should the City exercise its option to require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period as set forth in Section 4.4.8 herein, the Company shall deduct from the cash portion of the Franchise Fee to be paid for the quarter immediately following the Olympic Period the following amount:

the average Gross Revenue, for the same eight weeks as the Olympic Period, of the three years preceding the Olympics, multiplied by 1.2.

9.7 Credits. The parties acknowledge that the cash portion of the Franchise Fee payable by the Company each year has been determined by the Company based on certain assumptions of the Company regarding revenue generation from advertising as permitted under this Agreement. Accordingly:

9.7.1. Bus Shelters. If at any time the number of Bus Shelters is reduced to fewer than 3300 Bus Shelters through no fault of the Company, then NYCMDC and the Company shall promptly mutually designate Bus Shelters in the same geographic area to the extent possible, which are allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 Bus Shelters. To the extent that the Company is thereafter able to install additional Bus Shelters, the Bus Shelters shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 Bus Shelters.

9.7.2. New Bus Shelters. If by the fifth anniversary of the Build Start Date the Company is unable to install at least 3300 New Bus Shelters within the time frames for such installation provided for in this Agreement due to the fault of the City, then NYCMDC and the Company shall promptly mutually designate New Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 New Bus Shelters (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC for

reversion, on a one-for-one basis, in lieu of New Bus Shelters). To the extent that the Company thereafter is able to install additional New Bus Shelters, the New Bus Shelters (or Existing Bus Shelters, as the case may be) shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 New Bus Shelters.

9.7.3. Newsstands. If, through no fault of the Company, (a) at any time after the end of the first year of the Term the number of Newsstands is reduced to fewer than 110 New or Replacement Newsstands, (b) at any time after the end of the second year of the Term the number of Newsstands is reduced to fewer than 220 New or Replacement Newsstands, or (c) at any time after the end of the third year of the Term the number of Newsstands is reduced to fewer than 330 New or Replacement Newsstands, then NYCMDC and the Company shall promptly mutually designate Replacement Newsstands and/or New Newsstands and/or Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon (which may be on Replacement Newsstands and/or New Newsstands and/or Bus Shelters but excluding Bus Shelters which the Company controls the advertising on pursuant to Sections 9.7.1 and 9.7.2 herein) such that the Company controls the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term, provided, that for purposes of the foregoing reversion, (i) Replacement Newsstands and New Newsstands shall be the first to revert on a one to one basis, (ii) if NYCMDC has no remaining Newsstands available to it, then New Bus Shelters shall revert (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC in lieu of New Bus Shelters) and (iii) if NYCMDC has no remaining New Bus Shelters, then Existing Bus Shelters shall revert. In designating Bus Shelters for reversion in accordance with this Section 9.7.3, the parties shall make such reversion on the basis of 1.5 Bus Shelters reverting for every 1 Newsstand. To the extent that the Company is thereafter able to install additional Newsstands, the Existing Bus Shelters, New Bus Shelters and Newsstands shall be re-allocated as set forth in Exhibit H attached hereto, in the reverse order that they reverted to the Company in accordance with this Section 9.7.3, by the next advertising cycle, so that the Company shall at all times control the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term.

9.7.4. Cash Option. At the City's option, in lieu of part or all of the reversion of Bus Shelters, Replacement Newsstands and/or New Newsstands contemplated by Sections 9.7.1, 9.7.2, and 9.7.3 herein, the City may choose to have the Company deduct from the cash portion of the Franchise Fee the product of (a) the revenue value associated with the applicable Coordinated Franchise Structure(s), as set forth in Table A of Appendix 5 of the Proposal (increasing annually to adjust for inflation at the higher of (i) 2.5% per year or (ii) the rate of inflation reflected in the Consumer Price Index for All Urban Consumers (CPI-U), subject to a cap of 3% per year), (b) the number of Coordinated Franchise Structures that would be required to compensate the Company in accordance with Sections 9.7.1, 9.7.2, and 9.7.3 herein, and (c)

the number of advertising panels on the applicable Coordinated Franchise Structure set forth in such Appendix 5, Table C.

9.7.5. Cash or Alternative Compensation Set-Off. In the event that there are insufficient Coordinated Franchise Structures allocated to NYCMDC at any time to effectuate the reversions as contemplated by Sections 9.7.1, 9.7.2 and 9.7.3, then any such shortfalls shall be made up by a deduction by the Company from the cash portion of the Franchise Fee of the amount in cash calculated in accordance with Section 9.7.4, or, in the Company's sole discretion, by a reduction in an equivalent amount of Alternative Compensation.

9.7.6. Inability to Mutually Designate Coordinated Franchise Structures For Reversion. If the Company and NYCMDC are unable to mutually designate, in good faith, the appropriate Coordinated Franchise Structures for reversion to the Company under the circumstances described in Sections 9.7.1, 9.7.2 or 9.7.3, the reversion of Coordinated Franchise Structures to the Company contemplated in such Sections shall occur automatically, with the Coordinated Franchise Structures allocated to NYCMDC that are located nearest to the applicable unavailable Coordinated Franchise Structures reverting to the Company and with respect to Sections 9.7.2 and 9.7.3 in accordance with the priorities and ratios for such reversion set forth in Sections 9.7.2 and 9.7.3.

9.7.7. Absence of Identified Locations. In the event that the reversion of Coordinated Franchise Structures allocated to NYCMDC contemplated by Sections 9.7.1, 9.7.2 or 9.7.3 is to take place with respect to New Bus Shelters or Newsstands as to which no specific location for installation had been previously agreed to between the Company and the City, such reversion shall take place in proportion to the overall geographic distribution of the then installed Bus Shelters or Newsstands, as applicable (other than those allocated to NYCMDC Advertising).

9.7.8. No Default. No failure by the Company to install Coordinated Franchise Structures that gives rise to a right of the Company to reversion of Coordinated Franchise Structures from NYCMDC pursuant to Sections 9.7.1, 9.7.2 or 9.7.3 shall constitute a breach or default under this Agreement or give rise to the obligation to pay liquidated damages.

9.7.9. Performance at the Cost of the City. In the event the Company is required to perform an obligation under this Agreement which is to be performed at the City's cost or expense, as specifically set forth in this Agreement, the Company shall be permitted to delay such performance until it receives written authorization from DOT. All reasonable costs and expenses expended by the Company in performance of such obligation shall be reimbursed to the Company by the City reasonably promptly after submission of invoices therefor.

9.8 Reports and Records.

9.8.1. Monthly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues, and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 10 business days of the end of each calendar month during the Term.

9.8.2. Quarterly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each quarter of the Term.

9.8.3. Yearly. The Company shall submit to DOT a detailed income and expense statement, reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each year of the Term. In addition, the Company shall submit a certification from JCDecaux, SA that no bundling of franchise advertising assets with non-franchise assets has occurred that would reduce the City's franchise compensation below that which it would have been had the franchise assets been sold unbundled for their fair market value.

9.8.4. Third Party Agreements. All agreements entered into by the Company in connection with the Coordinated Franchise Structures shall provide that such agreements and all records and documents related thereto shall be made available to the City upon request. Additionally, all agreements entered into by the Company in connection with advertising on the Coordinated Franchise Structures shall include a provision requiring that upon expiration or sooner termination of this Agreement, the City shall have the option of assuming all the Company's rights and obligations under such agreement.

9.8.5. Access to Third Party Agreements. The Company shall make available to the City, at its office located in the City, all third party agreements entered into by the Company in connection with the Coordinated Franchise Structures and comprehensive itemized records of all revenues received in a format reasonably acceptable to DOT and in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to this Section 9 is being paid to the City upon request, during regular business hours and upon reasonable prior notice to the Company. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

9.9 Reservation of Rights. No acceptance of any compensation by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement, subject to Section 13.5(b). All amounts paid shall be subject to audit and recomputation by the City.

9.10 Other Payments.

9.10.1. City Incurred Cost. If the City incurs any costs or expenses pursuant to this Agreement for (a) work that should have been performed by the Company, or (b) work performed by the City which the Company could not perform, but the costs and expenses for which the Company is liable, the Company shall, within 30 days of receipt of an invoice from the City, pay to the City the amount so incurred.

9.10.2. Future Costs. In the event of a Default by the Company under this Agreement, the Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 enforcement of remedies including termination for a Termination Default. Before any reimbursable work is performed, the City will advise the Company 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 Company, or the Company brings an action against the City, and the Company finally prevails, then the Company 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 Company contests the charges, it shall pay any uncontested amounts. The Commissioner 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 Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 Company. Before any reimbursable work is performed, the City will advise the Company that the City will be incurring the services of third parties pursuant to the preceding sentence. The Company expressly agrees that the payments made pursuant to this Section 9.10.2 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 Company pursuant to any other provision of this Section 9.

9.11 Limitations on Credits or Deductions.

(a) The Company expressly acknowledges and agrees that:

(i) The compensation and other payments to be made or Services to be provided pursuant to this Section 9 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which the Company or any Affiliated Person shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company;

(ii) Except as may be expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made or Services to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability (other than income taxes) or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency;

(iii) Except as expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of compensation or

other payments to be made or Services to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons; and

(iv) Except as may be expressly permitted by this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made or Services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

(b) Nothing contained in this Section 9.11 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement or costs that it may incur in connection therewith as an ordinary expense of doing business and accordingly, from deducting said payments from gross income in any City, state or federal tax return.

9.12 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date until received at a rate per year equal to the greater of (i) the then applicable Prime Rate plus 2%, or (ii) 7%.

9.13 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement shall be made to the New York City Department of Transportation, Director of Accounts Payable, 55 Water Street, 9th Floor, New York, New York 10041 or as otherwise directed by DOT.

9.14 Report Certification. All compensation reports furnished by the Company pursuant to Section 9.8 herein shall be certified by the chief financial officer of the Company to be correct and in accordance with the books of account and records of the Company.

9.15 Continuing Obligation and Holdover. In the event the Company continues to operate all or any part of the System, including the placement of advertising, and the collection of revenue related thereto, after the expiration or termination of this Agreement, then the Company shall continue to comply with all provisions of this Agreement as if the Agreement was still in force and effect, including, without limitation, all compensation and other payment provisions of this Agreement as well as the maintenance of the Security Fund, the Letter of Credit, the Performance Bond, and the Guaranty throughout the period of such continued operation, provided that any such continued operation and compliance with this Agreement shall in no way 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 available to the City as a result of such continued operation after the term of this Agreement, including, but not limited to, damages and restitution and injunctive relief. If the Company fails to make such payments, DOT may withdraw such amounts from the Security Fund or the Letter of Credit.

9.16 Energy Costs. The Company shall be responsible for any and all electrical costs, or other costs for energy or power, used for, by or in connection with any and all of the Coordinated Franchise Structures, except as otherwise provided in Sections 2.4.6 and 3.1.4(b) herein.

9.17 Amenities. DOT at its option may require during the first five years of the Term that the Company provide certain amenities to the Coordinated Franchise Structures, the value of which shall not exceed \$2,500,000 in the aggregate. Such amenities may include, but are not limited to solar panels, battery recycling containers, installation of water fountains in APTs and support of the integration of new technology. Notwithstanding the foregoing, the City acknowledges that the Company shall have satisfied its obligation to install amenities under the 2006 Agreement by constructing, installing and maintaining 30 New Bus Shelters at locations to be determined by DOT, and which shall not include Reciprocal Bus Shelters or Fifth Avenue Bus Shelters.

SECTION 10

OVERSIGHT AND REGULATION

10.1 Confidentiality. To the extent permissible under applicable law, the City shall protect from disclosure any trade secret materials or otherwise confidential information submitted to or made available by the Company to the City under this Agreement provided that the Company timely notifies the City of, and clearly labels, the information which the Company deems to be trade secret materials or otherwise confidential information as such. Such notification and labeling shall be the sole responsibility of the Company.

In the event that the City becomes legally compelled to disclose the trade secret materials or otherwise confidential information of the Company, it shall provide the Company with prompt written notice of such requirement so that the Company may seek a protective order or other remedy. In the event that such protective order or other remedy is not obtained, the City agrees to furnish only that portion of such information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information.

Notwithstanding the foregoing, this Section 10.1 shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this Agreement, or (ii) was available publicly without a breach of an obligation of confidentiality by a third party, or (iii) was learned from a third party who was not under an obligation of confidentiality.

The Company expressly acknowledges and agrees that neither DOT nor the City of New York will have any obligation or liability to the Company in the event of disclosure of materials, including materials labeled by the Company as trade secret materials, or otherwise confidential information.

10.2 Oversight. DOT shall have the right at all times to oversee, regulate and inspect periodically the installation, operation, and maintenance of the System, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to demonstrate, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Company is in compliance with this Agreement. The Company shall retain such records for not less than 6 years following expiration or termination of this Agreement.

10.3 State-of-the-Art. State-of-the-art construction methods and building materials must be integrated into the Coordinated Franchise Structures as they become available at the sole cost and expense of the Company. Nothing in this Section requires the Company to replace or reinstall a Coordinated Franchise Structure solely for the purpose of complying with this Section.

10.4 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 such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its powers, including, but not limited to, its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

10.5 Office in New York City. The Company shall have and maintain an office in the City where all books and records referenced in, and pertaining to, this Agreement shall be maintained and where the Company's accounting, billing, and clerical functions pertaining to this Agreement shall be performed.

10.6 Reports.

10.6.1 Financial Reports. In the event the City has a good faith reason to believe that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into consideration the guaranty of Guarantor), the Company shall submit to DOT, upon its request, a complete set of the latest general purpose financial statements for a specified past fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from an independent Certified Public Accountant ("CPA") who performed a review of the statements in accordance, with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, not later than 20 business days from the date such financial statements become available to the Company from its CPA. All such statements shall be accurate and complete in all material respects. In the event the City reviews such financial statements and determines in its reasonable discretion that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into account the Guaranty), the City may require the Company to submit, and obtain the Commissioner's approval of, a plan setting forth the steps the Company will take to continue to be able to comply with this Agreement.

10.6.2 Other Reports. Upon the written request of the Commissioner, the Company shall promptly submit to DOT or the City, any non-Privileged Information reasonably related to the Company's obligations under this Agreement, its business and operations, or those

of any Affiliated Person, with respect to the System or its operations, or any Service, in such form and containing such information as the Commissioner shall specify in writing. Such information or report shall be accurate and complete in all material respects. The Commissioner or the City may provide notice to the Company in writing, as set forth in Section 14.5 hereof with regard to the adequacy or inadequacy of such reports pursuant to the requirements of this Section 10.6.

10.6.3. Guarantor Financials Statements. The Company shall cause Guarantor to yearly submit to DOT a complete set of the latest general purpose financial statements for the prior fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from the independent Certified Public Accountant (“CPA”) who performed a review of the statements in accordance with the American Institute of Certified Public Accountants’ (“AICPA”) Professional Standards, not later than 20 business days from the date such financial statements become available to the Guarantor from its CPA. All such financial statements shall be accurate and complete in all material respects.

10.7 Books and Reports/Audits.

10.7.1. Books and Records. Throughout the Term the Company shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Company with respect to the System in a manner that allows the City to determine whether the Company is in compliance with the Agreement. Should the City reasonably determine that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section. All financial books and records which are maintained in accordance with generally accepted accounting principles shall be deemed to be acceptable under this Section. The Company shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.

10.7.2. Right of Inspection. The City, the Commissioner and the Comptroller, or their designated representatives, shall have the right upon written demand with reasonable notice to the Company under the circumstances to inspect, examine or audit during normal business hours all documents, records or other information which pertain to the Company or any Affiliated Person related to the Company’s obligations under this Agreement. All such documents shall be made available at the Company’s New York City office. All such documents shall be retained by the Company for a minimum of six years following expiration or termination of this Agreement. All such documents and information that are identified by the Company as trade secret materials or otherwise confidential information shall be treated as such in accordance with Section 10.1 hereof, and the City shall make reasonable efforts to limit access to the alleged trade secret materials or otherwise confidential information to those individuals who require the information in the exercise of the City’s rights under this Agreement. In the event any information the City claims the right to inspect pursuant to this Section 10.7.2 constitutes Privileged Information, then the Company will not be required to disclose such information and the City shall instead have the right to review a reasonably detailed log of the Privileged Information. The City shall not share any information obtained through the City’s audit and

inspection rights under this Section 10.7.2 or otherwise under this Agreement with any media agency retained pursuant to Section 9.4.1. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

10.8 Compliance with “Investigations Clause”. The Company agrees to comply in all respects with the City’s “Investigations Clause,” a copy of which is attached as Exhibit G hereto.

SECTION 11

RESTRICTION AGAINST ASSIGNMENT AND OTHER TRANSFERS

11.1 Transfer of Interest. Except as provided in this Section 11, neither the franchise granted herein nor any rights or obligations of the Company in the System or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, without the prior written consent of the City, pursuant to Section 11.3 hereof. In the event any transfer of interest which requires consent of the City takes place without such consent, such transfer shall constitute a Termination Default and the City may exercise any rights it may have under this Agreement.

11.2 Transfer of Control or Ownership. Notwithstanding any other provision of this Agreement, except as provided in this Section 11, no change in Control of the Company or the franchise granted herein shall occur after the Effective Date, by act of the Company, by act of any Person holding control of the Company or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City. The requirements of Section 11.3 hereof shall also apply whenever any change is proposed of 10% or more of the direct ownership of Cemusa, Inc. (the “Parent”), the Company, or the franchise granted herein (but nothing herein shall be construed as suggesting that a proposed change of less than 10% does not require consent of the City acting pursuant to Section 11.3 hereof if it would in fact result in a change in Control of Parent, the Company, or the franchise granted herein), and any other event which could result in a change in Control of the Company. For the avoidance of doubt, nothing in this Section 11 shall prohibit, restrict or subject to any approval a change in Control of any entity that Controls, directly or indirectly, the Parent, and such change in Control of any entity that Controls, directly or indirectly, the Parent shall not constitute a change in Control of the Parent, the Company, or the franchise granted hereby for purposes of this Section 11.2, or any transfer of any interest to which Section 11.1 applies.

11.3 Petition. The Company shall promptly notify the Commissioner of any proposed action requiring the consent of the City pursuant to Sections 11.1 or 11.2 herein by submitting to the City, pursuant to Section 14.5 hereof, a petition either (a) requesting the approval of the Commissioner and submission by the Commissioner of a petition to the FCRC and approval thereof by the FCRC or (b) requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each such petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Company’s argument as to why such action would not involve a change in

Control of the Company, the System or the franchise, or a transfer of interest in the franchise granted herein or any rights or obligations of the Company in the System or pursuant to this Agreement and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Company in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Company that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval.

11.4 Consideration of the Petition. The Commissioner and the FCRC, as the case may be, may take such actions as it deems appropriate in considering the petition and determining whether consent is needed or should be granted. In considering the petition, the Commissioner and the FCRC, as the case may be, may inquire into: (i) the qualifications of each Person involved in the proposed action; (ii) all matters relevant to whether the relevant Person(s) will adhere to all applicable provisions of this Agreement; (iii) the effect of the proposed action on competition; and (iv) all other matters it deems relevant in evaluating the petition. After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the Commissioner and the FCRC may review the Company's performance under the terms and conditions of this Agreement. The Company shall provide all requested assistance to the Commissioner and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

11.5 Permitted Encumbrances. Nothing in this Section shall be deemed to prohibit any mortgage, lien, security interest, or pledge being granted to any banking or lending institution which is a secured creditor of the Company or any of its Affiliates with respect to any stock of the Company or any of its Affiliates, any rights granted pursuant to this Agreement, or any rights of the Company or any of its Affiliates in the System, including the assets of the Company and its Affiliates which comprise the System, provided that any such mortgage, lien, security interest or pledge shall be subject to the interests of the City as franchisor under this Agreement (and, in the case of any newsstand, any rights of the newsstand operator hereunder or under applicable law), including without limitation the City's right of approval with respect to any transfer of the franchise rights hereunder.

11.6 Subcontracts. The Company agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of DOT, provided that if the proposed subcontractor is not required to comply with VENDEX such prior written approval shall not be required. Two copies of each such proposed subcontract requiring approval shall be submitted to DOT with the Company's written request for approval. All such subcontracts shall contain provisions specifying:

(a) That the work performed by the subcontractor must be in accordance with the terms of this Agreement;

(b) That nothing contained in the subcontract shall impair the rights of DOT or the City;

(c) That nothing contained in the subcontract, or under this Agreement, shall create any contractual relation between the subcontractor and DOT or the City.

The Company agrees that it is fully responsible under this Agreement for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it. The Company shall not in any way be relieved of any responsibility under this Agreement by any subcontract. All subcontracts submitted by the Company to the City for approval in accordance with this Section 11.6 shall be approved (or reasons for failure to approve shall be provided) as soon as reasonably practicable in view of the time sensitive nature of the obligations of the Company under this Agreement.

11.7 Consent Not a Waiver. The grant or waiver of any one or more consents under this Section 11 shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section 11.

SECTION 12

LIABILITY AND INSURANCE

12.1 Liability and Indemnity.

12.1.1. Company. The Company shall indemnify, defend and hold the City, its officers, agents and employees (the "Indemnitees") harmless from any and all liabilities, suits, damages, claims and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or asserted against any of the Indemnitees arising out of the Company's performance of, or its failure to perform, its obligations under this Agreement, including, but not limited to the design, installation, operation and maintenance of the System, or any part thereof, provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 12.1.1 shall not apply to any Damages to the extent arising out of any willful misconduct or gross negligence of the City, its officers, employees, or agents. This Section shall supersede the indemnification provisions of section 19-128.1 of the New York City Administrative Code or any Rules promulgated thereunder, with respect to multi-rack newsracks. Insofar as the facts and law relating to any Damages would preclude the City from being completely indemnified by the Company, the City shall be partially indemnified by the Company to the fullest extent provided by law, except to the extent such Damages arise out of any willful misconduct or gross negligence of any Indemnitee. This indemnification is independent of the Company's obligations to obtain insurance as provided under this agreement.

12.1.2. City. The Company will not be liable for any Damages to the extent arising from the gross negligence or willful misconduct of any Indemnitee.

12.1.3. No Liability for Public Work, Etc. The Indemnitees shall have no liability to the Company for any Damages as a result of or in connection with the installation, operation and maintenance, of any part of the System by or on behalf of the Company or the City 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, unless and to the extent such Damages are due to the gross negligence or willful misconduct of any Indemnitee. To the extent practicable under the circumstances, the Company shall be consulted prior to any such activity and shall be given the opportunity to perform such work itself, but the City shall have no liability to the Company, except as expressly set forth above, in the event it does not so consult the Company. All costs to install, operate and maintain the System or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company; except to the extent such Damages arise out of any willful misconduct or gross negligence of the Indemnitees.

12.1.4. No Liability for Damages. None of the Indemnitees shall have any liability to the Company for any Damages as a result of the proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 12.1.4 shall not apply to any liabilities, suits, damages (other than special, incidental, consequential or punitive damages), penalties, claims, costs, and expenses to the extent arising out of any willful misconduct or gross negligence of the Indemnitees.

12.1.5. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 12.1.1 herein, then upon demand by City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for or approved by the Company's insurance carrier (if the defense of such claim, action or proceeding is provided by the insurance carrier) or by the Company's attorneys. The foregoing notwithstanding, in the event an Indemnitee believes additional representation is needed, such Indemnitee may engage its own attorneys to assist such Indemnitee's defense of such claim, action or proceeding, as the case may be, at its sole cost and expense. The Indemnitees shall not settle any claim with respect to which the Company is required to indemnify the Indemnitees pursuant to Section 12.1.1 without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.

12.1.6. Intellectual Property Indemnification. The Company shall defend, indemnify and hold the City harmless from and against any and all Damages, to which it may be subject because of or related to any claim that the Plans and Specifications and/or the Preliminary Plans and Specifications, the Coordinated Franchise Structures, any intellectual property of the Company incorporated in the Ad-Bearing Street Furniture/ and/or Non-Ad-Bearing Street Furniture (to the extent such are designed during the Term of this Agreement) 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;

provided, however, that the Company shall not be obligated to indemnify the City for any Damages to the extent such Damages arise out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and Specifications, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. This indemnification is independent of the Company's obligations to obtain insurance as provided under this Agreement. Furthermore, the Company shall defend and settle at its sole expense all suits or proceedings brought against Company arising out of the foregoing. No such settlement, however, shall be made that prevents the City or the Company from continuing to use the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software without the City's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event an injunction or order shall be obtained against the City's use of Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software under this Agreement by reason of the allegations, or if in the Company's opinion the Plans and Specifications, and the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software is likely to become the subject of a claim of infringement or violation of a copyright, trade secret or other proprietary right of a third party, or if the City's ability to enjoy use of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software has become materially disrupted by a claim of a third party, the Company shall at its expense, and at its option: (i) procure the right to allow the City to continue using the alleged infringing material; or (ii) modify the applicable portion(s) of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software so that it becomes non-infringing, or replace the infringing materials or Software with non-infringing materials or Software, but only if the modification or replacement does not materially change the design of the affected Coordinated Franchise Structures; provided, however, that the Company shall not be obligated to take the actions described in clauses (i) and (ii) if the injunction, order or claim in question arises out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and Specifications, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. The modifications discussed in the previous sentence are subject to the City's prior written approval. The obligations to indemnify pursuant to this Section 12.1.6 shall survive the expiration or termination of this Agreement.

12.1.7. No Claims Against Officers, Employees, or Agents. Company agrees not to make any claim against any officer or employee of the City or officer or employee of an agent of the City, in their individual capacity, for, or on account of, anything done or omitted in connection with this Agreement. Nothing contained in this Agreement shall be construed to hold the City liable for any lost profits, or any consequential damages incurred by Company or any Person acting or claiming by, through or under Company.

12.2 Insurance.

12.2.1. Types of Insurance. The Company shall continuously maintain one or more liability insurance policies meeting the requirements of this Section 12.2 throughout the Term and thereafter until completion of removal of the System, or any part thereof, on, over, or under the Inalienable Property of the City including all reasonably associated repair of the Inalienable Property of the City or any other property to the extent such removal and or restoration is required pursuant to this Agreement. The Company has provided Proof of Insurance pursuant to Section 12.2.3(a) hereof, and shall effect and maintain the following types of insurance as indicated in Schedule E attached hereto (with the minimum limits and special conditions specified in Schedule E attached hereto). Such insurance shall be issued by companies that meet the standards of Section 12.2.2(a) hereof and shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

(a) The Company shall provide a Commercial General Liability Insurance policy covering the Company as Named Insured and the City as an Additional Insured. Coverage for the City as Additional Insured shall specifically include the City's officials, employees and agents, and shall be at least as broad as Insurance Services Office ("ISO") Form CG 2010 (11/85 ed.) (No later edition of ISO Form CG 2010, and no more limited form or endorsement, is acceptable.) This policy shall protect the City and the Company from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Agreement. Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (1/96 ed.), must be "occurrence" based rather than "claims-made", and shall 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. If such insurance contains an aggregate limit, it shall apply separately to this Project.

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

(i) The City of New York together with its officials, employees and agents is an Additional Insured with coverage as broad as ISO Forms CG 2010 (11/85 ed.) and CG 0001 (1/96 ed.); and

(ii) The Duties in the Event of Occurrence, Claim or Suit condition of the policy is amended per the following: if and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City of New York as Additional Insured under this policy, such 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 following position shall have received notice thereof from such agent, servant, official, or employee: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

(iii) Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall 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; and

(iv) 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.

(b) The Company shall provide, and ensure that each subcontractor provides, Workers Compensation Insurance and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Agreement.

(c) The Company shall provide, and ensure that each subcontractor provides, Employers Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his/her employment under this Agreement.

(d) The Company shall provide a Comprehensive Business Automobile Liability policy for liability arising out of 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").

(e) The Company shall provide a Professional Liability Insurance Policy covering Breach of Professional Duty, including actual or alleged negligent acts, errors or omissions committed by the Company, 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. 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 Company'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 three-year extended reporting period for acts or omissions that occurred but were not reported during the policy period.

(f) All insurers shall waive their rights of subrogation against the City, its officials, employees and agents.

(g) 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 given as a matter of law.

(h) The Company shall provide such other types of insurance, at such minimum limits, as are specified in Schedule E attached hereto.

12.2.2. General Requirements for Insurance Policies.

(a) All required insurance policies shall be maintained 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, unless prior written approval is obtained from the Mayor's Office of Operations.

(b) The Company shall be 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.

(c) 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 such schedule or (ii) the limits provided to the Company as Named Insured under all primary, excess and umbrella policies of that type of coverage.

(d) Except for insurance required pursuant to Sections 12.2.1(b) and 12.2.1(c) herein, all policies shall be endorsed to provide that the policy may not be cancelled, terminated, modified or changed unless 30 days prior written notice is sent by the Insurance Company to the Named Insured (or First Named Insured, as appropriate), the Commissioner, and to Comptroller, attn: Office of Contract Administration, Municipal Building, Room 1005, New York, New York 10007.

(e) Within 15 days of receipt by the City of any notice as described in 12.2.2(d) hereof, the Company shall obtain and furnish to DOT, with a copy to the Comptroller, replacement insurance policies in a form acceptable to DOT and the Comptroller together with evidence demonstrating that the premiums for such insurance have been paid.

12.2.3. Proof of Insurance.

(a) The Company has, for each policy required under this Agreement, filed a Certificate of Insurance with the Commissioner pursuant to Section 12.2.6 hereof.

(b) All Certificates of Insurance shall be in a form acceptable to the City and shall certify the issuance and effectiveness of the Types of Insurance specified in Schedule E, each with the specified Minimum Limits and Special Conditions.

(c) Certificates of Insurance confirming renewals of, or changes to, insurance shall be submitted to the Commissioner not less than 30 Days prior to the expiration date of coverage of policies required under this Agreement. Such Certificates of Insurance shall comply with the requirements of Sections 12.2.3(a) and 12.2.3(b) herein.

(d) The Company shall be obligated to provide the City with a copy of any policy required by this Section 12 upon the demand for such policy by the Commissioner or the New York City Law Department.

12.2.4. Operations of the Company.

(a) Acceptance by the Commissioner of a certificate hereunder does not excuse the Company from securing a policy consistent with all provisions of this Section 12 or of any liability arising from its failure to do so.

(b) The Company shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to perform Services only during the effective period of all required coverage.

(c) In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Company shall immediately stop all Services, and shall not recommence Services until authorized in writing to do so by the Commissioner. Notwithstanding the above, if any or all of the Services are being provided by a subcontractor that maintains insurance satisfactory to the City that names the City as additional insured, and such insurance is in full force and effect and remains in full force and effect during the period of the lapse, then the Company, acting through its subcontractor, may continue to provide such Services as directed by DOT.

(d) The Company shall notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of the Company or its subcontractors, promptly, but not later than 20 days after such event. The Company'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 Company as Named Insured." The Company's notice to the insurance carrier shall contain the following information: the name of the Company, 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 Company, the identity of the persons or things injured, damaged or lost. Additionally,

(i) At the time notice is provided to the insurance carrier(s), the Company shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street Room 1222, New York, New York 10007. Notice to the Commissioner shall be sent to the address set forth in Schedule E attached hereto; and

(ii) If the Company fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Company 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.

12.2.5. Subcontractor Insurance. The Company shall ensure that each subcontractor name 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 Company. The foregoing requirements shall not apply to insurance provided pursuant to Sections 12.2.1(b) and 12.2.1(c) herein.

12.2.6. Insurance Notices, Filings Submissions. Wherever reference is made in Section 12.2 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Schedule E attached hereto. In the event no address is set forth in such schedule, such documents are to be sent to the Commissioner's address as provided in Section 14.4 hereof.

12.2.7. Disposal. If pursuant to this Agreement the Company is involved in the disposal of hazardous materials, the Company shall dispose such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least \$2,000,000 for losses arising from such disposal site.

12.2.8. Adjusted Insurance Coverage. The Company agrees to adjust the minimum coverage of the liability insurance policy or policies required in this Section 12.2 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 with respect to 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. Such notice shall specify in reasonable detail why the City is requiring such additional amounts or types of insurance.

12.2.9. Other Remedies. Insurance coverage in the minimum amounts provided for herein shall not relieve the Company or subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

SECTION 13

DEFAULTS AND REMEDIES; TERMINATION

13.1 Defaults.

(a) In the event any requirement listed in Appendix A is not performed to the standard set forth in Appendix A and this Agreement, the Company shall be obligated to pay the liquidated damages described in Appendix A. The Company agrees that any failure to perform such requirements to such standard shall result in injuries to the City and its residents, businesses and institutions the compensation for which will be difficult to ascertain. Accordingly the Company agrees that the liquidated damages in the amounts set forth in Appendix A are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. Liquidated damages payable by the Company under this Agreement shall cease to accrue following expiration or termination of this Agreement for any reason, but shall accrue or be imposed during any holdover period.

(b) In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement, which breach or default is not cured within the specific cure period provided for in this Agreement (each such breach or default referred to herein as a “Default”), then the City may:

(i) cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

(ii) make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

(iii) draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

(iv) pursue any rights the City may have under the Guaranty;

(v) seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

(vi) seek to restrain by injunction the continuation of the Default;

(vii) and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

(c) In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement for which breach or default a specific time period to cure is not expressly identified in this Agreement, and, except as provided in the last paragraph of this Section 13.1(c) below, which breach or default is not cured within ten days after notice from the City (each such breach or default also referred to herein as a “Default”), then the City may:

(i) cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

(ii) make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

(iii) draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

(iv) pursue any rights the City may have under the Guaranty;

(v) seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

(vi) seek to restrain by injunction the continuation of the Default;

(vii) and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

Notwithstanding the above, the 10-day cure period is not applicable to (x) any matters contemplated by Section 2.5.4.4 herein, (y) any breach of the Company's obligations set forth in Section 3.1.5(e) herein (with respect to its obligation to remove broken glass within 24 hours), 3.1.5(f)(1) herein, or 4.4.9 herein (with respect to the obligation to remove material in violation of Section 4.4.1 herein), or (z) the breach of any other obligation of the Company which adversely impacts public safety, and the City may exercise any of the rights enumerated in this paragraph arising from such breach.

(d) 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 Company shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

(e) The rights and remedies described in the preceding subsections (b) and (c) shall not be exclusive (except as specifically set forth therein with regard to liquidated damages), but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any liability under this Agreement. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City. The provisions of this Section 13.1(e) shall at all times be subject to Section 13.5(b).

13.2 Termination Defaults.

13.2.1. Definition of Termination Default.

(a) Any failure by the Company to comply with the material terms and conditions of this Agreement, as such failures are described in the following subsections (i) through (xiv) shall be a “Termination Default” hereunder:

(i) material failure to comply with the Company’s obligations to install Coordinated Franchise Structures in accordance with this Agreement (including the specified timeframes);

(ii) material failure to comply with the Company’s obligations to maintain the Coordinated Street Furniture as described in this Agreement;

(iii) persistent or repeated failures to timely pay amounts due hereunder that are not being disputed by the Company in good faith, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

(iv) persistent or repeated failures to timely abide by the Company’s obligations under this Agreement, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

(v) if the Company fails to maintain in effect the Letter of Credit in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.5(b)), and such failure continues for ten business days after notice;

(vi) if the Company fails to maintain in effect the Performance Bond in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.1(b)), and such failure continues for ten business days after notice;

(vii) if the Company fails to replenish the Security Fund as required under the provisions of Section 6 herein and such failure continues for ten business days after notice;

(viii) if the Company fails to establish or maintain the Escrow Fund or to cause the establishment or maintenance of the Supplemental Escrow Fund as required under the provisions of Section 9.5 herein and such failure continues for ten business days after notice;

(ix) if, in connection with this Agreement, the Company (x) intentionally or recklessly makes a material false entry in the books of account of the Company or intentionally or recklessly makes a material false statement in the reports or other filings submitted to the City, or (y) makes multiple false entries that are material in the aggregate in the books of account of the Company or multiple false statements that are material in the aggregate in the reports or other filings submitted to the City;

(x) if the Company fails to maintain insurance coverage or otherwise materially breaches Section 12.2 herein and such failure continues for ten business days after notice from the City to the Company;

(xi) if the Company engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;

(xii) if the Company, 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;

(xiii) the occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other similar judicial or non judicial sale of all or any material part of the System, and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner within 20 business days after notice from the City to the Company that such event will not lead to such foreclosure or other judicial or non judicial sale. Such an event may include, without limitation: (a) default under any loan or any financing arrangement material to the System or the obligations of the Company under this Agreement; (b) default under any contract material to the System or the obligations of the Company under this Agreement; or (c) default under any lease or mortgage covering all or any material part of the System;

(xiv) if: (aa) the Company shall make an assignment or other transfer of interest of the Company or the System, or there is any change in Control, in each case prohibited by or in violation of Section 11, or if the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any part of the System; (bb) a writ or warranty of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (cc) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings which is unstayed for 60 days (provided that the 60 day period shall not apply if as a result of such final order, judgment or decree the Company will be unable to perform its obligations under this Agreement); or (dd) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company;

(xv) the Company sets a charge for use of the APTs that exceeds the maximum permitted charge hereunder.

(b) Relation To Other Defaults. The Company acknowledges that a Termination Default may exist pursuant to one or more of the provisions of the preceding subsection 13.2.1(a) even if such defaults on an individual basis have subsequently been cured after their original occurrence, were the subject of liquidated damages and such liquidated damages have been paid, or were subsequently remediated by recourse to the Security Fund, Letter of Credit, Performance Bond or Guaranty or by collection of judicially awarded damages.

(c) Prior Notice of Certain Events. The City shall give the Company reasonable notice of the existence of any events or circumstances that the City reasonably believes would give rise to a Termination Default under Section 13.2(a)(i)-(iv) if such events or circumstances were to continue.

(d) Remedies of the City for Termination Defaults. In the event of a Termination Default, the City may (in addition to any other remedy which the City may have under Section 13.1 hereof) at its option, give to the Company a notice, in accordance with Section 14.5 hereof, stating that this Agreement and the franchise granted hereunder shall terminate on the date specified in such notice (which date shall not be less than ten days from the giving of the notice), and this Agreement and the franchise granted hereunder shall terminate on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the franchise granted herein.

13.3 Expiration and Termination for Reasons Other Than Termination Default.

(a) Termination for Reasons Other Than Termination Default.

(i) In the event of the condemnation by 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 Company to carry out its obligations and the purposes of this Agreement and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner, within 20 business days after notice that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Company, then and in such event the City may, at its option, to the extent permitted by law, terminate this Agreement by notice within 60 days after the expiration of the foregoing 20 business day notice period as set forth in Section 14.5 hereof.

(ii) In the event the Company shall fail to promptly (A) terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement or (B) suspend pending final resolution of the matter its relationship with any Affiliated Person, any employee or agent of the Company who is indicted 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 pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

(iii) In the Event that the Company is indicted 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 pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

(b) Expiration. This Agreement, if not previously terminated pursuant to the terms of the Agreement, shall expired at the end of the scheduled Term.

13.4 Disposition of System.

13.4.1. Expiration. Upon expiration of this Agreement, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option, to be exercised at least 60 days prior to the expiration, Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 180 days of expiration of this Agreement, which the Company agrees to undertake and complete.

13.4.2. After Termination Upon Termination Default. In the event of any termination of this Agreement due to a Termination Default by the Company, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option to be exercised within 30 days of the date of termination, the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.4.3. After Termination For Reason Other Than A Termination Default. In the event of any termination of this Agreement by the City in accordance with Section 13.3(a), within 30 days of the date of such termination, at the City's option (a) the City may purchase from the Company the System, or any portion thereof, at a purchase price determined by

calculating 100% of the actual cost of fabricating and installing the structures, less depreciation on a straight line basis using an annual depreciation of 10% starting from the initial Installation Date of the applicable Coordinated Franchise Structure; or (b) the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore their site to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.5 Effect of Expiration or Termination.

(a) For Reason Other Than A Termination Default. Following expiration or sooner termination of this Agreement pursuant to Section 13.3(a), the Company shall not be obligated to pay the Franchise Fee, other than in accordance with Section 9.5(b) herein. The City shall refund to the Company within 30 days of the date of such termination, any portion of the Advance Payment which, had the Advance Payment been payable over the first four years of the Term in accordance with the annual amounts set forth on Schedule C, would not yet have become payable to the City in accordance with the terms of Section 9.5 herein.

(b) Upon a Termination Default. Following termination of this Agreement upon a Termination Default, except with respect to the Company's indemnification obligations for third-party claims under Section 12.1, any amounts that may be owed pursuant to Section 4.7 for amounts deferred but not repaid, or any unpaid compensation accrued through the date of termination, the maximum amount of damages that the Company may be liable for in connection with this Agreement (whether as liquidated damages, actual contract damages, or under any theory of recovery whatsoever) shall be limited to, subject to the City's mitigation of damages obligations as set forth in Section 14.23 hereof, the greater of:

(i) the Cash Component for the first three years after any judgment is entered against the Company (or what would have been the last three years of the Term if judgment is entered after what would have been the 16th year of the Term); or

(ii) three times the cash portion of the Franchise Fee owed to the City for the last year of the Term before this Agreement was terminated after adjusting for inflation in the amount of 2.5% per year up to the date the judgment is entered,

plus the full amount of the Security Fund, recourse to the Performance Bond and the full amount of the Letter of Credit then required pursuant to this Agreement.

13.6 Procedures for Transfer After Expiration or Termination. Upon the acquisition of the System by the City or the City's designee pursuant to Section 13.4 herein, the Company shall:

(a) cooperate with the City to effectuate an orderly transfer to the City (or the City's designee) of all records and information reasonably necessary to maintain and

operate the System being transferred (such part of the System referred to hereafter as the “Post Term System”); and

(b) at the City’s option promptly supply the Commissioner with all existing records, contracts, leases, licenses, permits, rights-of-way, and any other materials necessary for the City or its designee to operate and maintain the Post Term System.

13.7 Removal Upon Expiration or Termination.

13.7.1. Removal Procedures. If, upon expiration or any termination of this Agreement, all or any part of the Coordinated Franchise Structures is to be removed pursuant to this Section 13, the following procedures shall apply:

(a) in removing the System, or part thereof, the Company shall restore all Inalienable Property of the City and any other property affected by the actions of the Company under this Agreement (“Other Affected Property”) to its condition as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, and shall have received all applicable approvals from DOT and any other applicable City approvals;

(b) the City shall have the right to inspect and approve the condition of such Inalienable Property of the City after removal and, to the extent that the City reasonably determines that said Inalienable Property of the City and Other Affected Property have not been restored to its condition, as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, the Company shall be liable to the City for the cost of restoring the Inalienable Property of the City and Other Affected Property to said condition; and

(c) the Security Fund, Performance Bond, Letter of Credit, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal of all or any of the Coordinated Franchise Structures and/or restoration and associated repair of all Inalienable Property of the City or Other Affected Property, and for not less than 120 days thereafter, or for such longer periods as set forth in this Agreement.

13.7.2. Failure to Commence or Complete Removal. If, in the reasonable judgment of the Commissioner, the Company fails to commence removal or if the Company fails to substantially complete such removal, 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 Section 13, the Commissioner may, at his or her sole discretion authorize removal of the System, or part thereof, at the Company’s cost and expense, by another Person or remove such System, or part thereof, at the Company’s cost and expense, itself.

13.7.3. No Condemnation. None of the declaration, connection, use, transfer or other actions by the City or the Commissioner under this Section 13 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

13.7.4. Other Provisions. The City and the Company shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that the Company hereby waives its rights, if any, to relocation costs that may be provided by law and except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

SECTION 14

MISCELLANEOUS

14.1 Appendices, Exhibits, Schedules. The Appendices, Exhibits and Schedules to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are except as otherwise specified in said Appendices, Exhibits and Schedules and in Schedule F, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices, Exhibits and Schedules shall be the same as those applicable to any amendment or modification hereof.

14.2 Order of Governance. The following order of governance shall prevail in the event of a conflict between this Agreement and any attachments hereto: 1. Authorizing Resolution; 2. this Agreement; 3. the Schedules, Appendices and Exhibits attached hereto, excluding, however, the BAFO, Proposal and the RFP; 4. BAFO; 5. Proposal; 6. RFP.

14.3 Coordination. The Company and DOT acknowledge and agree that the nature of the relationship created by this Agreement requires extensive and ongoing long-term coordination between the parties. Accordingly, no later than ten business days after the Effective Date, the City shall designate a director of Coordinated Franchise Structures and the Company shall designate the Director of Inter-governmental Relations, as the individual responsible for coordinating with the other party with respect to all matters that may arise from time to time, including matters arising under Section 2.4.4, in the course of the Term relating to the installation, maintenance, and operation of the System. When at any time during the Term of this Agreement any notice is required to be sent to the Company, other than a notice pursuant to Section 14.5 hereof, such notice shall 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. Any such oral notice shall only be effective if (a) given to the person identified in this Section 14.3 or a designee of such person whose designation is notified to the other party hereto in writing and (b) followed reasonably promptly by written notice, which may for such purposes be given by e-mail.

14.4 Publicity. The prior written approval of DOT is required before the Company or any of its employees, servants, agents or independent contractors may, at any time, 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 of communication bearing on the work

performed or data collected under this Agreement. If the Company publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, DOT shall 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, such portion of the publication.

14.5 Notices. All notices required to be given to the City or the Company pursuant to Sections 1.27, 6.6, 7.1, 7.2(c), 7.7, 9.4.1, 9.4.1(d), 10.6.2, 11.3, 12.1.5, 13.2.1(b), 13.2.1(c), 13.2.1(d), 13.3(a), 13.4.1, 13.4.2, 14.10, and 14.11 shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by overnight mail, by fax, or by personal delivery to the address or facsimile number listed below, or to such other location or person as any party may designate in writing from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to “the City,” in which case such communication shall be sent to:

If to the City:

The Commissioner of DOT at 55 Water Street, New York, New York 10041;

with a copy to

General Counsel, New York City Department of Transportation, 55 Water Street, New York, New York 10041

If to the Company:

Cemusa NY, LLC at 420 Lexington Avenue, Suite 2533, New York, NY 10170 or fax # 212-599-7999, Attention: Director of Inter-governmental Relations;

with a copy to

Greenberg Traurig, LLP, MetLife Building, 200 Park Avenue, New York, New York, 10166, or fax # 212-805-9299, Attention: Edward C. Wallace

Except as otherwise provided herein, the mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when mailed or when received if transmitted by facsimile. Any notice required to be given to the Company pursuant to Section 13 herein for which a cure period is ten days or less, which requires action to be taken within ten days or less, or notifies the Company of an event or action that will occur in 10 days or less must be given by personal delivery, overnight mail service or facsimile transmission.

14.6 General Representations, Warranties and Covenants of the Company. In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which

representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City), as set forth in Sections 14.6.1 and 14.6.2 as of the date of this Agreement.

14.6.1. Organization, Standing and Power. The Company is an entity of the type described in Appendix E attached hereto, validly existing and in good standing under the laws of the State specified in Appendix E attached hereto and is duly authorized to do business in the State of New York and in the City. Appendix E attached hereto represents a complete and accurate description of the organizational and ownership structure of the Company and a complete and accurate list of all Persons which hold, directly or indirectly, a 10% interest in the Company, and all entities in which the Company, directly or indirectly, holds a 10% or greater interest. The Company 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 in connection with or as contemplated hereby. The Company is qualified to do business and is in good standing in the State of New York.

14.6.2. Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the certified copies of authorizations for the execution and delivery of this Agreement provided to the City pursuant to Section 2.2 herein are true and correct. This Agreement and all other agreements, if any entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms. The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Neither the execution and delivery of this Agreement by the Company nor the performance of its obligations contemplated hereby will:

(a) conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of the Company or to the Company's knowledge, any agreement among the owners of the Company, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;

(b) result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of the Company except permitted encumbrances under Section 11.5 herein; or

(c) terminate, breach or cause a default under any provision or term of any contract, arrangement, agreement, license or commitment to which the Company is a party, except for any event specified herein or in (a) or (b) above, which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company or the System.

14.6.3. Fees. The Company has paid all material franchise, permit, or other fees and charges to the City which have become due prior to the date of this Agreement pursuant to any franchise, permit, or other agreement.

14.6.4. Criminal Acts Representation. Neither the Company nor, any Affiliated Person or any employee or agent of the Company, has committed and/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 (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided pursuant to this Agreement.

14.6.5. Criminal Acts Covenant. The Company shall promptly terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement.

14.6.6. Relationship with the City. The Company affirms and declares that 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 Company to receive a franchise or other public contracts.

14.6.7. Misrepresentation. No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, in connection with any submission to DOT or the Commissioner, including the Proposal, in connection with the negotiation of this Agreement.

14.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement shall apply to the City and the Company and their successors and assigns.

14.8 Comptroller Rights. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

14.9 Remedies. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of Termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City.

14.10 No Waiver; Cumulative Remedies. No failure on the part of the City or the Company to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City or the Company, as applicable under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City or the Company, as applicable at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City or the Company, as applicable at any other time. In order for any waiver of the City or the Company, as applicable to be effective, it must be in writing. The failure of the City to take any action regarding a Default or a Termination Default by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such Default or Termination Default.

14.11 Partial Invalidity. The clauses and provisions of this Agreement are intended to be 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, such provision shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are not undermined. If, however, the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are undermined as a result of any clause or provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration

is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other party in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity, provided, however, that any such modifications shall be subject to all 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 (which 120-day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences as would ensue if it had been terminated by the City pursuant to Section 13.3(a).

In addition, in the event any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing applicable federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part), the adversely affected party shall notify the other party in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such change, provided, however, that any such modifications shall be subject to all City approvals and authorizations and compliance with all City procedures and processes.

14.12 Survival. Any provision of this Agreement which should naturally survive the termination or expiration of this Agreement shall be deemed to do so.

14.13 Headings and Construction. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder” and “hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term “may” is permissive; the terms “shall,” “must,” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

14.14 No Subsidy. No public subsidy is provided to the Company pursuant to this Agreement.

14.15 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

14.16 Governing Law. This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York,

irrespective of conflict of laws principles, as applicable to contracts entered into and to be performed entirely within the State.

14.17 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive the Term.

14.18 Claims Under Agreement. The City and the Company agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall 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”). To effect this Agreement and intent, the Company agrees that:

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 14.20 hereof,

(b) With respect to any action between the City and the Company in New York State Court; the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non convenience; (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;

(c) With respect to any action between the City and the Company in Federal Court, the Company 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; and

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

14.19 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 shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and, approved as required by applicable law.

14.20 Service of Process. If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its address as set forth in this Agreement, or to such other address as the Company may provide to the City in writing.

14.21 Compliance With Certain City Requirements. The Company agrees to comply in all respects with the City's "MacBride Principles", a copy of which is attached at Appendix F hereto. The Company agrees to comply in all respects with VENDEX, as the same may be amended from time to time.

14.22 Compliance With Law, Licenses.

(a) The Company at its sole cost and expense shall comply with all applicable City, state and federal laws, regulations and policies.

(b) The Company at its sole cost and expense shall obtain all licenses and permits that are necessary for the provision of the Services from, and comply with all rules and regulations of any governmental body having jurisdiction over the Company with respect to the Services.

14.23 Mitigation. In the event of a breach of this Agreement by any of the parties hereto, the other parties will act in good faith and exercise commercially reasonable efforts to mitigate any damages or losses that result from such breach. Notwithstanding the foregoing, nothing contained in this Section 14.23 shall limit in any respect the parties' right to indemnification pursuant to Section 12 herein.

14.24 Force Majeure and Other Excused Failure to Perform. Neither party shall be liable (including, without limitation, for payment of liquidated damages) for failure to perform any of its obligations, covenants, or conditions contained in this Agreement when such failure is caused by the occurrence of an Event of Force Majeure, and such party's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period. Notwithstanding anything to the contrary set forth in this Agreement, to the extent that the Company is unable to timely perform any of its obligations, covenants, or conditions contained in this Agreement due to the fault of the City, the Company's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period.

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

IN WITNESS WHEREOF, the party of the first part, by its Deputy Mayor, duly authorized by the Charter of The City of New York, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and by its Commissioner of The New York City Department of Transportation, duly authorized, has caused its name to be hereunto signed 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.

THE CITY OF NEW YORK

By: _____
Deputy Mayor of The City of New York

THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

By: _____
Commissioner

Approved as to form,
Certified as to Legal Authority

Acting Corporation Counsel

CEMUSA NY, LLC

By: _____
Name:
Title:

Attest: _____
City Clerk

CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

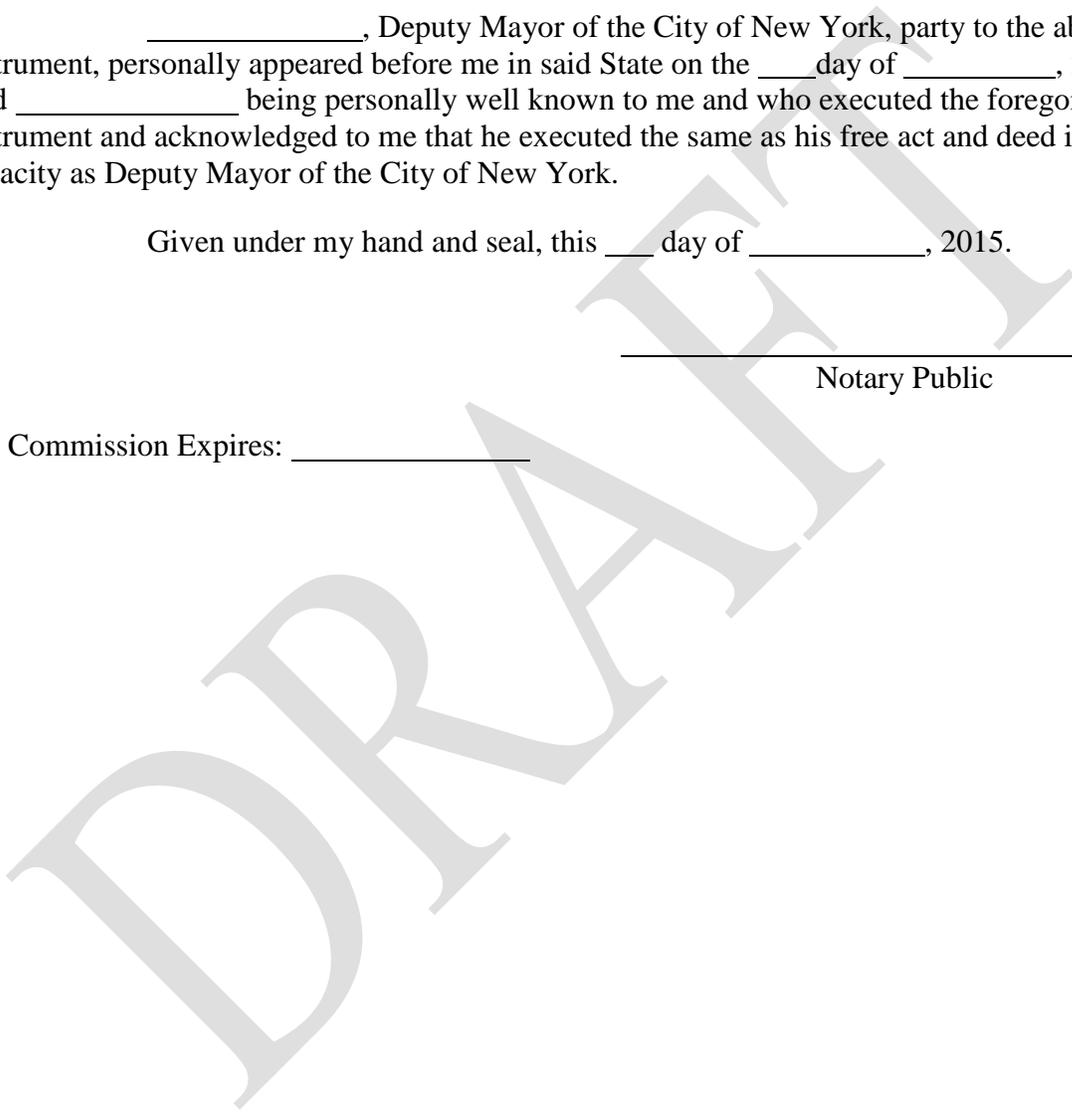
I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, Deputy Mayor of the City of New York, party to the above instrument, personally appeared before me in said State on the ___ day of _____, 2015, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as Deputy Mayor of the City of New York.

Given under my hand and seal, this ___ day of _____, 2015.

Notary Public

My Commission Expires: _____



CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

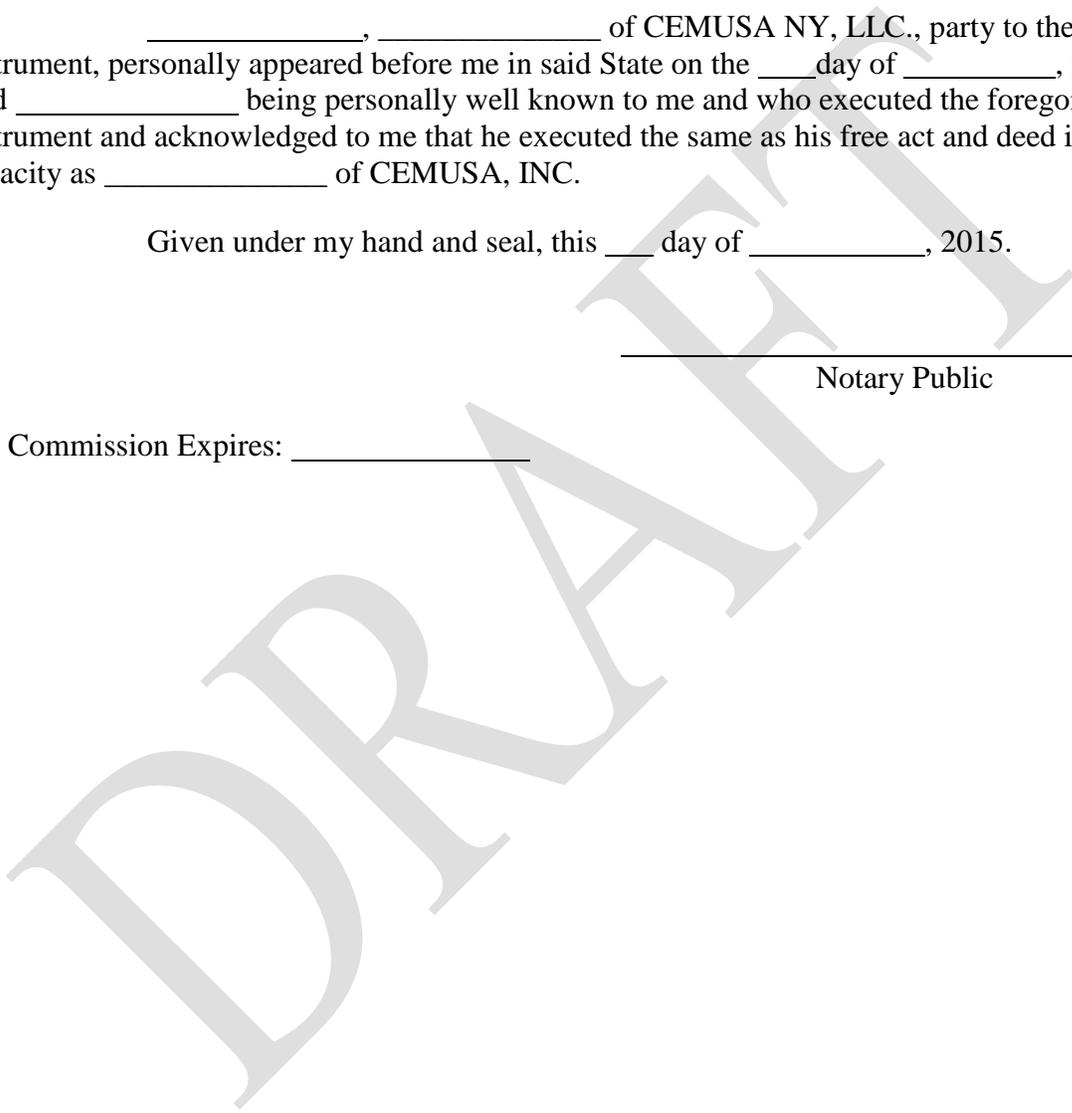
I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, _____ of CEMUSA NY, LLC., party to the above instrument, personally appeared before me in said State on the ___ day of _____, 2015, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as _____ of CEMUSA, INC.

Given under my hand and seal, this ___ day of _____, 2015.

Notary Public

My Commission Expires: _____



Amended and Restated Franchise Agreement

FRANCHISE AGREEMENT

between

THE CITY OF NEW YORK

and

CEMUSA NY, LLC, INC.

Coordinated Street Furniture Franchise

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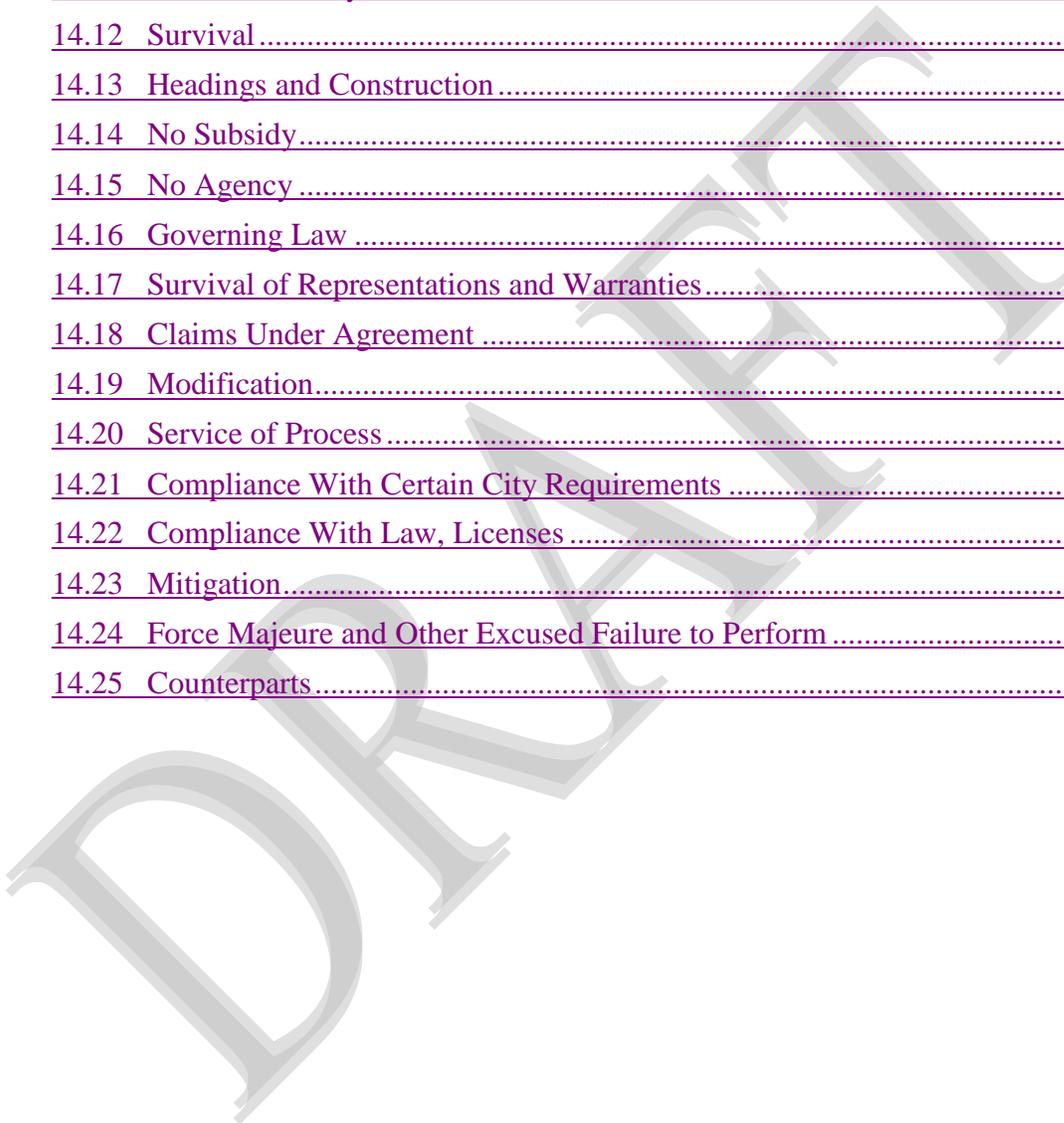
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AMENDED AND REPAIR SCHEDULE

Dated: 5/19/06

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AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, (this “Agreement”) executed as of the 19th day of May, 2015 ~~May, 2006~~ by and between **THE CITY OF NEW YORK** (as defined in Section 1 hereof, the “City”) acting by and through its DEPARTMENT OF TRANSPORTATION ~~DEPARTMENT OF TRANSPORTATION~~ (as defined in Section 1 hereof, “DOT”), having an address at 55 Water ~~40 Worth~~ Street, New York, New York 10041 ~~10013~~, and **CEMUSA NY, LLC, - INC.,** having a place of business at 420 Lexington Avenue, Suite 2533, New York, New York 10170 (as defined in Section 1 hereof, the “Company”).

WITNESSETH:

WHEREAS, pursuant to City Council Authorizing Resolution No. 1004 (passed by the New York City Council on August 19, 2003), attached as Exhibit A hereto, the DOT, on behalf of the City, has the authority to grant non-exclusive franchises for the occupation or use of the Inalienable Property of the City (as defined in Section 1 hereof, the “Inalienable Property of the City”) for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs (as each is hereinafter defined) and for the installation and maintenance of Newsstands (as hereinafter defined) (Bus Shelters, APTs, PSSs and Newsstands are collectively referred to herein as “Coordinated Franchise Structures”), including renewals thereof; and

WHEREAS, DOT issued a Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004, (as defined in Section 1 hereof, the “RFP”) inviting qualified entities to submit proposals for the design, construction, installation, operation and maintenance of Coordinated Franchise Structures on City streets to serve with a coordinated design the needs of residents of, and visitors to, the City; and

WHEREAS, Cemusa, Inc. ~~the Company~~ submitted to DOT its Proposal in response to the RFP; and

WHEREAS, DOT recommended Cemusa, Inc.’s ~~the Company’s~~ Proposal based on its assessment that it was the most beneficial proposal in the interest of the City; and

WHEREAS, on May 11, 2006, the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the “FCRC”) held a public hearing on the proposed grant of a franchise to Cemusa, Inc. ~~the Company~~ for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs and for the installation and maintenance of Newsstands, and associated equipment 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”); and

WHEREAS, the FCRC, at its duly constituted meeting held on May 15, 2006, and acting in accordance with its customary procedures, voted on and approved the grant to Cemusa, Inc. ~~the Company~~ of a franchise as contemplated by the RFP; and

WHEREAS, the potential environmental impacts of the action to be taken hereunder have been considered by the City and have been determined by the City to be fully consistent with those resulting from the ~~Council's~~~~Council's~~ approval of the authorization of DOT to grant a nonexclusive franchise for the installation, operation and maintenance of coordinated franchise structures, which include bus stop shelters, automatic public toilets, newsstands and other public service structures and Local Law 64 of 2003 (the newsstand legislation) which were reviewed and for which a negative declaration was issued finding that such actions will not result in any significant adverse environmental impacts, all in accordance with the New York State Environmental Quality Review Act (~~("SEQRA")~~), 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); and

WHEREAS, on June 26, 2006, Cemusa, Inc. and the City acting by and through its DOT entered into the Franchise Agreement for the Coordinated Street Furniture Franchise for the installation, operation and maintenance of Bus Shelters, APTs, and PSSs and for installation and maintenance of Newsstands (the "2006 Agreement"); and

WHEREAS, on September 20, 2007, the franchisee's interest in the 2006 Agreement was assigned to Cemusa NY, LLC; and

WHEREAS, on March 17, 2014, FCC Versia, S.A., Beta De Administración, S.A., JCDecaux Europe Holding and JCDecaux SA entered into an Agreement for the Sale and Purchase of CEMUSA – Corporación Europea de Mobiliario Urbano, S.A., pursuant to which all shares in Cemusa, Inc. shall be transferred from CEMUSA – Corporación Europea de Mobiliario Urbano, S.A. to JCDecaux North America, Inc. ("JCDecaux") (the transaction described herein being referred to hereinafter as the "2015 Change in Control"); and

WHEREAS, in accordance with the 2006 Agreement, on September 28, 2015, the FCRC held a public hearing to consider the 2015 Change in Control; and

WHEREAS, the FCRC, at a meeting held on September 30, 2015, and acting in accordance with its customary procedures, voted on and approved the 2015 Change in Control together with certain amendments, clarifications and provisions updating the 2006 Agreement, all as fully set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1

DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates

that another meaning is intended. In addition, all references to “install, operate and maintain,” “installation, operation and maintenance,” “install and maintain,” “installation and maintenance,” or any other variance therein, shall be deemed to include any construction, installation, operation, maintenance, repair, upgrading, renovation, removal, relocation, alteration, replacement or deactivation as appropriate, except that with respect to Newsstands, it shall not include operation.

~~1.1~~ 1.1 “ADA” shall have the meaning given in Section 3.7 hereof.

~~1.2~~ 1.2 “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 Company; (ii) each Person in which the Company has directly or indirectly, a Controlling Interest; (iii) each executive officer, director or general partner or limited partner holding an interest of 10% or more in the Company; and (iv) each Person directly or indirectly, controlling, controlled by or under common Control with the Company; provided that “Affiliate” or “Affiliated Person” shall in no event mean the City, any limited partner holding an interest of less than 10% of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliate or Affiliated Person.

~~1.3~~ 1.3 “Agreement” means this ~~Agreement~~agreement, together with the Appendices, Exhibits and Schedules attached hereto and all amendments or modifications thereof.

~~1.4~~ 1.4 “APT(s)” means automatic public toilets installed or to be installed by the Company pursuant to this Agreement.

~~1.5~~ 1.5 “Arbitrated Value” shall have the meaning given in Section 9.4.1(d) hereof.

~~1.6~~ 1.6 “Art Commission” means the Art Commission of the City of New York, or any successor thereto.

~~1.7~~ 1.7 “AVLC(s)” means automatic vehicle location and control systems.

~~1.8~~ 1.8 “Bus Shelter(s)” means structures intended as bus stop shelters (including seating, if installed) which provide meaningful protection from precipitation, wind, and sun, consisting of New Bus Shelters and Existing Bus Shelters.

~~1.9~~ 1.9 “BAFO” means ~~Cemusa Inc.’s~~the Company’s Best and Final Offer dated June 27, 2005.

~~1.10~~ 1.10 “Baseline In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

~~1.11~~ 1.11 “Build Start Date” shall have the meaning given in Section 2.4.6 hereof.

~~1.12~~ 1.12 “~~Cemusa In Kind Market(s)~~” shall have the meaning given in Section 9.1(a) hereof.

~~1.13~~ “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 thereof, or any successor thereto.

~~1.14~~ 1.13 Intentionally Deleted.

~~1.15~~ 1.14 “Commissioner” means the Commissioner of DOT, or his or her designee, or any successor in function to the Commissioner.

~~1.16~~ 1.15 “Company” means Cemusa NY, LLC, CEMUSA, Inc., a Delaware limited liability company ~~corporation~~, whose principal place of business is located at 420 Lexington 645 North Michigan Avenue, Suite 2533, New York, New York 10170800, Chicago, Illinois 60611.

~~1.17~~ 1.16 “Comptroller” means the Comptroller of the City, the Comptroller’s designee, or any successor in function to the Comptroller.

~~1.18~~ 1.17 “Control” or “Controlling Interest” in a Person, in the assets comprising the System, in the Company or in the franchise granted herein means working control in whatever manner exercised, including without limitation, working control through ownership, management, or negative control (provided, however that negative control shall not be interpreted to include negative covenants that may be set forth in financing documentation or similar provisions that may be set forth in financing documentation), as the case may be, of such Person, the assets comprising the System, the Company or the franchise granted herein. A rebuttable presumption of the existence of Control or a Controlling Interest in a Person, in the assets comprising the System, in the Company or in the franchise granted herein shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public), of 10% or more of such Person, the assets comprising the System, the Company or the franchise granted herein. “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person or group of Persons.

~~1.19~~ 1.18 “Coordinated Franchise Structure(s)” means Bus Shelters, APTs, PSSs and Newsstands and any associated equipment, wiring, and/or cables that are attached to such Coordinated Franchise Structures (other than any such associated equipment, wiring, and/or cables that are owned by third parties) and the advertising panels, installed on, over and under the Inalienable Property of the City.

~~1.20~~ 1.19 “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).

~~1.21~~ 1.20 “Damages” shall have the meaning given in Section 12.1.1 hereof.

~~1.22~~ 1.21 “DOT” or the “Department” means the Department of Transportation of the City, its designee, or any successor thereto.

1.22 “Effective Date” means the effective date of the 2006 Agreement, which is June 26, 2006.

~~1.23~~ ~~1.23~~ “Effective Date” means the later of the date on which this Agreement has been registered with the Comptroller as provided in Sections 375 and 93.p. of the City Charter or the expiration of the 30 day notice period provided under the Viacom Outdoor Agreement to the current party thereto; provided, that the City agrees to give such notice under the Viacom Outdoor Agreement no later than the date this Agreement is registered with the Comptroller.

1.24 “Electronic Inventory and Management Information System” or “EIMIS” means the software which constitutes a computerized inventory system for the Coordinated Franchise Structures and sites as further set forth in the RFP and the Proposal that includes, but is not limited to (a) database, mapping, and graphic capabilities for recording the location (by borough and community district), type, design and features of all installed Coordinated Franchise Structures and the location, features, and status of proposed sites for Coordinated Franchise Structures including sites that have been rejected and (b) capacity for contemporaneous two-way information sharing between DOT and the Company regarding the design, construction, installation, operation, and maintenance of the Coordinated Franchise Structures.

1.25 1.24 “Estimated In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

~~1.26~~ 1.25 “Escrow Agent” shall have the meaning given in Section 9.5(c) hereof.

1.26 “Escrow Agreement” shall have the meaning given in Section 9.5(c) hereof.

1.27 “Escrow Fund” shall have the meaning given in Section 9.5(c) hereof.

1.27 1.28 “Event of Force Majeure” means a delay due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the party claiming an Event of Force Majeure, provided in each case that such party has taken and continues to take all reasonable actions to avoid or mitigate such delay and provided that such party notifies the other party to this Agreement in writing of the occurrence of such 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 Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the party claiming Event of Force Majeure has taken and continues to take all reasonable steps to

pursue such decision. In no event will a government entity's final decision relating to the Company, this Agreement or the System, whether positive or negative, once made constitute an Event of Force Majeure (the term "final decision" in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). The financial incapacity of the Company shall not constitute an Event of Force Majeure.

~~1.28 1.29~~ "Existing Bus Shelters" means the existing Bus Shelters as of the Effective Date, as currently set forth on Schedule A attached hereto, which schedule for purposes of this Agreement shall be updated and finalized on or about the Effective Date by DOT in order to reflect relocation and similar activity since the date of this Agreement.

~~1.29 1.30~~ "Existing Bus Shelter Replacement Schedule" shall have the meaning given in Section 2.4.6(a)(i) hereof.

~~1.30 1.31~~ "Existing Newsstands" means the existing newsstands as of the Effective Date, as currently set forth on Schedule B attached hereto, which schedule for purposes of this Agreement shall be updated and finalized on or about the Effective Date by the New York City Department of Consumer Affairs.

~~1.31 1.32~~ "FCRC" means the Franchise and Concession Review Committee of the City, or any successor thereto.

~~1.32 1.33~~ "Franchise Fees" means the fees paid by the Company to the City as set forth in Section 9 hereof.

~~1.33 1.34~~ "Guarantor" shall mean JCDecaux SAFCC Versia, S.A.

~~1.34 1.35~~ "Guaranty" shall have the meaning given in Section 2.2 hereof.

~~1.35 1.36~~ "Historic Districts" means those districts so designated by Landmarks.

~~1.36 1.37~~ "Inalienable Property of the City" means the property designated in Section 383 of the Charter of The City of New York.

~~1.37 1.38~~ "Indemnitees" shall have the meaning given in Section 12.1.1 hereof.

~~1.38 1.39~~ "Installation Date" shall have the meaning given in Sections 2.4.6-(e) and 2.4.6(f) hereof.

1.40 "JCDecaux In-Kind Market(s)" shall have the meaning given in Section 9.1(a) hereof.

~~1.39 1.41~~ "Landmarks" shall mean the Landmarks Preservation Commission of the City of New York, or any successor thereto.

~~1.40~~ 1.42 “L/C Replenishment Period” shall have the meaning given in Section 7.8 hereof.

~~1.41~~ 1.43 “Letter of Credit” shall have the meaning given in Section 7.1(a) hereof.

~~1.42~~ 1.44 “Mayor” means the chief executive officer of the City or any designee thereof.

~~1.43~~ 1.45 “Media Plan” shall have the meaning given in Section 9.4(a) hereof.

~~1.44~~ 1.46 “New Bus Shelter(s)” means bus shelters installed or to be installed by the Company in conformity with the Plans and Specifications, which replace Existing Bus Shelters or are placed at DOT’s request at other locations, as contemplated in this Agreement, and shall also include Reciprocal Bus Shelters and Fifth Avenue Bus Shelters.

~~1.45~~ 1.47 “New Newsstand” means a Newsstand which is not a Replacement Newsstand as defined in Local Law 64 for the year 2003.

~~1.46~~ 1.48 “New Newsstand Operator” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates or will operate a New Newsstand in the City.

~~1.47~~ 1.49 “Newsstand(s)” means structures intended for selling and displaying newspapers, periodicals and convenience items installed or to be installed by the Company pursuant to this Agreement.

~~1.48~~ 1.50 “Newsstand Operator(s)” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates a Newsstand in the City.

~~1.49~~ 1.51 “NYCMDC” means the New York City Marketing Development Corporation, or successor thereto, acting as agent for the City. If there is no successor to NYCMDC, then DOT shall be deemed the successor thereto for purposes of this Agreement. As agent for the City all obligations of NYCMDC under this Agreement shall be binding on and enforceable against the City, and all benefits to NYCMDC under this Agreement shall accrue to, and be enforceable by, the City.

~~1.50~~ 1.52 “Other Affected Property” shall have meaning given in Section 13.7.1(a) ~~6.1~~ hereof.

~~1.51~~ 1.53 “Performance Bond” shall have the meaning given in Section 7.1(a) hereof.

~~1.52~~ 1.54 “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 shall not mean the City.

~~1.53~~ 1.55 “Plans and Specifications” shall mean the plans, specifications, and designs for the Coordinated Franchise Structures (other than the Existing Bus Shelters) to be installed by the Company pursuant to this Agreement, as approved by the Art Commission and Landmarks to the extent required by law and accepted by DOT, as may be modified from time to time pursuant to this Agreement, and all rights of copyright, patent, trademark, service mark, trade dress, and all other intellectual property rights of any kind arising out of, relating to, or embodied or incorporated in the Coordinated Franchise Structures; any reports, documents, data, drawings, sketches, mockups, models, photographs, images, and/or other materials of any kind and in any medium produced pursuant to this Agreement related to the design, structure and physical appearance of the Coordinated Franchise Structures, and any and all drafts and/or other preliminary materials in any format or medium related to such items. Nothing contained herein shall be construed as entitling the City to assert ownership rights or the licensed rights set forth in Sections 2.4.2 or 2.6 in any word marks or logos of the Company or its licensors.

~~1.54~~ 1.56 “Post Term System” shall have the meaning given in Section 13.6(a) hereof.

~~1.55—1.57~~ “PSS(s)” means public service structures such as trash receptacles, multi-rack news racks and information/computer kiosks that provide access to government or commercial activity (provided, however, that no internet connectivity shall be permitted) to be installed by the Company pursuant to this Agreement.

1.56 “Preliminary Plans and Specifications” means the plans and specifications and designs for the “New York City Line” of the Coordinated Franchise Structures, presented in the BAFO as the “Grimshaw 5” line, and shall include all modifications, improvements and further developments as may be required for presentation to the Art Commission and Landmarks.

~~1.57~~ 1.58 “Privileged Information” shall mean attorney-client communications or attorney work product entitled to privilege under New York State law.

~~1.58~~ 1.59 “Proposal” means the proposal dated September 14, 2004, the Response to Follow-Up Questions dated April 11, 2005, the ~~Company’s letter dated April 18, 2005, the~~ Best and Final Offer dated June 27, 2005 and ~~Cemusa Inc.’s~~ the Company’s letter dated July 7, 2005, each submitted by ~~Cemusa, Inc.~~ the Company in response to the RFP.

1.60 “PSS(s)” means public service structures such as trash receptacles, multi-rack news racks and information/computer kiosks that provide access to government or commercial activity (provided, however, that no Internet connectivity shall be permitted) to be installed by the Company pursuant to this Agreement.

1.61 “Public Communications Structure Franchise Agreement” or “PCSFA” means the Public Communications Structure Franchise Agreement between the City and CityBridge, LLC, executed December 19, 2014, as such PCSFA may be amended from time to time.

~~1.59~~ 1.62 “quarter” as used in Sections 4 and 9 of this Agreement shall mean three-month periods beginning on the Effective Date. For avoidance of doubt, if the Effective Date is

May 25, the quarters of the Term would end on August 24, November 24, February 24 and May 24.

~~1.60~~ 1.63 “Replacement Newsstand” means a Newsstand as defined in Local Law 64 for the year 2003.

~~1.61~~ 1.64 “Replacement Newsstand Schedule” shall have the meaning given in Section 2.4.6(d)(i) hereof.

~~1.62~~ 1.65 “Replenishment Period” shall have the meaning given in Section 6.7.

~~1.63~~ 1.66 “RFP” means the Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004.

~~1.64~~ 1.67 “Scroller(s)” shall mean a two-sided advertising display that contains a minimum of three posters per side, each containing an individual graphic, and that can display multiple campaigns on both sides by providing an opportunity to change an advertising poster at pre-determined time intervals by gradually moving another poster containing an individual graphic in place of the first, allowing for multiple advertisers to post advertising posters in one location (or allowing an advertiser the opportunity to post multiple creative executions in a series as part of one ad campaign) during the same posting period. For the purposes of Section 4 hereof, a Scroller shall not be counted as one panel but rather by the number of posters with individual graphics contained therein.

~~1.65~~ 1.68 “Security Fund” shall have the meaning given in Section 6.1 hereof.

~~1.66~~ 1.69 “Service(s)” means the installation, operation and maintenance of Coordinated Franchise Structures, provided, however, that with respect to Newsstands, Services shall mean installation and maintenance and shall not include operation.

~~1.67~~ 1.70 “Software” shall have the meaning given in Section 2.4.2(b) hereof.

~~1.68~~ 1.71 “Software Escrow Agent” shall have the meaning given in Section 2.4.2(e) hereof.

~~1.69~~ 1.72 “System” means all of the Coordinated Franchise Structures which are to be installed, operated and/or maintained by the Company pursuant to this Agreement and the EIMIS (together with associated data).

~~1.70~~ 1.73 “Term” means the term of the Agreement as described in Section 2.1 hereof.

~~1.71~~ 1.74 “Termination Default” shall have the meaning given in Section 13.2.1(a) hereof.

~~1.72~~ 1.75 “Vendex” means the City’s Vendor Information Exchange System, or any successor system established pursuant to law, rule or regulation.

~~1.73~~ 1.76 “Viacom Outdoor Agreement” means the contract dated March 20, 1985 by and between the City of New York and Miller Signs Associates, as last amended on January 25, 2005.

~~1.74~~ 1.77 “year” shall mean a period of 365 days, as distinguished from a calendar year.

SECTION 2

GRANT OF AUTHORITY

2.1 Term. This Agreement, and the franchise granted hereunder, shall commence upon the Effective Date, and shall continue for a term of 20 years from the Effective Date, unless this Agreement is earlier terminated as provided in this Agreement (the “Term”).

2.2 Submissions By the Company. The City acknowledges receipt from the Company of the following items and documents and hereby agrees that as of the date hereof each such item or document delivered by the Company is on its face in compliance with the terms and conditions of this Agreement and that the Company has fulfilled its contractual obligations thereto, provided, however, that this acknowledgement and agreement in no way releases any of the Company’s ongoing obligations as to such items under this Agreement: (i) evidence as described in Section 12 hereof of the Company’s insurance coverage, (ii) an opinion of the Company’s~~Company's~~ counsel dated as of the date this Agreement is executed by the Company, in a form reasonably satisfactory to the City, that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company, (iii) an IRS W-9 form certifying the Company’s tax identification number, (iv) a letter from the Company to the Department of Consumer Affairs certifying to the projected costs of the construction and installation of the New Newsstands, as described in Section 2.4.6(d)(iii) hereof, (v) organizational and authorizing documents as described in Sections 14.6.1 and 14.6.2 hereof, (vi) evidence that the Security Fund required pursuant to Section 6 hereof has been created, (vii) evidence that the Performance Bond required pursuant to Section 7 hereof has been created consisting of an original executed performance bond in the required amount and approved form, (viii) evidence that the Letter of Credit required pursuant to Section 7 hereof has been delivered, (ix) a guaranty from the Guarantor (“Guaranty”), and (x) fully completed and up-to-date questionnaires in connection with Vendex which have received a favorable review by the City.

~~2.3.2.3~~ Certain Actions by the Company.~~after the Effective Date.~~ Within five (5) business days of receipt by the Company of an invoice, the Company shall reimburse to the City all costs incurred by the City in publishing legally required notices with respect to the approvals and consents required for franchise granted by this Agreement.

~~2.4.2.4~~ Nature of Franchise; Effect of Termination.

2.4.1. Nature of Franchise. The City hereby grants the Company, in accordance with the terms and conditions of this Agreement, the RFP, the Proposal and the BAFO (the RFP, Proposal and BAFO are attached hereto and made a part hereof as Exhibits B, C, and D respectively), a non-exclusive franchise providing the right and consent to install, operate and maintain Bus Shelters, APTs, and PSSs and to install and maintain Newsstands on, over and under the Inalienable Property of the City. The exercise of such franchise is subject to all applicable laws, rules and regulations of the City, including with respect to the Newsstands, Local Law 64 for the year 2003 and with respect to multi-rack news racks, 19-128.1 of the Administrative Code. The Inalienable Property of the City does not include premises controlled by such entities as, including, but not limited to, the New York City Department of Education, the New York City Health and Hospitals Corporation, the Metropolitan Transportation Authority, the New York City Housing Authority, the New York City Off Track Betting Corporation, or the interior of any buildings owned, leased, or operated by the City, or any other City property not expressly included in Section 1.3736 herein.

2.4.2. Ownership.

(a) (a)—All Coordinated Franchise Structures are at all times during the Term of this Agreement, except as otherwise stated in this Agreement, the property of the Company, and the Company has responsibility therefore in accordance with the terms of this Agreement. The Company shall take ownership and be responsible for the operation and maintenance as described herein of the Existing Bus Shelters as of the Effective Date of this Agreement. No representations are or have been made by the City, or by any of its officers, agents, employees or representatives, as to the present physical condition, structural integrity, cost of operation or otherwise of the Existing Bus Shelters, and the Company acknowledges that it has inspected the same, is familiar with the “as is” condition thereof, and will hold the City harmless in connection therewith pursuant to Section 12.1.1 hereof, provided, however, the Company shall have no liability for Damages relating to any event that occurred prior to the Effective Date. Except as otherwise stated in this Agreement, during the Term hereof, the City has no ownership interest, or any obligations with respect to, the Coordinated Franchise Structures.

(b) (b)—The Company and/or Cemusa, Inc. has purchased sufficient licenses for all off-the-shelf software and hardware components reasonably necessary for the creation, maintenance, and operation of EIMIS and has secured for the City valid, non-exclusive, royalty-free, paid-up sublicenses, or equivalent rights to use, consistent with the terms and conditions of this Agreement for any proprietary software used by the Company and reasonably necessary for operation and (to the extent applicable) maintenance of EIMIS, and to the extent independent licenses are required, software pertaining to the operation and maintenance of APTs and PSSs (all such software referred to in this sentence, collectively referred to hereinafter as the “Software,” which for purposes of this Agreement will mean programs in object code format only together with any manuals and documentation). The licenses and sublicenses in the Software to be granted to the Company and/or the City in accordance with this Section 2.4.2(b) or Section 3.3(c) will be sufficient to allow the Company and/or City to (i) access, operate, and maintain the EIMIS, and all APTs and PSSs for the purposes contemplated by this Agreement

during the Term and (ii) address changing conditions as they apply to EIMIS, including without limitation, by requiring the applicable software vendors to create derivative works of the Software in customizing, adapting, configuring, optimizing and refining EIMIS consistent with the purposes of this Agreement.

~~(c)~~ ~~(e)~~—The Plans and Specifications and the Preliminary Plans and Specifications are the property of the Company or its licensors, as applicable. The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City, effective as of the date of the first to occur of the termination or expiration of this Agreement in accordance with its terms or the transfer of ownership of the Coordinated Franchise Structures to the City, an exclusive, irrevocable, royalty-free to the City, fully paid-up license (i) to use the Plans and Specifications, and the Preliminary Plans and Specifications to the extent incorporated in the Plans and Specifications, for the purpose of installing, maintaining and operating in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures) and (ii) to display, perform publicly, and reproduce the Plans and Specifications for purposes of installing, operating, and maintaining in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures). For avoidance of doubt, the license grant set forth in the immediately preceding sentence of this Section 2.4.2(c) shall immediately take effect in accordance with its terms whether or not the Company challenges such termination; provided, however, that nothing herein shall be interpreted as an admission by the Company that any such termination is appropriate. Furthermore, for all copyright and patent rights in the grants above, the terms of these licenses will be the longest term currently recognized for copyrights and patents, respectively, under United States law. For all other rights licensed in this Section, the term of the license is perpetual. Notwithstanding the foregoing, as of the Effective Date, nothing herein shall be construed as restricting the City’s ability to work during the Term with the Company and the Company’s licensor Grimshaw Industrial Design, LLC (“Grimshaw”) in furtherance of the purposes of this Agreement to coordinate the creation, installation, and maintenance of the Coordinated Franchise Structures. Further, as of the Effective Date, the Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City a non-exclusive, royalty-free license to display, reproduce, and perform publicly images of the Coordinated Franchise Structures in any medium for the term of copyright.

~~(d)~~ ~~(d)~~—The Company agrees that the Coordinated Franchise Structures installed by the Company in accordance with this Agreement shall be unique to the City, and the Company shall not, without the prior written permission of the City, install or cause or facilitate the installation of any such Coordinated Franchise Structures for any other client or other third party anywhere in the world. Additionally, the Company shall cause third parties that expressly licensed the Plans and Specifications, in whole or in part, to the Company, or third parties that otherwise participated in the creation of the Plans and Specifications –to execute documents to this effect.

~~(e)~~ ~~(e)~~—To the extent that this Agreement includes software licensed to the Company and/or the City (excluding “off-the-shelf” software) in connection with the creation, operation or maintenance of EIMIS, the Company agrees that (i) it shall cause its software vendor to enter into, and maintain in full force and effect a source code escrow agreement with an escrow agent (the “Software Escrow Agent”), which escrow agreement shall provide materially the same terms and conditions as follows, and (ii) all source code and related documentation for the licensed software shall be under escrow deposit pursuant to said escrow agreement. The Company shall cause its software vendor to provide 30 days prior written notice of a change of the Software Escrow Agent. The escrow agreement contemplated hereby must be in effect within 30 days of the Effective Date. Additionally,

~~(i)~~ ~~(i)~~—source code must be held by the Software Escrow Agent in trust for the City;

~~(ii)~~ ~~(ii)~~—all major updates (e.g., new versions and critical patches and fixes) must be escrowed as they are issued; minor updates may be escrowed in batches no less frequently than monthly;

~~(iii)~~ ~~(iii)~~—the Software Escrow Agent shall verify deposit of the source code and all updates and so notify the City;

~~(iv)~~ ~~(iv)~~—the City shall be permitted periodic testing of all source code held in escrow; and

~~(v)~~ ~~(v)~~—if the Company’s software vendor, any assignee or successor (x) becomes insolvent or ceases to exist as a business entity or (y) fails to perform its obligations under its agreement with the Company such that the Company fails to comply with its obligations with respect to EIMIS contained in this Agreement, 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 commentary for the installed release level of the product utilized by the City. 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 Company’s software vendor.

It is agreed that the Company shall provide to the City all information necessary for the City to comply with registration requirements, if any, of the Software Escrow Agent. The Company agrees to adhere to the obligations set forth in ~~any~~ agreement with the software vendor or the Software Escrow Agent as they relate to the deposit of Software in escrow. ~~The agreement with the Software Escrow Agent shall provide that the City shall have the opportunity to cure any default of the Company, at the sole cost and expense of the Company, that jeopardizes the ability of the City to access the escrowed source code as provided for under this Agreement.~~

The escrow agreement provisions set forth in this Section 2.4.2(e) shall apply with equal force to any software licensed to the City (excluding “off-the-shelf” software) by a subcontractor of the Company.

2.4.3. Warranties of Title. The Company represents and warrants that the Plans and Specifications and Software: (a) are original to the Company or validly licensed or sublicensed to the Company; (b) to the knowledge of the Company after reasonable inquiry, do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any law, rule, or regulation; and (c) do not constitute defamation or invasion of the right of privacy. The Company further represents and warrants that it has not granted any license(s), permit(s), interest(s), or right(s), exclusive or nonexclusive, to any party other than the City with respect to the Plans and Specifications and will not grant any such licenses unless such grants are necessary to perform the Company’s obligations under this Agreement.

2.4.4. Permits, Authorizations, Approvals, Consents and Licenses.

~~(a)~~ ~~(a)~~—Before installing any Coordinated Franchise Structure, the Company shall obtain at its sole cost and expense, any necessary permits, authorizations, approvals, consents, licenses, and certifications required for each Coordinated Franchise Structure, including, but not limited to: (i) pursuant to all City laws, rules and codes 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 DOT, Landmarks and the Art Commission, and any other agency of the City with jurisdiction over the property on which the Coordinated Franchise Structure is to be located; (iii) any necessary permits, authorizations, approvals, consents, licenses, and certifications required pursuant to any applicable state and federal laws, rules, regulations and policies, writs, decrees and judgments; and (iv) any necessary permits, authorizations, approvals, consents, licenses and certifications from Persons to use a building or other private property, easements, poles, and conduits.

~~(b)~~ ~~(b)~~—The Company agrees that fees paid to obtain any permits, consents, licenses, or any other forms of approval or authorization shall not be considered in any manner to be in the nature of a tax, or to be compensation for this franchise in lieu of the compensation described in Section 9 hereof.

2.4.5. Design of Coordinated Franchise Structures. The design of all Coordinated Franchise Structures installed pursuant to this Agreement (other than Existing Bus Shelters) shall be in compliance with all applicable laws, rules and regulations of the City and shall be subject to approval of the Art Commission and, to the extent required by law, Landmarks. Company shall make good faith efforts to obtain approval of the Art Commission and to the extent required by law, Landmarks. The Company shall submit an application signed by DOT (which application DOT agrees to sign in a form reasonably acceptable to DOT), to the Art Commission and, to the extent required by law, Landmarks, for review and approval of the Preliminary Plans and Specifications. In the event that changes to the Preliminary Plans and Specifications are required by the Art Commission or Landmarks for their approvals, the

Company at its sole cost and expense shall make such changes as are required to obtain such approval. Following such approval, the Preliminary Plans and Specifications as approved shall be the Plans and Specifications referred to in this Agreement and shall be the Plans and Specifications used to manufacture the Coordinated Franchise Structures. It is anticipated that street or sidewalk conditions at certain locations will require modifications of the size of individual Coordinated Franchise Structures (as distinct from modifications to the design of the Coordinated Franchise Structures overall). Such modifications to individual Coordinated Franchise Structures shall be made at the Company's sole cost and expense upon a determination by the City that such modifications are necessary or appropriate based on street or sidewalk conditions at such specified locations. Additionally,

~~(a)~~ ~~(a)~~—The Company shall design PSSs such that the public service provided is immediately apparent and shall not be obscured physically or visually by advertising;

~~(b)~~ ~~(b)~~—In consultation with DOT the Company shall prepare as part of the Plans and Specifications size variations of the Newsstands which all meet the dimensional requirements set forth in the RFP and shall comply with the Americans with Disability Act as further set forth in Section 3.7 hereof. Such variations must be approved by DOT in its reasonable discretion and must meet the following specifications: there must be Newsstand lengths of 8', 10' and 12' which must be able to be used interchangeably with Newsstand widths of 4', 5' and 6'. All Newsstands must be a standard height of 9'. Additionally, the Company shall make reasonable efforts to customize the interior of the Newsstand by permitting all Newsstand Operators to select customization options from a standardized group of customization alternatives offered by the Company;

~~(c)~~ ~~(c)~~—The Company shall design New Bus Shelters in a variety of sizes such that every Existing Bus Shelter may be replaced in accordance with the terms of this Agreement. New Bus Shelter designs shall provide for bus route maps, street maps, bus stop name identification, Guide-a-Ride canisters and other information. The New Bus Shelter designs shall also contemplate some form of passenger seating, such as a bench, that may or may not be required to be installed in every New Bus Shelter. Once during the Term at any time during such Term, the City may require the Company, and the Company shall at its sole cost and expense, install or remove such seating from each New Bus Shelter (this provision is not intended to limit the Company's obligation to maintain, including replacement where and when necessary, seating that has been installed and has become worn or damaged, in accordance with the maintenance obligations imposed upon the Company by this Agreement);

~~(d)~~ ~~(d)~~—As the City has determined that only one configuration (in lieu of standard and landmark) is appropriate, the Company shall only be required to design and install one configuration of New Bus Shelters, APTs and Newsstands during the Term, subject to the requirements on size variations set forth in this Agreement;

~~(e)~~ ~~(e)~~—Company shall at its sole cost and expense produce and install such signage as is requested from time to time by DOT. The obligation to produce as used in this Section is defined as the printing and reproduction of City-designed signage intended

specifically and exclusively for Bus Shelters (not including generic bus or transit route maps of the entire system); and

~~(f)~~ ~~(f)~~—The Company shall make appropriate staff available to represent itself and assist DOT during any informal or formal public review processes, including, but not limited to, presentations to a Community Board, review by the Art Commission or Landmarks, or a hearing in front of the FCRC.

2.4.6. Build out and Costs. The Company agrees to construct and install Coordinated Franchise Structures conforming to the Plans and Specifications, and in accordance with the timeframes set forth herein and in Appendix G annexed hereto, at its sole cost and expense, such cost and expense including, but not limited to, the costs of utility connections and infrastructure related thereto, and utilities consumed during the build-out. The Company's construction and installation obligations in this Section 2.4.6 shall be measured from the 60th day after the date of final approval by the Art Commission as set forth in Section 2.4.5 herein (such date shall be referred to as the "Build Start Date"). If the final Art Commission approval contemplated in this paragraph is received on different dates with respect to the New Bus Shelters, Newsstands or APTs, the term "Build Start Date" shall refer to the date of final approval of the Art Commission as it relates to the relevant Coordinated Franchise Structure. Prior to the installation of any Coordinated Franchise Structure, the Company shall provide to DOT for its approval photographs of the site and a site plan conforming to the siting criteria contained in the RFP. All site plans shall be prepared to scale, shall include all elements and dimensions relevant to the siting criteria, and shall be certified by a professional engineer or licensed architect.

~~(a)~~ ~~(a)~~—The Company shall remove Existing Bus Shelters and shall install New Bus Shelters in accordance with the following:

~~(i)~~ ~~(i)~~—The Company shall construct and install in locations as set forth in Schedule A attached hereto, and in such other locations as may be directed by DOT, at least 3300 New Bus Shelters by the fifth anniversary of the Build Start Date, with at least 650 New Bus Shelters in total having been installed by the first anniversary of the Build Start Date, at least 1350 New Bus Shelters in total having been installed by the second anniversary of the Build Start Date, at least 2000 New Bus Shelters in total having been installed by the third anniversary of the Build Start Date, at least 2650 New Bus Shelters in total having been installed by the fourth anniversary of the Build Start Date and at least 3300 New Bus Shelters having been installed by the fifth anniversary of the Build Start Date. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. In addition, the Company shall construct and install at the option of DOT in its sole discretion a maximum of 200 additional New Bus Shelters, where and when directed by DOT, provided, however, that (x) such option must be exercised in the first eighteen years of the Term, and (y) the total number of New Bus Shelters to be installed by the Company shall not exceed 3500 without the mutual consent of the Company and the City (said 3500 limit shall not include the Fifth Avenue Bus Shelters installed pursuant to Section 2.5.3.1, the Reciprocal Bus Shelters installed pursuant to Section 2.5.3.2 or the 30 New Bus Shelters installed pursuant to Section 9.17). The replacement

of Existing Bus Shelters at the locations set forth in Schedule A shall take place in accordance with a schedule to be proposed by the Company and approved by DOT (the “Existing Bus Shelter Replacement Schedule”) which shall be consistent with the overall construction and installation schedule contemplated by this Agreement and shall provide that each year 20% of replacements take place at locations allocated to NYCMDC as set forth in Exhibit H attached hereto. The Existing Bus Shelter Replacement Schedule shall include at a minimum, for each month of the build-out years, the location of each Existing Bus Shelter scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected date for installation. On notification from DOT that a site plan and photographs are required for a location other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and to install the New Bus Shelter provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature of the required changes. Notwithstanding any provision of this Agreement to the contrary, in the event that a particular Bus Shelter is removed but not returned to the same location (either by movement of the individual shelter or the route being relocated), the total number of shelters that count towards the 3500 limit shall be reduced by one.

~~(ii)~~ ~~(ii)~~—The Company shall dismantle, remove, and if necessary, dispose of Existing Bus Shelters, at its sole cost and expense, provided that no Existing Bus Shelter shall be removed unless and until DOT has either approved a site plan for a New Bus Shelter to replace it or determined that it will be removed but not replaced. A New Bus Shelter shall be installed in accordance with paragraph (i) of this subsection within five days of the removal of each Existing Bus Shelter, except where DOT has determined that the Existing Bus Shelter will not be replaced. All Existing Bus Shelters shall have been removed and replaced as required by the fifth anniversary of the Build Start Date. Should DOT require the removal of any Bus Shelter other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have five days from receipt of notice from DOT to effect the removal. Any site where a Bus Shelter is removed but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Bus Shelter and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

~~(b)~~ ~~(b)~~—Unless the City requires fewer APTs to be installed, the Company shall construct and install in locations as directed by the City, and in accordance with the time frames set forth in Appendix G annexed hereto, at least 10 APTs in total by the first anniversary of the Build Start Date and 20 APTs in total by the second anniversary of the Build Start Date, provided that the Company’s obligations set forth in this sentence shall be tolled during any time that access to the site selected by the City is blocked due to circumstances beyond the Company’s control. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of the City. To the extent that the City has not directed the Company

to install all 20 APTs by the second anniversary of the Build Start Date, in any year of the Term the City may direct the Company to install a maximum of 10 APTs with no more than 20 APTs installed during the Term.

~~(c)~~ ~~(e)~~—The Company shall construct and install, when and as directed by DOT in locations selected by DOT, PSSs consisting of trash receptacles, multi-rack newsracks, and information/computer kiosks in accordance with the time frames set forth in Appendix G annexed hereto, provided that the number of PSSs the Company shall be required to install in any given time period shall be reasonable under the circumstances existing at the time, including when considered in light of any concurrent obligations of the Company to install, maintain and, if applicable, relocate, other Coordinated Franchise Structures under this Agreement.

~~(d)~~ ~~(d)~~—Additionally, in accordance with the RFP, the Proposal and the BAFO:

~~(i)~~ ~~(i)~~—The Company shall be responsible at its sole cost and expense for the prompt dismantling and removal of any and all Existing Newsstands (unless, in each instance, the Newsstand Operator exercises its option under Section 20-241.1b of Title 20 of the City’s Administrative Code, or any successor provision thereto, to itself remove the Existing Newsstand) and the installation of Replacement Newsstands in accordance with a schedule to be provided by DOT from time to time (the “Replacement Newsstand Schedule”). The Replacement Newsstand Schedule shall be consistent with the overall installation timetable for Newsstands contemplated by Section 2.4.6(d)(iii). The Replacement Newsstand Schedule shall include the location of each Existing Newsstand scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected dates for removal of the Existing Newsstand and the installation of the Replacement Newsstand. On the date specified in the Replacement Newsstand Schedule (provided the City has given the relevant Newsstand Operator notice within the time period required by applicable law, if any, of the date for the removal of the Existing Newsstand), or a date mutually agreed to by the Company, and DOT, the Company shall remove the Existing Newsstand (unless the Newsstand Operator has already removed it) and install the Replacement Newsstand. Installation of each Replacement Newsstand must be completed in nine days from removal by the Company of the applicable Existing Newsstand (or from the date of notice to the Company that the Existing Newsstand has been removed by the Newsstand Operator).

~~(ii)~~ ~~(ii)~~—On notification from DOT that a site plan and photographs are required for a location other than as specified in the Replacement Newsstand Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and install the New Newsstand provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature of the required changes. Should DOT require the removal of any Newsstand, other than as specified in the Replacement Newsstand Schedule, the Company shall have five

days to effect the removal and restore the sidewalk. Any site where a Newsstand is removed by the Company but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Newsstand and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

~~(iii)~~ ~~(iii)~~—The Company shall construct and install in locations as set forth in Schedule B attached hereto, and in such other locations as may be directed by the City, ~~at least 330 Newsstands, which may include Replacement Newsstands and/or New Newsstands with at least 110 Newsstands, as selected by the City in its sole discretion, being installed by the first anniversary of the Build Start Date, with at least 220 Newsstands, as selected by the City in its sole discretion, being installed by the second anniversary of the Build Start Date, and at least 330 Newsstands being installed by the third anniversary of the Build Start Date.~~ The Company's obligations set forth in the preceding sentence shall, to the extent that the above time schedule cannot be met because access to any site is blocked due to circumstances outside the Company's control, be tolled during such time access is blocked. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. Additionally, the Company shall construct and install at the option of the City in its sole discretion additional New Newsstands necessary for operation under any new license issued throughout the Term by the Department of Consumer Affairs (or any successor thereto). All Newsstands constructed shall include, at the Company's sole cost and expense, necessary electric and telephone hook-ups and infrastructure required by the appropriate utility to establish a separate account for the Newsstand Operator's usage of electricity in the Newsstand. However, the New Newsstand Operators will be required to reimburse the Company for the costs and expenses of the construction and installation including costs associated with any interior electric and/or telephone hookups to the Newsstand, in accordance with Appendix B attached hereto, provided that the City shall not be responsible for reimbursement to the Company for the New Newsstands in the event that the Company does not receive such compensation from the New Newsstand Operators. Upon payment of the amount required, or the entry into an installment payment plan with the New Newsstand Operator(s) pursuant to Appendix B, Company shall provide the New Newsstand Operator(s) with either proof of payment or a letter stating that the New Newsstand Operator(s) has entered into an installment payment agreement with the Company.

~~(iv)~~ ~~(iv)~~—Under no circumstances will the Company be responsible or liable for the removal of any Newsstand Operator who does not cooperate in the Newsstand replacement process contemplated by or arising out of this Agreement. Additionally, the Company shall not have any obligations to any Indemnitee under Section 12.1.1 for any Damages relating to any claim against any Indemnitee made by or on behalf of a Newsstand Operator (a) challenging or contesting the right of the City to remove such Newsstand Operator's newsstand or claiming compensation arising from the removal thereof, (b) claiming any ownership rights in any newsstand, (c) alleging any violation of law or other wrongful conduct on the part of the City or its agents or contractors in connection with the removal of such Newsstand Operators' newsstands (other than any such conduct for which the Company is directly responsible and which is not ~~carried out by the Company at the direction of the City~~),

and any similar claim that does not arise directly out of the performance by the Company of, or its failure to perform, its obligations under this Agreement.

~~(e)~~ ~~(e)~~—Upon installing any of the Coordinated Franchise Structures the Company shall send to DOT a photograph of the new installation showing the placement in context of such Coordinated Franchise Structure together with a request for DOT acceptance of the specified Coordinated Franchise Structure, which acceptance shall not be unreasonably withheld, conditioned or delayed. Such request shall set forth the date the Coordinated Franchise Structure was installed (such date shall be the “Installation Date” if the installation is accepted by DOT in accordance with Section 2.4.6(f) below).

~~(f)~~ ~~(f)~~—DOT shall inspect such new installation within 14 days of receipt of such photograph and request. Acceptance of the installation shall not constitute an approval of the structural integrity of the Coordinated Franchise Structures or of any utility connections. Should DOT accept the Coordinated Franchise Structure as being installed in accordance with the site plan it shall send the Company an acceptance notice within 14 days from inspection. Should DOT not accept the Coordinated Franchise Structure as being installed in conformity with the site plan it shall send the Company a rejection notice within 14 days from inspection specifying the problems which need correction and the Company shall have five days from receipt of notice from DOT (provided that in the case of APTs and Newsstands the Company’s obligations set forth in this sentence shall be tolled during any time that the Company’s access to the site is blocked due to circumstances outside its control) to make such corrections, except if local law requires otherwise in the case of Newsstands. Thereafter, the Company shall follow the procedures set forth in this Section 2.4.6 (the date such corrections are made shall be the Installation Date if such corrections are approved by DOT). If DOT sends a rejection notice as contemplated herein, the time between the date the Company sent its request for acceptance and the date DOT sent the rejection notice shall not count towards the assessment of liquidated damages.

~~(g)~~ ~~(g)~~—The procedure for accepting Newsstands shall be as set forth in this Section 2.4.6 unless superseded by Local Law 64 of the year 2003 or any other section of the New York City Administrative Code or the Rules of the City of New York.

~~(h)~~ ~~(h)~~—Except as otherwise set forth in this Agreement, failure to complete the timely construction and installation of any Coordinated Franchise Structure within the time specified shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto, or the exercise of any other remedy available to the City under this Agreement provided, however, that if DOT does not send a notice of acceptance or rejection of the installation of any Coordinated Franchise Structure within the time period set forth above, such delay shall not be counted against the Company for purposes of assessing liquidated damages or the exercise of any other remedy. It is agreed that the full amount of liquidated damages due prior to the 2015 Change in Control with respect to the construction, installation and maintenance of the Bus Shelters and Newsstands totaling \$1,687,988 has been collected by the City, and as of the date of this Agreement, no additional liquidated damages have been assessed by the City.

2.4.7. Effect of Expiration or Termination. Upon expiration or termination of this Agreement (and provided no new franchise of similar effect has been granted to the Company pursuant to the New York City Charter, any authorizing resolution, and any other applicable laws and rules in effect at the time) the franchise shall expire; all rights of the Company in the franchise shall cease with no value allocable to the franchise itself; and the rights of the City and the Company to the System, or any part thereof, shall be determined as provided in Section 13 hereof.

2.5-2.5 Conditions and Limitations on Franchise-.

2.5.1. Not Exclusive. Nothing in this Agreement shall affect the right of the City to grant to any Person other than the Company a franchise, consent or right to occupy and use the Inalienable Property of the City, or any part thereof, for the installation operation and/or maintenance of street furniture, including, but not limited to, bus shelters, public toilets, trash receptacles, multi-rack news racks, information/computer kiosks or newsstands, with or without advertising. Notwithstanding the above, (i) DOT shall not grant to any other Person a franchise to install bus shelters until DOT has issued to the Company 3500 permits for the installation of New Bus Shelters and (ii) DOT shall not grant to any other Person a franchise to install newsstands until DOT has issued to the Company 330 permits for the installation of Replacement and/or New Newsstands, provided, however, that should the City at any time issue a request for proposals for the installation, operation and/or maintenance of bus shelters and/or newsstands then DOT's agreement not to grant franchises as described in this sentence shall be conditional on the Company's prompt delivery to DOT of all materials required from the Company -that would be necessary for DOT to process and issue the necessary permits for the installation of the number of New Bus Shelters and/or Newsstands necessary to reach the 3500 and 330 figures described above, as the case may be. If the Company fails to promptly deliver the materials necessary for DOT to process and issue the necessary permits, the City may grant any Person a franchise notwithstanding the requisite number of permits, as provided in this Section 2.5.1, have not been issued; provided however that any such failure by the Company shall not constitute a breach or default under this Agreement. This Section 2.5.1 is not intended to affect the Company's right to install 3500 New Bus Shelters and 330 Replacement and/or New Newsstands and to place advertising thereon as set forth in this Agreement or any of the Company's other rights or obligations as set forth in this Agreement. Nothing in this Agreement shall affect the ability of the Company and the City to consider potential additional revenue generating opportunities that may be proposed by either party in the future with respect to the Coordinated Franchise Structures.

2.5.2. Sidewalk and Historic Pavement. No Coordinated Franchise Structure shall be designed so that it would result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Neither the installation, operation, maintenance nor removal of Bus Shelters, APTs, and PSSs nor the installation, maintenance and removal of Newsstands shall result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Nothing herein shall preclude the Company from installing a Coordinated Franchise Structure, including appurtenant utility connections, on a sidewalk or historic pavement by any means necessary. Prior to any such installation, the Company shall make a good faith effort to procure

sufficient quantities of those materials of which the sidewalk or historic pavement is comprised to repair, replace, or restore it to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure and in compliance with the New York City Administrative Code. If the City is the sole source of those materials of which the sidewalk or historic pavement is comprised, then it shall provide the Company, at the Company's expense, any such materials stored by the City. In the event that the installation, operation, maintenance or removal of any Bus Shelter, APT, or PSS or the installation, maintenance and removal of Newsstands results in damage to sidewalk or historic pavement, such sidewalk or historic pavement shall be restored to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure in accordance with the timeframes set forth in Appendix C and in compliance with the New York City Administrative Code at the sole cost and expense of the Company, using in-kind materials. The Company may request an extension of time to the timeframes referred to in the preceding sentence which may be granted by DOT in its sole discretion.

2.5.3. Location of Coordinated Franchise Structures. The Coordinated Franchise Structures shall be installed, removed and replaced by the Company in such locations and in such priority as directed by DOT in accordance with this Agreement, or, if not otherwise specifically set forth in this Agreement, in DOT's sole discretion, provided, however, that APTs shall be installed by the Company in such locations as directed by the City in its sole discretion. When practicable, DOT shall provide Company with an opportunity to comment on DOT's location decisions regarding Coordinated Franchise Structures in light of the Company's concerns regarding the revenue generating potential of locations. Nothing contained in this paragraph or Section 2.5.3.1 shall be construed to prevent DOT from changing a location set forth in Schedules ~~A, B, or X~~ if the City would otherwise have the right to order the relocation of the structure in accordance with ~~Sections~~Section 2.5.4.1 or 2.5.4.2 herein.

2.5.3.1. Fifth Avenue. The Company may construct, install and maintain fifteen (15) New Bus Shelters at locations designated by DOT between 34th street and 59th street on Fifth Avenue (the "Fifth Avenue Bus Shelters") as set forth in the attached Schedule X provided that in exchange for the right to install the Fifth Avenue Bus Shelters, the Company shall also be obligated to install an additional thirty (30) New Bus Shelters at locations designated by DOT (the "Reciprocal Bus Shelters"). The Fifth Avenue Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i). Provided that the Reciprocal Bus Shelters are equipped with adequate illumination pursuant to Section 3.1.5(d), the Company may, but shall not be required to provide electrical connections or advertising lightboxes for such Reciprocal Bus Shelters. The Reciprocal Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i).

2.5.3.2. Restrictions. Notwithstanding any provision of this Agreement to the contrary, in the event that an advertising Public Communications Structure or Public Pay Telephone (as such terms are defined in the PCSFA) is installed on Fifth Avenue between 34th street and 59th street pursuant to authorization from the City and such installation is not a replacement of an existing telephone installation installed or maintained pursuant to a now-expired public pay telephone franchise agreement on Fifth Avenue between 34th Street and 59th

Street (such an event shall be referred to as a “Fifth Avenue Installation”), prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, then the Company shall have no further obligation to install any additional Reciprocal Bus Shelters (but shall not be entitled to remove any Reciprocal Bus Shelters already installed) that it would otherwise be obligated to install pursuant to Section 2.5.3.1. Furthermore, in the event of a Fifth Avenue Installation prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, any Reciprocal Bus Shelters installed prior to such Fifth Avenue Installation shall be depreciated on a straight-line basis over a 20 year period. The yearly value of each Reciprocal Bus Shelter for the purpose of such depreciation shall be \$1250, which is derived by dividing the cost of the shelter (\$25,000) by 20. The formula to determine the unamortized amount for each respective Reciprocal Bus Shelter shall be as follows: \$1250 shall be multiplied by the difference between 20 and the difference between year 2026 (the year in which the Term ends) and the year such shelter was installed. For example, if the Reciprocal Bus Shelter was installed in 2021, that number (2021) would be subtracted from 2026 to get 5. Then 5 would be subtracted from 20 to get 15. The number 15 would then be multiplied by \$1250 to get the unamortized balance for that particular Reciprocal Bus Shelter (which would be \$18,750). In the event of a Fifth Avenue Installation, the Company shall be credited for the total unamortized amount of all amortized Reciprocal Bus Shelters as set forth in Section 9.1(a).

2.5.4. Removal, Replacement, Relocation, Reinstallation.

2.5.4.1. 2.5.4.1. ~~Public Utilities, Other.~~ The Company shall remove, replace, relocate or reinstall at its sole cost and expense, at the request of the City, Coordinated Franchise Structures which interfere with the construction, maintenance or repairs of public utilities, public works or public improvements. The Company shall not be responsible for the costs and expenses of any removal, replacement, relocation and/or reinstallation requested by the City except as set forth in the preceding sentence or as expressly required elsewhere in this Agreement, including, but not limited to, Section 2.5.4.2 hereof. Nothing in this Agreement shall abrogate the right of the City to change the grades or lines of any Inalienable Property of the City, or perform any public works or public improvements, or any street widening project, or any other capital project of any description. In the event that the Company refuses or neglects to so remove, replace, relocate or reinstall such Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City including, but not limited to repair and restoration costs, arising out of the performance of such work.

2.5.4.2. 2.5.4.2. ~~Public Use, Other.~~ The City shall have the right at any time to inspect the Coordinated Franchise Structures and order the removal, replacement, relocation or reinstallation of any of the Coordinated Franchise Structures at the sole cost and expense of the Company upon a determination in the City’s sole discretion that any of the Coordinated Franchise Structures, unreasonably interferes or will unreasonably interfere with the use of a street by the public, constitutes a public nuisance, creates a security concern, or is, or has otherwise become inappropriate at a particular location, or that such removal,

replacement, relocation or reinstallation is necessary to address changing conditions. In the event that the Company fails to so remove, replace, relocate or reinstall any of the Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City, including but not limited to repair and restoration costs. If a Coordinated Franchise Structure is required to be removed and/or relocated because the City mistakenly identified a location listed on Schedule A or Schedule B as Inalienable Property of the City, the City shall require the Company to remove and/or relocate such Coordinated Franchise Structure and shall pay to the Company the costs incurred in connection with such removal and/or relocation and for any other costs or damages incurred by the Company, including but not limited to repair and restoration costs.

~~2.5.4.3.~~ 2.5.4.3. ~~Notification.~~ In the event the Commissioner determines that all or any of the Coordinated Franchise Structures should be removed, replaced, relocated or reinstalled pursuant to this Section 2.5, the Company shall perform such work in accordance with the timeframes set forth in Appendix G attached hereto.

~~2.5.4.4.~~ 2.5.4.4. ~~Emergency.~~ Notwithstanding the foregoing, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may, at the sole cost and expense of the Company, with such notice, if any, as is practicable to the Company given the nature of the emergency, take such action as the Commissioner deems necessary to alleviate the emergency, including but not limited to removing, replacing, relocating or reinstalling all or any portion of the System and have repair and restoration work performed. The Commissioner may, if he or she determines that the System or any portion of the System can be safely reinstalled and maintained, require the Company to do so at its sole cost and expense.

2.5.5. No Waiver. Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of the City or of the City's right to require the Company to secure the appropriate permits or authorizations for Coordinated Franchise Structure installation.

2.5.6. No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property of the City. In the event that all or part of the Inalienable Property of the City is eliminated, discontinued, closed or demapped, all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property of the City, or any part thereof so eliminated, discontinued, closed or demapped, shall cease upon the effective date of such elimination, discontinuance, closing or demapping. If said elimination, discontinuance, closing or demapping is undertaken for the benefit of any private Person, the City shall make reasonable efforts to condition its consent to said elimination, discontinuance, closing or demapping on the agreement of said private Person to: (i) grant the Company the right to continue to occupy and use said Inalienable Property of the City; or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the Coordinated Franchise Structures.

2.6-2.6 Other Structures-:

~~(a)~~ ~~(a)~~—The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant), will grant to the City such rights as may be necessary for the purposes of constructing, installing, operating, and maintaining street furniture and structures other than the Coordinated Franchise Structures as described in and subject to the provisions of Sections 2.6-(b) and 2.6(c) below. Such grants shall be made and take effect at the earliest time necessary to effectuate the purposes of this Section 2.6.

~~(b)~~ ~~(b)~~—If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by the Company and/or Grimshaw for the Coordinated Franchise Structures, and if such street furniture is to bear advertising in any form (all such street furniture referred to as “Ad-Bearing Street Furniture”), the City shall (i) retain the services of Grimshaw and the Company to perform such creation and/or design of the Ad-Bearing Street Furniture and (ii) pay to the Company 5% of any advertising revenue (calculated in the same manner as Gross Revenues are calculated under this Agreement) that the City actually receives from the sale of advertising on such Ad-Bearing Street Furniture during such time as advertising is displayed on the Ad-Bearing Street Furniture (for the remainder of the Term of this Agreement or for 7 years, whichever is longer). In such event, the Company will be solely responsible for standard per-diem and expense reimbursement payments to Grimshaw. Payments due the Company pursuant to this paragraph shall be made reasonably promptly after the City’s receipt of the advertising revenue. Pursuant to a separate agreement between Grimshaw and the Company, which is attached hereto as Exhibit J (the “Grimshaw Agreement”), Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Ad-Bearing Street Furniture for its design services to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City); provided that the City shall be obligated to make all such payments in the event the third party fails to do so), or, if previously paid by the Company, reimbursed to the Company by the City.

~~(c)~~ ~~(e)~~—If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by Company and/or Grimshaw for the Coordinated Franchise Structures, but such street furniture does not bear advertising in any form (“Non-Ad-Bearing Street Furniture”), then the City shall retain the services of Grimshaw to perform such creation and/or design of the Non-Ad-Bearing Street Furniture to perform creation and/or design services in connection therewith. Pursuant to the Grimshaw Agreement, Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Non-Ad-Bearing Street Furniture for such design services, plus Grimshaw’s standard per-diem and expense reimbursement, to be paid by the City (or a third party designated by the City; provided that the

City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Non-Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event any Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture (during the Term of this Agreement), the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) for the term specified therein. In the event Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture within the seven-year period immediately following the Term of this Agreement, the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) from the time of such conversion through the remainder of that seven-year period.

~~(d)~~ ~~(d)~~—No street furniture created pursuant to the provisions of this Section 2.6 may be installed anywhere other than New York City without the express written permission of the Company and Grimshaw.

~~(e)~~ ~~(e)~~—The Company shall not have any obligations under Section 12.1.1, or Section 12.1.6 except as expressly set forth therein, to any Indemnitee for any Damages relating to the matters contemplated pursuant to this Section 2.6.

~~(f)~~ ~~(f)~~—The Company agrees that it will not agree to any amendment to Sections 4.2, 4.4, 5.1, 5.2, 7.4, the last two sentences of Section 10.1, and 12.13 of the Grimshaw Agreement, or to the defined terms used in those sections, that adversely affects the City's rights under any of those sections without the City's prior written consent.

SECTION 3

SERVICE

3.1.3.1 Operations.

3.1.1. Bus Shelters. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the Effective Date and thereafter throughout the Term the Company shall be responsible for the following cleaning and maintenance requirements:

~~(a)~~ ~~(a)~~—All maintenance of the Bus Shelters, including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse from the Bus Shelters, must occur on at least two nonconsecutive days each week; promptly clearing and removing debris, snow and ice from the ground in and around the Bus Shelters up to three feet on each side of the Bus Shelter and to the Curb on the Curb-side of the Bus Shelter (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover). The Company shall comply with the regulations for snow

removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. A copy of section 16-123 is attached hereto as Exhibit E.

~~(b)~~ ~~(b)~~—Inspections on at least two nonconsecutive days each week for damage, debris and unsafe conditions.

~~(c)~~ ~~(e)~~—Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.2. APTs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of an APT and thereafter throughout the Term the Company shall make the APTs available for use to the public at a nominal amount of \$0.25 per use between the hours of eight a.m. to eight p.m. daily, unless longer hours are otherwise directed by DOT in its reasonable discretion. Additionally, every APT must provide an emergency alarm system that allows for two-way communication for activation by the user and transmission to an operations center and the police and fire department. A smoke and fire alarm system with an automatic door opening device must be provided. An emergency access portal, in addition to the user door, must be provided to allow access to the interior by police or other emergency services. All APTs must contain a self-activating system that communicates contemporaneously all significant maintenance and operations problems to an operations center. The Company shall be responsible for the following cleaning and maintenance requirements:

~~(a)~~ ~~(a)~~—All maintenance of the APTs including, but not limited to, preventative maintenance, cleaning, removing graffiti, dirt, stickers and refuse, and restocking dispensers on a daily basis, promptly clearing and removing debris, snow and ice from the ground in and around the APTs up to three feet on each side of the APT and to the Curb on the Curb-side of the APT (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover), prompt response to self activating maintenance and operating warning systems, and ensuring comfortable interior temperature, ventilation and illumination between the hours of eight a.m. and eight p.m. daily unless longer hours are otherwise directed by DOT in its reasonable discretion. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time.

~~(b)~~ ~~(b)~~—Daily inspections of the APTs for damage, debris, and unsafe conditions.

~~(c)~~ ~~(e)~~—Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.3. PSSs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a PSS and thereafter throughout the Term the Company shall be responsible for:

(a) ~~(a)~~—All maintenance of the PSSs, including, but not limited to, preventative maintenance, cleaning, and removing graffiti, dirt, stickers and refuse (provided, however, that the Company shall not be responsible for the removal of refuse from free standing trash receptacles) on at least two nonconsecutive days of the week. Company shall remove snow as necessary to ensure continued access to the PSSs.

(b) ~~(b)~~—Two inspections weekly on non-consecutive days of the PSSs for damage, debris, and unsafe conditions and for information kiosks, proper functioning of the information systems including any hardware and software.

(c) ~~(c)~~—Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.4. Newsstands. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a Newsstand and thereafter throughout the Term:

(a) ~~(a)~~—the Company shall be responsible for all maintenance of the exterior of the Replacement and New Newsstands, in cooperation with the Newsstand Operators including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse on the exterior of the Newsstand on at least two nonconsecutive days each week, promptly clearing and removing debris, snow and ice from the ground in and around the Newsstands up to three feet on each side of the Newsstand and to the Curb on the Curb-side of the Newsstand (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover) and daily inspections of the Newsstands for damage, debris, and unsafe conditions. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. The Company shall also be responsible for inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing; provided, however,

(b) ~~(b)~~—the Company shall not be responsible for (i) operating the Newsstand as a newsstand, (ii) cleaning Newsstand interiors, (iii) any condition on the exterior of the Newsstand that can be reasonably demonstrated to the satisfaction of DOT by the Company to have been caused solely by the Newsstand Operator provided, however, the City may require the Company to address any such condition at the City's sole cost and expense; (iv)

the cost of any telephone, other communication, or electricity usage by a Newsstand Operator; or
(v) any other utility cost that is not necessary to the franchise; and

~~(c)~~ ~~(e)~~—The Company is prohibited from deriving revenue from the operation of the Newsstand as a newsstand.

3.1.5. Other. The Company shall

~~(a)~~ ~~(a)~~—promptly and diligently, and in all cases within the minimum standards and timeframes set forth on Appendix C attached hereto, maintain, replace or repair any parts or components of the Coordinated Franchise Structures which are broken, deteriorated or damaged, regardless of the nature, cause or frequency of such conditions using materials and methods for such maintenance, repair and replacement that comply with all applicable federal, state and local laws, rules and regulations; and

~~(b)~~ ~~(b)~~—collect refuse or recyclables from any trash receptacles incorporated within or on Coordinated Franchise Structures, provided, however, that the Company shall not be responsible for the collection of refuse or recyclables from free standing trash receptacles installed as PSSs; and

~~(c)~~ ~~(e)~~—maintain and repair the sidewalk immediately under and three feet on each side of the Coordinated Franchise Structure in its proper condition, or, if necessary restored thereto at the Company's sole cost and expense. On the side of the Coordinated Franchise Structure nearest the Curb, Company's responsibility of maintenance and repair shall extend to, and include, the Curb. Notwithstanding the foregoing, the Company shall not be responsible for the creation of new pedestrian curbs within the area for which it is responsible for maintenance and repair; and

~~(d)~~ ~~(d)~~—provide and maintain adequate illumination for all Coordinated Franchise Structures, except trash receptacles and multi-rack newsracks, between dusk and daylight, or whenever artificial lighting is required for the protection, safety and welfare of the public (provided that where there is no existing electrical connection to a Bus Shelter location and where adding an electrical connection would be impractical because the necessary utility connections are unusually inaccessible, then the phrase "adequate illumination" shall mean courtesy lighting powered by solar panel); and

~~(e)~~ ~~(e)~~—remove broken glass, such that the structure is made safe, within 24 hours after the Company becomes aware of the problem, (the glass shall be replaced when practicable within 24 hours of the Company becoming aware of the problem but in no event later than 48 hours after becoming aware of the problem); and

~~(f)~~ ~~(i)~~~~(f)~~ ~~(i)~~ complete repairs, replacement of parts, or removal of the structure or components thereof as necessary to ensure public safety of the Coordinated Franchise Structure, within 24 hours (subject to the time frames for the replacement of glass set forth in Section 3.1.5(e)) of the time the Company becomes aware of the problem, including without limitation by oral or written notice from DOT that repair, replacement or removal is

necessary to ensure public safety. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 24 hours of receipt of permit, provided that the Company submits a complete application for such permit without delay. The Company shall make the structure safe while permits are pending; and

~~(ii)~~ ~~(ii)~~—complete repairs, replacement of parts or removals not covered by the preceding clause (i), within 5 days of the time the Company becomes aware of the problem, ~~unless a permit is required~~. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 5 days of receipt of permit, provided that the Company submits a complete application for such permit without delay; and

~~(g)~~ ~~(g)~~—If the Company removes a Coordinated Franchise Structure pursuant to Section 3.1.5-(f) and such Coordinated Franchise Structure is to be replaced at the same location, such replacement will take place within the time frames set forth in Appendix G. If a permit is required, the time period shall be measured from the date of receipt of permit, provided that the Company submits a complete application for such permit without delay.

~~(h)~~ ~~(h)~~—If the Company fails to make replacement, complete repairs, or effectuate removals, as required herein, then DOT may, in addition to any other rights and remedies set forth in this Agreement, and without any further notice, make replacement and repairs, or effectuate removals, at the sole cost and expense of the Company.

3.2 Automatic Vehicle Location and Control System. The Company shall cooperate with DOT, MTA New York City Transit, or any other agencies to make the Bus Shelters available for the installation of wiring and equipment and the ongoing maintenance of AVLCS as such systems are developed. The Company is not responsible for the acquisition, installation, or maintenance of AVLCS equipment or for associated costs and will have no ownership interest in, or responsibility for, the AVLCS. However, the Company shall cooperate in its design, installation and maintenance and shall provide access to the Bus Stop Shelters to permit AVLCS installation and maintenance, and ensuring (assuming adequate instruction from all applicable governmental and quasi-governmental entities) that routine maintenance of the Bus Stop Shelters does not interfere with the AVLCS.

3.3.3.3 Electronic Inventory and Management Information System and Recordkeeping.

~~(a)~~ ~~(a)~~—Within 20 days of the Effective Date and thereafter throughout the Term, the Company shall at its sole cost and expense, and as more fully set forth in the RFP and Proposal, install and maintain an Electronic Inventory and Management Information System for the Coordinated Franchise Structures incorporating state-of-the-art technology. If at any time during the Term DOT determines in its reasonable discretion that EIMIS is failing to meet the requirements of the preceding sentence or is inadequate for its purposes then DOT may direct the Company to make such necessary modifications to EIMIS as it deems necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

~~(i)~~ ~~(i)~~—to the extent necessary the EIMIS, any part thereof, or any software necessary for its operation shall be installed and maintained by the Company on DOT provided personal computers providing for access by authorized DOT users. DOT shall make appropriate information technology personnel available to coordinate the installation of the EIMIS on its equipment and/or network as appropriate.

~~(ii)~~ ~~(ii)~~—the EIMIS shall not run primarily on the DOT's equipment or network and DOT shall not be responsible for management, maintenance or assuring access to the system. All such requirements shall be the responsibility of the Company.

~~(iii)~~ ~~(iii)~~—within 20 days of the Effective Date, the Company shall provide full access to the EIMIS (and training thereon reasonably satisfactory to DOT) to no less than ten authorized personnel of the City through the Internet using any standard Internet browser providing access to the World Wide Web pursuant to the license agreement between the Company and The Siroky Group Inc. attached hereto as Exhibit K. Such access shall be provided through standard Internet security protocols through a secure server. In addition, the City shall have access, through the same means, for a reasonable number of additional users—to allow read-only access to conduct searches of the EIMIS and to allow 311 operators (or operators under a successor system) to enter and review the status of complaints received.

~~(iv)~~ ~~(iv)~~—the EIMIS shall provide at minimum: two-way information sharing between the City and the Company for the recording and processing of complaints from the public and the City, plotting street furniture structures on city maps, graphic navigation, color coding of structures, incident recording and reports, financial information regarding costs, revenues, advertising value by location and structure type, advertising panels displaying Public Service Advertising and NYCMDC Advertising, back-up maintenance and data protection protocols, and a help-menu function for assisting with system operation. The City shall make appropriate 311 personnel available to coordinate the creation of an interface between EIMIS and the 311 system.

~~(v)~~ ~~(v)~~—the EIMIS shall be available to authorized users 24 hours per day, seven days a week. In the event of lost access, it shall be restored within six hours of notification by the City.

~~(b)~~ ~~(b)~~—Commencing on the Effective Date and thereafter throughout the Term, the Company shall maintain records, in a form satisfactory to the Commissioner and which shall be in a format which is downloadable to commercially available software, demonstrating compliance with the maintenance and operating requirements set forth in Section 3.1 herein, Appendix C attached hereto and the RFP, Proposal and BAFO. Such records shall be available for inspection by the City at all times upon reasonable written advance notice and copies thereof, whether in paper, electronic or other form, shall be provided to DOT promptly upon request. Not later than 30 calendar days after the Effective Date, the Company shall submit to DOT a detailed description of all proposed recordkeeping procedures that will document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto. If DOT determines in its reasonable discretion that such proposed recordkeeping procedures are insufficiently detailed or otherwise unlikely to

adequately document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto, DOT may direct the Company to adopt such modifications to the proposed recordkeeping procedures as it deems reasonably necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

~~(c)~~ ~~(e)~~—The Company shall be permitted, at any time during the Term, to replace the software and related components then constituting the EIMIS with alternative software and related components (which may be proprietary to the Company or an Affiliate of the Company), at its sole cost and expense, provided that the features of the replacement EIMIS are substantially equivalent or superior to the EIMIS being replaced. In such event, the Company shall grant to the City all necessary licenses and sublicenses as contemplated by Section 2.4.2(b), and shall escrow or cause to be escrowed the source code as required by Section 2.4.2(e). In addition, if such software is proprietary to the Company or an Affiliate of the Company, the Company shall grant to the City all necessary licenses to operate the EIMIS as contemplated by this Agreement following the Term, on a perpetual, royalty-free basis. Furthermore, all right, title, and interest in all data collected by the EIMIS and all other information necessary for the City to maintain and operate the Coordinated Franchise Structures will become the sole and exclusive property of the City without any compensation to the Company after the termination or expiration of this Agreement and the Company and its software vendor shall return any and all such data to the City in a format accessible and usable by the City without the use of the Company's and/or software vendor's software; provided, however, that the Company may retain and use for its own business purposes a copy of such data, and the City shall grant to the Company any necessary license in this regard.

3.4.3.4 Performance Standards and Corrective Actions.

~~(a)~~ ~~(a)~~—If the Company has failed to comply with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, then the Company shall pay liquidated damages as set forth on Appendix A attached hereto.

~~(b)~~ ~~(b)~~—If notwithstanding compliance with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, complaints that the Coordinated Franchise Structures are unsafe or unclean or in disrepair increase by 20% or more during any six month period as compared to the previous six month period, the Commissioner may require the Company, at its sole cost and expense, to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as he or she deems appropriate to ensure that the Coordinated Franchise Structures are maintained in a clean and safe condition and in good repair.

~~(c)~~ ~~(e)~~—In addition to any other term, condition or requirement of this Agreement, except and to the extent caused by relocation requirements imposed by the City, the Company shall not have more than ten percent of any one type of its Coordinated Franchise Structures out of service at any given time; provided that the foregoing requirement with respect to APTs shall be twenty percent and shall not be in effect until at least five APTs have been installed by the Company. Failure to comply with this Section 3.4(c) shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto.

3.5-3.5 Complaint Handling Procedures.

~~(a)~~ ~~(a)~~—Within 30 days after the Effective Date of this Agreement, subject to the reasonable approval of DOT, the Company shall establish and maintain prompt and efficient complaint handling procedures for handling complaints received directly from the public and for handling complaints forwarded to the Company by the City, which procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section 3.5. Such procedures shall be set forth in writing and copies thereof shall be maintained at the Company's office and shall be available to the public and the Commissioner upon request.

~~(b)~~ ~~(b)~~—All Coordinated Franchise Structures shall have on them a conspicuously posted notice advising the public that they may direct complaints and comments to 311.

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

~~(d)~~ ~~(d)~~—The Company shall record all complaints received on the telephone line, through EIMIS, or from any other source in the manner set forth in Section 3.6 hereof and shall diligently and promptly investigate each complaint. If such complaint is reasonably determined to be accurate, the condition shall be cured within the timeframes set forth in Appendix C attached hereto.

~~(e)~~ ~~(e)~~—The Company shall provide to DOT a reasonable and adequate explanation describing corrective steps taken by the Company in response to any complaint or reasons why no corrective steps were taken.

~~(f)~~ ~~(f)~~—In the event that a complaint has not been diligently and promptly investigated and/or the underlying problem has not been cured by the Company to the satisfaction of the Commissioner within the periods set forth above, the Commissioner may (i) order the Company in writing to take appropriate action to investigate such complaint and/or cure the problem, as the case may be and (ii) if the Company fails to take appropriate action accordingly, investigate and cure the underlying problem at the Company's sole cost and expense.

3.6 Complaint Record Keeping. The Company shall maintain written, accurate and complete records of all complaints that shall be available to DOT through EIMIS or, at DOT's reasonable advance request, in written form. Such records shall indicate: (i) the specific Coordinated Franchise Structure, including its identifying number and its exact location, for which the complaint was made; (ii) the type of complaint; (iii) the date and time of complaint; (iv) if the complaint is in written form, the name, address, and telephone number of the Person filing the complaint; (v) the Company's action to address the complaint; and (vi) to the extent applicable the date of resolution of the complaint. All such records shall be retained by the

Company throughout the Term. The EIMIS shall provide DOT a means by which it can search for complaints by location and/or time period, and shall produce statistical reports, at DOT's request, by type of complaint, location of complaint, type of structure, and time period.

3.7 Americans with Disabilities Act. In connection with its obligations under this Agreement the Company, at its sole cost and expense, agrees to comply with the applicable provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA"), the Architectural and Transportation Barriers Compliance Board Guidelines, and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

3.8 No Discrimination. The Company shall not discriminate in the provision of Services on the basis of race, creed, color, national origin, sex, age, handicap, marital status, or real or perceived sexual orientation.

3.9 Continuity of Service. In the event the Company, with the consent of the City as required and in accordance with the provisions of Section 11 hereof, sells or otherwise transfers the System, or any part thereof, or Control thereof to any Person, or to the City or the City's assignee, or in the event the franchise terminates, the Company shall transfer the System, or such relevant part, in an orderly manner in order to maintain continuity of Service.

SECTION 4

ADVERTISING ADVERTISING

4.1.4.1 Introduction.

(a) (a)—In consideration of the Company's performance of the Services, ~~and~~ payment by the Company of the Franchise Fees, the City hereby grants to the Company the exclusive right throughout the Term to sell and place advertising on the Coordinated Franchise Structures that are the subject of this Agreement and subject to the specifications, terms, reservations and restrictions of this Agreement, and to collect revenues generated by such advertising.

(b) (b)—The Company expressly acknowledges that it is receiving a non-exclusive franchise and that the City, either itself or through third parties, may design, construct, install, operate and maintain street furniture, including, but not limited to, bus stop shelters, automatic public toilets, trash receptacles, multi-rack news racks, information/computer kiosks, and newsstands, that contain advertising on them from which the Company would not be entitled to collect revenue.

4.2 Defined Terms. For the purposes of this Section 4, the following terms, phrases, words and their derivations shall have the meaning set forth herein, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular

number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in Section 1.

~~(a)~~ ~~(a)~~—“advertising” shall mean any printed matter or electronic display including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual message or information, but in no event shall include the textual information that is required to be posted on a Coordinated Franchise Structure by federal, state and local law, rule or regulation, or this Agreement.

~~(b)~~ ~~(b)~~—“alcohol advertising” shall mean advertising, the purpose or effect of which is to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or to promote the use or sale of an alcohol product.

~~(c)~~ ~~(c)~~—“NYCMDC Advertising” shall mean advertising reasonably determined by NYCMDC to be within its corporate purpose including, but not limited to, commercial advertisements, advertising promoting New York City, and public service advertisements, but NYCMDC Advertising shall not include “spot market advertising”.

~~(d)~~ ~~(d)~~—“tobacco advertising” shall mean advertising, which bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance which contains tobacco, including, but not limited to, cigarettes; cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

~~(e)~~ ~~(e)~~—“Olympic Period” shall mean the period starting four weeks prior to the commencement of the Olympics and ending two weeks after the end of the Olympics.

~~(f)~~ ~~(f)~~—“prohibited advertising” shall mean advertising that is false and/or misleading, which promotes unlawful conduct or illegal goods, services or activities, or that is otherwise unlawful or obscene as determined by DOT, including but not limited to advertising that constitutes public display of offensive sexual material in violation of Penal Law 245.11.

~~(g)~~ ~~(g)~~—“Public Service Advertising” shall mean 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 DOT in its sole discretion.

~~(h)~~ ~~(h)~~—“spot market advertising” shall mean advertising sold by NYCMDC to commercial advertisers (whether for cash, trade or barter) in a manner unrelated to any broader sponsorship or partnership arrangement between such advertiser and NYCMDC or the City and unrelated to any event, sponsorship or support efforts, or intergovernmental

agreements of NYCMDC or the City. For the purposes of this definition of “spot market advertising”, intergovernmental agreements shall mean agreements between the City and/or NYCMDC and other governmental or quasi-governmental entities.

(i) “electronic cigarette advertising” shall mean advertising of an electronic device that delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.

4.3.4.3 Advertising Specifications-.

4.3.1. Generally. Advertising shall be permitted on the Coordinated Franchise Structures except that advertising shall not be permitted on the interior of Newsstands or APTs, or as otherwise prohibited herein. Advertising is not permitted on PSSs except that the name or logo of a sponsoring entity shall be permitted on the exterior of trash receptacles and information/computer kiosks. No advertising shall be permitted on APTs in parks, except that advertising shall be permitted on APTs located on sidewalks adjacent to parks. The design, dimensions, and location of advertising on all Coordinated Franchise Structures shall be in accordance with the terms of this Agreement including Appendix D. The Company shall be entitled to utilize the full amount of advertising space set forth on Appendix D (notwithstanding that the dimension specifications on Appendix D are expressed as “maximum advertising”).

4.3.2. Dimensions/Specifications. All advertising, or the name or logo of a sponsoring entity, shall contain the features and conform to the basic dimensions set forth in Appendix D attached hereto, and made part hereof, provided, however, that modifications to advertising dimensions may be necessitated by location specific modifications to individual Coordinated Franchise Structures as set forth in Section 2.4.5 herein. Notwithstanding any provision of this Agreement to the contrary, except for the modifications at individual locations contemplated in the proviso to the immediately preceding sentence, the Company shall not be required to modify the basic dimensions set forth on Appendix D attached hereto.

4.4.4.4 Restrictions-.

4.4.1. Prohibitions. Tobacco and electronic cigarette advertising and prohibited advertising is not permitted. Alcohol advertising within 250 feet of any school, day care center, or house of worship is not permitted.

4.4.2. Other Media. Electronic media will be permitted on a case by case basis and, except for backlighting of printed posters (the Company shall be permitted to use backlighting of advertising on Coordinated Franchise Structures except where prohibited by rules or regulations of Landmarks), will be subject (except as may otherwise be permitted by the City) to the applicable zoning regulations for property adjacent to the site, and shall be subject to all applicable approvals by City agencies. Audio advertising will not be permitted, provided, however, an audio component used in connection with an information/computer kiosk may be permitted in the sole discretion of DOT. The Company shall be permitted to install 250 Scrollers

on Coordinated Franchise Structures when and where the Company deems most advantageous in its sole discretion. Any other multimedia, or other non traditional form or type of advertising, including additional Scrollers, shall be permitted only on a case by case basis, as determined by the Commissioner and shall be subject to any applicable approvals by City agencies.

4.4.3. Viacom Outdoor Agreement. The Company ~~has acknowledged~~acknowledges receipt from the City of the Viacom Outdoor Agreement and ~~has agreed~~agrees that it ~~has taken~~shall take such actions as are reasonably necessary to comply with the revenue sharing obligations set forth in Section 4.10 therein.

4.4.4. Public Service Advertising. In each year of the Term, the Company shall provide 2.5% of the total number of panels then available to the Company, to be evenly distributed among the various Coordinated Franchise Structures and evenly distributed throughout the City, at no cost to the City or NYCMDC for Public Service Advertising. The first panel locations for Public Service Advertising shall be as set forth in Exhibit H attached hereto which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided for Public Service Advertising during the Term in accordance with this Section 4.4. The Company shall assist DOT and/or NYCMDC in its efforts to inform City agencies of the availability of such Public Service Advertising and in the coordination of requests by such agencies for the use of such space. NYCMDC will coordinate with City agencies for use of the Public Service Advertising panels. The City agrees to consider, in good faith, any proposal made by the Company to postpone the use of the Public Service Advertising space provided for in this Section, or to return that space to the Company, during times of full occupancy for other advertising campaigns in order to maximize revenue generation opportunities; provided that nothing in this sentence shall be interpreted to require the City to forego its rights to receive the Public Service Advertising space that it is entitled to pursuant to this Section.

4.4.5. NYCMDC Advertising. In each year of the Term, in addition to the advertising inventory provided for Public Service Advertising pursuant to Section 4.4.4 herein, the Company shall provide advertising space to NYCMDC for NYCMDC Advertising at no cost to the City or NYCMDC consisting of 20% of the total number of panels then available to the Company under this Agreement. Such space shall be distributed fairly throughout the City and shall represent a corresponding percentage of the value of the advertising space available to the Company under this Agreement as set forth in Exhibit H attached hereto, which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided to NYCMDC during the Term in accordance with this Section 4.4.

4.4.6. New Structures, ~~Return, Other.~~

~~(a)~~ (a)—No later than 90 days prior to the expiration of each year of the Term, additional panels that have become available to the Company in the preceding 12 months shall be allocated by mutual agreement between the Company and NYCMDC as follows for the following year of the Term:

~~(i) (i)~~—2.5% of such new panels shall be allocated to Public Service Advertising to be evenly distributed as to value and geography among the newly available panels; and

~~(ii) (ii)~~—20% of such new panels shall be allocated to NYCMDC Advertising to be evenly distributed as to value and geography among the newly available panels.

~~(b) — If the City opts with respect to any year to return some but not all of the Public Service Advertising or the NYCMDC Advertising pursuant to Section 4.4.6(f) hereof, the specific locations of the panels shall reflect an even geographical distribution throughout the City unless otherwise agreed between the Company and NYCMDC.~~

~~(b) (e)~~—The Company agrees to consider, in good faith, any proposal made by DOT or NYCMDC to exchange locations of the NYCMDC Advertising inventory previously agreed upon. Notwithstanding the preceding, the City shall have a yearly option, to be exercised on or before the 90th day prior to the expiration of each year of the Term (subject to the Company’s reasonable approval as to locations, based on availability), to exchange with the Company no more than 5% of the locations (provided that no more than 1% may be exchanged per borough in any given year and all such exchanges shall be within the same borough) of the NYCMDC Advertising inventory previously agreed upon on a comparable value basis, effective the following year of the Term.

~~(c) (d)~~—The administration of NYCMDC Advertising and Public Service Advertising, including but not limited to posting, planning, installation, maintenance, removal and reporting shall be performed by the Company at no cost to the City or NYCMDC (except that the advertising posters shall be provided to or at the direction of the Company at no expense to the Company), shall be implemented in accordance with the same standards and best practices and utilization of the same materials and methods as used by the Company for displays of its paying commercial clients, which shall include, at a minimum: sufficient lead time for planning, a copy change every four weeks, location lists with spotted maps provided to NYCMDC and DOT 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 NYCMDC and DOT within 6 weeks of the posting completion. In programming the NYCMDC Advertising and Public Service Advertising, NYCMDC shall provide the Company with a monthly inventory of the NYCMDC Advertising and Public Service Advertising locations and the advertising campaign requested at each location.

~~(d) (e)~~—For the purposes of this Section 4.4.6 an exclusive advertising campaign shall be any campaign whereby the Company agrees to limit its rights to enter into advertising agreements with entities that compete with a particular advertiser. If the Company wishes to enter into an exclusive advertising campaign that would limit not just the Company’s rights but also NYCMDC’s rights under this Agreement to use panels for NYCMDC Advertising, then provided the Company has given NYCMDC the notice described below in this paragraph NYCMDC agrees to cooperate in good faith to address any potential issues that may

arise out of an accommodation by NYCMDC 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. NYCMDC has no obligation beyond such good faith cooperation to accommodate any such exclusivity commitment sought by the Company. The notice to NYCMDC 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.

~~(f) — Additionally, the City shall have a yearly option, to be exercised no later than the 90th day prior to the expiration of each year of the Term, to return to the Company any or all of the advertising space reserved for Public Service Advertising and NYCMDC Advertising effective the following year of the Term. DOT will be compensated for this returned advertising space in accordance with Section 9.6.2 hereof.~~

4.4.7. Alternative Compensation. In addition to the advertising panels provided for Public Service Advertising and NYCMDC Advertising, the Company shall be required to provide to NYCMDC certain advertising space pursuant to Section 9.4 hereof.

~~4.4.8. Olympics. Should any Olympics be awarded to the City during the Term. Should any Olympics be awarded to the City during the Term:~~

~~(a) (a) — the City, at its sole discretion, may require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period;~~

~~(b) (b) — the City, at its sole discretion, may impose restrictions on the parties who may advertise on the Coordinated Franchise Structures and/or the nature of the advertising during the Olympic Period;~~

~~(c) (c) — the City or its designated representative may assume control of advertising sales and placement during the Olympic Period;~~

~~(d) (d) — the Company shall continue to comply with all other terms of this Agreement, except as expressly set forth herein.~~

4.4.9. Removal. Any material displayed or placed in violation of Section 4 shall be removed by the Company within 48 hours of notice from DOT and any material displayed or placed in violation of Section 4.4.1 shall be removed by the Company within 24 hours of notice from DOT. If the Company fails to do so, the City shall have the right to remove such material without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work.

4.5.4.5 Maintenance of Advertising.

~~(a)~~ ~~(a)~~—The Company shall maintain the advertising on Coordinated Franchise Structures in a clean and attractive condition at all times and be responsible for the cost of any power consumption used, electrical or otherwise, including the cost of any power consumption used in connection with NYCMDC Advertising and Public Service Advertising.

~~(b)~~ ~~(b)~~—All advertising display panels must be safe, secure and sturdy, and shall be maintained as such throughout the Term. In the event the Commissioner deems a display panel or any part thereof to be unsafe, insecure or not sturdy, or to otherwise pose a threat to public safety, the Company shall remove such panel without delay upon receipt of notice from DOT. If the Company fails to do so, the City shall have the right to remove such panel without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work. In the event any panel is removed in accordance with this Section 4.5, the Company shall take all steps necessary to maintain the full function of the structure. A replacement panel may be installed, at the Company's sole cost and expense, only with the express, prior written approval of the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed.

4.6 Future Compliance. The Company shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted with respect to advertising.

4.7 Change in Local Law. If there is a change in local New York City law, rule or regulation restricting alcohol advertising (a "Local Alcohol Advertising Restriction") such that the Company can demonstrate to the City a loss in revenue, then:

~~(a)~~ ~~(a)~~—If the Company can show that its Gross Revenues have declined in any or all of the eight quarters beginning in the quarter in which the restriction imposed by the Local Alcohol Advertising Restriction took effect (the "Restriction Effective Date") (as compared with the Company's Gross Revenues during the corresponding quarter of the 12 month period prior to the Restriction Effective Date), then the Cash Component applicable to any such quarters shall be reduced by the product of (i) .5 and (ii) the decline in the Company's Gross Revenues attributable to the Local Alcohol Advertising Restriction during such applicable quarter. If the reduction contemplated by the preceding sentence is greater than the Cash Component applicable to such quarter pursuant to Section 9.5 hereof (after all other adjustments pursuant to Section 9 hereof), then all subsequent payments of the cash portion of the Franchise Fee shall be reduced until the full amount of the adjustment calculated in accordance with this Section 4.7(a) has been deducted, provided, however, that in no event shall any reductions be rolled over for more than seven quarters.

~~(b)~~ ~~(b)~~—The adjustments set forth in Section 4.7(a) shall be in the nature of a deferral, not an offset. Accordingly, the Company shall repay to the City all amounts (without interest) deducted in accordance with Section 4.7(a) in 12 equal quarterly payments

beginning on the date of the first regularly scheduled payment under Section 9.5 occurring after the last deferral allowed in Section 4.7(a) hereof.

~~(c)~~ ~~(e)~~—Notwithstanding the foregoing, this Section 4.7 shall have no force or effect if there is a Local Alcohol Advertising Restriction after the 17th year of the Term. If any of the payments to be made to the City pursuant to Section 4.7(b) above would, by its terms, be payable after the expiration of this Agreement, then the balance of such amount deferred shall be paid no later than 30 days after start of the last quarter of the last year of the Term. In the event that this Agreement is terminated in accordance with its terms, Company shall pay back any amounts deferred within 30 days of such termination.

For the avoidance of doubt, an example of the calculation of the adjustments to the Franchise Fee contemplated by this Section 4.7 is set forth on Schedule 4.7 to this Agreement.

~~(d)~~ ~~(d)~~—Any adjustment to the Cash Component made pursuant to this Section 4.7 shall not be taken into consideration for purposes of comparing the Cash Component to 50% of Gross Revenues in accordance with Sections 9.2, 9.3 and 9.5.

SECTION 5

CONSTRUCTION AND TECHNICAL REQUIREMENTS

5.1 General Requirements. The Company agrees to construct and install the Coordinated Franchise Structures in accordance with the Plans and Specifications and each of the terms set forth in this Agreement governing construction and installation of the Coordinated Franchise Structures, the siting criteria in the RFP, the Proposal and BAFO.

5.2 Identification of Coordinated Franchise Structure. The Company shall have displayed on each Coordinated Franchise Structure a unique identifying number (which shall be tracked via EIMIS) and a visible sign that shall comply with Section 3.5-(b) herein.

5.3 Quality. The Company agrees to comply with all applicable sections of the building, plumbing and electrical codes of the City and the National Electrical Safety Code and where the nature of any work to be done in connection with the installation, operation and maintenance or deactivation of the System requires that such work be done by an electrician and/or plumber, the Company agrees to employ and utilize only licensed electricians and plumbers. All such work shall be performed using quality workmanship and construction methods in a safe, thorough and reliable manner using state of the art building materials of good and durable quality and all such work shall be done in accordance with all applicable law, rules and regulations. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, is harmful to the public health or safety, then the Company shall, at its sole cost and expense, promptly correct all such conditions, provided, however, that to the extent the harmful condition was caused by the City's gross negligence or intentional misconduct, the Company shall correct such harmful condition at the City's sole cost and expense.

5.4 Structures. In connection with the installation, operation, and maintenance of any and all Coordinated Franchise Structures, the Company shall, at its own cost and expense, take commercially reasonable measures to protect any and all structures belonging to the City and all designated landmarks, and all other structures within any Historic District from damage that may be caused to such structures and landmarks as a result of the installation, operation or maintenance performed thereon by, or on behalf of the Company. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure, designated landmarks, structures in an Historic District or any part of the Inalienable Property of the City that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

5.5 No Obstruction.

5.5. —In connection with the installation, operation, and maintenance of the Coordinated Franchise Structures, the Company shall use commercially reasonable efforts to minimize the extent to which the use of the streets or other Inalienable Property of the City is disrupted, and shall use commercially reasonable efforts not to obstruct the use of such streets and/or Inalienable Property of the City, including, but not limited to, pedestrian travel. Sidewalk clearance must be maintained at all times so as to insure a free pedestrian passage in accordance with Appendix 3 of the RFP and any applicable laws, rules and regulations unless prior consent has been obtained from the Commissioner in his/her sole discretion.

5.6 Safety Precautions. The Company shall, at its own cost and expense, undertake appropriate efforts and any other actions as otherwise directed by DOT to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the Curb, and suitable and sufficient lighting.

5.7 Power Outages. In the event that any type of power outage occurs, to the extent the source of such outage is under the direct and exclusive control of the Company, the Company shall restore service within 24 hours at all Coordinated Franchise Structure locations so affected. If the source of a power outage is not under the direct and exclusive control of the Company, the Company shall undertake commercially reasonable efforts to restore service at all affected Coordinated Franchise Structure locations and shall notify the responsible party and the Commissioner within 24 hours.

SECTION 6

SECURITY FUND

6.1 General Requirement. The Company shall, in accordance with Section 2.2 herein, deposit with DOT a security deposit (the “Security Fund”) in the amount of \$5,000,000.00, which may consist of a certified check, bank check or wire transfer payable to the “City of New York,” or other cash equivalent acceptable to DOT. Interest shall accrue in an interest bearing bank account for the benefit of the Company and shall be paid annually to the Company on each anniversary of the Effective Date.

DOT shall be entitled, as authorized by law, to charge and collect from the Company for any reasonable administrative expenses, custodial charges, or other similar expenses, as may result from the operation of this Security Fund.

The Company shall maintain \$5,000,000 in the Security Fund at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period), unless within such one year period DOT notifies the Company that the Security Fund shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Security Fund provides security; provided that only such portion of the Security Fund as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Any amounts remaining in the Security Fund that are not being retained in accordance with this paragraph shall be promptly returned to the Company.

6.2 Scope of Security Fund. The Security Fund shall secure the City up to the full face amount of such Security Fund for any purpose set forth in Section 6.3 hereof.

6.3 Security Fund Purposes. The Security Fund shall serve as security for the faithful performance by the Company of all terms, conditions and obligations of this Agreement, including, but not limited to:

(a) (a)—any loss or damage to any municipal structure or Inalienable Property of the City, for which the Company would be responsible under this Agreement, during the course of any installation, operation, and maintenance of the System;

(b) (b)—any costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement;

(c) (c)—the removal of all or any part of the System, for which the Company would be responsible under this Agreement, from the Inalienable Property of the City, pursuant to this Agreement;

(d) (d)—any expenditure, damage, or loss incurred by the City resulting from the Company's failure to comply with any rules, regulations, orders, permits and other directives of the City and the Commissioner issued pursuant to this Agreement; and

(e) (e)—the payment of any other amounts which become due to the City from the Company pursuant to this Agreement, including, but not limited to payment of compensation set forth in Section 9 hereof and liquidated damages.

6.4 Withdrawals From or Claims Under the Security Fund. In accordance with Section 6.3 herein, this Section 6.4, and Section 13 hereof, DOT may make withdrawals from the Security Fund of such amounts as are necessary to satisfy (to the degree possible) the Company's obligations under this Agreement that are not otherwise satisfied and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to satisfy its

obligations. DOT may not seek recourse against the Security Fund for any costs, losses or damages for which DOT has previously been compensated through a withdrawal from the Security Fund, recourse to the Performance Bond or the Guaranty, draw down against the Letter of Credit, or otherwise through payment or reimbursement by the Company.

6.5 Use. In performing any of the Company's obligations under this Agreement using the Security Fund the City, if applicable, shall obtain competition to the maximum extent practicable under the circumstances.

6.6 Notice of Withdrawals. Within 48 hours after any withdrawals from the Security Fund, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any withdrawals by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The withdrawal of the amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Company.

6.7 Replenishment. Until the expiration of one year after the end of the Term or during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c), within 30 days after receipt of notice (the "Replenishment Period") from DOT that any amount has been withdrawn from the Security Fund as provided in this Section 6, the Company shall restore the Security Fund to the amount specified in Section 6.1 herein, provided that the Company is not contesting, in good faith, the withdrawal. If the Company fails to replenish the appropriate amount within the Replenishment Period and does not contest the withdrawal before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the Replenishment Period until such replenishment is made. If the withdrawal is contested, then upon the entry of a final, non-appealable, court order or judgment determining the propriety of the withdrawal, DOT, or the Company as applicable, shall refund or replenish the appropriate amount to the Security Fund. If either DOT or the Company has not refunded or made the required replenishment to the Security Fund within 30 days of the entry of a final non-appealable court order or judgment, interest on the amount not refunded or replenished shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the Replenishment Period to the date the applicable amounts are actually refunded or replenished. Such interest shall be payable to the party entitled thereto.

6.8 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Security Fund required by this Section 6 subject to the limitations set forth in the last sentence of Section 6.4 and in Section 13.5(b).

SECTION 7

PERFORMANCE BOND AND LETTER OF CREDIT

7.1.7.1 General Requirement.

~~(a)~~ ~~(a)~~—The Company shall, in accordance with Section 2.2 herein, provide DOT with a surety performance bond (the “Performance Bond”) in the amount of \$5,000,000 and an unconditional and irrevocable Letter of Credit (the “Letter of Credit”) in the amount of \$96,000,000 and such Performance Bond and Letter of Credit shall be in place (subject to the reductions in the amount of the Letter of Credit contemplated in Section 7.4 and substitution contemplated in Section 7.1(b) or 7.2(c)) at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period) unless within such one year period DOT notifies the Company that the Performance Bond or Letter of Credit shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Performance Bond or Letter of Credit provides security; provided that only such portion of the Performance Bond or Letter of Credit as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Within 20 days’ notice from the City of the amount subject to such outstanding litigation or claim, the Company shall provide the City with a replacement Performance Bond and/or Letter of Credit in such amount to be retained in accordance with the provisions of this Section 7. To the extent that the claim can be satisfied from the Letter of Credit or the Performance Bond, the City shall elect either the Letter of Credit or the Performance Bond.

~~(b)~~ ~~(b)~~—If at any time during the Term the Performance Bond is (i) to be cancelled by the surety company, (ii) expires by its terms and the surety gives notice 90 days prior to such expiration that the Performance Bond will not remain in effect, or (iii) is no longer in effect for any reason, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, provide DOT with a replacement performance bond acceptable to DOT (which Performance Bond shall be acceptable if in the form of Exhibit F and the surety is acceptable to DOT). If the Company cannot obtain a replacement because it is not then commercially available, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, substitute a Letter of Credit for such Performance Bond for up to three months. If a Performance Bond is still not available 30 days before the end of such 3 month period, the Company shall increase the Security Fund by the full face amount of the Performance Bond before the expiration of the substitute Letter of Credit in lieu of maintaining a Performance Bond in accordance with this Section 7. The circumstances described in this paragraph shall not constitute a breach or default under this Agreement by virtue of the Company having failed to maintain the Performance Bond in accordance with the terms of this Agreement provided that the Company timely complies with the obligations to substitute the Letter of Credit and increase the Security Fund in accordance herewith. The Company shall provide proof that the Performance Bond is in effect for the full face value on or about each anniversary of the Effective Date or upon reasonable demand by DOT.

7.2.7.2 Form:

~~(a)~~ ~~(a)~~—The Performance Bond shall be in a form and from an institution reasonably satisfactory to the City provided that a form of Performance Bond that

matches the form set forth in Exhibit F shall be deemed satisfactory to the City. The “City of New York acting by and through the Department of Transportation” shall serve as the sole obligee under the Performance Bond. The attorney-in-fact who signs the performance bond must file with the bond a certified copy of his/her power of attorney to sign the bond.

~~(b)~~ ~~(b)~~—The Letter of Credit, prior to the reduction to \$5 million as contemplated in Section 7.4 below, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IA shall be deemed satisfactory to the City (“Pre-Build Out L/C”). The Letter of Credit, once the amount is reduced to \$5 million and thereafter for the remainder of the Term, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IB shall be deemed satisfactory to the City (“Post Build-Out L/C”). The “City of New York acting by and through the Department of Transportation” shall be named as a beneficiary in both the Pre Build-Out L/C and the Post Build-Out L/C. The original Letter of Credit shall be deposited with DOT and DOT shall serve as the holder of such letter. The Post Build-Out L/C shall contain the following endorsement:

“It is a condition of this Letter of Credit that it shall be deemed automatically renewed for consecutive additional periods of one year each from the present and each future expiration date hereof unless and until at least ninety (90) days prior to any such date the Bank shall notify the Beneficiary and the Principal in writing of its intention not to renew this Letter of Credit for any such additional period.”

~~(c)~~ ~~(e)~~—In the event that the Company intends to change the issuing bank of the Post Build-Out L/C, the Company shall provide written notification to the City of such proposed change, including the name of the proposed new issuing bank. Upon receipt of such notification, and provided that the new issuing bank is reasonably acceptable to the City, the City and the Company shall sign a written communication to the issuing bank of the then existing Post Build-Out L/C instructing such bank not to renew the existing Post Build-Out L/C and allow it to expire in accordance with its terms. In the event that the Company does not provide a replacement Post Build-Out L/C before the existing Post Build-Out L/C has thirty (30) days to run before it is set to expire, the City may draw down on the Post Build-Out L/C in accordance with Section 7.5-(b) of this Agreement.

7.3.7.3 Scope.

~~(a)~~ ~~(a)~~—The Performance Bond shall serve as security for any loss or damage, in kind replacement, and/or repairs of, Sidewalks and Historic Pavement during the course of any installation, operation, maintenance or removal, of all or any part of the System by the Company.

~~(b)~~ ~~(b)~~—The Letter of Credit shall serve as security for the Company’s performance under this Agreement as such performance is described in Section 6.3 herein.

7.4 Letter of Credit Reduction. The amount of the Letter of Credit required to be provided by the Company shall be reduced on a yearly basis on or about the 90th day after each anniversary of the Effective Date, by an amount equal to the number of Coordinated Franchise Structures for which the ~~Installation Date~~ has occurred during the preceding year of the Term, multiplied by the dollar amount applicable to each such Coordinated Franchise Structure set forth in Schedule 7.4, provided that in no event shall the amount of the Letter of Credit be reduced below \$5,000,000. The Company shall deliver to the City a replacement Letter of Credit on or about each such 90th day following the anniversary of the Effective Date in a face amount calculated in accordance with this Section 7.4.

7.5.7.5 Drawdown Against the Letter of Credit.

~~(a)~~ ~~(a)~~—In accordance with Section 7.3 herein, this Section 7.5, and Section 13 hereof, DOT may drawdown against the Letter of Credit such amounts as are necessary to satisfy (to the degree possible) the Company's obligations under this Agreement not otherwise met and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to meet its obligations. ~~DOT~~ may not seek recourse against the Letter of Credit for any costs, losses or damages for which DOT has previously been compensated through a drawdown against the Letter of Credit, recourse to the Performance Bond or the Guaranty, withdrawal from the Security Fund or otherwise through payment or reimbursement by the Company.

~~(b)~~ ~~(b)~~—In addition to its right to drawdown on the Letter of Credit for any of the reasons set forth in Section 6.3 hereof, DOT may drawdown in full on the Letter of Credit at any time such Letter of Credit has less than thirty (30) days to run before it is scheduled to expire and no replacement or renewal Letter of Credit has been given in its place. In the event of a drawdown for such reason, DOT will hold the proceeds as cash security (paying to itself any interest earned) in lieu of a Letter of Credit (with DOT having the right to make withdrawals for the same purposes as drawdowns are permitted on the Letter of Credit) until a replacement Letter of Credit is put in place, at which time such drawdown proceeds will be returned to the Company less any proper withdrawals and any reasonable transaction expenses. All amounts so held in cash will be subject to annual reduction in accordance with Section 7.4, and the excess cash held by the City following such annually scheduled reduction shall promptly be returned to the Company. In the event of the drawdown contemplated in this Section 7.5(b), no breach or default shall exist under this Agreement by virtue of the Company having failed to maintain the Letter of Credit in accordance with the terms of this Agreement. In the event of a drawdown on the Letter of Credit as contemplated by this Section 7.5(b), and until such time as a replacement Letter of Credit is obtained in accordance with this Section 7.5(b), the replenishment obligations of the Company with respect to the moneys held by the City following such drawdown as cash security shall correspond to the replenishment obligations (and rights, including the Company's right to contest any withdrawals therefrom) of the Company applicable to the Security Fund under Section 6.7.

7.6 Use. In performing any of the Company's obligations under this Agreement using the Letter of Credit the City shall obtain competition, if applicable, to the maximum extent practicable under the circumstances.

7.7 Notice of Drawdown. Within 48 hours after any drawdown against the Letter of Credit or any claim with respect to the Performance Bond, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any drawdowns or claims by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The drawdown against the Letter of Credit or a satisfied claim with respect to the Performance Bond shall constitute a credit against the amount of the applicable liability of the Company.

7.8 Replenishment. Until the expiration of one year after the Term, during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c), within 30 days after receipt of notice (the "L/C Replenishment Period") from DOT that at least \$500,000 (cumulatively or in a single instance) has been drawn down against the Letter of Credit, the Company shall obtain a replacement or additional letter of credit such that the total amount available under the letter(s) of credit obtained shall be restored to the amount required in this Section 7, provided that the Company is not contesting, in good faith, the drawdown, or any portion thereof (provided that the Company shall replenish any uncontested portions if greater than \$500,000). Nothing herein shall prohibit the Company from contesting any drawdown, including any drawdown less than \$500,000. The amount referenced in the immediately preceding sentence shall be reduced proportionately in accordance with the Letter of Credit reductions contemplated by Section 7.4, to a minimum of \$100,000. If the Company fails to obtain a replacement or additional letter of credit in the appropriate amount within the L/C Replenishment Period and does not contest the drawdown before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the L/C Replenishment Period until such replacement or additional letter of credit is obtained. If the drawdown is contested, then upon the entry of a final non-appealable court order or judgment determining the propriety of the drawdown, DOT, or the Company as applicable, shall refund or replenish the appropriate amount, or obtain a replacement or additional letter of credit, as appropriate. If either DOT or the Company has not refunded or made the required replenishment, or obtained a replacement or additional letter of credit, as appropriate, within 30 days of the entry of a final non-appealable court order or judgment, interest on the appropriate amount shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the L/C Replenishment Period to the date the applicable amounts are actually refunded or replenished, or an additional or replacement letter of credit is obtained, as appropriate. Such interest shall be payable to the party entitled thereto.

7.9 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Performance Bond or the Letter of Credit required by this Section 7 subject to the limitations set forth in the last sentence of Section 7.5(a) and Section 13.5(b).

7.10 Cancellation Upon Replacement. In the event the Company provides a replacement or substitute Letter of Credit or a replacement Performance Bond pursuant to the provisions of this Section 7, the City shall, as soon as practicable and in no event later than 30 days after such replacement or substitute Letter of Credit or replacement Performance Bond is

delivered to the City or to a third party for the benefit of the City, return to the issuing bank such Letter of Credit and/or to the Company or surety such Performance Bond that was replaced or substituted, and shall notify, in writing, the Company and/or the surety of such return. Additionally, the City hereby agrees that upon delivery of the replacement or substitute Letter of Credit or replacement Performance Bond to the City, the City shall have no further rights (including, without limitation, the right to make claims or demands) against any Letter of Credit and/or Performance Bond that has been replaced or substituted as described above.

SECTION 8

EMPLOYMENT AND PURCHASING—Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or any other terms, conditions or privileges of employment. The Company 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 Company, shall use commercially reasonable efforts, at its own cost and expense, to recruit, educate, train and employ residents of the City, for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the System. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. The Company shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company.

8.3 ———Obligation to Use Domestic and Local Contractors and Subcontractors. The Company certifies that at least eighty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly, of the Coordinated Franchise Structures shall be within the United States and that at least fifty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly of the Coordinated Franchise Structures shall be within the City of New York.

8.4 ———No Discrimination. The Company shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. The Company agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the Term.

SECTION 9

COMPENSATION AND OTHER PAYMENTS

9.1 Defined Terms. For the purposes of this Agreement, the following terms, phrases and words shall have the meaning set forth in this Section 9.1, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in Sections 1 or 4 herein. References in this Section 9 to “commercial advertising” provided to NYCMDC as compensation to the City shall be understood to refer to space for advertising to be provided to NYCMDC (including New York City Promotional Advertising) for use consistent with its corporate purpose in accordance with this Section 9.

(a) ~~(a)~~—“Alternative Compensation” means one of the two compensation components of the Guaranteed Minimum. Alternative Compensation for each year of the Term shall have a market value as set forth in Column B of Schedule C attached hereto (subject to adjustment as contemplated by this Section 9), and shall consist of commercial advertising which shall be provided to NYCMDC by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest~~provided to NYCMDC~~ on the inventory described below, which shall be used by NYCMDC consistent with NYCMDC’s corporate purpose (but not for “spot market advertising”); provided, however, that \$2,500,000 of Alternative Compensation listed in Column B of Schedule C for the first year of the Term shall consist of the amenities contemplated by Section 9.17 and not commercial advertising. The inventory referred to in the immediately preceding sentence shall consist of out-of-home advertising media (e.g. billboards, ~~stadium signage~~, transit terminals, shopping centers, street furniture and advertising time on any form of electronic media) outside of New York City (i) then owned or controlled by the Company or any other entity which is more than 50% owned directly or indirectly by JCDecaux SA, by Cemusa Corporacion Europea de Mobiliario Urbano, S.A. (the “Parent”), or a successor in interest to JCDecaux SA (a “JCDecaux In-Kind Company”),~~the Parent,~~ and (ii) over which JCDecaux SA~~the Parent~~ or such successor in interest exercises operational control—(the “JCDecaux Cemusa In-Kind Markets”). Alternative Compensation shall be valued at the prevailing market rates actually charged to commercial customers buying comparable amounts of the Company’s advertising space in the applicable JCDecaux Cemusa In-Kind Market in accordance with the valuation methodology described in Section 9.4.1. Notwithstanding anything to the contrary in this Agreement, in determining whether the value of Alternative Compensation has the market value set forth in Column B of Schedule C, the amount of any value added tax due shall not be included, provided, however, the total unamortized value for Reciprocal Bus Shelters, if any, calculated in accordance with Section 2.5.3.2 above, may be deducted from the Alternative Compensation in year 19 of the Term, and year 20 if necessary. Commercial advertising provided as Alternative Compensation shall be ~~provided~~implemented pursuant to Sections 4.4.6(d) and 9.4 herein unless otherwise noted herein.

~~(b)~~ ~~(b)~~—“Cash Component” means one of the two compensation components of the Guaranteed Minimum, consists of cash, and is as set forth in Column A of Schedule C attached hereto.

~~(c)~~ ~~(e)~~—“Gross Revenues” means all revenues (from whatever source derived, and without any 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 Company, its subsidiaries, affiliates, or any third parties directly or indirectly retained by the Company to generate revenue (not including amounts paid or obligated to be paid to such third parties by or on behalf of the Company or any subsidiary or affiliate of the Company), as a result of the installation of the Coordinated Franchise Structures and, including without limitation, the display of advertising thereon. In addition to any revenues generated in the form of monetary receipts, Gross Revenues shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the Company may receive. In the event that the Company provides any advertising space pursuant to any transaction which is not an arm’s-length 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 Company’s including or grouping advertising on the Coordinated Franchise Structures with other assets in the Company’s inventory or otherwise), the amount to be included in Gross Revenues with respect to such transaction will be the fair market value of the advertising space as if such advertising space were provided pursuant to an arm’s-length transaction. Notwithstanding anything to the contrary in this definition, Gross Revenues shall not include any sales taxes or other taxes imposed by law which the Company is obligated to collect, or any Public Service Advertising, NYCMDC Advertising or Alternative Compensation. Gross Revenues shall not include Scroller Gross Revenues in years 1 through 5 of the Term and PSS Gross Revenues during the Term. The Company will not divert or recharacterize revenue that would otherwise have been considered Gross Revenues for purposes of this Agreement.

~~(d)~~ ~~(d)~~—“Guaranteed Minimum” for any given year of the Term shall consist of the Cash Component set forth in Schedule C and the Alternative Compensation set forth in Schedule C, subject to adjustment as expressly set forth in Section 9.

~~(e)~~ ~~(e)~~—“New York City Promotional Advertising” means advertising which in at least substantial portion on its face promotes New York City, including by promoting, for example: travel to New York City; doing business in New York City; arts, entertainment and cultural institutions located in New York City; or life in or living in New York City.

~~(f)~~ ~~(f)~~—“PSS Gross Revenues” shall mean revenue generated by PSSs calculated in the same manner as Gross Revenues. PSS Gross Revenues shall be paid in accordance with Schedule D.

~~(g)~~ ~~(g)~~—“Scroller Gross Revenues” shall mean revenue generated by Scrollers calculated in the same manner as Gross Revenues.

9.2 Compensation. As compensation for the franchise, commencing on the Effective Date and as set forth in this Section 9, the Company shall pay and/or provide (as the case may be) to the City with respect to each year of the Term (subject to the remaining provisions of this Section 9):

the greater of:

(i) ~~(i)~~ 50% of Gross Revenues for such year of the Term;

or

(ii) ~~(ii)~~ the Cash Component for such year of the Term;

plus

the Alternative Compensation for such year of the Term

as the Franchise Fee; provided however that, in any year of the Term in which 50% of Gross Revenues is greater than the Cash Component, ~~the~~ Cash Component will be increased and the Alternative Compensation will be reduced by the actual amount of the positive difference obtained by subtracting the amount of the ~~Cash Component~~ (as set forth in Schedule C for such year, i.e., prior to ~~any adjustment~~) from 50% of Gross Revenues for such year; provided further however that the Alternative Compensation shall not be reduced by, nor the Cash Component increased by, an amount which would reduce Alternative Compensation below the amount set forth in Column C of Schedule C for such year. The adjustments to the Alternative Compensation contemplated in this Section 9.2 shall be made in the year of the Term following the year of the Term to which they apply, due to the inability to adjust Alternative Compensation retroactively.

For the avoidance of doubt, several examples of the calculation of the Franchise Fee in a variety of circumstances are set forth on Schedule 9.2 to this Agreement.

9.3 Advance Payment. Within five business days of the Effective Date, the Company shall pay to the City \$50,000,000 in cash as the first installment of the advance payment of the Cash Component for the first four years of the Term. Within five business days of receipt by the Company from DOT of the necessary permits for installation by the Company of the 200th Coordinated Franchise Structure (not including PSSs), the Company shall pay to the City \$68,460,000 in cash as the second and last installment of the advance payment of the Cash Component for the first four years of the Term. Should 50% of the Gross Revenues for any of the first four years of the Term be more than the Cash Component for that year, the Company shall make payment of the excess amount in cash within 45 days of the end of that year of the Term. The Alternative Compensation shall be paid to the City in accordance with the terms of this Section 9.

9.4.9.4 Alternative Compensation Planning.

(a) The Company and NYCMDC shall consider NYCMDC advertising campaigns for each year of the Term in mutually agreed JCDecaux In-Kind Markets. As a baseline media plan, and throughout each year of the Term, the parties shall consider advertising campaigns in each agreed upon market, taking into account that market practice and market availability may vary according to location and over time. The Company agrees to make commercially reasonable efforts or the Company shall cause JCDecaux SA or its successor in interest to make commercially reasonable efforts to concentrate advertising campaigns within no more than twelve (12) countries in which JCDecaux In-Kind Markets are present in each year of the Term having a minimum value of at least five-hundred thousand dollars (\$500,000.00) per country during each year of the Term. For purposes of this Section 9, a “market” may include, depending on local market sales practice, all or any portion of a country in which a JCDecaux In-Kind Company is present. The parties shall have an initial meeting(a) — The Company and NYCMDC shall consider two four week advertising campaigns, with 100% penetration, in each of the Cemusa In Kind Markets then available as the baseline media plan for Alternative Compensation for each year of the Term. The parties shall meet annually at least 180 days prior to the end of each year of the Term to mutually agree in good faith on a baseline media plan (which may be either the baseline media plan referred to above or a modified version thereof in accordance with the remaining provisions of this Section 9.4) for the advertising campaigns to be made available to NYCMDC by the Company or caused by the Company to be made available by JCDecaux SA or its successor in interest (including the particular JCDecaux Cemusa In-Kind Markets to be included, the specific campaign in each such market, the preferred format, the intended value assigned to each campaign, and the schedule for placement) which is to constitute the Alternative Compensation due to the City on Schedule C for the next succeeding year. The parties shall confer regularly and at least monthly throughout each year of the Term to review, update and modify the baseline media plan provided only that the Company shall make available the amount of Alternative Compensation set forth in Schedule C within each year of the Term. Nothing—(provided, however, nothing herein shall limit the ability of NYCMDC and the Company to plan campaigns through mutual agreement beyond the next succeeding year (to the extent such planning is commercially reasonable) of the Term (the “Media Plan”). If the parties are unable to agree, then NYCMDC shall propose a placement program each month which shall be subject to the approval of the Company, not to be unreasonably withheld, and in the event of reasonable objections by the Company (such as the Company being obligated to provide the requested space to a third party for the applicable period)year of the Term); NYCMDC shall make reasonable adjustments to its proposal to meet the Company’s objections. Once NYCMDC makes such adjustment, the Media Plan shall be final, subject to further adjustment pursuant to Section 9. The parties acknowledge that NYCMDC may not be able to determine valuation to its satisfaction prior to the time set forth in Section 9.4.1.

Notwithstanding the foregoing, thereafter the Company and NYCMDC may mutually agree to revise the agreed Media Plan at any time, except that such revisions to placement in any given market shall be on a space available basis. For the first year of the Term, the parties shall agree on a Media Plan prior to the Effective Date to the extent possible, or as soon as possible thereafter.

(b) At the time the Media Plan is agreed to with respect to any month of any year of the Term, NYCMDC shall designate specific markets (or parts thereof) that may be relinquished in the event the amount of Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to such year of the Term. Such adjustment will be made to the agreed upon Media Plan.

9.4.1. Valuation of Alternative Compensation. No later than 90 days prior to the end of each year of the Term, NYCMDC shall notify the Company if NYCMDC believes that the value of the Media Plan for the following year of the Term is less than the amount set forth on Schedule C for such year. In such event, NYCMDC may retain an international media agency reasonably acceptable to the Company (provided that WPP, Interpublic, Dentsu, Publicis, and Omnicom shall be acceptable) with expertise in media buying and planning in each of the JCDecauxCemusa In-Kind Markets to determine the value of the Media Plan created pursuant to Section 9.4. The value determined by the media agency (the “Estimated In-Kind Value”) in any given year shall be compared against the Alternative Compensation amount as set forth in Schedule C attached hereto for that same year (Such amount set forth on Schedule C, after any adjustment required pursuant to Section 9.2, the “Baseline In-Kind Value”). If the adjustment to the Alternative Compensation required by Section 9.2 is not determinable at the time the valuation contemplated by this Section 9.4.1 is finalized, then such valuation and resulting adjustment to the Media Plan, if any, shall be recalculated when the adjustment to the Alternative Compensation becomes known.

(a) (a)—To the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on additional advertising campaigns to be provided by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest to NYCMDC in JCDecauxCemusa In-Kind Markets, ~~(but, unless such denomination is impossible, such additional campaigns must consist of four week advertising campaigns, with 100% penetration),~~ such that the Estimated In-Kind Value plus the value of these additional campaigns equals the Baseline In-Kind Value for such year; ~~provided that in no event will the Company be obligated to provide more than three four week advertising campaigns with 100% penetration in any Cemusa In-Kind Market unless it is necessary to exceed this limitation in order for the Company to deliver the full Baseline In-Kind Value.~~

(b) (b)—To the extent the Estimated In-Kind Value is more than 115% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on advertising campaigns to be relinquished by NYCMDC in JCDecaux In-Kind Markets, Cemusa In-Kind Markets ~~(but, unless such denomination is impossible, such reduction must consist of four week advertising campaigns, with 100% penetration),~~ such that the Estimated In-Kind Value minus the value of the campaigns to be relinquished equals the Baseline In-Kind Value for such year.

(c) (e)—To the extent the Estimated In-Kind Value is less than or equal to 115% of the Baseline In-Kind Value for such year but more than or equal to 85% of the Baseline In-Kind Value for such year, there shall be no change to the Media Plan for that year resulting from the performance of the valuation contemplated by this Section 9.4.1.

~~(d)~~ ~~(d)~~—However, to the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company may, within 20 days notice of the Estimated In-Kind Value, choose to dispute the Estimated In-Kind Value. If the parties are not able to successfully resolve their differences within 10 business days after the Company gives notice to the City that it is disputing the Estimated In-Kind Value, then the parties shall immediately thereupon submit their dispute with respect to the value of the Media Plan to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) or any successor organization thereto. The determination of the AAA arbitrator shall be limited to determining the value of the Media Plan and shall be final and binding upon the parties. The AAA shall select one arbitrator who shall be an individual with at least twenty years’ experience in the field of commercial marketing and advertising. Because of the time-sensitive nature of the required calculation, the arbitrator shall, to the extent reasonably possible, hold a hearing to consider the submissions of the parties within one week of the arbitrator’s appointment and to render the decision within 10 business days of the close of the arbitration hearing and final submission of all materials in support of the positions of the parties. In rendering the decision, the arbitrator shall consider the criteria set forth in Section 9.1(a). The parties agree that in the event that arbitration is invoked, both parties shall proceed as expeditiously as possible under the circumstances to conclude the arbitration, including the timely submission of any supporting materials and appearance at arbitration hearings. Each party shall bear its own legal fees and expenses, but the cost of the arbitration shall be borne equally by the parties. The arbitrator shall have no power to vary or modify the provisions of this Agreement and the arbitrator’s jurisdiction is limited accordingly. The arbitration contemplated hereby shall be conducted in New York, New York. Following the arbitrator’s determination, the parties will increase or decrease the number of ~~two four week advertising~~ campaigns ~~with 100% penetration~~ in mutually agreed JCDecauxCemusa In-Kind Markets in the same manner as contemplated in Sections 9.4.1(a) and (b) based upon the arbitrator’s determination as to the value of the Media Plan (such determination, the “Arbitrated Value”).

9.4.2. Exchanging Markets; Less Than 100% Penetration.

~~(a)~~ ~~(a)~~—As part of the process contemplated in Section 9.4(a), and subject to the Company’s ~~or NYCMDC’s, as the case may be,~~ reasonable approval based on availability, NYCMDC ~~or the Company may exchange or the Company may cause JCDecaux SA or its successor in interest to exchange comparable~~four week advertising campaigns ~~with 100% penetration~~ in one JCDecauxCemusa In-Kind Market for ~~comparable~~four week advertising campaigns ~~with 100% penetration~~ of equivalent value in a different JCDecauxCemusa In-Kind Market; ~~provided that in any given Cemusa In Kind Market in any given year of the Term NYCMDC may not run more than three~~ four week advertising campaigns ~~with 100% penetration~~. Solely for purposes of this Section 9.4.2, “equivalent value” shall be determined by reference to the Company’s rate cards in the applicable markets. ~~References to “100% penetration” in this Agreement mean 100% penetration as such term is generally understood in the out of home advertising industry.~~

~~(b)~~—~~NYCMDC shall not be entitled to run advertising campaigns of less than four weeks duration or less than 100% penetration unless such is necessary to achieve~~

~~in a practical manner the full market value of Alternative Compensation (as determined in accordance with Section 9.4.1) the Company is obligated to provide under this Agreement in a particular year of the Term (i.e., if there is an amount of Alternative Compensation left over that is too small to equal in value a four week marketing campaign of 100% penetration in any of the Cemusa In Kind Markets).~~

9.4.3. Alternative Compensation Content. NYCMDC shall program the Alternative Compensation on behalf of the City. No more than 50% of the Alternative Compensation to be programmed by NYCMDC pursuant to this Section 9.4 shall consist of advertising that is not New York City Promotional Advertising. Furthermore, in any given ~~JCDecauxCemusa~~ In-Kind Market, NYCMDC may program panels for an existing advertiser-client of the Company in that ~~JCDecauxCemusa~~ In-Kind Market only if such advertising is New York City Promotional Advertising. NYCMDC shall at all times during the Term give the Company 10 business days notice prior to entering into agreements with marketing partners for campaigns involving use of Alternative Compensation panels. The notice shall contain information as to the identity of the marketing partner, length of time, the geographic reach and the number of panels involved in the proposed campaign. In addition, the content and creative for such marketing partnerships shall be provided to the Company within a reasonable time after receipt of that information by NYCMDC. NYCMDC and the Company shall cooperate in good faith to address any potential issues that may arise out of the execution of such advertising campaigns.

9.4.4. No Carryover; No Cash Conversion. Subject to Section 9.4.5,- Alternative Compensation shall not be convertible into cash under any circumstances; except, however, that if the Alternative Compensation is not provided by the Company in accordance with this Agreement, nothing herein shall prevent the City from pursuing all remedies available to it at law, equity or in this Agreement. Additionally, Alternative Compensation to be provided in a particular year of the Term must be used in such year and may not be carried over into any subsequent year of the Term.

9.4.5. Major Markets Requirement. In the event that JCDecaux In-Kind Markets do not include at least 18 cities with populations of at least 500,000 people (“Major Markets”) for any year of the Term and the City is not able to reasonably satisfy its Alternative Compensation requirements through the use of non-Major Markets acceptable to NYCMDC, the Company hereby agrees that the City shall have the option, to be exercised no later than the last day of such year of the Term, to compel the Company to provide or compel the Company to cause JCDecaux SA or its successor in interest to provide Alternative Compensation, all or part of which may be converted into cash, at the option of the the City (the “Alternative Compensation Conversion Option”), to the City in such market or in such markets that are substantially equivalent with respect to the designated market area (the “DMA”) of such Major Market(s) that are no longer part of the JCDecaux In-Kind Markets. If the City exercises its Alternative Compensation Conversion Option, the City shall receive cash in the amount of the Alternative Compensation for such year multiplied by a fraction, the numerator of which shall be the difference between the amount of Alternative Compensation for such year and the amount of Alternative Compensation delivered (or planned to be delivered by the end of the relevant year

of the Term) and the denominator of which shall be the amount of the Alternative Compensation for such year, as listed in Column B of Schedule C.

9.4.6. Adjustments to Alternative Compensation Under Section 9.2. In the event the amount of the Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to any year of the Term, such adjustment will be implemented by reducing the Media Plan. The value of the campaigns to be relinquished by NYCMDC shall be established by reference to (a) the Arbitrated Value for such year, (b) the Estimated In-Kind Value for such year if there is no Arbitrated Value, or (c) the valuations assigned to each JCDecauxCemusa In-Kind Market in the Media Plan for such year, if there is no Estimated In-Kind Value.

9.5-9.5 Payments.-

(a) (a)—Beginning with the fifth year of the Term (it being understood and agreed that the cash portion of the Franchise Fee payable with respect to the first four years of the Term shall be paid in accordance with Section 9.3 herein), within 30 days after the end of each of the first three quarters of each year of the Term, the Company shall pay to the City in cash the greater of (i) one fourth of the Cash Component for such year or (ii) 50% of Gross Revenues for that quarter. Beginning with the fifth year of the Term, within 30 days after the end of the fourth quarter of each year of the Term, the Company shall pay the excess, if any, of the full cash payment due to the City under Section 9.2 for such year of the Term (after all applicable adjustments contemplated by Section 9 and Section 4.7) over the amounts already paid by the Company on a quarterly basis with respect to such year under the preceding sentence. If the sum of the payments made by the Company in accordance with this Section 9.5(a) with respect to any year of the Term exceeds the cash portion of the Franchise Fee due to the City under Section 9.2 for such year (after all applicable adjustments contemplated by Section 9 and Section 4.7), the Company shall be entitled to take the excess as a credit against the next cash payment or payments due to the City under this Section 9, unless there is no such next payment scheduled (i.e., the Term has expired or terminated), in which case such excess shall be payable by the City to the Company within 30 days (if the amount is less than \$100,000) or 90 days (if the amount is equal to or greater than \$100,000) of invoice therefor.

(b) (b)—Within 30 days after any termination of this Agreement, the Company shall pay to the City in cash the appropriate pro rata amount (based on the number of days in the partial year and using 365 days in a full year) of the cash portion of the Franchise Fee for the elapsed portion of such year which has not previously been paid pursuant to Sections 9.3 or 9.5(a) and any other amounts owed to the City pursuant to this Agreement. Additionally, the Company shall deliver the pro rata amount of any Alternative Compensation agreed to pursuant to Section 9.4 herein for such year and not previously delivered.

(c) (e)—Beginning with the fifth year of the Term, and for each year of the Term thereafter, no later than 45 days from the anniversary of the Effective Date, the Company shall deposit with the escrow agent (the “Escrow Agent”) under an escrow agreement to be entered into among the Company, such Escrow Agent and the City (the “Escrow Agreement”), which Escrow Agreement shall be substantially in the form attached hereto as

Exhibit L, the greater of (i) the Cash Component for that year of the Term or (ii) the cash portion of the Franchise Fee paid by the Company for the immediately preceding year of the Term, minus, in each case, any amounts deposited in escrow the prior year pursuant to this Section 9.5(c) and then remaining in escrow (the amount deposited in escrow in accordance with this Section 9.5(c), the “Escrow Fund”). Each payment required to be made pursuant to Sections 9.5(a) and 9.5(b) shall be made from the Escrow Fund provided that if the Escrow Fund is at any time insufficient to make such payments, the Company shall make such payments directly.

~~(d)~~ ~~(d)~~—In addition, no later than the first day of the fourth year of the Term, the Company shall cause the establishment with the Escrow Agent of an additional, separate escrow account (the “Supplemental Escrow Account~~”~~”), pursuant to the Escrow Agreement. The Supplemental Escrow Account shall be unfunded until required to be funded in accordance with the terms of this Section 9.5(d). Funds on deposit in the Supplemental Escrow Account from time to time as required herein are referred to as the “Supplemental Escrow Fund.” During the Term, the Supplemental Escrow Fund shall be increased (by deposit of additional funds by or at thedirection of the Company) or decreased (by payment to or at the direction of the Company bythe Escrow Agent), within 10 business days, as follows:

~~(i)~~ ~~(i)~~—At any time after the third year of the Term when the Net Worth (hereinafter defined) of the Guarantor is less than 125 million Euros the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term and the following year of the Term or (y) two times the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

~~(ii)~~ ~~(ii)~~—At any time after the fourth year of the Term when the Net Worth of the Guarantor is between 125 million Euros and 150 million Euros, the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term or (y) the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

~~(iii)~~ ~~(iii)~~—At any time when the Net Worth of the Guarantor is 150 million Euros or greater, or after the 19th year of the Term, the Supplemental Escrow Fund shall be 0.

Solely for purposes of this Section 9.5(d), “Net Worth” shall mean total assets of the Guarantor, minus total liabilities of the Guarantor, calculated in accordance with generally accepted accounting principles, as reflected in the most recent audited annual financial statements of the Guarantor required to be delivered to the City pursuant to Section 10.6.3.

~~(e)~~ ~~(e)~~—All interest earned on the Escrow Fund and Supplemental Escrow Fund shall accrue to the Company or the Guarantor, as applicable, and be payable to or at the direction of the Company at the end of each quarter of the Term.

9.6.9.6 Revisions to Franchise Fee. ~~The Franchise Fee may be revised as follows. The Franchise Fee may be revised as follows:~~

9.6.1. PSS. Should DOT exercise its option to require the Company to install, maintain and operate PSSs as set forth in Section 2.4.6(c) herein, the cash portion of the Franchise Fee shall be adjusted as set forth on Schedule D attached hereto.

~~9.6.2. NYCMDC Advertising/Public Service Advertising. Should the City exercise its yearly option to return to the Company advertising space reserved for NYCMDC Advertising or Public Service Advertising as set forth in Section 4.4.6(f) herein, the cash portion of the Franchise Fee shall be adjusted as set forth on Schedule D attached hereto.~~

9.6.2. Scrollers. Should the Company install any Scroller before year six of the Term, the cash portion of the Franchise Fee prior to year six of the Term shall be increased by an amount equal to 50% of Scroller Gross Revenues.

9.6.3. Olympics. Should the City exercise its option to require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period as set forth in Section 4.4.8 herein, the Company shall deduct from the cash portion of the Franchise Fee to be paid for the quarter immediately following the Olympic Period the following amount:

the average Gross Revenue, for the same eight weeks as the Olympic Period, of the three years preceding the Olympics, multiplied by 1.2.

9.7 Credits. The parties acknowledge that the cash portion of the Franchise Fee payable by the Company each year has been determined by the Company based on certain assumptions of the Company regarding revenue generation from advertising as permitted under this Agreement. Accordingly:

9.7.1. Bus Shelters. If at any time the number of Bus Shelters is reduced to fewer than 3300 Bus Shelters through no fault of the Company, then NYCMDC and the Company shall promptly mutually designate Bus Shelters in the same geographic area to the extent possible, which are allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 Bus Shelters. To the extent that the Company is thereafter able to install additional Bus Shelters, the Bus Shelters shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 Bus Shelters.

9.7.2. New Bus Shelters. If by the fifth anniversary of the Build Start Date the Company is unable to install at least 3300 New Bus Shelters within the time frames for such installation provided for in this Agreement due to the fault of the City, then NYCMDC and the Company shall promptly mutually designate New Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 New Bus Shelters (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC for reversion, on a one-for-one basis, in lieu of New Bus Shelters). To the extent that the Company

thereafter is able to install additional New Bus Shelters, the New Bus Shelters (or Existing Bus Shelters, as the case may be) shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 New Bus Shelters.

9.7.3. Newsstands. If, through no fault of the Company, (a) at any time after the end of the first year of the Term the number of Newsstands is reduced to fewer than 110 New or Replacement Newsstands, (b) at any time after the end of the second year of the Term the number of Newsstands is reduced to fewer than 220 New or Replacement Newsstands, or (c) at any time after the end of the third year of the Term the number of Newsstands is reduced to fewer than 330 New or Replacement Newsstands, then NYCMDC and the Company shall promptly mutually designate Replacement Newsstands and/or New Newsstands and/or Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon (which may be on Replacement Newsstands and/or New Newsstands and/or Bus Shelters but excluding Bus Shelters which the Company controls the advertising on pursuant to Sections 9.7.1 and 9.7.2 herein) such that the Company controls the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term, provided, that for purposes of the foregoing reversion, (i) Replacement Newsstands and New Newsstands shall be the first to revert on a one to one basis, (ii) if NYCMDC has no remaining Newsstands available to it, then New Bus Shelters shall revert (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC in lieu of New Bus Shelters) and (iii) if NYCMDC has no remaining New Bus Shelters, then Existing Bus Shelters shall revert. In designating Bus Shelters for reversion in accordance with this Section 9.7.3, the parties shall make such reversion on the basis of 1.5 Bus Shelters reverting for every 1 Newsstand. To the extent that the Company is thereafter able to install additional Newsstands, the Existing Bus Shelters, New Bus Shelters and Newsstands shall be re-allocated as set forth in Exhibit H attached hereto, in the reverse order that they reverted to the Company in accordance with this Section 9.7.3, by the next advertising cycle, so that the Company shall at all times control the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term.

9.7.4. Cash Option. At the City's option, in lieu of part or all of the reversion of Bus Shelters, Replacement Newsstands and/or New Newsstands contemplated by Sections 9.7.1, 9.7.2, and 9.7.3 herein, the City may choose to have the Company deduct from the cash portion of the Franchise Fee the product of (a) the revenue value associated with the applicable Coordinated Franchise Structure(s), as set forth in Table A of Appendix 5 of the Proposal (increasing annually to adjust for inflation at the higher of (i) 2.5% per year or (ii) the rate of inflation reflected in the Consumer Price Index for All Urban Consumers (CPI-U), subject to a cap of 3% per year), (b) the number of Coordinated Franchise Structures that would be required to compensate the Company in accordance with Sections 9.7.1, 9.7.2, and 9.7.3 herein, and (c)

the number of advertising panels on the applicable Coordinated Franchise Structure set forth in such Appendix 5, Table C.

9.7.5. Cash or Alternative Compensation Set-Off. In the event that there are insufficient Coordinated Franchise Structures allocated to NYCMDC at any time to effectuate the reversions as contemplated by Sections 9.7.1, 9.7.2 and 9.7.3, then any such shortfalls shall be made up by a deduction by the Company from the cash portion of the Franchise Fee of the amount in cash calculated in accordance with Section 9.7.4, or, in the Company's sole discretion, by a reduction in an equivalent amount of Alternative Compensation.

9.7.6. Inability to Mutually Designate Coordinated Franchise Structures For Reversion. If the Company and NYCMDC are unable to mutually designate, in good faith, the appropriate Coordinated Franchise Structures for reversion to the Company under the circumstances described in Sections 9.7.1, 9.7.2 or 9.7.3, the reversion of Coordinated Franchise Structures to the Company contemplated in such Sections shall occur automatically, with the Coordinated Franchise Structures allocated to NYCMDC that are located nearest to the applicable unavailable Coordinated Franchise Structures reverting to the Company and with respect to Sections 9.7.2 and 9.7.3 in accordance with the priorities and ratios for such reversion set forth in Sections 9.7.2 and 9.7.3.

9.7.7. Absence of Identified Locations. In the event that the reversion of Coordinated Franchise Structures allocated to NYCMDC contemplated by Sections 9.7.1, 9.7.2 or 9.7.3 is to take place with respect to New Bus Shelters or Newsstands as to which no specific location for installation had been previously agreed to between the Company and the City, such reversion shall take place in proportion to the overall geographic distribution of the then installed Bus Shelters or Newsstands, as applicable (other than those allocated to NYCMDC Advertising).

9.7.8. No Default. No failure by the Company to install Coordinated Franchise Structures that gives rise to a right of the Company to reversion of Coordinated Franchise Structures from NYCMDC pursuant to Sections 9.7.1, 9.7.2 or 9.7.3 shall constitute a breach or default under this Agreement or give rise to the obligation to pay liquidated damages.

9.7.9. Performance at the Cost of the City. In the event the Company is required to perform an obligation under this Agreement which is to be performed at the City's cost or expense, as specifically set forth in this Agreement, the Company shall be permitted to delay such performance until it receives written authorization from DOT. All reasonable costs and expenses expended by the Company in performance of such obligation shall be reimbursed to the Company by the City reasonably promptly after submission of invoices therefor.

9.8-9.8 Reports and Records-.

9.8.1. Monthly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues, and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 10 business days of the end of each calendar month during the Term.

9.8.2. Quarterly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each quarter of the Term.

9.8.3. Yearly. The Company shall submit to DOT a detailed income and expense statement, reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each year of the Term. In addition, the Company shall submit a certification from JCDecaux, SA that no bundling of franchise advertising assets with non-franchise assets has occurred that would reduce the City's franchise compensation below that which it would have been had the franchise assets been sold unbundled for their fair market value.

9.8.4. Third Party Agreements. All agreements entered into by the Company in connection with the Coordinated Franchise Structures shall provide that such agreements and all records and documents related thereto shall be made available to the City upon request. Additionally, all agreements entered into by the Company in connection with advertising on the Coordinated Franchise Structures shall include a provision requiring that upon expiration or sooner termination of this Agreement, the City shall have the option of assuming all the Company's rights and obligations under such agreement.

9.8.5. Access to Third Party Agreements. The Company shall make available to the City, at its office located in the City, all third party agreements entered into by the Company in connection with the Coordinated Franchise Structures and comprehensive itemized records of all revenues received in a format reasonably acceptable to DOT and in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to this Section 9 is being paid to the City upon request, during regular business hours and upon reasonable prior notice to the Company. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

9.9 Reservation of Rights. No acceptance of any compensation by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement, subject to Section 13.5(b). All amounts paid shall be subject to audit and recomputation by the City.

9.10-9.10 Other Payments-.

9.10.1. City Incurred Cost. If the City incurs any costs or expenses pursuant to this Agreement for (a) work that should have been performed by the Company, or (b) work performed by the City which the Company could not perform, but the costs and expenses for which the Company is liable, the Company shall, within 30 days of receipt of an invoice from the City, pay to the City the amount so incurred.

9.10.2. Future Costs. In the event of a Default by the Company under this Agreement, the Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 enforcement of remedies including termination for a Termination Default. Before any reimbursable work is performed, the City will advise the Company 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 Company, or the Company brings an action against the City, and the Company finally prevails, then the Company 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 Company contests the charges, it shall pay any uncontested amounts. The Commissioner 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 Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 Company. Before any reimbursable work is performed, the City will advise the Company that the City will be incurring the services of third parties pursuant to the preceding sentence. The Company expressly agrees that the payments made pursuant to this Section 9.10.2 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 Company pursuant to any other provision of this Section 9.

9.11.9.11 Limitations on Credits or Deductions-:

~~(a)~~ ~~(a)~~—The Company expressly acknowledges and agrees that:

~~(i)~~ ~~(i)~~—The compensation and other payments to be made or Services to be provided pursuant to this Section 9 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which the Company or any Affiliated Person shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company;

~~(ii)~~ ~~(ii)~~—Except as may be expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made or Services to be provided pursuant to this Agreement from or against any City or other governmental taxes of

general applicability (other than income taxes) or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency;

~~(iii)~~ ~~(iii)~~—Except as expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of compensation or other payments to be made or Services to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons; and

~~(iv)~~ ~~(iv)~~—Except as may be expressly permitted by this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made or Services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

~~(b)~~ ~~(b)~~—Nothing contained in this Section 9.11 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement or costs that it may incur in connection therewith as an ordinary expense of doing business and accordingly, from deducting said payments from gross income in any City, state or federal tax return.

9.12 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date until received at a rate per year equal to the greater of ~~(i)~~ the then applicable Prime Rate plus ~~2%,%~~ or ~~(ii)~~ 7%.

9.13 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement shall be made to the New York City Department of Transportation, Director of Accounts Payable, ~~55 Water40-Worth~~ Street, 9th Floor, New York, New York ~~10041+0013~~ or as otherwise directed by DOT.

9.14 Report Certification. All compensation reports furnished by the Company pursuant to Section 9.8 herein shall be certified by the chief financial officer of the Company to be correct and in accordance with the books of account and records of the Company.

9.15 Continuing Obligation and Holdover. In the event the Company continues to operate all or any part of the System, including the placement of advertising, and the collection of revenue related thereto, after the expiration or termination of this Agreement, then the Company shall continue to comply with all provisions of this Agreement as if the Agreement was still in force and effect, including, without limitation, all compensation and other payment provisions of this Agreement as well as the maintenance of the Security Fund, the Letter of Credit, the Performance Bond, and the Guaranty throughout the period of such continued

operation, provided that any such continued operation and compliance with this Agreement shall in no way 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 available to the City as a result of such continued operation after the term of this Agreement, including, but not limited to, damages and restitution and injunctive relief. If the Company fails to make such payments, DOT may withdraw such amounts from the Security Fund or the Letter of Credit.

9.16 Energy Costs. The Company shall be responsible for any and all electrical costs, or other costs for energy or power, used for, by or in connection with any and all of the Coordinated Franchise Structures, except as otherwise provided in Sections 2.4.6 and 3.1.4(b) herein.

9.17 Amenities. DOT at its option may require during the first five years of the Term that the Company provide certain amenities to the Coordinated Franchise Structures, the value of which shall not exceed \$2,500,000 in the aggregate. - Such amenities may include, but are not limited to solar panels, battery recycling containers, -installation of water fountains in APTs and support of the integration of new technology. Notwithstanding the foregoing, the City acknowledges that the Company shall have satisfied its obligation to install amenities under the 2006 Agreement by constructing, installing and maintaining 30 New Bus Shelters at locations to be determined by DOT, and which shall not include Reciprocal Bus Shelters or Fifth Avenue Bus Shelters.

SECTION 10

OVERSIGHT AND REGULATION

10.1 Confidentiality. To the extent permissible under applicable law, the City shall protect from disclosure any trade secret materials or otherwise confidential information submitted to or made available by the Company to the City under this Agreement provided that the Company timely notifies the City of, and clearly labels, the information which the Company deems to be trade secret materials or otherwise confidential information as such. Such notification and labeling shall be the sole responsibility of the Company.

In the event that the City becomes legally compelled to disclose the trade secret materials or otherwise confidential information of the Company, it shall provide the Company with prompt written notice of such requirement so that the Company may seek a protective order or other remedy. In the event that such protective order or other remedy is not obtained, the City agrees to furnish only that portion of such information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information.

Notwithstanding the foregoing, this Section 10.1 shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this Agreement, or (ii) was available publicly without a breach of an obligation of confidentiality by a third party, or (iii) was learned from a third party who was not under an obligation of confidentiality.

The Company expressly acknowledges and agrees that neither DOT nor the City of New York will have any obligation or liability to the Company in the event of disclosure of materials, including materials labeled by the Company as trade secret materials, or otherwise confidential information.

10.2 Oversight. DOT shall have the right at all times to oversee, regulate and inspect periodically the installation, operation, and maintenance of the System, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to demonstrate, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Company is in compliance with this Agreement. The Company shall retain such records for not less than 6 years following expiration or termination of this Agreement.

10.3 State-of-the-Art. State-of-the-art construction methods and building materials must be integrated into the Coordinated Franchise Structures as they become available at the sole cost and expense of the Company. Nothing in this Section requires the Company to replace or reinstall a Coordinated Franchise Structure solely for the purpose of complying with this Section.

10.4 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 such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its powers, including, but not limited to, its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

10.5 Office in New York City. The Company shall have and maintain an office in the City where all books and records referenced in, and pertaining to, this Agreement shall be maintained and where the Company's accounting, billing, and clerical functions pertaining to this Agreement shall be performed.

10.6.10.6 Reports.

10.6.1. Financial Reports. In the event the City has a good faith reason to believe that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into consideration the guaranty of Guarantor), the Company shall submit to DOT, upon its request, a complete set of the latest general purpose financial statements for a specified past fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from an independent Certified Public Accountant ("CPA") who performed a review of the statements in accordance, with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, not later than 20 business days from the date such financial statements become available to the Company from its CPA. All such statements shall be accurate and complete in all material respects. In the event the City reviews such financial statements and determines in its reasonable discretion that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into account the Guaranty), the City may require the

Company to submit, and obtain the Commissioner's approval of, a plan setting forth the steps the Company will take to continue to be able to comply with this Agreement.

10.6.2. Other Reports. Upon the written request of the Commissioner, the Company shall promptly submit to DOT or the City, any non-Privileged Information reasonably related to the Company's obligations under this Agreement, its business and operations, or those of any Affiliated Person, with respect to the System or its operations, or any Service, in such form and containing such information as the Commissioner shall specify in writing. Such information or report shall be accurate and complete in all material respects. The Commissioner or the City may provide notice to the Company in writing, as set forth in Section 14.5 hereof with regard to the adequacy or inadequacy of such reports pursuant to the requirements of this Section 10.6.

10.6.3. Guarantor Financials Statements. The Company shall cause Guarantor to yearly submit to DOT a complete set of the latest general purpose financial statements for the prior fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from the independent Certified Public Accountant ("CPA") who performed a review of the statements in accordance with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, not later than 20 business days from the date such financial statements become available to the Guarantor from its CPA. All such financial statements shall be accurate and complete in all material respects.

10.7.10.7 Books and Reports/Audits.

10.7.1. Books and Records. Throughout the Term the Company shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Company with respect to the System in a manner that allows the City to determine whether the Company is in compliance with the Agreement. Should the City reasonably determine that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section. All financial books and records which are maintained in accordance with generally accepted accounting principles shall be deemed to be acceptable under this Section. The Company shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.

10.7.2. Right of Inspection. The City, the Commissioner and the Comptroller, or their designated representatives, shall have the right upon written demand with reasonable notice to the Company under the circumstances to inspect, examine or audit during normal business hours all documents, records or other information which pertain to the Company or any Affiliated Person related to the Company's obligations under this Agreement. All such documents shall be made available at the Company's New York City office. All such documents shall be retained by the Company for a minimum of six years following expiration or termination of this Agreement. All such documents and information that are identified by the Company as trade secret materials or otherwise confidential information shall be treated as such in accordance with Section 10.1 hereof, and the City shall make reasonable efforts to limit access to the alleged

trade secret materials or otherwise confidential information to those individuals who require the information in the exercise of the City's rights under this Agreement. In the event any information the City claims the right to inspect pursuant to this Section 10.7.2 constitutes Privileged Information, then the Company will not be required to disclose such information and the City shall instead have the right to review a reasonably detailed log of the Privileged Information. The City shall not share any information obtained through the ~~City's~~ audit and inspection rights under this Section 10.7.2 or otherwise under this Agreement with any media agency retained pursuant to Section 9.4.1. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

10.8 Compliance with "Investigations Clause". The Company agrees to comply in all respects with the City's "Investigations Clause," a copy of which is attached as Exhibit G hereto.

SECTION 11

RESTRICTION AGAINST ASSIGNMENT AND OTHER TRANSFERS

11.1 Transfer of Interest. Except as provided in this Section 11, neither the franchise granted herein nor any rights or obligations of the Company in the System or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, without the prior written consent of the City, pursuant to Section 11.3 hereof. In the event any transfer of interest which requires consent of the City takes place without such consent, such transfer shall constitute a Termination Default and the City may exercise any rights it may have under this Agreement. ~~Notwithstanding anything contained herein to the contrary, the City hereby consents to the Company's assignment of the Agreement to Cemusa NY, LLC, a wholly owned subsidiary of the Company, provided that Cemusa NY, LLC satisfies the City's VENDEX and other City's responsibility procedures, and further provided that Cemusa NY, LLC agrees in writing to assume all responsibilities and obligations under the Agreement.~~

11.2 Transfer of Control or Ownership. Notwithstanding any other provision of this Agreement, except as provided in this Section 11, no change in Control of the Company or the franchise granted herein shall occur after the Effective Date, by act of the Company, by act of any Person holding control of the Company or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City. The requirements of Section 11.3 hereof shall also apply whenever any change is proposed of 10% or more of the direct ownership of Cemusa, Inc. (the "Parent"), the Company, ~~Cemusa NY, LLC~~, or the franchise granted herein (but nothing herein shall be construed as suggesting that a proposed change of less than 10% does not require consent of the City acting pursuant to Section 11.3 hereof if it would in fact result in a change in Control of Parent, the Company, Cemusa NY, LLC, or the franchise granted herein), and any other event which could result in a change in Control of the Company. For the avoidance of doubt, nothing in this Section 11 shall prohibit, restrict or subject to any approval a change in Control of any entity that Controls, directly or indirectly, the Parent, and such change

in Control of any entity that Controls, directly or indirectly, the Parent shall not constitute a change in Control of the Parent, the Company, or the franchise granted hereby for purposes of this Section 11.2, or any transfer of any interest to which Section 11.1 applies.

11.3 Petition. The Company shall promptly notify the Commissioner of any proposed action requiring the consent of the City pursuant to Sections 11.1 or 11.2 herein by submitting to the City, pursuant to Section 14.5 hereof, a petition either (a) requesting the approval of the Commissioner and submission by the Commissioner of a petition to the FCRC and approval thereof by the FCRC or (b) requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each such petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Company's argument as to why such action would not involve a change in Control of the Company, the System or the franchise, or a transfer of interest in the franchise granted herein or any rights or obligations of the Company in the System or pursuant to this Agreement and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Company in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Company that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval.

11.4 Consideration of the Petition. The Commissioner and the FCRC, as the case may be, may take such actions as it deems appropriate in considering the petition and determining whether consent is needed or should be granted. In considering the petition, the Commissioner and the FCRC, as the case may be, may inquire into: (i) the qualifications of each Person involved in the proposed action; (ii) all matters relevant to whether the relevant Person(s) will adhere to all applicable provisions of this Agreement; (iii) the effect of the proposed action on competition; and (iv) all other matters it deems relevant in evaluating the petition. After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the Commissioner and the FCRC may review the Company's performance under the terms and conditions of this Agreement. The Company shall provide all requested assistance to the Commissioner and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

11.5 Permitted Encumbrances. Nothing in this Section shall be deemed to prohibit any mortgage, lien, security interest, or pledge being granted to any banking or lending institution which is a secured creditor of the Company or any of its Affiliates with respect to any stock of the Company or any of its Affiliates, any rights granted pursuant to this Agreement, or any rights of the Company or any of its Affiliates in the System, including the assets of the Company and its Affiliates which comprise the System, provided that any such mortgage, lien, security interest or pledge shall be subject to the interests of the City as franchisor under this Agreement (and, in the case of any newsstand, any rights of the newsstand operator hereunder or under applicable

law), including without limitation the ~~City's~~City's right of approval with respect to any transfer of the franchise rights hereunder.

11.6 Subcontracts. The Company agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of DOT, provided that if the proposed subcontractor is not required to comply with VENDEX such prior written approval shall not be required. Two copies of each such proposed subcontract requiring approval shall be submitted to DOT with the Company's written request for approval. All such subcontracts shall contain provisions specifying:

~~(a)~~ (a)—That the work performed by the subcontractor must be in accordance with the terms of this Agreement;

~~(b)~~ (b)—That nothing contained in the subcontract shall impair the rights of DOT or the City;

~~(c)~~ (e)—That nothing contained in the subcontract, or under this Agreement, shall create any contractual relation between the subcontractor and DOT or the City.

The Company agrees that it is fully responsible under this Agreement for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it. The Company shall not in any way be relieved of any responsibility under this Agreement by any subcontract. All subcontracts submitted by the Company to the City for approval in accordance with this Section 11.6 shall be approved (or reasons for failure to approve shall be provided) as soon as reasonably practicable in view of the time sensitive nature of the obligations of the Company under this Agreement.

11.7 Consent Not a Waiver. The grant or waiver of any one or more consents under this Section 11 shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section 11.

SECTION 12

LIABILITY AND INSURANCE

~~12.1.12.1~~ Liability and Indemnity.

12.1.1. Company. The Company shall indemnify, defend and hold the City, its officers, agents and employees (the "Indemnitees") harmless from any and all liabilities, suits, damages, claims and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or asserted against any of the Indemnitees arising out of the Company's performance of, or its failure to perform, its obligations under this Agreement, including, but not limited to the design, installation, operation and maintenance of the System, or any part thereof, provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 12.1.1 shall not apply

to any Damages to the extent arising out of any willful misconduct or gross negligence of the City, its officers, employees, or agents. This Section shall supersede the indemnification provisions of section 19-128.1 of the New York City Administrative Code or any Rules promulgated thereunder, with respect to multi-rack newsracks. Insofar as the facts and law relating to any Damages would preclude the City from being completely indemnified by the Company, the City shall be partially indemnified by the Company to the fullest extent provided by law, except to the extent such Damages arise out of any willful misconduct or gross negligence of any Indemnitee. This indemnification is independent of the Company's obligations to obtain insurance as provided under this agreement.

12.1.2. City. The Company will not be liable for any Damages to the extent arising from the gross negligence or willful misconduct of any Indemnitee.

12.1.3. No Liability for Public Work, Etc. The Indemnitees shall have no liability to the Company for any Damages as a result of or in connection with the installation, operation and maintenance, of any part of the System by or on behalf of the Company or the City 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, unless and to the extent such Damages are due to the gross negligence or willful misconduct of any Indemnitee. To the extent practicable under the circumstances, the Company shall be consulted prior to any such activity and shall be given the opportunity to perform such work itself, but the City shall have no liability to the Company, except as expressly set forth above, in the event it does not so consult the Company. All costs to install, operate and maintain the System or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company; except to the extent such Damages arise out of any willful misconduct or gross negligence of the Indemnitees.

12.1.4. No Liability for Damages. None of the Indemnitees shall have any liability to the Company for any Damages as a result of the proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 12.1.4 shall not apply to any liabilities, suits, damages (other than special, incidental, consequential or punitive damages), penalties, claims, costs, and expenses to the extent arising out of any willful misconduct or gross negligence of the Indemnitees.

12.1.5. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 12.1.1 herein, then upon demand by City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for or approved by the Company's insurance carrier (if the defense of such claim, action or proceeding is provided by the insurance carrier) or by the Company's attorneys. The foregoing notwithstanding, in the event an Indemnitee believes additional representation is needed, such Indemnitee may engage its own attorneys to assist such Indemnitee's defense of such claim, action or proceeding, as the case may be, at its sole cost and expense. The Indemnitees shall not settle any claim with respect to which the Company is required to indemnify the Indemnitees

pursuant to Section 12.1.1 without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.

12.1.6. Intellectual Property Indemnification. The Company shall defend, indemnify and hold the City harmless from and against any and all Damages, to which it may be subject because of or related to any claim that the Plans and Specifications and/or the Preliminary Plans and Specifications, the Coordinated Franchise Structures, any intellectual property of the Company incorporated in the Ad-Bearing Street Furniture/ and/or Non-Ad-Bearing Street Furniture (to the extent such are designed during the Term of this Agreement) 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; provided, however, that the Company shall not be obligated to indemnify the City for any Damages to the extent such Damages arise out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and Specifications, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. This indemnification is independent of the Company's obligations to obtain insurance as provided under this Agreement. Furthermore, the Company shall defend and settle at its sole expense all suits or proceedings brought against Company arising out of the foregoing. No such settlement, however, shall be made that prevents the City or the Company from continuing to use the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software without the City's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event an injunction or order shall be obtained against the City's use of Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software under this Agreement by reason of the allegations, or if in the Company's opinion the Plans and Specifications, and the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software is likely to become the subject of a claim of infringement or violation of a copyright, trade secret or other proprietary right of a third party, or if the City's ability to enjoy use of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software has become materially disrupted by a claim of a third party, the Company shall at its expense, and at its option: (i) procure the right to allow the City to continue using the alleged infringing material; or (ii) modify the applicable portion(s) of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software so that it becomes non-infringing, or replace the infringing materials or Software with non-infringing materials or Software, but only if the modification or replacement does not materially change the design of the affected Coordinated Franchise Structures; provided, however, that the Company shall not be obligated to take the actions described in clauses (i) and (ii) if the injunction, order or claim in question arises out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and

Specifications-, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. The modifications discussed in the previous sentence are subject to the City's prior written approval. The obligations to indemnify pursuant to this Section 12.1.6 shall survive the expiration or termination of this Agreement.

12.1.7. No Claims Against Officers, Employees, or Agents. Company agrees not to make any claim against any officer or employee of the City or officer or employee of an agent of the City, in their individual capacity, for, or on account of, anything done or omitted in connection with this Agreement. Nothing contained in this Agreement shall be construed to hold the City liable for any lost profits, or any consequential damages incurred by Company or any Person acting or claiming by, through or under Company.

12.2.12.2 Insurance.

12.2.1. Types of Insurance. The Company shall continuously maintain one or more liability insurance policies meeting the requirements of this Section 12.2 throughout the Term and thereafter until completion of removal of the System, or any part thereof, on, over, or under the Inalienable Property of the City including all reasonably associated repair of the Inalienable Property of the City or any other property to the extent such removal and or restoration is required pursuant to this Agreement. The Company has provided Proof of Insurance pursuant to Section 12.2.3(a) hereof, and shall effect and maintain the following types of insurance as indicated in Schedule E attached hereto (with the minimum limits and special conditions specified in Schedule E attached hereto). Such insurance shall be issued by companies that meet the standards of Section 12.2.2(a) hereof and shall be primary (and non--contributing) to any insurance or self-insurance maintained by the City.

(a) ~~(a)~~—The Company shall provide a Commercial General Liability Insurance policy covering the Company as Named Insured and the City as an Additional Insured. Coverage for the City as Additional Insured shall specifically include the City's officials, employees and agents, and shall be at least as broad as Insurance Services Office ("ISO") Form CG 2010 (11/85 ed.) (No later edition of ISO Form CG 2010, and no more limited form or endorsement, is acceptable.) This policy shall protect the City and the Company from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Agreement. Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (1/96 ed.), must be "occurrence" based rather than "claims-made", and shall 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. If such insurance contains an aggregate limit, it shall apply separately to this Project.

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

~~(i)~~ ~~(i)~~—The City of New York together with its officials, employees and agents is an Additional Insured with coverage as broad as ISO Forms CG 2010 (11/85 ed.) and CG 0001 (1/96 ed.); and

~~(ii)~~ ~~(ii)~~—The Duties in the Event of Occurrence, Claim or Suit condition of the policy is amended per the following: if and insofar as knowledge of an “occurrence”, “claim”, or “suit” is relevant to the City of New York as Additional Insured under this policy, such 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 following position shall have received notice thereof from such agent, servant, official, or employee: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

~~(iii)~~ ~~(iii)~~—Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall 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; and

~~(iv)~~ ~~(iv)~~—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.

~~(b)~~ ~~(b)~~—The Company shall provide, and ensure that each subcontractor provides, Workers Compensation Insurance and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Agreement.

~~(c)~~ ~~(c)~~—The Company shall provide, and ensure that each subcontractor provides, Employers Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his/her employment under this Agreement.

~~(d)~~ ~~(d)~~—The Company shall provide a Comprehensive Business Automobile Liability policy for liability arising out of 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”).

~~(e)~~ ~~(e)~~—The Company shall provide a Professional Liability Insurance Policy covering Breach of Professional Duty, including actual or alleged negligent acts, errors or omissions committed by the Company, 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. 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 Company’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 three-year extended reporting period for acts or omissions that occurred but were not reported during the policy period.

~~(f) (f)~~—All insurers shall waive their rights of subrogation against the City, its officials, employees and agents.

~~(g) (g)~~—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 given as a matter of law.

~~(h) (h)~~—The Company shall provide such other types of insurance, at such minimum limits, as are specified in Schedule E attached hereto.

12.2.2. General Requirements for Insurance Policies.

~~(a) (a)~~—All required insurance policies shall be maintained 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, unless prior written approval is obtained from the Mayor's Office of Operations.

~~(b) (b)~~—The Company shall be 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.

~~(c) (c)~~—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 such schedule or (ii) the limits provided to the Company as Named Insured under all primary, excess and umbrella policies of that type of coverage.

~~(d) (d)~~—Except for insurance required pursuant to Sections 12.2.1(b) and 12.2.1(c) herein, all policies shall be endorsed to provide that the policy may not be cancelled, terminated, modified or changed unless 30 days prior written notice is sent by the Insurance Company to the Named Insured (or First Named Insured, as appropriate), the Commissioner, and to Comptroller, attn: Office of Contract Administration, Municipal Building, Room 1005, New York, New York 10007.

~~(e) (e)~~—Within 15 days of receipt by the City of any notice as described in 12.2.2(d) hereof, the Company shall obtain and furnish to DOT, with a copy to the Comptroller, replacement insurance policies in a form acceptable to DOT and the Comptroller together with evidence demonstrating that the premiums for such insurance have been paid.

12.2.3. Proof of Insurance.

~~(a)~~ ~~(a)~~—The Company has, for each policy required under this Agreement, filed a Certificate of Insurance with the Commissioner pursuant to Section 12.2.6 hereof.

~~(b)~~ ~~(b)~~—All Certificates of Insurance shall be in a form acceptable to the City and shall certify the issuance and effectiveness of the Types of Insurance specified in Schedule E, each with the specified Minimum Limits and Special Conditions.

~~(c)~~ ~~(c)~~—Certificates of Insurance confirming renewals of, or changes to, insurance shall be submitted to the Commissioner not less than 30 Days prior to the expiration date of coverage of policies required under this Agreement. Such Certificates of Insurance shall comply with the requirements of Sections 12.2.3(a) and 12.2.3(b) herein.

~~(d)~~ ~~(d)~~—The Company shall be obligated to provide the City with a copy of any policy required by this Section 12 upon the demand for such policy by the Commissioner or the New York City Law Department.

12.2.4. Operations of the Company.

~~(a)~~ ~~(a)~~—Acceptance by the Commissioner of a certificate hereunder does not excuse the Company from securing a policy consistent with all provisions of this Section 12 or of any liability arising from its failure to do so.

~~(b)~~ ~~(b)~~—The Company shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to perform Services only during the effective period of all required coverage.

~~(c)~~ ~~(c)~~—In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Company shall immediately stop all Services, and shall not recommence Services until authorized in writing to do so by the Commissioner. Notwithstanding the above, if any or all of the Services are being provided by a subcontractor that maintains insurance satisfactory to the City that names the City as additional insured, and such insurance is in full force and effect and remains in full force and effect during the period of the lapse, then the Company, acting through its subcontractor, may continue to provide such Services as directed by DOT.

~~(d)~~ ~~(d)~~—The Company shall notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of the Company or its subcontractors, promptly, but not later than 20 days after such event. The Company'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 Company as Named Insured." The Company's notice to the insurance carrier shall contain the following information: the name of the Company, 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 Company, the identity of the persons or things injured, damaged or lost. Additionally,

~~(i)~~ ~~(i)~~—At the time notice is provided to the insurance carrier(s), the Company shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street —Room 1222, New York, New York 10007. Notice to the Commissioner shall be sent to the address set forth in Schedule E attached hereto; and

~~(ii)~~ ~~(ii)~~—If the Company fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Company 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.

12.2.5. Subcontractor Insurance. The Company shall ensure that each subcontractor name 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 Company. The foregoing requirements shall not apply to insurance provided pursuant to Sections 12.2.1(b) and 12.2.1(c) herein.

12.2.6. Insurance Notices, Filings, Submissions. Wherever reference is made in Section 12.2 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Schedule E attached hereto. In the event no address is set forth in such schedule, such documents are to be sent to the Commissioner's address as provided in Section 14.45 hereof.

12.2.7. Disposal. If pursuant to this Agreement the Company is involved in the disposal of hazardous materials, the Company shall dispose such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least \$2,000,000 for losses arising from such disposal site.

12.2.8. Adjusted Insurance Coverage. The Company agrees to adjust the minimum coverage of the liability insurance policy or policies required in this Section 12.2 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 with respect to 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. Such notice shall specify in reasonable detail why the City is requiring such additional amounts or types of insurance.

12.2.9. Other Remedies. Insurance coverage in the minimum amounts provided for herein shall not relieve the Company or subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

SECTION 13

DEFAULTS DEFAULTS AND REMEDIES; TERMINATION TERMINATION

13.1.13.1 Defaults.

(a) ~~(a)~~—In the event any requirement listed in Appendix A is not performed to the standard set forth in Appendix A and this Agreement, the Company shall be obligated to pay the liquidated damages described in Appendix A. The Company agrees that any failure to perform such requirements to such standard shall result in injuries to the City and its residents, businesses and institutions the compensation for which will be difficult to ascertain. Accordingly the Company agrees that the liquidated damages in the amounts set forth in Appendix A are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. Liquidated damages payable by the Company under this Agreement shall cease to accrue following expiration or termination of this Agreement for any reason, but shall accrue or be imposed during any holdover period.

(b) ~~(b)~~—In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement, which breach or default is not cured within the specific cure period provided for in this Agreement (each such breach or default referred to herein as a “Default”), then the City may:

(i) ~~(i)~~—cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

(ii) ~~(ii)~~—make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

(iii) ~~(iii)~~—draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

(iv) ~~(iv)~~—pursue any rights the City may have under the Guaranty;

(v) ~~(v)~~—seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

(vi) ~~(vi)~~—seek to restrain by injunction the continuation of the Default;

(vii) ~~(vii)~~—and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

~~(c)~~ ~~(e)~~—In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement for which breach or default a specific time period to cure is not expressly identified in this Agreement, and, except as provided in the last paragraph of this Section 13.1(c) below, which breach or default is not cured within ten days after notice from the City (each such breach or default also referred to herein as a “Default”), then the City may:

~~(i)~~ ~~(i)~~—cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

~~(ii)~~ ~~(ii)~~—make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

~~(iii)~~ ~~(iii)~~—draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

~~(iv)~~ ~~(iv)~~—pursue any rights the City may have under the Guaranty;

~~(v)~~ ~~(v)~~—seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

~~(vi)~~ ~~(vi)~~—seek to restrain by injunction the continuation of the Default;

~~(vii)~~ ~~(vii)~~—and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

Notwithstanding the above, the 10-day cure period is not applicable to (x) any matters contemplated by Section 2.5.4.4 herein, (y) any breach of the Company’s obligations set forth in Section 3.1.5(e) herein (with respect to its obligation to remove broken glass within 24 hours), 3.1.5(f)(1) herein, or 4.4.9 herein (with respect to the obligation to remove material in violation of Section 4.4.1 herein), or (z) the breach of any other obligation of the Company which adversely impacts public safety, and the City may exercise any of the rights enumerated in this paragraph arising from such breach.

~~(d)~~ ~~(d)~~—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 Company shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

~~(e)~~ ~~(e)~~—The rights and remedies described in the preceding subsections (b) and (c) shall not be exclusive (except as specifically set forth therein with regard to liquidated damages), but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any liability under this Agreement. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City. The provisions of this Section 13.1(e) shall at all times be subject to Section 13.5(b).

13.2.13.2 Termination Defaults.

13.2.1. Definition of Termination Default.

~~(a)~~ ~~(a)~~—Any failure by the Company to comply with the material terms and conditions of this Agreement, as such failures are described in the following subsections (i) through (xiv) shall be a “Termination Default” hereunder:

~~(i)~~ ~~(i)~~—material failure to comply with the Company’s obligations to install Coordinated Franchise Structures in accordance with this Agreement (including the specified timeframes);

~~(ii)~~ ~~(ii)~~—material failure to comply with the Company’s obligations to maintain the Coordinated Street Furniture as described in this Agreement;

~~(iii)~~ ~~(iii)~~—persistent or repeated failures to timely pay amounts due hereunder that are not being disputed by the Company in good faith, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

~~(iv)~~ ~~(iv)~~—persistent or repeated failures to timely abide by the Company’s obligations under this Agreement, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

~~(v)~~ ~~(v)~~—if the Company fails to maintain in effect the Letter of Credit in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.5(b)), and such failure continues for ten business days after notice;

~~(vi)~~ ~~(vi)~~—if the Company fails to maintain in effect the Performance Bond in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.1(b),); and such failure continues for ten business days after notice;

~~(vii)~~ ~~(vii)~~—if the Company fails to replenish the Security Fund as required under the provisions of Section 6 herein and such failure continues for ten business days after notice;

~~(viii)~~ ~~(viii)~~—if the Company fails to establish or maintain the Escrow Fund or to cause the establishment or maintenance of the Supplemental Escrow Fund as required under the provisions of Section 9.5 herein and such failure continues for ten business days after notice;

~~(ix)~~ ~~(ix)~~—if, in connection with this Agreement, the Company (x) intentionally or recklessly makes a material false entry in the books of account of the Company or intentionally or recklessly makes a material false statement in the reports or other filings submitted to the City, or (y) makes multiple false entries that are material in the aggregate in the books of account of the Company or multiple false statements that are material in the aggregate in the reports or other filings submitted to the City;

~~(x)~~ ~~(x)~~—if the Company fails to maintain insurance coverage or otherwise materially breaches Section 12.2 herein and such failure continues for ten business days after notice from the City to the Company;

~~(xi)~~ ~~(xi)~~—if the Company engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;

~~(xii)~~ ~~(xii)~~—if the Company, 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;

~~(xiii)~~ ~~(xiii)~~—the occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other similar judicial or non judicial sale of all or any material part of the System, and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner within 20 business days after notice from the City to the Company that such event will not lead to such foreclosure or other judicial or non judicial sale. Such an event may include, without limitation: (a) default under any loan or any financing arrangement material to the System or the obligations of the Company under this Agreement; (b) default under any contract material to the System or the obligations of the Company under this Agreement; or (c) default under any lease or mortgage covering all or any material part of the System;

~~(xiv)~~ ~~(xiv)~~—if: (aa) the Company shall make an assignment or other transfer of interest of the Company or the System, or there is any change in Control, in each case prohibited by or in violation of Section 11, or if the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any part of the System; (bb) a writ or warranty of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (cc) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings which is unstayed for 60 days (provided that the 60 day period shall not apply if as a result of such final order, judgment or decree the Company will be unable to perform its obligations under this Agreement); or (dd) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company;

~~(xv)~~ ~~(xv)~~—the Company sets a charge for use of the APTs that exceeds the maximum permitted charge hereunder.

~~(b)~~ ~~(b)~~—Relation To Other Defaults. The Company acknowledges that a Termination Default may exist pursuant to one or more of the provisions of the preceding subsection 13.2.1(a) even if such defaults on an individual basis have subsequently been cured after their original occurrence, were the subject of liquidated damages and such liquidated damages have been paid, or were subsequently remediated by recourse to the Security Fund, Letter of Credit, Performance Bond or Guaranty or by collection of judicially awarded damages.

~~(c)~~ ~~(c)~~—Prior Notice of Certain Events. The City shall give the Company reasonable notice of the existence of any events or circumstances —that the City reasonably believes would give rise to a Termination Default under Section 13.2(a)(i)-(iv) if such events or circumstances were to continue.

~~(d)~~ ~~(d)~~—Remedies of the City for Termination Defaults. In the event of a Termination Default, the City may (in addition to any other remedy which the City may have under Section 13.1 hereof) at its option, give to the Company a notice, in accordance with Section 14.5 hereof, stating that this Agreement and the franchise granted hereunder shall terminate on the date specified in such notice (which date shall not be less than ten days from the giving of the notice), and this Agreement and the franchise granted hereunder shall terminate on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the franchise granted herein.

13.3.13.3 Expiration and Termination for Reasons Other Than Termination Default.

~~(a)~~ ~~(a)~~ — Termination for Reasons Other Than Termination Default.

~~(i)~~ ~~(i)~~ — In the event of the condemnation by 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 Company to carry out its obligations and the purposes of this Agreement and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner, within 20 business days after notice that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Company, then and in such event the City may, at its option, to the extent permitted by law, terminate this Agreement by notice within 60 days after the expiration of the foregoing 20 business day notice period as set forth in Section 14.5 hereof.

~~(ii)~~ ~~(ii)~~ — In the event the Company shall fail to promptly (A) terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement or (B) suspend pending final resolution of the matter its relationship with any Affiliated Person, any employee or agent of the Company who is indicted 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 pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

~~(iii)~~ ~~(iii)~~ — In the Event that the Company is indicted 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 pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

~~(b)~~ ~~(b)~~ — Expiration. — This Agreement, if not previously terminated pursuant to the terms of the Agreement, shall ~~expired~~expire at the end of the scheduled Term.

13.4.13.4 Disposition of System-.

13.4.1. Expiration. Upon expiration of this Agreement, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option, to be exercised at least 60 days prior to the expiration, Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 180 days of expiration of this Agreement, which the Company agrees to undertake and complete.

13.4.2. After Termination Upon Termination Default. In the event of any termination of this Agreement due to a Termination Default by the Company, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option to be exercised within 30 days of the date of termination, the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.4.3. After Termination For Reason Other Than A Termination Default. In the event of any termination of this Agreement by the City in accordance with Section 13.3(a), within 30 days of the date of such termination, at the City's option (a) the City may purchase from the Company the System, or any portion thereof, at a purchase price determined by calculating 100% of the actual cost of fabricating and installing the structures, less depreciation on a straight line basis using an annual depreciation of 10% starting from the initial Installation Date of the applicable Coordinated Franchise Structure; or (b) the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore their site to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.5.13.5 Effect of Expiration or Termination-.

(a) (a) — For Reason Other Than A Termination Default. Following expiration or sooner termination of this Agreement pursuant to Section 13.3(a), the Company shall not be obligated to pay the Franchise Fee, other than in accordance with Section 9.5(b) herein. The City shall refund to the Company within 30 days of the date of such termination, any portion of the Advance Payment which, had the Advance Payment been payable over the first four years of the Term in accordance with the annual amounts set forth on Schedule C, would not yet have become payable to the City in accordance with the terms of Section 9.5 herein.

~~(b)~~ ~~(b)~~—Upon a Termination Default. Following termination of this Agreement upon a Termination Default, except with respect to the Company’s indemnification obligations for third-party claims under Section 12.1, any amounts that may be owed pursuant to Section 4.7 for amounts deferred but not repaid, or any unpaid compensation accrued through the date of termination, the maximum amount of damages that the Company may be liable for in connection with this Agreement (whether as liquidated damages, actual contract damages, or under any theory of recovery whatsoever) shall be limited to, subject to the City’s mitigation of damages obligations as set forth in Section 14.23 hereof, the greater of:

~~(i)~~ ~~(i)~~—the Cash Component for the first three years after any judgment is entered against the Company (or what would have been the last three years of the Term if judgment is entered after what would have been the 16th year of the Term); or

~~(ii)~~ ~~(ii)~~—three times the cash portion of the Franchise Fee owed to the City for the last year of the Term before this Agreement was terminated after adjusting for inflation in the amount of 2.5% per year up to the date the judgment is entered,

plus the full amount of the Security Fund, recourse to the Performance Bond and the full amount of the Letter of Credit then required pursuant to this Agreement.

13.6 Procedures for Transfer After Expiration or Termination. Upon the acquisition of the System by the City or the City’s designee pursuant to Section 13.4 herein, the Company shall:

~~(a)~~ ~~(a)~~—cooperate with the City to effectuate an orderly transfer to the City (or the City’s designee) of all records and information reasonably necessary to maintain and operate the System being transferred (such part of the System referred to hereafter as the “Post Term System”); and

~~(b)~~ ~~(b)~~—at the City’s option promptly supply the Commissioner with all existing records, contracts, leases, licenses, permits, rights-of-way, and any other materials necessary for the City or its designee to operate and maintain the Post Term System.

~~13.7.13.7~~ Removal Upon Expiration or Termination.

13.7.1. Removal Procedures. If, upon expiration or any termination of this Agreement, all or any part of the Coordinated Franchise Structures is to be removed pursuant to this Section 13, the following procedures shall apply:

~~(a)~~ ~~(a)~~—in removing the System, or part thereof, the Company shall restore all Inalienable Property of the City and any other property affected by the actions of the Company under this Agreement (“Other Affected Property”) to its condition as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, and shall have received all applicable approvals from DOT and any other applicable City approvals;

~~(b)~~ ~~(b)~~ —the City shall have the right to inspect and approve the condition of such Inalienable Property of the City after removal and, to the extent that the City reasonably determines that said Inalienable Property of the City and Other Affected Property have not been restored to its condition, as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, the Company shall be liable to the City for the cost of restoring the Inalienable Property of the City and Other Affected Property to said condition; and

~~(c)~~ ~~(e)~~ —the Security Fund, Performance Bond, Letter of Credit, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal of all or any of the Coordinated Franchise Structures and/or restoration and associated repair of all Inalienable Property of the City or Other Affected Property, and for not less than 120 days thereafter, or for such longer periods as set forth in this Agreement.

13.7.2. Failure to Commence or Complete Removal. If, in the reasonable judgment of the Commissioner, the Company fails to commence removal or if the Company fails to substantially complete such removal, 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 Section 13, the Commissioner may, at his or her sole discretion authorize removal of the System, or part thereof, at the Company's cost and expense, by another Person or remove such System, or part thereof, at the Company's cost and expense, itself.

13.7.3. No Condemnation. None of the declaration, connection, use, transfer or other actions by the City or the Commissioner under this Section 13 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

13.7.4. Other Provisions. The City and the Company shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that the Company hereby waives its rights, if any, to relocation costs that may be provided by law and except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

SECTION 14

MISCELLANEOUS

14.1 Appendices, Exhibits, Schedules. The Appendices, Exhibits and Schedules to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are except as otherwise specified in said Appendices, Exhibits and Schedules and in Schedule F, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any

subsequent amendment or modification to said Appendices, Exhibits and Schedules shall be the same as those applicable to any amendment or modification hereof.

14.2 Order of Governance. The following order of governance shall prevail in the event of a conflict between this Agreement and any attachments hereto: 1. Authorizing Resolution; 2. this Agreement; 3. the Schedules, Appendices and Exhibits attached hereto, excluding, however, the BAFO, Proposal and the RFP; 4. BAFO; 5. Proposal; 6. RFP.

14.3 Coordination. The Company and DOT acknowledge and agree that the nature of the relationship created by this Agreement requires extensive and ongoing long-term coordination between the parties. Accordingly, no later than ten business days after the Effective Date, the City shall designate a director of Coordinated Franchise Structures and the Company shall designate the Director of Inter-governmental Relations, as the individual responsible for coordinating with the other party with respect to all matters that may arise from time to time, including matters arising under Section 2.4.4, in the course of the Term relating to the installation, maintenance, and operation of the System. When at any time during the Term of this Agreement any notice is required to be sent to the Company, other than a notice pursuant to Section 14.5 hereof, such notice shall 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. Any such oral notice shall only be effective if (a) given to the person identified in this Section 14.3 or a designee of such person whose designation is notified to the other party hereto in writing and (b) followed reasonably promptly by written notice, which may for such purposes be given by e-mail.

14.4 Publicity. The prior written approval of DOT is required before the Company or any of its employees, servants, agents or independent contractors may, at any time, 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 of communication bearing on the work performed or data collected under this Agreement. If the Company publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, DOT shall 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, such portion of the publication.

14.5 Notices. All notices required to be given to the City or the Company pursuant to Sections 1.27, 6.6, 7.1, 7.2-(c), 7.7, 9.4.1, 9.4.1(d), 10.6.2, 11.3, 12.1.5, 13.2.1(b), 13.2.1(c), 13.2.1(d), 13.3(a), 13.4.1, 13.4.2, 14.10, and 14.11 shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by overnight mail, by fax, or by personal delivery to the address or facsimile number listed below, or to such other location or person as any party may designate in writing from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to “the City^{2,22}” in which case such communication shall be sent to:

If to the City:

The Commissioner of DOT at ~~55 Water~~^{40 Worth} Street, New York, New York
10041+0013;

DRAFT

with a copy to

General Counsel, New York City Department of Transportation, 55 Water40
Worth Street, New York, New York 10041+0013

If to the Company:

Cemusa NY, LLCCEMUSA, Inc. at 420 Lexington Avenue, Suite 2533, New York, NY 10170 or+0470or fax # 212-599-7999, Attention: Director of Inter-governmental Relations;

with a copy to

Greenberg TraurigDLA Piper Rudnick Gray Cary, LLP, MetLife Building, 200
Park Avenue+251 Ave of the Americas, New York, New York, 10166+0020, or fax # 212-805-
9299835-6001, Attention: Edward C. WallaceAnthony P. Coles

Except as otherwise provided herein, the mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when mailed or when received if transmitted by facsimile. Any notice required to be given to the Company pursuant to Section 13 herein for which a cure period is ten days or less, which requires action to be taken within ten days or less, or notifies the Company of an event or action that will occur in 10 days or less must be given by personal delivery, overnight mail service or facsimile transmission.

14.6 General Representations, Warranties and Covenants of the Company. In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City), as set forth in Sections 14.6.1 and 14.6.2 as of the date of this AgreementEffective Date.

14.6.1. Organization, Standing and Power. The Company is an entity of the type described in Appendix E attached hereto, validly existing and in good standing under the laws of the State specified in Appendix E attached hereto and is duly authorized to do business in the State of New York and in the City. Appendix E attached hereto represents a complete and accurate description of the organizational and ownership structure of the Company and a complete and accurate list of all Persons which hold, directly or indirectly, a 10% interest in the Company, and all entities in which the Company, directly or indirectly, holds a 10% or greater interest. The Company 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 in connection with or as contemplated hereby. The Company is qualified to do business and is in good standing in the State of New York.

14.6.2. Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the certified copies of authorizations for the execution and delivery of this Agreement provided to the City pursuant to Section 2.2 herein are true and correct. This Agreement and all other agreements, if any entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms. The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Neither the execution and delivery of this Agreement by the Company nor the performance of its obligations contemplated hereby will:

(a) ~~(a)~~—conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of the Company or to the Company’s knowledge, any agreement among the owners of the Company, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;

(b) ~~(b)~~—result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of the Company except permitted encumbrances under Section 11.5 herein; or

(c) ~~(c)~~—terminate, breach or cause a default under any provision or term of any contract, arrangement, agreement, license or commitment to which the Company is a party, except for any event specified herein or in (a) or (b) above, which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company or the System.

14.6.3. Fees. The Company has paid all material franchise, permit, or other fees and charges to the City which have become due prior to the date of this Agreement pursuant to any franchise, permit, or other agreement.

14.6.4. Criminal Acts Representation. Neither the Company nor, any Affiliated Person or any employee or agent of the Company, has committed and/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 (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided pursuant to this Agreement.

14.6.5. Criminal Acts Covenant. The Company shall promptly terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement.

14.6.6. Relationship with the City. The Company affirms and declares that 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 Company to receive a franchise or other public contracts.

14.6.7. Misrepresentation. No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, in connection with any submission to DOT or the Commissioner, including the Proposal, in connection with the negotiation of this Agreement.

14.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement shall apply to the City and the Company and their successors and assigns.

14.8 Comptroller Rights. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

14.9 Remedies. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of Termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City.

14.10 No Waiver; ÷ Cumulative Remedies. No failure on the part of the City or the Company to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City or the

Company, as applicable under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City or the Company, as applicable at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City or the Company, as applicable at any other time. In order for any waiver of the City or the Company, as applicable to be effective, it must be in writing. The failure of the City to take any action regarding a Default or a Termination Default by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such Default or Termination Default.

14.11 Partial Invalidity. The clauses and provisions of this Agreement are intended to be 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, such provision shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are not undermined. If, however, the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are undermined as a result of any clause or provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other party in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity, provided, however, that any such modifications shall be subject to all 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 (which 120-day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences as would ensue if it had been terminated by the City pursuant to Section 13.3(a).

In addition, in the event any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing applicable federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part), the adversely affected party shall notify the other party in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such

change, provided, however, that any such modifications shall be subject to all City approvals and authorizations and compliance with all City procedures and processes.

14.12 Survival. Any provision of this Agreement which should naturally survive the termination or expiration of this Agreement shall be deemed to do so.

14.13 Headings and Construction. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder” and “hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term “may” is permissive; the terms “shall,” “must,” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

~~14.14.14.14 No Subsidy. No public subsidy is provided to the Company pursuant to this Agreement.~~ No public subsidy is provided to the Company pursuant to this Agreement.

14.15 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

14.16 Governing Law. This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, irrespective of conflict of laws principles, as applicable to contracts entered into and to be performed entirely within the State.

14.17 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive the Term.

14.18 Claims Under Agreement. The City and the Company agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall 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”). To effect this Agreement and intent, the Company agrees that:

(a) (a)—If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 14.20 hereof,

(b) (b)—With respect to any action between the City and the Company in New York State Court; the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non convenience; (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;

~~(c)~~ ~~(e)~~—With respect to any action between the City and the Company in Federal Court, the Company 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; and

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

14.19 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 shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and, approved as required by applicable law.

14.20 Service of Process. If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its address as set forth in this Agreement, or to such other address as the Company may provide to the City in writing.

14.21 Compliance With Certain City Requirements. The Company agrees to comply in all respects with the City’s “MacBride Principles”, a copy of which is attached at Appendix F hereto. The Company agrees to comply in all respects with VENDEX, as the same may be amended from time to time.

~~14.22.~~14.22 Compliance With Law, Licenses.

~~(a)~~ ~~(a)~~—The Company at its sole cost and expense shall comply with all applicable City, state and federal laws, regulations and policies.

~~(b)~~ ~~(b)~~—The Company at its sole cost and expense shall obtain all licenses and permits that are necessary for the provision of the Services from, and comply with all rules and regulations of any governmental body having jurisdiction over the Company with respect to the Services.

14.23 Mitigation. In the event of a breach of this Agreement by any of the parties hereto, the other parties will act in good faith and exercise commercially reasonable efforts to mitigate any damages or losses that result from such breach. Notwithstanding the foregoing,

nothing contained in this Section 14.23 shall limit in any respect the parties' right to indemnification pursuant to Section 12 herein.

14.24 Force Majeure and Other Excused Failure to Perform. Neither party shall be liable (including, without limitation, for payment of liquidated damages) for failure to perform any of its obligations, covenants, or conditions contained in this Agreement when such failure is caused by the occurrence of an Event of Force Majeure, and such party's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period. Notwithstanding anything to the contrary set forth in this Agreement, to the extent that the Company is unable to timely perform any of its obligations, covenants, or conditions contained in this Agreement due to the fault of the City, the Company's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period.

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

IN WITNESS WHEREOF, the party of the first part, by its Deputy Mayor, duly authorized by the Charter of The City of New York, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and by its Commissioner of The New York City Department of Transportation, duly authorized, has caused its name to be hereunto signed 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.

THE CITY OF NEW YORK

By: _____
Deputy Mayor of The City of New York

THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

By: _____
Commissioner

Approved as to form,
Certified as to Legal Authority

Acting Corporation Counsel

CEMUSA NY, LLC

By: _____
Name: _____
Title: _____

Attest: _____
City Clerk

~~THE CITY OF NEW YORK~~

By: _____
Deputy Mayor of The City of New York

~~THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION~~

By: _____
Commissioner

Approved as to form,
Certified as to Legal Authority

Acting Corporation Counsel

~~CEMUSA, INC.~~

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest: _____

City Clerk

CITY OF NEW YORK)
) ss:
STATE OF NEW YORK)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, Deputy Mayor of the City of New York, party to the above instrument, personally appeared before me in said State on the ___ day of _____, 20152006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as Deputy Mayor of the City of New York.

Given under my hand and seal, this ___ day of _____, 20152006.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, Commissioner of The New York City Department of Transportation, party to the above instrument, personally appeared before me in said State on the ____ day of _____, 20152006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that she executed the same as his free act and deed in her capacity as Commissioner of The New York City Department of the Transportation.

Given under my hand and seal, this ____ day of _____, 20152006.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK _____)
_____) SS:
STATE OF NEW YORK _____)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, _____ of CEMUSA, INC., party to the above instrument, personally appeared before me in said State on the ____ day of _____, 2006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as _____ of CEMUSA, INC.

Given under my hand and seal, this ____ day of _____, 2006.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, _____ of CEMUSA ~~NY, LLC, INC.~~, party to the above instrument, personally appeared before me in said State on the ____ day of _____, ~~2015~~2006, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as _____ of CEMUSA, INC.

Given under my hand and seal, this ____ day of _____, ~~2015~~2006.

Notary Public

My Commission Expires: _____

Amended and Restated Franchise Agreement

between

THE CITY OF NEW YORK

and

CEMUSA NY, LLC

Coordinated Street Furniture Franchise

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AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, (this "Agreement") executed as of the _____ day of _____, 2015 by and between **THE CITY OF NEW YORK** (as defined in Section 1 hereof, the "City") acting by and through its **DEPARTMENT OF TRANSPORTATION** (as defined in Section 1 hereof, "DOT"), having an address at 55 Water Street, New York, New York 10041, and **CEMUSA NY, LLC**, having a place of business at 420 Lexington Avenue, Suite 2533, New York, New York 10170 (as defined in Section 1 hereof, the "Company").

WITNESSETH:

WHEREAS, pursuant to City Council Authorizing Resolution No. 1004 (passed by the New York City Council on August 19, 2003), attached as Exhibit A hereto, the DOT, on behalf of the City, has the authority to grant non-exclusive franchises for the occupation or use of the Inalienable Property of the City (as defined in Section 1 hereof, the "Inalienable Property of the City") for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs (as each is hereinafter defined) and for the installation and maintenance of Newsstands (as hereinafter defined) (Bus Shelters, APTs, PSSs and Newsstands are collectively referred to herein as "Coordinated Franchise Structures"), including renewals thereof; and

WHEREAS, DOT issued a Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004, (as defined in Section 1 hereof, the "RFP") inviting qualified entities to submit proposals for the design, construction, installation, operation and maintenance of Coordinated Franchise Structures on City streets to serve with a coordinated design the needs of residents of, and visitors to, the City; and

WHEREAS, Cemusa, Inc. submitted to DOT its Proposal in response to the RFP; and

WHEREAS, DOT recommended Cemusa, Inc.'s Proposal based on its assessment that it was the most beneficial proposal in the interest of the City; and

WHEREAS, on May 11, 2006, the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the "FCRC") held a public hearing on the proposed grant of a franchise to Cemusa, Inc. for the installation, operation, and maintenance of Bus Shelters, APTs, and PSSs and for the installation and maintenance of Newsstands, and associated equipment 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"); and

WHEREAS, the FCRC, at its duly constituted meeting held on May 15, 2006, and acting in accordance with its customary procedures, voted on and approved the grant to Cemusa, Inc. of a franchise as contemplated by the RFP; and

WHEREAS, the potential environmental impacts of the action to be taken hereunder have been considered by the City and have been determined by the City to be fully consistent with those resulting from the Council's approval of the authorization of DOT to grant a nonexclusive

franchise for the installation, operation and maintenance of coordinated franchise structures, which include bus stop shelters, automatic public toilets, newsstands and other public service structures and Local Law 64 of 2003 (the newsstand legislation) which were reviewed and for which a negative declaration was issued finding that such actions will not result in any significant adverse environmental impacts, all in accordance with the New York State Environmental Quality Review Act (“SEQRA”), 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); and

WHEREAS, on June 26, 2006, Cemusa, Inc. and the City acting by and through its DOT entered into the Franchise Agreement for the Coordinated Street Furniture Franchise for the installation, operation and maintenance of Bus Shelters, APTs, and PSSs and for installation and maintenance of Newsstands (the “2006 Agreement”); and

WHEREAS, on September 20, 2007, the franchisee’s interest in the 2006 Agreement was assigned to Cemusa NY, LLC; and

WHEREAS, on March 17, 2014, FCC Versia, S.A., Beta De Administración, S.A., JCDecaux Europe Holding and JCDecaux SA entered into an Agreement for the Sale and Purchase of CEMUSA – Corporación Europea de Mobiliario Urbano, S.A., pursuant to which all shares in Cemusa, Inc. shall be transferred from CEMUSA – Corporación Europea de Mobiliario Urbano, S.A. to JCDecaux North America, Inc. (“JCDecaux”) (the transaction described herein being referred to hereinafter as the “2015 Change in Control”); and

WHEREAS, in accordance with the 2006 Agreement, on September 28, 2015, the FCRC held a public hearing to consider the 2015 Change in Control; and

WHEREAS, the FCRC, at a meeting held on September 30, 2015, and acting in accordance with its customary procedures, voted on and approved the 2015 Change in Control together with certain amendments, clarifications and provisions updating the 2006 Agreement, all as fully set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1

DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. In addition, all references to “install, operate and maintain,” “installation, operation and maintenance,” “install and maintain,” “installation and maintenance,” or any other variance therein, shall be deemed to include any construction, installation,

operation, maintenance, repair, upgrading, renovation, removal, relocation, alteration, replacement or deactivation as appropriate, except that with respect to Newsstands, it shall not include operation.

1.1 “ADA” shall have the meaning given in Section 3.7 hereof.

1.2 “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 Company; (ii) each Person in which the Company has directly or indirectly, a Controlling Interest; (iii) each executive officer, director or general partner or limited partner holding an interest of 10% or more in the Company; and (iv) each Person directly or indirectly, controlling, controlled by or under common Control with the Company; provided that “Affiliate” or “Affiliated Person” shall in no event mean the City, any limited partner holding an interest of less than 10% of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliate or Affiliated Person.

1.3 “Agreement” means this Agreement, together with the Appendices, Exhibits and Schedules attached hereto and all amendments or modifications thereof.

1.4 “APT(s)” means automatic public toilets installed or to be installed by the Company pursuant to this Agreement.

1.5 “Arbitrated Value” shall have the meaning given in Section 9.4.1(d) hereof.

1.6 “Art Commission” means the Art Commission of the City of New York, or any successor thereto.

1.7 “AVLC(s)” means automatic vehicle location and control systems.

1.8 “Bus Shelter(s)” means structures intended as bus stop shelters (including seating, if installed) which provide meaningful protection from precipitation, wind, and sun, consisting of New Bus Shelters and Existing Bus Shelters.

1.9 “BAFO” means Cemusa Inc.’s Best and Final Offer dated June 27, 2005.

1.10 “Baseline In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

1.11 “Build Start Date” shall have the meaning given in Section 2.4.6 hereof.

1.12 “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 thereof, or any successor thereto.

1.13 Intentionally Deleted.

1.14 “Commissioner” means the Commissioner of DOT, or his or her designee, or any successor in function to the Commissioner.

1.15 “Company” means Cemusa NY, LLC, a Delaware limited liability company, whose principal place of business is located at 420 Lexington Avenue, Suite 2533, New York, New York 10170.

1.16 “Comptroller” means the Comptroller of the City, the Comptroller’s designee, or any successor in function to the Comptroller.

1.17 “Control” or “Controlling Interest” in a Person, in the assets comprising the System, in the Company or in the franchise granted herein means working control in whatever manner exercised, including without limitation, working control through ownership, management, or negative control (provided, however that negative control shall not be interpreted to include negative covenants that may be set forth in financing documentation or similar provisions that may be set forth in financing documentation), as the case may be, of such Person, the assets comprising the System, the Company or the franchise granted herein. A rebuttable presumption of the existence of Control or a Controlling Interest in a Person, in the assets comprising the System, in the Company or in the franchise granted herein shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public), of 10% or more of such Person, the assets comprising the System, the Company or the franchise granted herein. “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person or group of Persons.

1.18 “Coordinated Franchise Structure(s)” means Bus Shelters, APTs, PSSs and Newsstands and any associated equipment, wiring, and/or cables that are attached to such Coordinated Franchise Structures (other than any such associated equipment, wiring, and/or cables that are owned by third parties) and the advertising panels, installed on, over and under the Inalienable Property of the City.

1.19 “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).

1.20 “Damages” shall have the meaning given in Section 12.1.1 hereof.

1.21 “DOT” or the “Department” means the Department of Transportation of the City, its designee, or any successor thereto.

1.22 “Effective Date” means the effective date of the 2006 Agreement, which is June 26, 2006.

1.23 “Electronic Inventory and Management Information System” or “EIMIS” means the software which constitutes a computerized inventory system for the Coordinated Franchise

Structures and sites as further set forth in the RFP and the Proposal that includes, but is not limited to (a) database, mapping, and graphic capabilities for recording the location (by borough and community district), type, design and features of all installed Coordinated Franchise Structures and the location, features, and status of proposed sites for Coordinated Franchise Structures including sites that have been rejected and (b) capacity for contemporaneous two-way information sharing between DOT and the Company regarding the design, construction, installation, operation, and maintenance of the Coordinated Franchise Structures.

1.24 “Estimated In-Kind Value” shall have the meaning given in Section 9.4.1 hereof.

1.25 “Escrow Agent” shall have the meaning given in Section 9.5(c) hereof.

1.26 “Escrow Agreement” shall have the meaning given in Section 9.5(c) hereof.

1.27 “Escrow Fund” shall have the meaning given in Section 9.5(c) hereof.

1.28 “Event of Force Majeure” means a delay due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the party claiming an Event of Force Majeure, provided in each case that such party has taken and continues to take all reasonable actions to avoid or mitigate such delay and provided that such party notifies the other party to this Agreement in writing of the occurrence of such 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 Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity’s final decision relating to the Company, this Agreement or the System, whether positive or negative, once made constitute an Event of Force Majeure (the term “final decision” in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). The financial incapacity of the Company shall not constitute an Event of Force Majeure.

1.29 “Existing Bus Shelters” means the existing Bus Shelters as of the Effective Date, as currently set forth on Schedule A attached hereto.

1.30 “Existing Bus Shelter Replacement Schedule” shall have the meaning given in Section 2.4.6(a)(i) hereof.

1.31 “Existing Newsstands” means the existing newsstands as of the Effective Date, as currently set forth on Schedule B attached hereto.

1.32 “FCRC” means the Franchise and Concession Review Committee of the City, or any successor thereto.

1.33 “Franchise Fees” means the fees paid by the Company to the City as set forth in Section 9 hereof.

1.34 “Guarantor” shall mean JCDecaux SA.

1.35 “Guaranty” shall have the meaning given in Section 2.2 hereof.

1.36 “Historic Districts” means those districts so designated by Landmarks.

1.37 “Inalienable Property of the City” means the property designated in Section 383 of the Charter of The City of New York.

1.38 “Indemnitees” shall have the meaning given in Section 12.1.1 hereof.

1.39 “Installation Date” shall have the meaning given in Sections 2.4.6(e) and 2.4.6(f) hereof.

1.40 “JCDecaux In-Kind Market(s)” shall have the meaning given in Section 9.1(a) hereof.

1.41 “Landmarks” shall mean the Landmarks Preservation Commission of the City of New York, or any successor thereto.

1.42 “L/C Replenishment Period” shall have the meaning given in Section 7.8 hereof.

1.43 “Letter of Credit” shall have the meaning given in Section 7.1(a) hereof.

1.44 “Mayor” means the chief executive officer of the City or any designee thereof

1.45 “Media Plan” shall have the meaning given in Section 9.4(a) hereof.

1.46 “New Bus Shelter(s)” means bus shelters installed or to be installed by the Company in conformity with the Plans and Specifications, which replace Existing Bus Shelters or are placed at DOT’s request at other locations, as contemplated in this Agreement, and shall also include Reciprocal Bus Shelters and Fifth Avenue Bus Shelters.

1.47 “New Newsstand” means a Newsstand which is not a Replacement Newsstand as defined in Local Law 64 for the year 2003.

1.48 “New Newsstand Operator” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates or will operate a New Newsstand in the City.

1.49 “Newsstand(s)” means structures intended for selling and displaying newspapers, periodicals and convenience items installed or to be installed by the Company pursuant to this Agreement.

1.50 “Newsstand Operator(s)” means an individual who holds a valid newsstand license from The New York City Department of Consumer Affairs and operates a Newsstand in the City.

1.51 “NYCMDC” means the New York City Marketing Development Corporation, or successor thereto, acting as agent for the City. If there is no successor to NYCMDC, then DOT shall be deemed the successor thereto for purposes of this Agreement. As agent for the City all obligations of NYCMDC under this Agreement shall be binding on and enforceable against the City, and all benefits to NYCMDC under this Agreement shall accrue to, and be enforceable by, the City.

1.52 “Other Affected Property” shall have meaning given in Section 13.7.1(a) hereof.

1.53 “Performance Bond” shall have the meaning given in Section 7.1(a) hereof.

1.54 “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 shall not mean the City.

1.55 “Plans and Specifications” shall mean the plans, specifications, and designs for the Coordinated Franchise Structures (other than the Existing Bus Shelters) to be installed by the Company pursuant to this Agreement, as approved by the Art Commission and Landmarks to the extent required by law and accepted by DOT, as may be modified from time to time pursuant to this Agreement, and all rights of copyright, patent, trademark, service mark, trade dress, and all other intellectual property rights of any kind arising out of, relating to, or embodied or incorporated in the Coordinated Franchise Structures; any reports, documents, data, drawings, sketches, mockups, models, photographs, images, and/or other materials of any kind and in any medium produced pursuant to this Agreement related to the design, structure and physical appearance of the Coordinated Franchise Structures, and any and all drafts and/or other preliminary materials in any format or medium related to such items. Nothing contained herein shall be construed as entitling the City to assert ownership rights or the licensed rights set forth in Sections 2.4.2 or 2.6 in any word marks or logos of the Company or its licensors.

1.56 “Post Term System” shall have the meaning given in Section 13.6(a) hereof.

1.57 “Preliminary Plans and Specifications” means the plans and specifications and designs for the “New York City Line” of the Coordinated Franchise Structures, presented in the BAFO as the “Grimshaw 5” line, and shall include all modifications, improvements and further developments as may be required for presentation to the Art Commission and Landmarks.

1.58 “Privileged Information” shall mean attorney-client communications or attorney work product entitled to privilege under New York State law.

1.59 “Proposal” means the proposal dated September 14, 2004, the Response to Follow-Up Questions dated April 11, 2005, the Best and Final Offer dated June 27, 2005 and Cemusa Inc.’s letter dated July 7, 2005, each submitted by Cemusa, Inc. in response to the RFP.

1.60 “PSS(s)” means public service structures such as trash receptacles, multi-rack news racks and information/computer kiosks that provide access to government or commercial activity (provided, however, that no Internet connectivity shall be permitted) to be installed by the Company pursuant to this Agreement.

1.61 “Public Communications Structure Franchise Agreement” or “PCSFA” means the Public Communications Structure Franchise Agreement between the City and CityBridge, LLC, executed December 19, 2014, as such PCSFA may be amended from time to time.

1.62 “quarter” as used in Sections 4 and 9 of this Agreement shall mean three-month periods beginning on the Effective Date. For avoidance of doubt, if the Effective Date is May 25, the quarters of the Term would end on August 24, November 24, February 24 and May 24.

1.63 “Replacement Newsstand” means a Newsstand as defined in Local Law 64 for the year 2003.

1.64 “Replacement Newsstand Schedule” shall have the meaning given in Section 2.4.6(d)(i) hereof.

1.65 “Replenishment Period” shall have the meaning given in Section 6.7.

1.66 “RFP” means the Request for Proposals dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004.

1.67 “Scroller(s)” shall mean a two-sided advertising display that contains a minimum of three posters per side, each containing an individual graphic, and that can display multiple campaigns on both sides by providing an opportunity to change an advertising poster at pre-determined time intervals by gradually moving another poster containing an individual graphic in place of the first, allowing for multiple advertisers to post advertising posters in one location (or allowing an advertiser the opportunity to post multiple creative executions in a series as part of one ad campaign) during the same posting period. For the purposes of Section 4 hereof, a Scroller shall not be counted as one panel but rather by the number of posters with individual graphics contained therein.

1.68 “Security Fund” shall have the meaning given in Section 6.1 hereof.

1.69 “Service(s)” means the installation, operation and maintenance of Coordinated Franchise Structures, provided, however, that with respect to Newsstands, Services shall mean installation and maintenance and shall not include operation.

1.70 “Software” shall have the meaning given in Section 2.4.2(b) hereof.

1.71 “Software Escrow Agent” shall have the meaning given in Section 2.4.2(e) hereof.

1.72 “System” means all of the Coordinated Franchise Structures which are to be installed, operated and/or maintained by the Company pursuant to this Agreement and the EIMIS (together with associated data).

1.73 “Term” means the term of the Agreement as described in Section 2.1 hereof.

1.74 “Termination Default” shall have the meaning given in Section 13.2.1(a) hereof.

1.75 “Vendex” means the City’s Vendor Information Exchange System, or any successor system established pursuant to law, rule or regulation.

1.76 “Viacom Outdoor Agreement” means the contract dated March 20, 1985 by and between the City of New York and Miller Signs Associates, as last amended on January 25, 2005.

1.77 “year” shall mean a period of 365 days, as distinguished from a calendar year.

SECTION 2

GRANT OF AUTHORITY

2.1 Term. This Agreement, and the franchise granted hereunder, shall commence upon the Effective Date, and shall continue for a term of 20 years from the Effective Date, unless this Agreement is earlier terminated as provided in this Agreement (the “Term”).

2.2 Submissions By the Company. The City acknowledges receipt from the Company of the following items and documents and hereby agrees that as of the date hereof each such item or document delivered by the Company is on its face in compliance with the terms and conditions of this Agreement and that the Company has fulfilled its contractual obligations thereto, provided, however, that this acknowledgement and agreement in no way releases any of the Company’s ongoing obligations as to such items under this Agreement: (i) evidence as described in Section 12 hereof of the Company’s insurance coverage, (ii) an opinion of the Company’s counsel dated as of the date this Agreement is executed by the Company, in a form reasonably satisfactory to the City, that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company, (iii) an IRS W-9 form certifying the Company’s tax identification number, (iv) a letter from the Company to the Department of Consumer Affairs certifying to the projected costs of the construction and installation of the New Newsstands, as described in Section 2.4.6(d)(iii) hereof, (v) organizational and authorizing documents as described in Sections 14.6.1 and 14.6.2 hereof, (vi) evidence that the Security Fund required pursuant to Section 6 hereof has been created, (vii) evidence that the Performance Bond required pursuant to Section 7 hereof has been created consisting of an original executed performance bond in the required amount and approved form, (viii) evidence that the Letter of Credit required pursuant to Section 7 hereof has been delivered, (ix) a guaranty from the Guarantor (“Guaranty”), and (x) fully completed and up-to-date questionnaires in connection with Vendex which have received a favorable review by the City.

2.3 Certain Actions by the Company. Within five (5) business days of receipt by the Company of an invoice, the Company shall reimburse to the City all costs incurred by the City in publishing legally required notices with respect to the approvals and consents required for this Agreement.

2.4 Nature of Franchise; Effect of Termination.

2.4.1. Nature of Franchise. The City hereby grants the Company, in accordance with the terms and conditions of this Agreement, the RFP, the Proposal and the BAFO (the RFP, Proposal and BAFO are attached hereto and made a part hereof as Exhibits B, C, and D respectively), a non-exclusive franchise providing the right and consent to install, operate and maintain Bus Shelters, APTs, and PSSs and to install and maintain Newsstands on, over and under the Inalienable Property of the City. The exercise of such franchise is subject to all applicable laws, rules and regulations of the City, including with respect to the Newsstands, Local Law 64 for the year 2003 and with respect to multi-rack news racks, 19-128.1 of the Administrative Code. The Inalienable Property of the City does not include premises controlled by such entities as, including, but not limited to, the New York City Department of Education, the New York City Health and Hospitals Corporation, the Metropolitan Transportation Authority, the New York City Housing Authority, the New York City Off Track Betting Corporation, or the interior of any buildings owned, leased, or operated by the City, or any other City property not expressly included in Section 1.37 herein.

2.4.2. Ownership.

(a) All Coordinated Franchise Structures are at all times during the Term of this Agreement, except as otherwise stated in this Agreement, the property of the Company, and the Company has responsibility therefore in accordance with the terms of this Agreement. The Company shall take ownership and be responsible for the operation and maintenance as described herein of the Existing Bus Shelters as of the Effective Date of this Agreement. No representations are or have been made by the City, or by any of its officers, agents, employees or representatives, as to the present physical condition, structural integrity, cost of operation or otherwise of the Existing Bus Shelters, and the Company acknowledges that it has inspected the same, is familiar with the "as is" condition thereof, and will hold the City harmless in connection therewith pursuant to Section 12.1.1 hereof, provided, however, the Company shall have no liability for Damages relating to any event that occurred prior to the Effective Date. Except as otherwise stated in this Agreement, during the Term hereof, the City has no ownership interest, or any obligations with respect to, the Coordinated Franchise Structures.

(b) The Company and/or Cemusa, Inc. has purchased sufficient licenses for all off-the-shelf software and hardware components reasonably necessary for the creation, maintenance, and operation of EIMIS and has secured for the City valid, non-exclusive, royalty-free, paid-up sublicenses, or equivalent rights to use, consistent with the terms and conditions of this Agreement for any proprietary software used by the Company and reasonably necessary for operation and (to the extent applicable) maintenance of EIMIS, and to the extent independent licenses are required, software pertaining to the operation and maintenance of APTs

and PSSs (all such software referred to in this sentence, collectively referred to hereinafter as the “Software,” which for purposes of this Agreement will mean programs in object code format only together with any manuals and documentation). The licenses and sublicenses in the Software to be granted to the Company and/or the City in accordance with this Section 2.4.2(b) or Section 3.3(c) will be sufficient to allow the Company and/or City to (i) access, operate, and maintain the EIMIS, and all APTs and PSSs for the purposes contemplated by this Agreement during the Term and (ii) address changing conditions as they apply to EIMIS, including without limitation, by requiring the applicable software vendors to create derivative works of the Software in customizing, adapting, configuring, optimizing and refining EIMIS consistent with the purposes of this Agreement.

(c) The Plans and Specifications and the Preliminary Plans and Specifications are the property of the Company or its licensors, as applicable. The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City, effective as of the date of the first to occur of the termination or expiration of this Agreement in accordance with its terms or the transfer of ownership of the Coordinated Franchise Structures to the City, an exclusive, irrevocable, royalty-free to the City, fully paid-up license (i) to use the Plans and Specifications, and the Preliminary Plans and Specifications to the extent incorporated in the Plans and Specifications, for the purpose of installing, maintaining and operating in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures) and (ii) to display, perform publicly, and reproduce the Plans and Specifications for purposes of installing, operating, and maintaining in the City the Coordinated Franchise Structures (and additional items of street furniture identical to the Coordinated Franchise Structures). For avoidance of doubt, the license grant set forth in the immediately preceding sentence of this Section 2.4.2(c) shall immediately take effect in accordance with its terms whether or not the Company challenges such termination; provided, however, that nothing herein shall be interpreted as an admission by the Company that any such termination is appropriate. Furthermore, for all copyright and patent rights in the grants above, the terms of these licenses will be the longest term currently recognized for copyrights and patents, respectively, under United States law. For all other rights licensed in this Section, the term of the license is perpetual. Notwithstanding the foregoing, as of the Effective Date, nothing herein shall be construed as restricting the City’s ability to work during the Term with the Company and the Company’s licensor Grimshaw Industrial Design, LLC (“Grimshaw”) in furtherance of the purposes of this Agreement to coordinate the creation, installation, and maintenance of the Coordinated Franchise Structures. Further, as of the Effective Date, the Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant) hereby grants to the City a non-exclusive, royalty-free license to display, reproduce, and perform publicly images of the Coordinated Franchise Structures in any medium for the term of copyright.

(d) The Company agrees that the Coordinated Franchise Structures installed by the Company in accordance with this Agreement shall be unique to the City, and the Company shall not, without the prior written permission of the City, install or cause or facilitate the installation of any such Coordinated Franchise Structures for any other client or other third

party anywhere in the world. Additionally, the Company shall cause third parties that expressly licensed the Plans and Specifications, in whole or in part, to the Company, or third parties that otherwise participated in the creation of the Plans and Specifications to execute documents to this effect.

(e) To the extent that this Agreement includes software licensed to the Company and/or the City (excluding “off-the-shelf” software) in connection with the creation, operation or maintenance of EIMIS, the Company agrees that (i) it shall cause its software vendor to enter into, and maintain in full force and effect a source code escrow agreement with an escrow agent (the “Software Escrow Agent”), which escrow agreement shall provide materially the same terms and conditions as follows, and (ii) all source code and related documentation for the licensed software shall be under escrow deposit pursuant to said escrow agreement. The Company shall cause its software vendor to provide 30 days prior written notice of a change of the Software Escrow Agent. The escrow agreement contemplated hereby must be in effect within 30 days of the Effective Date. Additionally,

(i) source code must be held by the Software Escrow Agent in trust for the City;

(ii) all major updates (e.g., new versions and critical patches and fixes) must be escrowed as they are issued; 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 shall be permitted periodic testing of all source code held in escrow; and

(v) if the Company’s software vendor, any assignee or successor (x) becomes insolvent or ceases to exist as a business entity or (y) fails to perform its obligations under its agreement with the Company such that the Company fails to comply with its obligations with respect to EIMIS contained in this Agreement, 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 commentary for the installed release level of the product utilized by the City. 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 Company’s software vendor.

It is agreed that the Company shall provide to the City all information necessary for the City to comply with registration requirements, if any, of the Software Escrow Agent. The Company agrees to adhere to the obligations set forth in any agreement with the software vendor or the Software Escrow Agent as they relate to the deposit of Software in escrow. The agreement with the Software Escrow Agent shall provide that the City shall have the opportunity to cure any default of the Company, at the sole cost and expense of the Company,

that jeopardizes the ability of the City to access the escrowed source code as provided for under this Agreement.

The escrow agreement provisions set forth in this Section 2.4.2(e) shall apply with equal force to any software licensed to the City (excluding “off-the-shelf” software) by a subcontractor of the Company.

2.4.3. Warranties of Title. The Company represents and warrants that the Plans and Specifications and Software: (a) are original to the Company or validly licensed or sublicensed to the Company; (b) to the knowledge of the Company after reasonable inquiry, do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any law, rule, or regulation; and (c) do not constitute defamation or invasion of the right of privacy. The Company further represents and warrants that it has not granted any license(s), permit(s), interest(s), or right(s), exclusive or nonexclusive, to any party other than the City with respect to the Plans and Specifications and will not grant any such licenses unless such grants are necessary to perform the Company’s obligations under this Agreement.

2.4.4. Permits, Authorizations, Approvals, Consents and Licenses.

(a) Before installing any Coordinated Franchise Structure, the Company shall obtain at its sole cost and expense, any necessary permits, authorizations, approvals, consents, licenses, and certifications required for each Coordinated Franchise Structure, including, but not limited to: (i) pursuant to all City laws, rules and codes 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 DOT, Landmarks and the Art Commission, and any other agency of the City with jurisdiction over the property on which the Coordinated Franchise Structure is to be located; (iii) any necessary permits, authorizations, approvals, consents, licenses, and certifications required pursuant to any applicable state and federal laws, rules, regulations and policies, writs, decrees and judgments; and (iv) any necessary permits, authorizations, approvals, consents, licenses and certifications from Persons to use a building or other private property, easements, poles, and conduits.

(b) The Company agrees that fees paid to obtain any permits, consents, licenses, or any other forms of approval or authorization shall not be considered in any manner to be in the nature of a tax, or to be compensation for this franchise in lieu of the compensation described in Section 9 hereof.

2.4.5. Design of Coordinated Franchise Structures. The design of all Coordinated Franchise Structures installed pursuant to this Agreement (other than Existing Bus Shelters) shall be in compliance with all applicable laws, rules and regulations of the City and shall be subject to approval of the Art Commission and, to the extent required by law, Landmarks. Company shall make good faith efforts to obtain approval of the Art Commission and to the extent required by law, Landmarks. The Company shall submit an application signed by DOT (which application DOT agrees to sign in a form reasonably acceptable to DOT), to the

Art Commission and, to the extent required by law, Landmarks, for review and approval of the Preliminary Plans and Specifications. In the event that changes to the Preliminary Plans and Specifications are required by the Art Commission or Landmarks for their approvals, the Company at its sole cost and expense shall make such changes as are required to obtain such approval. Following such approval, the Preliminary Plans and Specifications as approved shall be the Plans and Specifications referred to in this Agreement and shall be the Plans and Specifications used to manufacture the Coordinated Franchise Structures. It is anticipated that street or sidewalk conditions at certain locations will require modifications of the size of individual Coordinated Franchise Structures (as distinct from modifications to the design of the Coordinated Franchise Structures overall). Such modifications to individual Coordinated Franchise Structures shall be made at the Company's sole cost and expense upon a determination by the City that such modifications are necessary or appropriate based on street or sidewalk conditions at such specified locations. Additionally,

(a) The Company shall design PSSs such that the public service provided is immediately apparent and shall not be obscured physically or visually by advertising;

(b) In consultation with DOT the Company shall prepare as part of the Plans and Specifications size variations of the Newsstands which all meet the dimensional requirements set forth in the RFP and shall comply with the Americans with Disability Act as further set forth in Section 3.7 hereof. Such variations must be approved by DOT in its reasonable discretion and must meet the following specifications: there must be Newsstand lengths of 8', 10' and 12' which must be able to be used interchangeably with Newsstand widths of 4', 5' and 6'. All Newsstands must be a standard height of 9'. Additionally, the Company shall make reasonable efforts to customize the interior of the Newsstand by permitting all Newsstand Operators to select customization options from a standardized group of customization alternatives offered by the Company;

(c) The Company shall design New Bus Shelters in a variety of sizes such that every Existing Bus Shelter may be replaced in accordance with the terms of this Agreement. New Bus Shelter designs shall provide for bus route maps, street maps, bus stop name identification, Guide-a-Ride canisters and other information. The New Bus Shelter designs shall also contemplate some form of passenger seating, such as a bench, that may or may not be required to be installed in every New Bus Shelter. Once during the Term at any time during such Term, the City may require the Company, and the Company shall at its sole cost and expense, install or remove such seating from each New Bus Shelter (this provision is not intended to limit the Company's obligation to maintain, including replacement where and when necessary, seating that has been installed and has become worn or damaged, in accordance with the maintenance obligations imposed upon the Company by this Agreement);

(d) As the City has determined that only one configuration (in lieu of standard and landmark) is appropriate, the Company shall only be required to design and install one configuration of New Bus Shelters, APTs and Newsstands during the Term, subject to the requirements on size variations set forth in this Agreement;

(e) Company shall at its sole cost and expense produce and install such signage as is requested from time to time by DOT. The obligation to produce as used in this Section is defined as the printing and reproduction of City-designed signage intended specifically and exclusively for Bus Shelters (not including generic bus or transit route maps of the entire system); and

(f) The Company shall make appropriate staff available to represent itself and assist DOT during any informal or formal public review processes, including, but not limited to, presentations to a Community Board, review by the Art Commission or Landmarks, or a hearing in front of the FCRC.

2.4.6. Build out and Costs. The Company agrees to construct and install Coordinated Franchise Structures conforming to the Plans and Specifications, and in accordance with the timeframes set forth herein and in Appendix G annexed hereto, at its sole cost and expense, such cost and expense including, but not limited to, the costs of utility connections and infrastructure related thereto, and utilities consumed during the build-out. The Company's construction and installation obligations in this Section 2.4.6 shall be measured from the 60th day after the date of final approval by the Art Commission as set forth in Section 2.4.5 herein (such date shall be referred to as the "Build Start Date"). If the final Art Commission approval contemplated in this paragraph is received on different dates with respect to the New Bus Shelters, Newsstands or APTs, the term "Build Start Date" shall refer to the date of final approval of the Art Commission as it relates to the relevant Coordinated Franchise Structure. Prior to the installation of any Coordinated Franchise Structure, the Company shall provide to DOT for its approval photographs of the site and a site plan conforming to the siting criteria contained in the RFP. All site plans shall be prepared to scale, shall include all elements and dimensions relevant to the siting criteria, and shall be certified by a professional engineer or licensed architect.

(a) The Company shall remove Existing Bus Shelters and shall install New Bus Shelters in accordance with the following:

(i) The Company shall construct and install in locations as set forth in Schedule A attached hereto, and in such other locations as may be directed by DOT, at least 3300 New Bus Shelters by the fifth anniversary of the Build Start Date, with at least 650 New Bus Shelters in total having been installed by the first anniversary of the Build Start Date, at least 1350 New Bus Shelters in total having been installed by the second anniversary of the Build Start Date, at least 2000 New Bus Shelters in total having been installed by the third anniversary of the Build Start Date, at least 2650 New Bus Shelters in total having been installed by the fourth anniversary of the Build Start Date and at least 3300 New Bus Shelters having been installed by the fifth anniversary of the Build Start Date. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. In addition, the Company shall construct and install at the option of DOT in its sole discretion a maximum of 200 additional New Bus Shelters, where and when directed by DOT, provided, however, that (x) such option must be exercised in the first eighteen years of the Term, and (y) the total number of New Bus Shelters to be installed by the Company shall not exceed 3500 without the mutual consent of the

Company and the City (said 3500 limit shall not include the Fifth Avenue Bus Shelters installed pursuant to Section 2.5.3.1, the Reciprocal Bus Shelters installed pursuant to Section 2.5.3.2 or the 30 New Bus Shelters installed pursuant to Section 9.17). The replacement of Existing Bus Shelters at the locations set forth in Schedule A shall take place in accordance with a schedule to be proposed by the Company and approved by DOT (the “Existing Bus Shelter Replacement Schedule”) which shall be consistent with the overall construction and installation schedule contemplated by this Agreement and shall provide that each year 20% of replacements take place at locations allocated to NYCMDC as set forth in Exhibit H attached hereto. The Existing Bus Shelter Replacement Schedule shall include at a minimum, for each month of the build-out years, the location of each Existing Bus Shelter scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected date for installation. On notification from DOT that a site plan and photographs are required for a location other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and to install the New Bus Shelter provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature of the required changes. Notwithstanding any provision of this Agreement to the contrary, in the event that a particular Bus Shelter is removed but not returned to the same location (either by movement of the individual shelter or the route being relocated), the total number of shelters that count towards the 3500 limit shall be reduced by one.

(ii) The Company shall dismantle, remove, and if necessary, dispose of Existing Bus Shelters, at its sole cost and expense, provided that no Existing Bus Shelter shall be removed unless and until DOT has either approved a site plan for a New Bus Shelter to replace it or determined that it will be removed but not replaced. A New Bus Shelter shall be installed in accordance with paragraph (i) of this subsection within five days of the removal of each Existing Bus Shelter, except where DOT has determined that the Existing Bus Shelter will not be replaced. All Existing Bus Shelters shall have been removed and replaced as required by the fifth anniversary of the Build Start Date. Should DOT require the removal of any Bus Shelter other than as specified in the Existing Bus Shelter Replacement Schedule, the Company shall have five days from receipt of notice from DOT to effect the removal. Any site where a Bus Shelter is removed but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Bus Shelter and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

(b) Unless the City requires fewer APTs to be installed, the Company shall construct and install in locations as directed by the City, and in accordance with the time frames set forth in Appendix G annexed hereto, at least 10 APTs in total by the first anniversary of the Build Start Date and 20 APTs in total by the second anniversary of the Build Start Date, provided that the Company’s obligations set forth in this sentence shall be tolled during any time that access to the site selected by the City is blocked due to circumstances beyond the

Company's control. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of the City. To the extent that the City has not directed the Company to install all 20 APTs by the second anniversary of the Build Start Date, in any year of the Term the City may direct the Company to install a maximum of 10 APTs with no more than 20 APTs installed during the Term.

(c) The Company shall construct and install, when and as directed by DOT in locations selected by DOT, PSSs consisting of trash receptacles, multi-rack newsracks, and information/computer kiosks in accordance with the time frames set forth in Appendix G annexed hereto, provided that the number of PSSs the Company shall be required to install in any given time period shall be reasonable under the circumstances existing at the time, including when considered in light of any concurrent obligations of the Company to install, maintain and, if applicable, relocate, other Coordinated Franchise Structures under this Agreement.

(d) Additionally, in accordance with the RFP, the Proposal and the BAFO:

(i) The Company shall be responsible at its sole cost and expense for the prompt dismantling and removal of any and all Existing Newsstands (unless, in each instance, the Newsstand Operator exercises its option under Section 20-241.1b of Title 20 of the City's Administrative Code, or any successor provision thereto, to itself remove the Existing Newsstand) and the installation of Replacement Newsstands in accordance with a schedule to be provided by DOT from time to time (the "Replacement Newsstand Schedule"). The Replacement Newsstand Schedule shall be consistent with the overall installation timetable for Newsstands contemplated by Section 2.4.6(d)(iii). The Replacement Newsstand Schedule shall include the location of each Existing Newsstand scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected dates for removal of the Existing Newsstand and the installation of the Replacement Newsstand. On the date specified in the Replacement Newsstand Schedule (provided the City has given the relevant Newsstand Operator notice within the time period required by applicable law, if any, of the date for the removal of the Existing Newsstand), or a date mutually agreed to by the Company, and DOT, the Company shall remove the Existing Newsstand (unless the Newsstand Operator has already removed it) and install the Replacement Newsstand. Installation of each Replacement Newsstand must be completed in nine days from removal by the Company of the applicable Existing Newsstand (or from the date of notice to the Company that the Existing Newsstand has been removed by the Newsstand Operator).

(ii) On notification from DOT that a site plan and photographs are required for a location other than as specified in the Replacement Newsstand Schedule, the Company shall have 30 days to produce the site plan and photographs and submit them to DOT and install the New Newsstand provided however that the clock shall stop during the time that DOT is reviewing the site plan. DOT shall notify Company when the site plan is approved, or whether changes are required. Company may request an extension of such time which may be granted by DOT in writing in its reasonable discretion; provided that if changes are required by DOT an extension shall be granted for a reasonable period of time commensurate with the nature

of the required changes. Should DOT require the removal of any Newsstand, other than as specified in the Replacement Newsstand Schedule, the Company shall have five days to effect the removal and restore the sidewalk. Any site where a Newsstand is removed by the Company but not replaced shall be promptly restored to its condition existing immediately prior to the date of the removal of the subject Newsstand and in compliance with the New York City Administrative Code at the sole cost and expense of the Company.

(iii) The Company shall construct and install in locations as set forth in Schedule B attached hereto, and in such other locations as may be directed by the City, at least 330 Newsstands, which may include Replacement Newsstands and/or New Newsstands with at least 110 Newsstands, as selected by the City in its sole discretion, being installed by the first anniversary of the Build Start Date, with at least 220 Newsstands, as selected by the City in its sole discretion, being installed by the second anniversary of the Build Start Date, and at least 330 Newsstands being installed by the third anniversary of the Build Start Date. The Company's obligations set forth in the preceding sentence shall, to the extent that the above time schedule cannot be met because access to any site is blocked due to circumstances outside the Company's control, be tolled during such time access is blocked. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. Additionally, the Company shall construct and install at the option of the City in its sole discretion additional New Newsstands necessary for operation under any new license issued throughout the Term by the Department of Consumer Affairs (or any successor thereto). All Newsstands constructed shall include, at the Company's sole cost and expense, necessary electric and telephone hook-ups and infrastructure required by the appropriate utility to establish a separate account for the Newsstand Operator's usage of electricity in the Newsstand. However, the New Newsstand Operators will be required to reimburse the Company for the costs and expenses of the construction and installation including costs associated with any interior electric and/or telephone hookups to the Newsstand, in accordance with Appendix B attached hereto, provided that the City shall not be responsible for reimbursement to the Company for the New Newsstands in the event that the Company does not receive such compensation from the New Newsstand Operators. Upon payment of the amount required, or the entry into an installment payment plan with the New Newsstand Operator(s) pursuant to Appendix B, Company shall provide the New Newsstand Operator(s) with either proof of payment or a letter stating that the New Newsstand Operator(s) has entered into an installment payment agreement with the Company.

(iv) Under no circumstances will the Company be responsible or liable for the removal of any Newsstand Operator who does not cooperate in the Newsstand replacement process contemplated by or arising out of this Agreement. Additionally, the Company shall not have any obligations to any Indemnitee under Section 12.1.1 for any Damages relating to any claim against any Indemnitee made by or on behalf of a Newsstand Operator (a) challenging or contesting the right of the City to remove such Newsstand Operator's newsstand or claiming compensation arising from the removal thereof, (b) claiming any ownership rights in any newsstand, (c) alleging any violation of law or other wrongful conduct on the part of the City or its agents or contractors in connection with the removal of such Newsstand Operators' newsstands (other than any such conduct for which the Company is

directly responsible and which is not carried out by the Company at the direction of the City), and any similar claim that does not arise directly out of the performance by the Company of, or its failure to perform, its obligations under this Agreement.

(e) Upon installing any of the Coordinated Franchise Structures the Company shall send to DOT a photograph of the new installation showing the placement in context of such Coordinated Franchise Structure together with a request for DOT acceptance of the specified Coordinated Franchise Structure, which acceptance shall not be unreasonably withheld, conditioned or delayed. Such request shall set forth the date the Coordinated Franchise Structure was installed (such date shall be the "Installation Date" if the installation is accepted by DOT in accordance with Section 2.4.6(f) below).

(f) DOT shall inspect such new installation within 14 days of receipt of such photograph and request. Acceptance of the installation shall not constitute an approval of the structural integrity of the Coordinated Franchise Structures or of any utility connections. Should DOT accept the Coordinated Franchise Structure as being installed in accordance with the site plan it shall send the Company an acceptance notice within 14 days from inspection. Should DOT not accept the Coordinated Franchise Structure as being installed in conformity with the site plan it shall send the Company a rejection notice within 14 days from inspection specifying the problems which need correction and the Company shall have five days from receipt of notice from DOT (provided that in the case of APTs and Newsstands the Company's obligations set forth in this sentence shall be tolled during any time that the Company's access to the site is blocked due to circumstances outside its control) to make such corrections, except if local law requires otherwise in the case of Newsstands. Thereafter, the Company shall follow the procedures set forth in this Section 2.4.6 (the date such corrections are made shall be the Installation Date if such corrections are approved by DOT). If DOT sends a rejection notice as contemplated herein, the time between the date the Company sent its request for acceptance and the date DOT sent the rejection notice shall not count towards the assessment of liquidated damages.

(g) The procedure for accepting Newsstands shall be as set forth in this Section 2.4.6 unless superseded by Local Law 64 of the year 2003 or any other section of the New York City Administrative Code or the Rules of the City of New York.

(h) Except as otherwise set forth in this Agreement, failure to complete the timely construction and installation of any Coordinated Franchise Structure within the time specified shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto, or the exercise of any other remedy available to the City under this Agreement provided, however, that if DOT does not send a notice of acceptance or rejection of the installation of any Coordinated Franchise Structure within the time period set forth above, such delay shall not be counted against the Company for purposes of assessing liquidated damages or the exercise of any other remedy. It is agreed that the full amount of liquidated damages due prior to the 2015 Change in Control with respect to the construction, installation and maintenance of the Bus Shelters and Newsstands totaling \$1,687,988 has been collected by the City, and as of the date of this Agreement, no additional liquidated damages have been assessed by the City.

2.4.7. Effect of Expiration or Termination. Upon expiration or termination of this Agreement (and provided no new franchise of similar effect has been granted to the Company pursuant to the New York City Charter, any authorizing resolution, and any other applicable laws and rules in effect at the time) the franchise shall expire; all rights of the Company in the franchise shall cease with no value allocable to the franchise itself; and the rights of the City and the Company to the System, or any part thereof, shall be determined as provided in Section 13 hereof.

2.5 Conditions and Limitations on Franchise.

2.5.1. Not Exclusive. Nothing in this Agreement shall affect the right of the City to grant to any Person other than the Company a franchise, consent or right to occupy and use the Inalienable Property of the City, or any part thereof, for the installation operation and/or maintenance of street furniture, including, but not limited to, bus shelters, public toilets, trash receptacles, multi-rack news racks, information/computer kiosks or newsstands, with or without advertising. Notwithstanding the above, (i) DOT shall not grant to any other Person a franchise to install bus shelters until DOT has issued to the Company 3500 permits for the installation of New Bus Shelters and (ii) DOT shall not grant to any other Person a franchise to install newsstands until DOT has issued to the Company 330 permits for the installation of Replacement and/or New Newsstands, provided, however, that should the City at any time issue a request for proposals for the installation, operation and/or maintenance of bus shelters and/or newsstands then DOT's agreement not to grant franchises as described in this sentence shall be conditional on the Company's prompt delivery to DOT of all materials required from the Company that would be necessary for DOT to process and issue the necessary permits for the installation of the number of New Bus Shelters and/or Newsstands necessary to reach the 3500 and 330 figures described above, as the case may be. If the Company fails to promptly deliver the materials necessary for DOT to process and issue the necessary permits, the City may grant any Person a franchise notwithstanding the requisite number of permits, as provided in this Section 2.5.1, have not been issued; provided however that any such failure by the Company shall not constitute a breach or default under this Agreement. This Section 2.5.1 is not intended to affect the Company's right to install 3500 New Bus Shelters and 330 Replacement and/or New Newsstands and to place advertising thereon as set forth in this Agreement or any of the Company's other rights or obligations as set forth in this Agreement. Nothing in this Agreement shall affect the ability of the Company and the City to consider potential additional revenue generating opportunities that may be proposed by either party in the future with respect to the Coordinated Franchise Structures.

2.5.2. Sidewalk and Historic Pavement. No Coordinated Franchise Structure shall be designed so that it would result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Neither the installation, operation, maintenance nor removal of Bus Shelters, APTs, and PSSs nor the installation, maintenance and removal of Newsstands shall result in the unrepaired destruction or damage of any part of a sidewalk or historic pavement. Nothing herein shall preclude the Company from installing a Coordinated Franchise Structure, including appurtenant utility connections, on a sidewalk or historic pavement by any means necessary. Prior to any such installation, the Company shall make a good faith effort to procure

sufficient quantities of those materials of which the sidewalk or historic pavement is comprised to repair, replace, or restore it to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure and in compliance with the New York City Administrative Code. If the City is the sole source of those materials of which the sidewalk or historic pavement is comprised, then it shall provide the Company, at the Company's expense, any such materials stored by the City. In the event that the installation, operation, maintenance or removal of any Bus Shelter, APT, or PSS or the installation, maintenance and removal of Newsstands results in damage to sidewalk or historic pavement, such sidewalk or historic pavement shall be restored to its condition existing immediately prior to the date of the installation of the subject Coordinated Franchise Structure in accordance with the timeframes set forth in Appendix C and in compliance with the New York City Administrative Code at the sole cost and expense of the Company, using in-kind materials. The Company may request an extension of time to the timeframes referred to in the preceding sentence which may be granted by DOT in its sole discretion.

2.5.3. Location of Coordinated Franchise Structures. The Coordinated Franchise Structures shall be installed, removed and replaced by the Company in such locations and in such priority as directed by DOT in accordance with this Agreement, or, if not otherwise specifically set forth in this Agreement, in DOT's sole discretion, provided, however, that APTs shall be installed by the Company in such locations as directed by the City in its sole discretion. When practicable, DOT shall provide Company with an opportunity to comment on DOT's location decisions regarding Coordinated Franchise Structures in light of the Company's concerns regarding the revenue generating potential of locations. Nothing contained in this paragraph or Section 2.5.3.1 shall be construed to prevent DOT from changing a location set forth in Schedules A, B or X if the City would otherwise have the right to order the relocation of the structure in accordance with Sections 2.5.4.1 or 2.5.4.2 herein.

2.5.3.1. Fifth Avenue. The Company may construct, install and maintain fifteen (15) New Bus Shelters at locations designated by DOT between 34th street and 59th street on Fifth Avenue (the "Fifth Avenue Bus Shelters") as set forth in the attached Schedule X provided that in exchange for the right to install the Fifth Avenue Bus Shelters, the Company shall also be obligated to install an additional thirty (30) New Bus Shelters at locations designated by DOT (the "Reciprocal Bus Shelters"). The Fifth Avenue Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i). Provided that the Reciprocal Bus Shelters are equipped with adequate illumination pursuant to Section 3.1.5(d), the Company may, but shall not be required to provide electrical connections or advertising lightboxes for such Reciprocal Bus Shelters. The Reciprocal Bus Shelters shall be in addition to the number of New Bus Shelters referenced in Section 2.4.6(a)(i).

2.5.3.2. Restrictions. Notwithstanding any provision of this Agreement to the contrary, in the event that an advertising Public Communications Structure or Public Pay Telephone (as such terms are defined in the PCSFA) is installed on Fifth Avenue between 34th street and 59th street pursuant to authorization from the City and such installation is not a replacement of an existing telephone installation installed or maintained pursuant to a now-expired public pay telephone franchise agreement on Fifth Avenue between 34th Street and 59th

Street (such an event shall be referred to as a “Fifth Avenue Installation”), prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, then the Company shall have no further obligation to install any additional Reciprocal Bus Shelters (but shall not be entitled to remove any Reciprocal Bus Shelters already installed) that it would otherwise be obligated to install pursuant to Section 2.5.3.1. Furthermore, in the event of a Fifth Avenue Installation prior to DOT’s direction to the Company to install any or all of the Reciprocal Bus Shelters, any Reciprocal Bus Shelters installed prior to such Fifth Avenue Installation shall be depreciated on a straight-line basis over a 20 year period. The yearly value of each Reciprocal Bus Shelter for the purpose of such depreciation shall be \$1250, which is derived by dividing the cost of the shelter (\$25,000) by 20. The formula to determine the unamortized amount for each respective Reciprocal Bus Shelter shall be as follows: \$1250 shall be multiplied by the difference between 20 and the difference between year 2026 (the year in which the Term ends) and the year such shelter was installed. For example, if the Reciprocal Bus Shelter was installed in 2021, that number (2021) would be subtracted from 2026 to get 5. Then 5 would be subtracted from 20 to get 15. The number 15 would then be multiplied by \$1250 to get the unamortized balance for that particular Reciprocal Bus Shelter (which would be \$18,750). In the event of a Fifth Avenue Installation, the Company shall be credited for the total unamortized amount of all amortized Reciprocal Bus Shelters as set forth in Section 9.1(a).

2.5.4. Removal, Replacement, Relocation, Reinstallation.

2.5.4.1. Public Utilities, Other. The Company shall remove, replace, relocate or reinstall at its sole cost and expense, at the request of the City, Coordinated Franchise Structures which interfere with the construction, maintenance or repairs of public utilities, public works or public improvements. The Company shall not be responsible for the costs and expenses of any removal, replacement, relocation and/or reinstallation requested by the City except as set forth in the preceding sentence or as expressly required elsewhere in this Agreement, including, but not limited to, Section 2.5.4.2 hereof. Nothing in this Agreement shall abrogate the right of the City to change the grades or lines of any Inalienable Property of the City, or perform any public works or public improvements, or any street widening project, or any other capital project of any description. In the event that the Company refuses or neglects to so remove, replace, relocate or reinstall such Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City including, but not limited to repair and restoration costs, arising out of the performance of such work.

2.5.4.2. Public Use, Other. The City shall have the right at any time to inspect the Coordinated Franchise Structures and order the removal, replacement, relocation or reinstallation of any of the Coordinated Franchise Structures at the sole cost and expense of the Company upon a determination in the City’s sole discretion that any of the Coordinated Franchise Structures, unreasonably interferes or will unreasonably interfere with the use of a street by the public, constitutes a public nuisance, creates a security concern, or is, or has otherwise become inappropriate at a particular location, or that such removal, replacement,

relocation or reinstallation is necessary to address changing conditions. In the event that the Company fails to so remove, replace, relocate or reinstall any of the Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City, including but not limited to repair and restoration costs. If a Coordinated Franchise Structure is required to be removed and/or relocated because the City mistakenly identified a location listed on Schedule A or Schedule B as Inalienable Property of the City, the City shall require the Company to remove and/or relocate such Coordinated Franchise Structure and shall pay to the Company the costs incurred in connection with such removal and/or relocation and for any other costs or damages incurred by the Company, including but not limited to repair and restoration costs.

2.5.4.3. Notification. In the event the Commissioner determines that all or any of the Coordinated Franchise Structures should be removed, replaced, relocated or reinstalled pursuant to this Section 2.5, the Company shall perform such work in accordance with the timeframes set forth in Appendix G attached hereto.

2.5.4.4. Emergency. Notwithstanding the foregoing, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may, at the sole cost and expense of the Company, with such notice, if any, as is practicable to the Company given the nature of the emergency, take such action as the Commissioner deems necessary to alleviate the emergency, including but not limited to removing, replacing, relocating or reinstalling all or any portion of the System and have repair and restoration work performed. The Commissioner may, if he or she determines that the System or any portion of the System can be safely reinstalled and maintained, require the Company to do so at its sole cost and expense.

2.5.5. No Waiver. Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of the City or of the City's right to require the Company to secure the appropriate permits or authorizations for Coordinated Franchise Structure installation.

2.5.6. No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property of the City. In the event that all or part of the Inalienable Property of the City is eliminated, discontinued, closed or demapped, all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property of the City, or any part thereof so eliminated, discontinued, closed or demapped, shall cease upon the effective date of such elimination, discontinuance, closing or demapping. If said elimination, discontinuance, closing or demapping is undertaken for the benefit of any private Person, the City shall make reasonable efforts to condition its consent to said elimination, discontinuance, closing or demapping on the agreement of said private Person to: (i) grant the Company the right to continue to occupy and use said Inalienable Property of the City; or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the Coordinated Franchise Structures.

2.6 Other Structures.

(a) The Company, on its own behalf and on behalf of its applicable licensors (each of whom has authorized in writing the following grant), will grant to the City such rights as may be necessary for the purposes of constructing, installing, operating, and maintaining street furniture and structures other than the Coordinated Franchise Structures as described in and subject to the provisions of Sections 2.6(b) and 2.6(c) below. Such grants shall be made and take effect at the earliest time necessary to effectuate the purposes of this Section 2.6.

(b) If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by the Company and/or Grimshaw for the Coordinated Franchise Structures, and if such street furniture is to bear advertising in any form (all such street furniture referred to as “Ad-Bearing Street Furniture”), the City shall (i) retain the services of Grimshaw and the Company to perform such creation and/or design of the Ad-Bearing Street Furniture and (ii) pay to the Company 5% of any advertising revenue (calculated in the same manner as Gross Revenues are calculated under this Agreement) that the City actually receives from the sale of advertising on such Ad-Bearing Street Furniture during such time as advertising is displayed on the Ad-Bearing Street Furniture (for the remainder of the Term of this Agreement or for 7 years, whichever is longer). In such event, the Company will be solely responsible for standard per-diem and expense reimbursement payments to Grimshaw. Payments due the Company pursuant to this paragraph shall be made reasonably promptly after the City’s receipt of the advertising revenue. Pursuant to a separate agreement between Grimshaw and the Company, which is attached hereto as Exhibit J (the “Grimshaw Agreement”), Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Ad-Bearing Street Furniture for its design services to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City); provided that the City shall be obligated to make all such payments in the event the third party fails to do so), or, if previously paid by the Company, reimbursed to the Company by the City.

(c) If, during the Term, the City desires to create or design street furniture (other than the Coordinated Franchise Structures) with designs that are substantially similar to those created by Company and/or Grimshaw for the Coordinated Franchise Structures, but such street furniture does not bear advertising in any form (“Non-Ad-Bearing Street Furniture”), then the City shall retain the services of Grimshaw to perform such creation and/or design of the Non-Ad-Bearing Street Furniture to perform creation and/or design services in connection therewith. Pursuant to the Grimshaw Agreement, Grimshaw has agreed to accept a royalty of 4% of the actual manufacturing costs of such Non-Ad-Bearing Street Furniture for such design services, plus Grimshaw’s standard per-diem and expense reimbursement, to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event that Grimshaw-designed Non-Ad Bearing Street Furniture is not actually installed, then in lieu of 4% of the

actual manufacturing costs, Grimshaw has agreed to accept its standard per-diem and expense reimbursement arrangements charged to its best customers to be paid by the City (or a third party designated by the City; provided that the City shall be obligated to make all such payments in the event the third party fails to do so). In the event any Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture (during the Term of this Agreement), the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) for the term specified therein. In the event Non-Ad-Bearing Street Furniture designed pursuant to this Section 2.6(c) subsequently becomes Ad-Bearing Street Furniture within the seven-year period immediately following the Term of this Agreement, the City shall be obligated to pay to the Company the payments contemplated in Section 2.6(b)(ii) from the time of such conversion through the remainder of that seven-year period.

(d) No street furniture created pursuant to the provisions of this Section 2.6 may be installed anywhere other than New York City without the express written permission of the Company and Grimshaw.

(e) The Company shall not have any obligations under Section 12.1.1, or Section 12.1.6 except as expressly set forth therein, to any Indemnitee for any Damages relating to the matters contemplated pursuant to this Section 2.6.

(f) The Company agrees that it will not agree to any amendment to Sections 4.2, 4.4, 5.1, 5.2, 7.4, the last two sentences of Section 10.1, and 12.13 of the Grimshaw Agreement, or to the defined terms used in those sections, that adversely affects the City's rights under any of those sections without the City's prior written consent.

SECTION 3

SERVICE

3.1 Operations.

3.1.1. Bus Shelters. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the Effective Date and thereafter throughout the Term the Company shall be responsible for the following cleaning and maintenance requirements:

(a) All maintenance of the Bus Shelters, including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse from the Bus Shelters, must occur on at least two nonconsecutive days each week; promptly clearing and removing debris, snow and ice from the ground in and around the Bus Shelters up to three feet on each side of the Bus Shelter and to the Curb on the Curb-side of the Bus Shelter (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover). The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. A copy of section 16-123 is attached hereto as Exhibit E.

(b) Inspections on at least two nonconsecutive days each week for damage, debris and unsafe conditions.

(c) Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.2. APTs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of an APT and thereafter throughout the Term the Company shall make the APTs available for use to the public at a nominal amount of \$0.25 per use between the hours of eight a.m. to eight p.m. daily, unless longer hours are otherwise directed by DOT in its reasonable discretion. Additionally, every APT must provide an emergency alarm system that allows for two-way communication for activation by the user and transmission to an operations center and the police and fire department. A smoke and fire alarm system with an automatic door opening device must be provided. An emergency access portal, in addition to the user door, must be provided to allow access to the interior by police or other emergency services. All APTs must contain a self-activating system that communicates contemporaneously all significant maintenance and operations problems to an operations center. The Company shall be responsible for the following cleaning and maintenance requirements:

(a) All maintenance of the APTs including, but not limited to, preventative maintenance, cleaning, removing graffiti, dirt, stickers and refuse, and restocking dispensers on a daily basis, promptly clearing and removing debris, snow and ice from the ground in and around the APTs up to three feet on each side of the APT and to the Curb on the Curb-side of the APT (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover), prompt response to self activating maintenance and operating warning systems, and ensuring comfortable interior temperature, ventilation and illumination between the hours of eight a.m. and eight p.m. daily unless longer hours are otherwise directed by DOT in its reasonable discretion. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time.

(b) Daily inspections of the APTs for damage, debris, and unsafe conditions.

(c) Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.3. PSSs. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a PSS and thereafter throughout the Term the Company shall be responsible for:

(a) All maintenance of the PSSs, including, but not limited to, preventative maintenance, cleaning, and removing graffiti, dirt, stickers and refuse (provided, however, that the Company shall not be responsible for the removal of refuse from free standing trash receptacles) on at least two nonconsecutive days of the week. Company shall remove snow as necessary to ensure continued access to the PSSs.

(b) Two inspections weekly on non-consecutive days of the PSSs for damage, debris, and unsafe conditions and for information kiosks, proper functioning of the information systems including any hardware and software.

(c) Inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) shall take place at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing.

3.1.4. Newsstands. As more fully set forth in the RFP, Proposal, BAFO, and Appendix C attached hereto, commencing on the installation of a Newsstand and thereafter throughout the Term:

(a) the Company shall be responsible for all maintenance of the exterior of the Replacement and New Newsstands, in cooperation with the Newsstand Operators including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse on the exterior of the Newsstand on at least two nonconsecutive days each week, promptly clearing and removing debris, snow and ice from the ground in and around the Newsstands up to three feet on each side of the Newsstand and to the Curb on the Curb-side of the Newsstand (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover) and daily inspections of the Newsstands for damage, debris, and unsafe conditions. The Company shall comply with the regulations for snow removal set forth in section 16-123 of the New York City Administrative Code as may be amended or modified from time to time. The Company shall also be responsible for inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing; provided, however,

(b) the Company shall not be responsible for (i) operating the Newsstand as a newsstand, (ii) cleaning Newsstand interiors, (iii) any condition on the exterior of the Newsstand that can be reasonably demonstrated to the satisfaction of DOT by the Company to have been caused solely by the Newsstand Operator provided, however, the City may require the Company to address any such condition at the City's sole cost and expense; (iv) the cost of any telephone, other communication, or electricity usage by a Newsstand Operator; or (v) any other utility cost that is not necessary to the franchise; and

(c) The Company is prohibited from deriving revenue from the operation of the Newsstand as a newsstand.

3.1.5. Other. The Company shall

(a) promptly and diligently, and in all cases within the minimum standards and timeframes set forth on Appendix C attached hereto, maintain, replace or repair any parts or components of the Coordinated Franchise Structures which are broken, deteriorated or damaged, regardless of the nature, cause or frequency of such conditions using materials and methods for such maintenance, repair and replacement that comply with all applicable federal, state and local laws, rules and regulations; and

(b) collect refuse or recyclables from any trash receptacles incorporated within or on Coordinated Franchise Structures, provided, however, that the Company shall not be responsible for the collection of refuse or recyclables from free standing trash receptacles installed as PSSs; and

(c) maintain and repair the sidewalk immediately under and three feet on each side of the Coordinated Franchise Structure in its proper condition, or, if necessary restored thereto at the Company's sole cost and expense. On the side of the Coordinated Franchise Structure nearest the Curb, Company's responsibility of maintenance and repair shall extend to, and include, the Curb. Notwithstanding the foregoing, the Company shall not be responsible for the creation of new pedestrian curbs within the area for which it is responsible for maintenance and repair; and

(d) provide and maintain adequate illumination for all Coordinated Franchise Structures, except trash receptacles and multi-rack newsracks, between dusk and daylight, or whenever artificial lighting is required for the protection, safety and welfare of the public (provided that where there is no existing electrical connection to a Bus Shelter location and where adding an electrical connection would be impractical because the necessary utility connections are unusually inaccessible, then the phrase "adequate illumination" shall mean courtesy lighting powered by solar panel); and

(e) remove broken glass, such that the structure is made safe, within 24 hours after the Company becomes aware of the problem, (the glass shall be replaced when practicable within 24 hours of the Company becoming aware of the problem but in no event later than 48 hours after becoming aware of the problem); and

(f) (i) complete repairs, replacement of parts, or removal of the structure or components thereof as necessary to ensure public safety of the Coordinated Franchise Structure, within 24 hours (subject to the time frames for the replacement of glass set forth in Section 3.1.5(e)) of the time the Company becomes aware of the problem, including without limitation by oral or written notice from DOT that repair, replacement or removal is necessary to ensure public safety. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 24 hours of receipt of permit, provided that the Company submits a complete application for such permit without delay. The Company shall make the structure safe while permits are pending; and

(ii) complete repairs, replacement of parts or removals not covered by the preceding clause (i), within 5 days of the time the Company becomes aware of the problem, unless a permit is required. Should a permit be required, the period for completion of such repair, replacement or removal shall be extended to within 5 days of receipt of permit, provided that the Company submits a complete application for such permit without delay; and

(g) If the Company removes a Coordinated Franchise Structure pursuant to Section 3.1.5(f) and such Coordinated Franchise Structure is to be replaced at the same location, such replacement will take place within the time frames set forth in Appendix G. If a permit is required, the time period shall be measured from the date of receipt of permit, provided that the Company submits a complete application for such permit without delay.

(h) If the Company fails to make replacement, complete repairs, or effectuate removals, as required herein, then DOT may, in addition to any other rights and remedies set forth in this Agreement, and without any further notice, make replacement and repairs, or effectuate removals, at the sole cost and expense of the Company.

3.2 Automatic Vehicle Location and Control System. The Company shall cooperate with DOT, MTA New York City Transit, or any other agencies to make the Bus Shelters available for the installation of wiring and equipment and the ongoing maintenance of AVLCS as such systems are developed. The Company is not responsible for the acquisition, installation, or maintenance of AVLCS equipment or for associated costs and will have no ownership interest in, or responsibility for, the AVLCS. However, the Company shall cooperate in its design, installation and maintenance and shall provide access to the Bus Stop Shelters to permit AVLCS installation and maintenance, and ensuring (assuming adequate instruction from all applicable governmental and quasi-governmental entities) that routine maintenance of the Bus Stop Shelters does not interfere with the AVLCS.

3.3 Electronic Inventory and Management Information System and Recordkeeping.

(a) Within 20 days of the Effective Date and thereafter throughout the Term, the Company shall at its sole cost and expense, and as more fully set forth in the RFP and Proposal, install and maintain an Electronic Inventory and Management Information System for the Coordinated Franchise Structures incorporating state-of-the-art technology. If at any time during the Term DOT determines in its reasonable discretion that EIMIS is failing to meet the requirements of the preceding sentence or is inadequate for its purposes then DOT may direct the Company to make such necessary modifications to EIMIS as it deems necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

(i) to the extent necessary the EIMIS, any part thereof, or any software necessary for its operation shall be installed and maintained by the Company on DOT provided personal computers providing for access by authorized DOT users. DOT shall make appropriate information technology personnel available to coordinate the installation of the EIMIS on its equipment and/or network as appropriate.

(ii) the EIMIS shall not run primarily on the DOT's equipment or network and DOT shall not be responsible for management, maintenance or assuring access to the system. All such requirements shall be the responsibility of the Company.

(iii) within 20 days of the Effective Date, the Company shall provide full access to the EIMIS (and training thereon reasonably satisfactory to DOT) to no less than ten authorized personnel of the City through the Internet using any standard Internet browser providing access to the World Wide Web pursuant to the license agreement between the Company and The Siroky Group Inc. attached hereto as Exhibit K. Such access shall be provided through standard Internet security protocols through a secure server. In addition, the City shall have access, through the same means, for a reasonable number of additional users to allow read-only access to conduct searches of the EIMIS and to allow 311 operators (or operators under a successor system) to enter and review the status of complaints received.

(iv) the EIMIS shall provide at minimum: two-way information sharing between the City and the Company for the recording and processing of complaints from the public and the City, plotting street furniture structures on city maps, graphic navigation, color coding of structures, incident recording and reports, financial information regarding costs, revenues, advertising value by location and structure type, advertising panels displaying Public Service Advertising and NYCMDC Advertising, back-up maintenance and data protection protocols, and a help-menu function for assisting with system operation. The City shall make appropriate 311 personnel available to coordinate the creation of an interface between EIMIS and the 311 system.

(v) the EIMIS shall be available to authorized users 24 hours per day, seven days a week. In the event of lost access, it shall be restored within six hours of notification by the City.

(b) Commencing on the Effective Date and thereafter throughout the Term, the Company shall maintain records, in a form satisfactory to the Commissioner and which shall be in a format which is downloadable to commercially available software, demonstrating compliance with the maintenance and operating requirements set forth in Section 3.1 herein, Appendix C attached hereto and the RFP, Proposal and BAFO. Such records shall be available for inspection by the City at all times upon reasonable written advance notice and copies thereof, whether in paper, electronic or other form, shall be provided to DOT promptly upon request. Not later than 30 calendar days after the Effective Date, the Company shall submit to DOT a detailed description of all proposed recordkeeping procedures that will document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto. If DOT determines in its reasonable discretion that such proposed recordkeeping procedures are insufficiently detailed or otherwise unlikely to adequately document compliance with the minimum service operating procedures set forth in Section 3.1 herein and Appendix C attached hereto, DOT may direct the Company to adopt such modifications to the proposed recordkeeping procedures as it deems reasonably necessary, and such modifications shall be promptly implemented by the Company at its sole cost and expense.

(c) The Company shall be permitted, at any time during the Term, to replace the software and related components then constituting the EIMIS with alternative software and related components (which may be proprietary to the Company or an Affiliate of the Company), at its sole cost and expense, provided that the features of the replacement EIMIS are substantially equivalent or superior to the EIMIS being replaced. In such event, the Company shall grant to the City all necessary licenses and sublicenses as contemplated by Section 2.4.2(b), and shall escrow or cause to be escrowed the source code as required by Section 2.4.2(e). In addition, if such software is proprietary to the Company or an Affiliate of the Company, the Company shall grant to the City all necessary licenses to operate the EIMIS as contemplated by this Agreement following the Term, on a perpetual, royalty-free basis. Furthermore, all right, title, and interest in all data collected by the EIMIS and all other information necessary for the City to maintain and operate the Coordinated Franchise Structures will become the sole and exclusive property of the City without any compensation to the Company after the termination or expiration of this Agreement and the Company and its software vendor shall return any and all such data to the City in a format accessible and usable by the City without the use of the Company's and/or software vendor's software; provided, however, that the Company may retain and use for its own business purposes a copy of such data, and the City shall grant to the Company any necessary license in this regard.

3.4 Performance Standards and Corrective Actions.

(a) If the Company has failed to comply with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, then the Company shall pay liquidated damages as set forth on Appendix A attached hereto.

(b) If notwithstanding compliance with the maintenance and operating requirements set forth in Section 3.1 herein and Appendix C attached hereto, complaints that the Coordinated Franchise Structures are unsafe or unclean or in disrepair increase by 20% or more during any six month period as compared to the previous six month period, the Commissioner may require the Company, at its sole cost and expense, to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as he or she deems appropriate to ensure that the Coordinated Franchise Structures are maintained in a clean and safe condition and in good repair.

(c) In addition to any other term, condition or requirement of this Agreement, except and to the extent caused by relocation requirements imposed by the City, the Company shall not have more than ten percent of any one type of its Coordinated Franchise Structures out of service at any given time; provided that the foregoing requirement with respect to APTs shall be twenty percent and shall not be in effect until at least five APTs have been installed by the Company. Failure to comply with this Section 3.4(c) shall result in the assessment of liquidated damages as set forth in Appendix A attached hereto.

3.5 Complaint Handling Procedures.

(a) Within 30 days after the Effective Date of this Agreement, subject to the reasonable approval of DOT, the Company shall establish and maintain prompt and

efficient complaint handling procedures for handling complaints received directly from the public and for handling complaints forwarded to the Company by the City, which procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section 3.5. Such procedures shall be set forth in writing and copies thereof shall be maintained at the Company's office and shall be available to the public and the Commissioner upon request.

(b) All Coordinated Franchise Structures shall have on them a conspicuously posted notice advising the public that they may direct complaints and comments to 311.

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

(d) The Company shall record all complaints received on the telephone line, through EIMIS, or from any other source in the manner set forth in Section 3.6 hereof and shall diligently and promptly investigate each complaint. If such complaint is reasonably determined to be accurate, the condition shall be cured within the timeframes set forth in Appendix C attached hereto.

(e) The Company shall provide to DOT a reasonable and adequate explanation describing corrective steps taken by the Company in response to any complaint or reasons why no corrective steps were taken.

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

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

3.7 Americans with Disabilities Act. In connection with its obligations under this Agreement the Company, at its sole cost and expense, agrees to comply with the applicable provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. 12132 (“ADA”), the Architectural and Transportation Barriers Compliance Board Guidelines, and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

3.8 No Discrimination. The Company shall not discriminate in the provision of Services on the basis of race, creed, color, national origin, sex, age, handicap, marital status, or real or perceived sexual orientation.

3.9 Continuity of Service. In the event the Company, with the consent of the City as required and in accordance with the provisions of Section 11 hereof, sells or otherwise transfers the System, or any part thereof, or Control thereof to any Person, or to the City or the City’s assignee, or in the event the franchise terminates, the Company shall transfer the System, or such relevant part, in an orderly manner in order to maintain continuity of Service.

SECTION 4

ADVERTISING

4.1 Introduction.

(a) In consideration of the Company’s performance of the Services, and payment by the Company of the Franchise Fees, the City hereby grants to the Company the exclusive right throughout the Term to sell and place advertising on the Coordinated Franchise Structures that are the subject of this Agreement and subject to the specifications, terms, reservations and restrictions of this Agreement, and to collect revenues generated by such advertising.

(b) The Company expressly acknowledges that it is receiving a non-exclusive franchise and that the City, either itself or through third parties, may design, construct, install, operate and maintain street furniture, including, but not limited to, bus stop shelters, automatic public toilets, trash receptacles, multi-rack news racks, information/computer kiosks, and newsstands, that contain advertising on them from which the Company would not be entitled to collect revenue.

4.2 Defined Terms. For the purposes of this Section 4, the following terms, phrases, words and their derivations shall have the meaning set forth herein, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in Section 1.

(a) “advertising” shall mean any printed matter or electronic display including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual message or information, but in no event shall include the textual information that is required to be posted on a Coordinated Franchise Structure by federal, state and local law, rule or regulation, or this Agreement.

(b) “alcohol advertising” shall mean advertising, the purpose or effect of which is to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or to promote the use or sale of an alcohol product.

(c) “NYCMDC Advertising” shall mean advertising reasonably determined by NYCMDC to be within its corporate purpose including, but not limited to, commercial advertisements, advertising promoting New York City, and public service advertisements, but NYCMDC Advertising shall not include “spot market advertising”.

(d) “tobacco advertising” shall mean advertising, which bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance which contains tobacco, including, but not limited to, cigarettes; cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

(e) “Olympic Period” shall mean the period starting four weeks prior to the commencement of the Olympics and ending two weeks after the end of the Olympics.

(f) “prohibited advertising” shall mean advertising that is false and/or misleading, which promotes unlawful conduct or illegal goods, services or activities, or that is otherwise unlawful or obscene as determined by DOT, including but not limited to advertising that constitutes public display of offensive sexual material in violation of Penal Law 245.11.

(g) “Public Service Advertising” shall mean 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 DOT in its sole discretion.

(h) “spot market advertising” shall mean advertising sold by NYCMDC to commercial advertisers (whether for cash, trade or barter) in a manner unrelated to any broader sponsorship or partnership arrangement between such advertiser and NYCMDC or the City and unrelated to any event, sponsorship or support efforts, or intergovernmental agreements of NYCMDC or the City. For the purposes of this definition of “spot market advertising”, intergovernmental agreements shall mean agreements between the City and/or NYCMDC and other governmental or quasi-governmental entities.

(i) “electronic cigarette advertising” shall mean advertising of an electronic device that delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not

include any product approved by the food and drug administration for sale as a drug or medical device.

4.3 Advertising Specifications.

4.3.1. Generally. Advertising shall be permitted on the Coordinated Franchise Structures except that advertising shall not be permitted on the interior of Newsstands or APTs, or as otherwise prohibited herein. Advertising is not permitted on PSSs except that the name or logo of a sponsoring entity shall be permitted on the exterior of trash receptacles and information/computer kiosks. No advertising shall be permitted on APTs in parks, except that advertising shall be permitted on APTs located on sidewalks adjacent to parks. The design, dimensions, and location of advertising on all Coordinated Franchise Structures shall be in accordance with the terms of this Agreement including Appendix D. The Company shall be entitled to utilize the full amount of advertising space set forth on Appendix D (notwithstanding that the dimension specifications on Appendix D are expressed as “maximum advertising”).

4.3.2. Dimensions/Specifications. All advertising, or the name or logo of a sponsoring entity, shall contain the features and conform to the basic dimensions set forth in Appendix D attached hereto, and made part hereof, provided, however, that modifications to advertising dimensions may be necessitated by location specific modifications to individual Coordinated Franchise Structures as set forth in Section 2.4.5 herein. Notwithstanding any provision of this Agreement to the contrary, except for the modifications at individual locations contemplated in the proviso to the immediately preceding sentence, the Company shall not be required to modify the basic dimensions set forth on Appendix D attached hereto.

4.4 Restrictions.

4.4.1. Prohibitions. Tobacco and electronic cigarette advertising and prohibited advertising is not permitted. Alcohol advertising within 250 feet of any school, day care center, or house of worship is not permitted.

4.4.2. Other Media. Electronic media will be permitted on a case by case basis and, except for backlighting of printed posters (the Company shall be permitted to use backlighting of advertising on Coordinated Franchise Structures except where prohibited by rules or regulations of Landmarks), will be subject (except as may otherwise be permitted by the City) to the applicable zoning regulations for property adjacent to the site, and shall be subject to all applicable approvals by City agencies. Audio advertising will not be permitted, provided, however, an audio component used in connection with an information/computer kiosk may be permitted in the sole discretion of DOT. The Company shall be permitted to install 250 Scrollers on Coordinated Franchise Structures when and where the Company deems most advantageous in its sole discretion. Any other multimedia, or other non traditional form or type of advertising, including additional Scrollers, shall be permitted only on a case by case basis, as determined by the Commissioner and shall be subject to any applicable approvals by City agencies.

4.4.3. Viacom Outdoor Agreement. The Company has acknowledged receipt from the City of the Viacom Outdoor Agreement and has agreed that it has taken such actions as

are reasonably necessary to comply with the revenue sharing obligations set forth in Section 4.10 therein.

4.4.4. Public Service Advertising. In each year of the Term, the Company shall provide 2.5% of the total number of panels then available to the Company, to be evenly distributed among the various Coordinated Franchise Structures and evenly distributed throughout the City, at no cost to the City or NYCMDC for Public Service Advertising. The first panel locations for Public Service Advertising shall be as set forth in Exhibit H attached hereto which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided for Public Service Advertising during the Term in accordance with this Section 4.4. The Company shall assist DOT and/or NYCMDC in its efforts to inform City agencies of the availability of such Public Service Advertising and in the coordination of requests by such agencies for the use of such space. NYCMDC will coordinate with City agencies for use of the Public Service Advertising panels. The City agrees to consider, in good faith, any proposal made by the Company to postpone the use of the Public Service Advertising space provided for in this Section, or to return that space to the Company, during times of full occupancy for other advertising campaigns in order to maximize revenue generation opportunities; provided that nothing in this sentence shall be interpreted to require the City to forego its rights to receive the Public Service Advertising space that it is entitled to pursuant to this Section.

4.4.5. NYCMDC Advertising. In each year of the Term, in addition to the advertising inventory provided for Public Service Advertising pursuant to Section 4.4.4 herein, the Company shall provide advertising space to NYCMDC for NYCMDC Advertising at no cost to the City or NYCMDC consisting of 20% of the total number of panels then available to the Company under this Agreement. Such space shall be distributed fairly throughout the City and shall represent a corresponding percentage of the value of the advertising space available to the Company under this Agreement as set forth in Exhibit H attached hereto, which Exhibit shall be amended as necessary to reflect changes and additional panel locations to be provided to NYCMDC during the Term in accordance with this Section 4.4.

4.4.6. New Structures, Other.

(a) No later than 90 days prior to the expiration of each year of the Term, additional panels that have become available to the Company in the preceding 12 months shall be allocated by mutual agreement between the Company and NYCMDC as follows for the following year of the Term:

(i) 2.5% of such new panels shall be allocated to Public Service Advertising to be evenly distributed as to value and geography among the newly available panels; and

(ii) 20% of such new panels shall be allocated to NYCMDC Advertising to be evenly distributed as to value and geography among the newly available panels.

(b) The Company agrees to consider, in good faith, any proposal made by DOT or NYCMDC to exchange locations of the NYCMDC Advertising inventory previously agreed upon. Notwithstanding the preceding, the City shall have a yearly option, to be exercised on or before the 90th day prior to the expiration of each year of the Term (subject to the Company's reasonable approval as to locations, based on availability), to exchange with the Company no more than 5% of the locations (provided that no more than 1% may be exchanged per borough in any given year and all such exchanges shall be within the same borough) of the NYCMDC Advertising inventory previously agreed upon on a comparable value basis, effective the following year of the Term.

(c) The administration of NYCMDC Advertising and Public Service Advertising, including but not limited to posting, planning, installation, maintenance, removal and reporting shall be performed by the Company at no cost to the City or NYCMDC (except that the advertising posters shall be provided to or at the direction of the Company at no expense to the Company), shall be implemented in accordance with the same standards and best practices and utilization of the same materials and methods as used by the Company for displays of its paying commercial clients, which shall include, at a minimum: sufficient lead time for planning, a copy change every four weeks, location lists with spotted maps provided to NYCMDC and DOT 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 NYCMDC and DOT within 6 weeks of the posting completion. In programming the NYCMDC Advertising and Public Service Advertising, NYCMDC shall provide the Company with a monthly inventory of the NYCMDC Advertising and Public Service Advertising locations and the advertising campaign requested at each location.

(d) For the purposes of this Section 4.4.6 an exclusive advertising campaign shall be any campaign whereby the Company agrees to limit its rights to enter into advertising agreements with entities that compete with a particular advertiser. If the Company wishes to enter into an exclusive advertising campaign that would limit not just the Company's rights but also NYCMDC's rights under this Agreement to use panels for NYCMDC Advertising, then provided the Company has given NYCMDC the notice described below in this paragraph NYCMDC agrees to cooperate in good faith to address any potential issues that may arise out of an accommodation by NYCMDC 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. NYCMDC has no obligation beyond such good faith cooperation to accommodate any such exclusivity commitment sought by the Company. The notice to NYCMDC 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.

4.4.7. Alternative Compensation. In addition to the advertising panels provided for Public Service Advertising and NYCMDC Advertising, the Company shall be required to provide to NYCMDC certain advertising space pursuant to Section 9.4 hereof.

4.4.8. Olympics. Should any Olympics be awarded to the City during the Term:

(a) the City, at its sole discretion, may require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period;

(b) the City, at its sole discretion, may impose restrictions on the parties who may advertise on the Coordinated Franchise Structures and/or the nature of the advertising during the Olympic Period;

(c) the City or its designated representative may assume control of advertising sales and placement during the Olympic Period;

(d) the Company shall continue to comply with all other terms of this Agreement, except as expressly set forth herein.

4.4.9. Removal. Any material displayed or placed in violation of Section 4 shall be removed by the Company within 48 hours of notice from DOT and any material displayed or placed in violation of Section 4.4.1 shall be removed by the Company within 24 hours of notice from DOT. If the Company fails to do so, the City shall have the right to remove such material without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work.

4.5 Maintenance of Advertising.

(a) The Company shall maintain the advertising on Coordinated Franchise Structures in a clean and attractive condition at all times and be responsible for the cost of any power consumption used, electrical or otherwise, including the cost of any power consumption used in connection with NYCMDC Advertising and Public Service Advertising.

(b) All advertising display panels must be safe, secure and sturdy, and shall be maintained as such throughout the Term. In the event the Commissioner deems a display panel or any part thereof to be unsafe, insecure or not sturdy, or to otherwise pose a threat to public safety, the Company shall remove such panel without delay upon receipt of notice from DOT. If the Company fails to do so, the City shall have the right to remove such panel without any liability to the Company and the Company shall pay to the City the costs incurred in connection with such removal and for any other costs or damages incurred by the City in connection with such removal including, but not limited to repair and restoration costs, arising out of the performance of such work. In the event any panel is removed in accordance with this Section 4.5, the Company shall take all steps necessary to maintain the full function of the structure. A replacement panel may be installed, at the Company's sole cost and expense, only with the express, prior written approval of the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed.

4.6 Future Compliance. The Company shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted with respect to advertising.

4.7 Change in Local Law. If there is a change in local New York City law, rule or regulation restricting alcohol advertising (a “Local Alcohol Advertising Restriction”) such that the Company can demonstrate to the City a loss in revenue, then:

(a) If the Company can show that its Gross Revenues have declined in any or all of the eight quarters beginning in the quarter in which the restriction imposed by the Local Alcohol Advertising Restriction took effect (the “Restriction Effective Date”) (as compared with the Company’s Gross Revenues during the corresponding quarter of the 12 month period prior to the Restriction Effective Date), then the Cash Component applicable to any such quarters shall be reduced by the product of (i) .5 and (ii) the decline in the Company’s Gross Revenues attributable to the Local Alcohol Advertising Restriction during such applicable quarter. If the reduction contemplated by the preceding sentence is greater than the Cash Component applicable to such quarter pursuant to Section 9.5 hereof (after all other adjustments pursuant to Section 9 hereof), then all subsequent payments of the cash portion of the Franchise Fee shall be reduced until the full amount of the adjustment calculated in accordance with this Section 4.7(a) has been deducted, provided, however, that in no event shall any reductions be rolled over for more than seven quarters.

(b) The adjustments set forth in Section 4.7(a) shall be in the nature of a deferral, not an offset. Accordingly, the Company shall repay to the City all amounts (without interest) deducted in accordance with Section 4.7(a) in 12 equal quarterly payments beginning on the date of the first regularly scheduled payment under Section 9.5 occurring after the last deferral allowed in Section 4.7(a) hereof.

(c) Notwithstanding the foregoing, this Section 4.7 shall have no force or effect if there is a Local Alcohol Advertising Restriction after the 17th year of the Term. If any of the payments to be made to the City pursuant to Section 4.7(b) above would, by its terms, be payable after the expiration of this Agreement, then the balance of such amount deferred shall be paid no later than 30 days after start of the last quarter of the last year of the Term. In the event that this Agreement is terminated in accordance with its terms, Company shall pay back any amounts deferred within 30 days of such termination.

For the avoidance of doubt, an example of the calculation of the adjustments to the Franchise Fee contemplated by this Section 4.7 is set forth on Schedule 4.7 to this Agreement.

(d) Any adjustment to the Cash Component made pursuant to this Section 4.7 shall not be taken into consideration for purposes of comparing the Cash Component to 50% of Gross Revenues in accordance with Sections 9.2, 9.3 and 9.5.

SECTION 5

CONSTRUCTION AND TECHNICAL REQUIREMENTS

5.1 General Requirements. The Company agrees to construct and install the Coordinated Franchise Structures in accordance with the Plans and Specifications and each of the terms set forth in this Agreement governing construction and installation of the Coordinated Franchise Structures, the siting criteria in the RFP, the Proposal and BAFO.

5.2 Identification of Coordinated Franchise Structure. The Company shall have displayed on each Coordinated Franchise Structure a unique identifying number (which shall be tracked via EIMIS) and a visible sign that shall comply with Section 3.5(b) herein.

5.3 Quality. The Company agrees to comply with all applicable sections of the building, plumbing and electrical codes of the City and the National Electrical Safety Code and where the nature of any work to be done in connection with the installation, operation and maintenance or deactivation of the System requires that such work be done by an electrician and/or plumber, the Company agrees to employ and utilize only licensed electricians and plumbers. All such work shall be performed using quality workmanship and construction methods in a safe, thorough and reliable manner using state of the art building materials of good and durable quality and all such work shall be done in accordance with all applicable law, rules and regulations. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, is harmful to the public health or safety, then the Company shall, at its sole cost and expense, promptly correct all such conditions, provided, however, that to the extent the harmful condition was caused by the City's gross negligence or intentional misconduct, the Company shall correct such harmful condition at the City's sole cost and expense.

5.4 Structures. In connection with the installation, operation, and maintenance of any and all Coordinated Franchise Structures, the Company shall, at its own cost and expense, take commercially reasonable measures to protect any and all structures belonging to the City and all designated landmarks, and all other structures within any Historic District from damage that may be caused to such structures and landmarks as a result of the installation, operation or maintenance performed thereon by, or on behalf of the Company. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure, designated landmarks, structures in an Historic District or any part of the Inalienable Property of the City that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

5.5 No Obstruction.

In connection with the installation, operation, and maintenance of the Coordinated Franchise Structures, the Company shall use commercially reasonable efforts to minimize the extent to which the use of the streets or other Inalienable Property of the City is disrupted, and shall use commercially reasonable efforts not to obstruct the use of such streets and/or

Inalienable Property of the City, including, but not limited to, pedestrian travel. Sidewalk clearance must be maintained at all times so as to insure a free pedestrian passage in accordance with Appendix 3 of the RFP and any applicable laws, rules and regulations unless prior consent has been obtained from the Commissioner in his/her sole discretion.

5.6 Safety Precautions. The Company shall, at its own cost and expense, undertake appropriate efforts and any other actions as otherwise directed by DOT to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the Curb, and suitable and sufficient lighting.

5.7 Power Outages. In the event that any type of power outage occurs, to the extent the source of such outage is under the direct and exclusive control of the Company, the Company shall restore service within 24 hours at all Coordinated Franchise Structure locations so affected. If the source of a power outage is not under the direct and exclusive control of the Company, the Company shall undertake commercially reasonable efforts to restore service at all affected Coordinated Franchise Structure locations and shall notify the responsible party and the Commissioner within 24 hours.

SECTION 6

SECURITY FUND

6.1 General Requirement. The Company shall, in accordance with Section 2.2 herein, deposit with DOT a security deposit (the "Security Fund") in the amount of \$5,000,000.00, which may consist of a certified check, bank check or wire transfer payable to the "City of New York," or other cash equivalent acceptable to DOT. Interest shall accrue in an interest bearing bank account for the benefit of the Company and shall be paid annually to the Company on each anniversary of the Effective Date.

DOT shall be entitled, as authorized by law, to charge and collect from the Company for any reasonable administrative expenses, custodial charges, or other similar expenses, as may result from the operation of this Security Fund.

The Company shall maintain \$5,000,000 in the Security Fund at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period), unless within such one year period DOT notifies the Company that the Security Fund shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Security Fund provides security; provided that only such portion of the Security Fund as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Any amounts remaining in the Security Fund that are not being retained in accordance with this paragraph shall be promptly returned to the Company.

6.2 Scope of Security Fund. The Security Fund shall secure the City up to the full face amount of such Security Fund for any purpose set forth in Section 6.3 hereof.

6.3 Security Fund Purposes. The Security Fund shall serve as security for the faithful performance by the Company of all terms, conditions and obligations of this Agreement, including, but not limited to:

(a) any loss or damage to any municipal structure or Inalienable Property of the City, for which the Company would be responsible under this Agreement, during the course of any installation, operation, and maintenance of the System;

(b) any costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement;

(c) the removal of all or any part of the System, for which the Company would be responsible under this Agreement, from the Inalienable Property of the City, pursuant to this Agreement;

(d) any expenditure, damage, or loss incurred by the City resulting from the Company's failure to comply with any rules, regulations, orders, permits and other directives of the City and the Commissioner issued pursuant to this Agreement; and

(e) the payment of any other amounts which become due to the City from the Company pursuant to this Agreement, including, but not limited to payment of compensation set forth in Section 9 hereof and liquidated damages.

6.4 Withdrawals From or Claims Under the Security Fund. In accordance with Section 6.3 herein, this Section 6.4, and Section 13 hereof, DOT may make withdrawals from the Security Fund of such amounts as are necessary to satisfy (to the degree possible) the Company's obligations under this Agreement that are not otherwise satisfied and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to satisfy its obligations. DOT may not seek recourse against the Security Fund for any costs, losses or damages for which DOT has previously been compensated through a withdrawal from the Security Fund, recourse to the Performance Bond or the Guaranty, draw down against the Letter of Credit, or otherwise through payment or reimbursement by the Company.

6.5 Use. In performing any of the Company's obligations under this Agreement using the Security Fund the City, if applicable, shall obtain competition to the maximum extent practicable under the circumstances.

6.6 Notice of Withdrawals. Within 48 hours after any withdrawals from the Security Fund, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any withdrawals by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The withdrawal of the amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Company.

6.7 Replenishment. Until the expiration of one year after the end of the Term or during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c),

within 30 days after receipt of notice (the “Replenishment Period”) from DOT that any amount has been withdrawn from the Security Fund as provided in this Section 6, the Company shall restore the Security Fund to the amount specified in Section 6.1 herein, provided that the Company is not contesting, in good faith, the withdrawal. If the Company fails to replenish the appropriate amount within the Replenishment Period and does not contest the withdrawal before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the Replenishment Period until such replenishment is made. If the withdrawal is contested, then upon the entry of a final, non-appealable, court order or judgment determining the propriety of the withdrawal, DOT, or the Company as applicable, shall refund or replenish the appropriate amount to the Security Fund. If either DOT or the Company has not refunded or made the required replenishment to the Security Fund within 30 days of the entry of a final non-appealable court order or judgment, interest on the amount not refunded or replenished shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the Replenishment Period to the date the applicable amounts are actually refunded or replenished. Such interest shall be payable to the party entitled thereto.

6.8 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Security Fund required by this Section 6 subject to the limitations set forth in the last sentence of Section 6.4 and in Section 13.5(b).

SECTION 7

PERFORMANCE BOND AND LETTER OF CREDIT

7.1 General Requirement.

(a) The Company shall, in accordance with Section 2.2 herein, provide DOT with a surety performance bond (the “Performance Bond”) in the amount of \$5,000,000 and an unconditional and irrevocable Letter of Credit (the “Letter of Credit”) in the amount of \$96,000,000 and such Performance Bond and Letter of Credit shall be in place (subject to the reductions in the amount of the Letter of Credit contemplated in Section 7.4 and substitution contemplated in Section 7.1(b) or 7.2(c)) at all times during the Term plus one year after the end of the Term (provided that such one year period shall not start until the end of any holdover period) unless within such one year period DOT notifies the Company that the Performance Bond or Letter of Credit shall remain in full force and effect during the pendency of any litigation or the assertion of any claim which has not been settled or brought to final judgment and for which the Performance Bond or Letter of Credit provides security; provided that only such portion of the Performance Bond or Letter of Credit as shall represent the amount actually subject to such outstanding litigation or other claim shall be retained and only until such time as the litigation or other claim is resolved. Within 20 days’ notice from the City of the amount subject to such outstanding litigation or claim, the Company shall provide the City with a replacement Performance Bond and/or Letter of Credit in such amount to be retained in accordance with the provisions of this Section 7. To the extent that the claim can be satisfied

from the Letter of Credit or the Performance Bond, the City shall elect either the Letter of Credit or the Performance Bond.

(b) If at any time during the Term the Performance Bond is (i) to be cancelled by the surety company, (ii) expires by its terms and the surety gives notice 90 days prior to such expiration that the Performance Bond will not remain in effect, or (iii) is no longer in effect for any reason, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, provide DOT with a replacement performance bond acceptable to DOT (which Performance Bond shall be acceptable if in the form of Exhibit F and the surety is acceptable to DOT). If the Company cannot obtain a replacement because it is not then commercially available, then the Company shall, prior to such cancellation or expiration, or as soon thereafter as reasonably practicable if prior notice by the surety is not given, substitute a Letter of Credit for such Performance Bond for up to three months. If a Performance Bond is still not available 30 days before the end of such 3 month period, the Company shall increase the Security Fund by the full face amount of the Performance Bond before the expiration of the substitute Letter of Credit in lieu of maintaining a Performance Bond in accordance with this Section 7. The circumstances described in this paragraph shall not constitute a breach or default under this Agreement by virtue of the Company having failed to maintain the Performance Bond in accordance with the terms of this Agreement provided that the Company timely complies with the obligations to substitute the Letter of Credit and increase the Security Fund in accordance herewith. The Company shall provide proof that the Performance Bond is in effect for the full face value on or about each anniversary of the Effective Date or upon reasonable demand by DOT.

7.2 Form.

(a) The Performance Bond shall be in a form and from an institution reasonably satisfactory to the City provided that a form of Performance Bond that matches the form set forth in Exhibit F shall be deemed satisfactory to the City. The “City of New York acting by and through the Department of Transportation” shall serve as the sole obligee under the Performance Bond. The attorney-in-fact who signs the performance bond must file with the bond a certified copy of his/her power of attorney to sign the bond.

(b) The Letter of Credit, prior to the reduction to \$5 million as contemplated in Section 7.4 below, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IA shall be deemed satisfactory to the City (“Pre-Build Out L/C”). The Letter of Credit, once the amount is reduced to \$5 million and thereafter for the remainder of the Term, shall be in a form and issued by a bank reasonably satisfactory to the City provided that a form of Letter of Credit that matches the form set forth in Exhibit IB shall be deemed satisfactory to the City (“Post Build-Out L/C”). The “City of New York acting by and through the Department of Transportation” shall be named as a beneficiary in both the Pre Build-Out L/C and the Post Build-Out L/C. The original Letter of Credit shall be deposited with DOT and DOT shall serve as the holder of such letter, The Post Build-Out L/C shall contain the following endorsement:

“It is a condition of this Letter of Credit that it shall be deemed automatically renewed for consecutive additional periods of one year each from the present and each future expiration date hereof unless and until at least ninety (90) days prior to any such date the Bank shall notify the Beneficiary and the Principal in writing of its intention not to renew this Letter of Credit for any such additional period.”

(c) In the event that the Company intends to change the issuing bank of the Post Build-Out L/C, the Company shall provide written notification to the City of such proposed change, including the name of the proposed new issuing bank. Upon receipt of such notification, and provided that the new issuing bank is reasonably acceptable to the City, the City and the Company shall sign a written communication to the issuing bank of the then existing Post Build-Out L/C instructing such bank not to renew the existing Post Build-Out L/C and allow it to expire in accordance with its terms. In the event that the Company does not provide a replacement Post Build-Out L/C before the existing Post Build-Out L/C has thirty (30) days to run before it is set to expire, the City may draw down on the Post Build-Out L/C in accordance with Section 7.5(b) of this Agreement.

7.3 Scope.

(a) The Performance Bond shall serve as security for any loss or damage, in kind replacement, and/or repairs of, Sidewalks and Historic Pavement during the course of any installation, operation, maintenance or removal, of all or any part of the System by the Company.

(b) The Letter of Credit shall serve as security for the Company’s performance under this Agreement as such performance is described in Section 6.3 herein.

7.4 Letter of Credit Reduction. The amount of the Letter of Credit required to be provided by the Company shall be reduced on a yearly basis on or about the 90th day after each anniversary of the Effective Date, by an amount equal to the number of Coordinated Franchise Structures for which the Installation Date has occurred during the preceding year of the Term, multiplied by the dollar amount applicable to each such Coordinated Franchise Structure set forth in Schedule 7.4, provided that in no event shall the amount of the Letter of Credit be reduced below \$5,000,000. The Company shall deliver to the City a replacement Letter of Credit on or about each such 90th day following the anniversary of the Effective Date in a face amount calculated in accordance with this Section 7.4.

7.5 Drawdown Against the Letter of Credit.

(a) In accordance with Section 7.3 herein, this Section 7.5, and Section 13 hereof, DOT may drawdown against the Letter of Credit such amounts as are necessary to satisfy (to the degree possible) the Company’s obligations under this Agreement not otherwise met and to- reimburse the City for costs, losses or damages incurred as the result of the Company’s failure(s) to meet its obligations. DOT may not seek recourse against the Letter of Credit for any costs, losses or damages for which DOT has previously been compensated

through a drawdown against the Letter of Credit, recourse to the Performance Bond or the Guaranty, withdrawal from the Security Fund or otherwise through payment or reimbursement by the Company.

(b) In addition to its right to drawdown on the Letter of Credit for any of the reasons set forth in Section 6.3 hereof, DOT may drawdown in full on the Letter of Credit at any time such Letter of Credit has less than thirty (30) days to run before it is scheduled to expire and no replacement or renewal Letter of Credit has been given in its place. In the event of a drawdown for such reason, DOT will hold the proceeds as cash security (paying to itself any interest earned) in lieu of a Letter of Credit (with DOT having the right to make withdrawals for the same purposes as drawdowns are permitted on the Letter of Credit) until a replacement Letter of Credit is put in place, at which time such drawdown proceeds will be returned to the Company less any proper withdrawals and any reasonable transaction expenses. All amounts so held in cash will be subject to annual reduction in accordance with Section 7.4, and the excess cash held by the City following such annually scheduled reduction shall promptly be returned to the Company. In the event of the drawdown contemplated in this Section 7.5(b), no breach or default shall exist under this Agreement by virtue of the Company having failed to maintain the Letter of Credit in accordance with the terms of this Agreement. In the event of a drawdown on the Letter of Credit as contemplated by this Section 7.5(b), and until such time as a replacement Letter of Credit is obtained in accordance with this Section 7.5(b), the replenishment obligations of the Company with respect to the moneys held by the City following such drawdown as cash security shall correspond to the replenishment obligations (and rights, including the Company's right to contest any withdrawals therefrom) of the Company applicable to the Security Fund under Section 6.7.

7.6 Use. In performing any of the Company's obligations under this Agreement using the Letter of Credit the City shall obtain competition, if applicable, to the maximum extent practicable under the circumstances.

7.7 Notice of Drawdown. Within 48 hours after any drawdown against the Letter of Credit or any claim with respect to the Performance Bond, DOT shall notify the Company of the date and amount thereof, provided, however, that DOT shall not make any drawdowns or claims by reason of any breach for which the Company has not been given notice and an opportunity to cure in accordance with this Agreement. The drawdown against the Letter of Credit or a satisfied claim with respect to the Performance Bond shall constitute a credit against the amount of the applicable liability of the Company.

7.8 Replenishment. Until the expiration of one year after the Term, during any holdover period, and subject to the provisions of Sections 13.5(b) and 13.7.1(c), within 30 days after receipt of notice (the "L/C Replenishment Period") from DOT that at least \$500,000 (cumulatively or in a single instance) has been drawn down against the Letter of Credit, the Company shall obtain a replacement or additional letter of credit such that the total amount available under the letter(s) of credit obtained shall be restored to the amount required in this Section 7, provided that the Company is not contesting, in good faith, the drawdown, or any portion thereof (provided that the Company shall replenish any uncontested portions if greater than \$500,000). Nothing herein shall prohibit the Company from contesting any drawdown,

including any drawdown less than \$500,000. The amount referenced in the immediately preceding sentence shall be reduced proportionately in accordance with the Letter of Credit reductions contemplated by Section 7.4, to a minimum of \$100,000. If the Company fails to obtain a replacement or additional letter of credit in the appropriate amount within the L/C Replenishment Period and does not contest the drawdown before a court of competent jurisdiction, then the Company shall pay interest accruing on that amount at the rate specified in Section 9.12 hereof from the completion of the L/C Replenishment Period until such replacement or additional letter of credit is obtained. If the drawdown is contested, then upon the entry of a final non-appealable court order or judgment determining the propriety of the drawdown, DOT, or the Company as applicable, shall refund or replenish the appropriate amount, or obtain a replacement or additional letter of credit, as appropriate. If either DOT or the Company has not refunded or made the required replenishment, or obtained a replacement or additional letter of credit, as appropriate, within 30 days of the entry of a final non-appealable court order or judgment, interest on the appropriate amount shall be payable by either DOT or the Company, as applicable, at the rate specified in Section 9.12 hereof from the end of the L/C Replenishment Period to the date the applicable amounts are actually refunded or replenished, or an additional or replacement letter of credit is obtained, as appropriate. Such interest shall be payable to the party entitled thereto.

7.9 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Performance Bond or the Letter of Credit required by this Section 7 subject to the limitations set forth in the last sentence of Section 7.5(a) and Section 13.5(b).

7.10 Cancellation Upon Replacement. In the event the Company provides a replacement or substitute Letter of Credit or a replacement Performance Bond pursuant to the provisions of this Section 7, the City shall, as soon as practicable and in no event later than 30 days after such replacement or substitute Letter of Credit or replacement Performance Bond is delivered to the City or to a third party for the benefit of the City, return to the issuing bank such Letter of Credit and/or to the Company or surety such Performance Bond that was replaced or substituted, and shall notify, in writing, the Company and/or the surety of such return. Additionally, the City hereby agrees that upon delivery of the replacement or substitute Letter of Credit or replacement Performance Bond to the City, the City shall have no further rights (including, without limitation, the right to make claims or demands) against any Letter of Credit and/or Performance Bond that has been replaced or substituted as described above.

SECTION 8

EMPLOYMENT AND PURCHASING Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or any other terms, conditions or privileges of employment. The Company 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 Company, shall use commercially reasonable efforts, at its own cost and expense, to recruit, educate, train and employ residents of the City, for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the System. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. The Company shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company.

8.3 Obligation to Use Domestic and Local Contractors and Subcontractors. The Company certifies that at least eighty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly, of the Coordinated Franchise Structures shall be within the United States and that at least fifty percent of the overall costs incurred by the Company for the labor and materials involved in the manufacture, including without limitation, assembly of the Coordinated Franchise Structures shall be within the City of New York.

8.4 No Discrimination. The Company shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. The Company agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the Term.

SECTION 9

COMPENSATION AND OTHER PAYMENTS

9.1 Defined Terms. For the purposes of this Agreement, the following terms, phrases and words shall have the meaning set forth in this Section 9.1, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms

used in the definition of any other term shall have their meaning as otherwise defined in Sections 1 or 4 herein. References in this Section 9 to “commercial advertising” provided to NYCMDC as compensation to the City shall be understood to refer to space for advertising to be provided to NYCMDC (including New York City Promotional Advertising) for use consistent with its corporate purpose in accordance with this Section 9.

(a) “Alternative Compensation” means one of the two compensation components of the Guaranteed Minimum. Alternative Compensation for each year of the Term shall have a market value as set forth in Column B of Schedule C attached hereto (subject to adjustment as contemplated by this Section 9), and shall consist of commercial advertising which shall be provided to NYCMDC by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest on the inventory described below, which shall be used by NYCMDC consistent with NYCMDC’s corporate purpose (but not for “spot market advertising”); provided, however, that \$2,500,000 of Alternative Compensation listed in Column B of Schedule C for the first year of the Term shall consist of the amenities contemplated by Section 9.17 and not commercial advertising. The inventory referred to in the immediately preceding sentence shall consist of out-of-home advertising media (e.g. billboards, transit terminals, shopping centers, street furniture and advertising time on any form of electronic media) outside of New York City (i) then owned or controlled by the Company or any other entity which is more than 50% owned directly or indirectly by JCDecaux SA, or a successor in interest to JCDecaux SA (a “JCDecaux In-Kind Company”), and (ii) over which JCDecaux SA or such successor in interest exercises operational control (the “JCDecaux In-Kind Markets”). Alternative Compensation shall be valued at the prevailing market rates actually charged to commercial customers buying comparable amounts of the Company’s advertising space in the applicable JCDecaux In-Kind Market in accordance with the valuation methodology described in Section 9.4.1. Notwithstanding anything to the contrary in this Agreement, in determining whether the value of Alternative Compensation has the market value set forth in Column B of Schedule C, the amount of any value added tax due shall not be included, provided, however, the total unamortized value for Reciprocal Bus Shelters, if any, calculated in accordance with Section 2.5.3.2 above, may be deducted from the Alternative Compensation in year 19 of the Term, and year 20 if necessary. Commercial advertising provided as Alternative Compensation shall be provided pursuant to Sections 4.4.6(d) and 9.4 herein unless otherwise noted herein.

(b) “Cash Component” means one of the two compensation components of the Guaranteed Minimum, consists of cash, and is as set forth in Column A of Schedule C attached hereto.

(c) “Gross Revenues” means all revenues (from whatever source derived, and without any 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 Company, its subsidiaries, affiliates, or any third parties directly or indirectly retained by the Company to generate revenue (not including amounts paid or obligated to be paid to such third parties by or on behalf of the Company or any subsidiary or affiliate of the Company), as a result of the installation of the Coordinated Franchise Structures and, including without limitation, the

display of advertising thereon. In addition to any revenues generated in the form of monetary receipts, Gross Revenues shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the Company may receive. In the event that the Company provides any advertising space pursuant to any transaction which is not an arm's-length 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 Company's including or grouping advertising on the Coordinated Franchise Structures with other assets in the Company's inventory or otherwise), the amount to be included in Gross Revenues with respect to such transaction will be the fair market value of the advertising space as if such advertising space were provided pursuant to an arm's-length transaction. Notwithstanding anything to the contrary in this definition, Gross Revenues shall not include any sales taxes or other taxes imposed by law which the Company is obligated to collect, or any Public Service Advertising, NYCMDC Advertising or Alternative Compensation. Gross Revenues shall not include Scroller Gross Revenues in years 1 through 5 of the Term and PSS Gross Revenues during the Term. The Company will not divert or recharacterize revenue that would otherwise have been considered Gross Revenues for purposes of this Agreement.

(d) "Guaranteed Minimum" for any given year of the Term shall consist of the Cash Component set forth in Schedule C and the Alternative Compensation set forth in Schedule C, subject to adjustment as expressly set forth in Section 9.

(e) "New York City Promotional Advertising" means advertising which in at least substantial portion on its face promotes New York City, including by promoting, for example: travel to New York City; doing business in New York City; arts, entertainment and cultural institutions located in New York City; or life in or living in New York City.

(f) "PSS Gross Revenues" shall mean revenue generated by PSSs calculated in the same manner as Gross Revenues. PSS Gross Revenues shall be paid in accordance with Schedule D.

(g) "Scroller Gross Revenues" shall mean revenue generated by Scrollers calculated in the same manner as Gross Revenues.

9.2 Compensation. As compensation for the franchise, commencing on the Effective Date and as set forth in this Section 9, the Company shall pay and/or provide (as the case may be) to the City with respect to each year of the Term (subject to the remaining provisions of this Section 9):

the greater of:

- (i) 50% of Gross Revenues for such year of the Term; or
- (ii) the Cash Component for such year of the Term;

plus

the Alternative Compensation for such year of the Term

as the Franchise Fee; provided however that, in any year of the Term in which 50% of Gross Revenues is greater than the Cash Component, the Cash Component will be increased and the Alternative Compensation will be reduced by the actual amount of the positive difference obtained by subtracting the amount of the Cash Component (as set forth in Schedule C for such year, i.e., prior to any adjustment) from 50% of Gross Revenues for such year; provided further however that the Alternative Compensation shall not be reduced by, nor the Cash Component increased by, an amount which would reduce Alternative Compensation below the amount set forth in Column C of Schedule C for such year. The adjustments to the Alternative Compensation contemplated in this Section 9.2 shall be made in the year of the Term following the year of the Term to which they apply, due to the inability to adjust Alternative Compensation retroactively.

For the avoidance of doubt, several examples of the calculation of the Franchise Fee in a variety of circumstances are set forth on Schedule 9.2 to this Agreement.

9.3 Advance Payment. Within five business days of the Effective Date, the Company shall pay to the City \$50,000,000 in cash as the first installment of the advance payment of the Cash Component for the first four years of the Term. Within five business days of receipt by the Company from DOT of the necessary permits for installation by the Company of the 200th Coordinated Franchise Structure (not including PSSs), the Company shall pay to the City \$68,460,000 in cash as the second and last installment of the advance payment of the Cash Component for the first four years of the Term. Should 50% of the Gross Revenues for any of the first four years of the Term be more than the Cash Component for that year, the Company shall make payment of the excess amount in cash within 45 days of the end of that year of the Term. The Alternative Compensation shall be paid to the City in accordance with the terms of this Section 9.

9.4 Alternative Compensation Planning.

(a) The Company and NYCMDC shall consider NYCMDC advertising campaigns for each year of the Term in mutually agreed JCDecaux In-Kind Markets. As a baseline media plan, and throughout each year of the Term, the parties shall consider advertising campaigns in each agreed upon market, taking into account that market practice and market availability may vary according to location and over time. The Company agrees to make commercially reasonable efforts or the Company shall cause JCDecaux SA or its successor in interest to make commercially reasonable efforts to concentrate advertising campaigns within no more than twelve (12) countries in which JCDecaux In-Kind Markets are present in each year of the Term having a minimum value of at least five-hundred thousand dollars (\$500,000.00) per country during each year of the Term. For purposes of this Section 9, a "market" may include, depending on local market sales practice, all or any portion of a country in which a JCDecaux In-Kind Company is present. The parties shall have an initial meeting annually at least 180 days prior to the end of each year of the Term to mutually agree in good faith on a baseline media plan

(which may be either the baseline media plan referred to above or a modified version thereof in accordance with the remaining provisions of this Section 9.4) for the advertising campaigns to be made available to NYCMDC by the Company or caused by the Company to be made available by JCDecaux SA or its successor in interest (including the particular JCDecaux In-Kind Markets to be included, the specific campaign in each such market, the preferred format, the intended value assigned to each campaign, and the schedule for placement) which is to constitute the Alternative Compensation due to the City on Schedule C for the next succeeding year. The parties shall confer regularly and at least monthly throughout each year of the Term to review, update and modify the baseline media plan provided only that the Company shall make available the amount of Alternative Compensation set forth in Schedule C within each year of the Term. Nothing herein shall limit the ability of NYCMDC and the Company to plan campaigns through mutual agreement beyond the next succeeding year (to the extent such planning is commercially reasonable) of the Term (the "Media Plan"). If the parties are unable to agree, then NYCMDC shall propose a placement program each month which shall be subject to the approval of the Company, not to be unreasonably withheld, and in the event of reasonable objections by the Company (such as the Company being obligated to provide the requested space to a third party for the applicable period) NYCMDC shall make reasonable adjustments to its proposal to meet the Company's objections. Once NYCMDC makes such adjustment, the Media Plan shall be final, subject to further adjustment pursuant to Section 9. The parties acknowledge that NYCMDC may not be able to determine valuation to its satisfaction prior to the time set forth in Section 9.4.1. Notwithstanding the foregoing, thereafter the Company and NYCMDC may mutually agree to revise the agreed Media Plan at any time, except that such revisions to placement in any given market shall be on a space available basis. For the first year of the Term, the parties shall agree on a Media Plan prior to the Effective Date to the extent possible, or as soon as possible thereafter.

(b) At the time the Media Plan is agreed to with respect to any month of any year of the Term, NYCMDC shall designate specific markets (or parts thereof) that may be relinquished in the event the amount of Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to such year of the Term. Such adjustment will be made to the agreed upon Media Plan.

9.4.1. Valuation of Alternative Compensation. No later than 90 days prior to the end of each year of the Term, NYCMDC shall notify the Company if NYCMDC believes that the value of the Media Plan for the following year of the Term is less than the amount set forth on Schedule C for such year. In such event, NYCMDC may retain an international media agency reasonably acceptable to the Company (provided that WPP, Interpublic, Dentsu, Publicis, and Omnicom shall be acceptable) with expertise in media buying and planning in each of the JCDecaux In-Kind Markets to determine the value of the Media Plan created pursuant to Section 9.4. The value determined by the media agency (the "Estimated In-Kind Value") in any given year shall be compared against the Alternative Compensation amount as set forth in Schedule C attached hereto for that same year (Such amount set forth on Schedule C, after any adjustment required pursuant to Section 9.2, the "Baseline In-Kind Value"). If the adjustment to the Alternative Compensation required by Section 9.2 is not determinable at the time the valuation contemplated by this Section 9.4.1 is finalized, then such valuation and resulting adjustment to

the Media Plan, if any, shall be recalculated when the adjustment to the Alternative Compensation becomes known.

(a) To the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on additional advertising campaigns to be provided by the Company or caused by the Company to be provided by JCDecaux SA or its successor in interest to NYCMDC in JCDecaux In-Kind Markets, such that the Estimated In-Kind Value plus the value of these additional campaigns equals the Baseline In-Kind Value for such year.

(b) To the extent the Estimated In-Kind Value is more than 115% of the Baseline In-Kind Value for such year, the Company and NYCMDC will mutually agree in good faith on advertising campaigns to be relinquished by NYCMDC in JCDecaux In-Kind Markets, such that the Estimated In-Kind Value minus the value of the campaigns to be relinquished equals the Baseline In-Kind Value for such year.

(c) To the extent the Estimated In-Kind Value is less than or equal to 115% of the Baseline In-Kind Value for such year but more than or equal to 85% of the Baseline In-Kind Value for such year, there shall be no change to the Media Plan for that year resulting from the performance of the valuation contemplated by this Section 9.4.1.

(d) However, to the extent the Estimated In-Kind Value is less than 85% of the Baseline In-Kind Value for such year, the Company may, within 20 days notice of the Estimated In-Kind Value, choose to dispute the Estimated In-Kind Value. If the parties are not able to successfully resolve their differences within 10 business days after the Company gives notice to the City that it is disputing the Estimated In-Kind Value, then the parties shall immediately thereupon submit their dispute with respect to the value of the Media Plan to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) or any successor organization thereto. The determination of the AAA arbitrator shall be limited to determining the value the Media Plan and shall be final and binding upon the parties. The AAA shall select one arbitrator who shall be an individual with at least twenty years’ experience in the field of commercial marketing and advertising. Because of the time-sensitive nature of the required calculation, the arbitrator shall, to the extent reasonably possible, hold a hearing to consider the submissions of the parties within one week of the arbitrator’s appointment and to render the decision within 10 business days of the close of the arbitration hearing and final submission of all materials in support of the positions of the parties. In rendering the decision, the arbitrator shall consider the criteria set forth in Section 9.1(a). The parties agree that in the event that arbitration is invoked, both parties shall proceed as expeditiously as possible under the circumstances to conclude the arbitration, including the timely submission of any supporting materials and appearance at arbitration hearings. Each party shall bear its own legal fees and expenses, but the cost of the arbitration shall be borne equally by the parties. The arbitrator shall have no power to vary or modify the provisions of this Agreement and the arbitrator’s jurisdiction is limited accordingly. The arbitration contemplated hereby shall be conducted in New York, New York. Following the arbitrator’s determination, the parties will increase or decrease the number of campaigns in mutually agreed JCDecaux In-Kind Markets in the same manner as contemplated in Sections 9.4.1(a) and (b)

based upon the arbitrator's determination as to the value of the Media Plan (such determination, the "Arbitrated Value").

9.4.2. Exchanging Markets.

(a) As part of the process contemplated in Section 9.4(a), and subject to the Company's or NYCMDC's, as the case may be, reasonable approval based on availability, NYCMDC or the Company may exchange or the Company may cause JCDecaux SA or its successor in interest to exchange comparable advertising campaigns in one JCDecaux In-Kind Market for comparable advertising campaigns of equivalent value in a different JCDecaux In-Kind Market. Solely for purposes of this Section 9.4.2, "equivalent value" shall be determined by reference to the Company's rate cards in the applicable markets.

9.4.3. Alternative Compensation Content. NYCMDC shall program the Alternative Compensation on behalf of the City. No more than 50% of the Alternative Compensation to be programmed by NYCMDC pursuant to this Section 9.4 shall consist of advertising that is not New York City Promotional Advertising. Furthermore, in any given JCDecaux In-Kind Market, NYCMDC may program panels for an existing advertiser-client of the Company in that JCDecaux In-Kind Market only if such advertising is New York City Promotional Advertising. NYCMDC shall at all times during the Term give the Company 10 business days notice prior to entering into agreements with marketing partners for campaigns involving use of Alternative Compensation panels. The notice shall contain information as to the identity of the marketing partner, length of time, the geographic reach and the number of panels involved in the proposed campaign. In addition, the content and creative for such marketing partnerships shall be provided to the Company within a reasonable time after receipt of that information by NYCMDC. NYCMDC and the Company shall cooperate in good faith to address any potential issues that may arise out of the execution of such advertising campaigns.

9.4.4. No Carryover; No Cash Conversion. Subject to Section 9.4.5, Alternative Compensation shall not be convertible into cash under any circumstances; except, however, that if the Alternative Compensation is not provided by the Company in accordance with this Agreement, nothing herein shall prevent the City from pursuing all remedies available to it at law, equity or in this Agreement. Additionally, Alternative Compensation to be provided in a particular year of the Term must be used in such year and may not be carried over into any subsequent year of the Term.

9.4.5. Major Markets Requirement. In the event that JCDecaux In-Kind Markets do not include at least 18 cities with populations of at least 500,000 people ("Major Markets") for any year of the Term and the City is not able to reasonably satisfy its Alternative Compensation requirements through the use of non-Major Markets acceptable to NYCMDC, the Company hereby agrees that the City shall have the option, to be exercised no later than the last day of such year of the Term, to compel the Company to provide or compel the Company to cause JCDecaux SA or its successor in interest to provide Alternative Compensation, all or part of which may be converted into cash, at the option of the the City (the "Alternative Compensation Conversion Option"), to the City in such market or in such markets that are substantially equivalent with respect to the designated market area (the "DMA") of such Major

Market(s) that are no longer part of the JCDecaux In-Kind Markets. If the City exercises its Alternative Compensation Conversion Option, the City shall receive cash in the amount of the Alternative Compensation for such year multiplied by a fraction, the numerator of which shall be the difference between the amount of Alternative Compensation for such year and the amount of Alternative Compensation delivered (or planned to be delivered by the end of the relevant year of the Term) and the denominator of which shall be the amount of the Alternative Compensation for such year, as listed in Column B of Schedule C.

9.4.6. Adjustments to Alternative Compensation Under Section 9.2. In the event the amount of the Alternative Compensation set forth on Schedule C is required to be adjusted in accordance with Section 9.2 with respect to any year of the Term, such adjustment will be implemented by reducing the Media Plan. The value of the campaigns to be relinquished by NYCMDC shall be established by reference to (a) the Arbitrated Value for such year, (b) the Estimated In-Kind Value for such year if there is no Arbitrated Value, or (c) the valuations assigned to each JCDecaux In-Kind Market in the Media Plan for such year, if there is no Estimated In-Kind Value.

9.5 Payments.

(a) Beginning with the fifth year of the Term (it being understood and agreed that the cash portion of the Franchise Fee payable with respect to the first four years of the Term shall be paid in accordance with Section 9.3 herein), within 30 days after the end of each of the first three quarters of each year of the Term, the Company shall pay to the City in cash the greater of (i) one fourth of the Cash Component for such year or (ii) 50% of Gross Revenues for that quarter. Beginning with the fifth year of the Term, within 30 days after the end of the fourth quarter of each year of the Term, the Company shall pay the excess, if any, of the full cash payment due to the City under Section 9.2 for such year of the Term (after all applicable adjustments contemplated by Section 9 and Section 4.7) over the amounts already paid by the Company on a quarterly basis with respect to such year under the preceding sentence. If the sum of the payments made by the Company in accordance with this Section 9.5(a) with respect to any year of the Term exceeds the cash portion of the Franchise Fee due to the City under Section 9.2 for such year (after all applicable adjustments contemplated by Section 9 and Section 4.7), the Company shall be entitled to take the excess as a credit against the next cash payment or payments due to the City under this Section 9, unless there is no such next payment scheduled (i.e., the Term has expired or terminated), in which case such excess shall be payable by the City to the Company within 30 days (if the amount is less than \$100,000) or 90 days (if the amount is equal to or greater than \$100,000) of invoice therefor.

(b) Within 30 days after any termination of this Agreement, the Company shall pay to the City in cash the appropriate pro rata amount (based on the number of days in the partial year and using 365 days in a full year) of the cash portion of the Franchise Fee for the elapsed portion of such year which has not previously been paid pursuant to Sections 9.3 or 9.5(a) and any other amounts owed to the City pursuant to this Agreement. Additionally, the Company shall deliver the pro rata amount of any Alternative Compensation agreed to pursuant to Section 9.4 herein for such year and not previously delivered.

(c) Beginning with the fifth year of the Term, and for each year of the Term thereafter, no later than 45 days from the anniversary of the Effective Date, the Company shall deposit with the escrow agent (the “Escrow Agent”) under an escrow agreement to be entered into among the Company, such Escrow Agent and the City (the “Escrow Agreement”), which Escrow Agreement shall be substantially in the form attached hereto as Exhibit L, the greater of (i) the Cash Component for that year of the Term or (ii) the cash portion of the Franchise Fee paid by the Company for the immediately preceding year of the Term, minus, in each case, any amounts deposited in escrow the prior year pursuant to this Section 9.5(c) and then remaining in escrow (the amount deposited in escrow in accordance with this Section 9.5(c), the “Escrow Fund”). Each payment required to be made pursuant to Sections 9.5(a) and 9.5(b) shall be made from the Escrow Fund provided that if the Escrow Fund is at any time insufficient to make such payments, the Company shall make such payments directly.

(d) In addition, no later than the first day of the fourth year of the Term, the Company shall cause the establishment with the Escrow Agent of an additional, separate escrow account (the “Supplemental Escrow Account”, pursuant to the Escrow Agreement. The Supplemental Escrow Account shall be unfunded until required to be funded in accordance with the terms of this Section 9.5(d). Funds on deposit in the Supplemental Escrow Account from time to time as required herein are referred to as the “Supplemental Escrow Fund.” During the Term, the Supplemental Escrow Fund shall be increased (by deposit of additional funds by or at the, direction of the Company) or decreased (by payment to or at the direction of the Company by Escrow Agent), within 10 business days, as follows:

(i) At any time after the third year of the Term when the Net Worth (hereinafter defined) of the Guarantor is less than 125 million Euros the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term and the following year of the Term or (y) two times the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

(ii) At any time after the fourth year of the Term when the Net Worth of the Guarantor is between 125 million Euros and 150 million Euros, the Supplemental Escrow Fund shall constitute the greater of (x) the Cash Component for the then current year of the Term or (y) the cash portion of the Franchise Fee actually paid by the Company for the immediately preceding year of the Term.

(iii) At any time when the Net Worth of the Guarantor is 150 million Euros or greater, or after the 19th year of the Term, the Supplemental Escrow Fund shall be 0.

Solely for purposes of this Section 9.5(d), “Net Worth” shall mean total assets of the Guarantor, minus total liabilities of the Guarantor, calculated in accordance with generally accepted accounting principles, as reflected in the most recent audited annual financial statements of the Guarantor required to be delivered to the City pursuant to Section 10.6.3.

(e) All interest earned on the Escrow Fund and Supplemental Escrow Fund shall accrue to the Company or the Guarantor, as applicable, and be payable to or at the direction of the Company at the end of each quarter of the Term.

9.6 Revisions to Franchise Fee. The Franchise Fee may be revised as follows:

9.6.1. PSS. Should DOT exercise its option to require the Company to install, maintain and operate PSSs as set forth in Section 2.4.6(c) herein, the cash portion of the Franchise Fee shall be adjusted as set forth on Schedule D attached hereto.

9.6.2. Scrollers. Should the Company install any Scroller before year six of the Term, the cash portion of the Franchise Fee prior to year six of the Term shall be increased by an amount equal to 50% of Scroller Gross Revenues.

9.6.3. Olympics. Should the City exercise its option to require the Company to cease to sell and place advertising on all or some of the Coordinated Franchise Structures during the Olympic Period as set forth in Section 4.4.8 herein, the Company shall deduct from the cash portion of the Franchise Fee to be paid for the quarter immediately following the Olympic Period the following amount:

the average Gross Revenue, for the same eight weeks as the Olympic Period, of the three years preceding the Olympics, multiplied by 1.2.

9.7 Credits. The parties acknowledge that the cash portion of the Franchise Fee payable by the Company each year has been determined by the Company based on certain assumptions of the Company regarding revenue generation from advertising as permitted under this Agreement. Accordingly:

9.7.1. Bus Shelters. If at any time the number of Bus Shelters is reduced to fewer than 3300 Bus Shelters through no fault of the Company, then NYCMDC and the Company shall promptly mutually designate Bus Shelters in the same geographic area to the extent possible, which are allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 Bus Shelters. To the extent that the Company is thereafter able to install additional Bus Shelters, the Bus Shelters shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 Bus Shelters.

9.7.2. New Bus Shelters. If by the fifth anniversary of the Build Start Date the Company is unable to install at least 3300 New Bus Shelters within the time frames for such installation provided for in this Agreement due to the fault of the City, then NYCMDC and the Company shall promptly mutually designate New Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon, such that the Company will control the advertising on 2557 New Bus Shelters (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC for

reversion, on a one-for-one basis, in lieu of New Bus Shelters). To the extent that the Company thereafter is able to install additional New Bus Shelters, the New Bus Shelters (or Existing Bus Shelters, as the case may be) shall be re-allocated as set forth in Exhibit H attached hereto by the next advertising cycle, so that the Company shall at all times control the advertising on 2557 New Bus Shelters.

9.7.3. Newsstands. If, through no fault of the Company, (a) at any time after the end of the first year of the Term the number of Newsstands is reduced to fewer than 110 New or Replacement Newsstands, (b) at any time after the end of the second year of the Term the number of Newsstands is reduced to fewer than 220 New or Replacement Newsstands, or (c) at any time after the end of the third year of the Term the number of Newsstands is reduced to fewer than 330 New or Replacement Newsstands, then NYCMDC and the Company shall promptly mutually designate Replacement Newsstands and/or New Newsstands and/or Bus Shelters in the same geographic area to the extent possible, which were allocated to NYCMDC Advertising as set forth on Exhibit H attached hereto, to revert back to the Company for advertising thereon (which may be on Replacement Newsstands and/or New Newsstands and/or Bus Shelters but excluding Bus Shelters which the Company controls the advertising on pursuant to Sections 9.7.1 and 9.7.2 herein) such that the Company controls the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term, provided, that for purposes of the foregoing reversion, (i) Replacement Newsstands and New Newsstands shall be the first to revert on a one to one basis, (ii) if NYCMDC has no remaining Newsstands available to it, then New Bus Shelters shall revert (provided that, in the Company's discretion, it may select geographically closer Existing Bus Shelters allocated to NYCMDC in lieu of New Bus Shelters) and (iii) if NYCMDC has no remaining New Bus Shelters, then Existing Bus Shelters shall revert. In designating Bus Shelters for reversion in accordance with this Section 9.7.3, the parties shall make such reversion on the basis of 1.5 Bus Shelters reverting for every 1 Newsstand. To the extent that the Company is thereafter able to install additional Newsstands, the Existing Bus Shelters, New Bus Shelters and Newsstands shall be re-allocated as set forth in Exhibit H attached hereto, in the reverse order that they reverted to the Company in accordance with this Section 9.7.3, by the next advertising cycle, so that the Company shall at all times control the advertising on the equivalent of 85 Newsstands in the second year of the Term, the equivalent of 171 Newsstands in the third year of the Term and the equivalent of 256 Newsstands starting in the fourth year of the Term for the remainder of the Term.

9.7.4. Cash Option. At the City's option, in lieu of part or all of the reversion of Bus Shelters, Replacement Newsstands and/or New Newsstands contemplated by Sections 9.7.1, 9.7.2, and 9.7.3 herein, the City may choose to have the Company deduct from the cash portion of the Franchise Fee the product of (a) the revenue value associated with the applicable Coordinated Franchise Structure(s), as set forth in Table A of Appendix 5 of the Proposal (increasing annually to adjust for inflation at the higher of (i) 2.5% per year or (ii) the rate of inflation reflected in the Consumer Price Index for All Urban Consumers (CPI-U), subject to a cap of 3% per year), (b) the number of Coordinated Franchise Structures that would be required to compensate the Company in accordance with Sections 9.7.1, 9.7.2, and 9.7.3 herein, and (c)

the number of advertising panels on the applicable Coordinated Franchise Structure set forth in such Appendix 5, Table C.

9.7.5. Cash or Alternative Compensation Set-Off. In the event that there are insufficient Coordinated Franchise Structures allocated to NYCMDC at any time to effectuate the reversions as contemplated by Sections 9.7.1, 9.7.2 and 9.7.3, then any such shortfalls shall be made up by a deduction by the Company from the cash portion of the Franchise Fee of the amount in cash calculated in accordance with Section 9.7.4, or, in the Company's sole discretion, by a reduction in an equivalent amount of Alternative Compensation.

9.7.6. Inability to Mutually Designate Coordinated Franchise Structures For Reversion. If the Company and NYCMDC are unable to mutually designate, in good faith, the appropriate Coordinated Franchise Structures for reversion to the Company under the circumstances described in Sections 9.7.1, 9.7.2 or 9.7.3, the reversion of Coordinated Franchise Structures to the Company contemplated in such Sections shall occur automatically, with the Coordinated Franchise Structures allocated to NYCMDC that are located nearest to the applicable unavailable Coordinated Franchise Structures reverting to the Company and with respect to Sections 9.7.2 and 9.7.3 in accordance with the priorities and ratios for such reversion set forth in Sections 9.7.2 and 9.7.3.

9.7.7. Absence of Identified Locations. In the event that the reversion of Coordinated Franchise Structures allocated to NYCMDC contemplated by Sections 9.7.1, 9.7.2 or 9.7.3 is to take place with respect to New Bus Shelters or Newsstands as to which no specific location for installation had been previously agreed to between the Company and the City, such reversion shall take place in proportion to the overall geographic distribution of the then installed Bus Shelters or Newsstands, as applicable (other than those allocated to NYCMDC Advertising).

9.7.8. No Default. No failure by the Company to install Coordinated Franchise Structures that gives rise to a right of the Company to reversion of Coordinated Franchise Structures from NYCMDC pursuant to Sections 9.7.1, 9.7.2 or 9.7.3 shall constitute a breach or default under this Agreement or give rise to the obligation to pay liquidated damages.

9.7.9. Performance at the Cost of the City. In the event the Company is required to perform an obligation under this Agreement which is to be performed at the City's cost or expense, as specifically set forth in this Agreement, the Company shall be permitted to delay such performance until it receives written authorization from DOT. All reasonable costs and expenses expended by the Company in performance of such obligation shall be reimbursed to the Company by the City reasonably promptly after submission of invoices therefor.

9.8 Reports and Records.

9.8.1. Monthly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues, and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 10 business days of the end of each calendar month during the Term.

9.8.2. Quarterly. The Company shall submit to DOT reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each quarter of the Term.

9.8.3. Yearly. The Company shall submit to DOT a detailed income and expense statement, reports of Gross Revenues, (and PSS Gross Revenues and Scroller Gross Revenues, as applicable), and any other information reasonably requested by DOT, in a form acceptable to DOT, within 20 business days of the end of each year of the Term. In addition, the Company shall submit a certification from JCDecaux, SA that no bundling of franchise advertising assets with non-franchise assets has occurred that would reduce the City's franchise compensation below that which it would have been had the franchise assets been sold unbundled for their fair market value.

9.8.4. Third Party Agreements. All agreements entered into by the Company in connection with the Coordinated Franchise Structures shall provide that such agreements and all records and documents related thereto shall be made available to the City upon request. Additionally, all agreements entered into by the Company in connection with advertising on the Coordinated Franchise Structures shall include a provision requiring that upon expiration or sooner termination of this Agreement, the City shall have the option of assuming all the Company's rights and obligations under such agreement.

9.8.5. Access to Third Party Agreements. The Company shall make available to the City, at its office located in the City, all third party agreements entered into by the Company in connection with the Coordinated Franchise Structures and comprehensive itemized records of all revenues received in a format reasonably acceptable to DOT and in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to this Section 9 is being paid to the City upon request, during regular business hours and upon reasonable prior notice to the Company. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

9.9 Reservation of Rights. No acceptance of any compensation by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement, subject to Section 13.5(b). All amounts paid shall be subject to audit and recomputation by the City.

9.10 Other Payments.

9.10.1. City Incurred Cost. If the City incurs any costs or expenses pursuant to this Agreement for (a) work that should have been performed by the Company, or (b) work performed by the City which the Company could not perform, but the costs and expenses for which the Company is liable, the Company shall, within 30 days of receipt of an invoice from the City, pay to the City the amount so incurred.

9.10.2. Future Costs. In the event of a Default by the Company under this Agreement, the Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 enforcement of remedies including termination for a Termination Default. Before any reimbursable work is performed, the City will advise the Company 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 Company, or the Company brings an action against the City, and the Company finally prevails, then the Company 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 Company contests the charges, it shall pay any uncontested amounts. The Commissioner 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 Company shall pay to the City or to third parties, at the direction of the Commissioner, 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 Company. Before any reimbursable work is performed, the City will advise the Company that the City will be incurring the services of third parties pursuant to the preceding sentence. The Company expressly agrees that the payments made pursuant to this Section 9.10.2 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 Company pursuant to any other provision of this Section 9.

9.11 Limitations on Credits or Deductions.

(a) The Company expressly acknowledges and agrees that:

(i) The compensation and other payments to be made or Services to be provided pursuant to this Section 9 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which the Company or any Affiliated Person shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company;

(ii) Except as may be expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made or Services to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability (other than income taxes) or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency;

(iii) Except as expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of compensation or

other payments to be made or Services to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons; and

(iv) Except as may be expressly permitted by this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made or Services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

(b) Nothing contained in this Section 9.11 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement or costs that it may incur in connection therewith as an ordinary expense of doing business and accordingly, from deducting said payments from gross income in any City, state or federal tax return.

9.12 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date until received at a rate per year equal to the greater of (i) the then applicable Prime Rate plus 2%, or (ii) 7%.

9.13 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement shall be made to the New York City Department of Transportation, Director of Accounts Payable, 55 Water Street, 9th Floor, New York, New York 10041 or as otherwise directed by DOT.

9.14 Report Certification. All compensation reports furnished by the Company pursuant to Section 9.8 herein shall be certified by the chief financial officer of the Company to be correct and in accordance with the books of account and records of the Company.

9.15 Continuing Obligation and Holdover. In the event the Company continues to operate all or any part of the System, including the placement of advertising, and the collection of revenue related thereto, after the expiration or termination of this Agreement, then the Company shall continue to comply with all provisions of this Agreement as if the Agreement was still in force and effect, including, without limitation, all compensation and other payment provisions of this Agreement as well as the maintenance of the Security Fund, the Letter of Credit, the Performance Bond, and the Guaranty throughout the period of such continued operation, provided that any such continued operation and compliance with this Agreement shall in no way 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 available to the City as a result of such continued operation after the term of this Agreement, including, but not limited to, damages and restitution and injunctive relief. If the Company fails to make such payments, DOT may withdraw such amounts from the Security Fund or the Letter of Credit.

9.16 Energy Costs. The Company shall be responsible for any and all electrical costs, or other costs for energy or power, used for, by or in connection with any and all of the Coordinated Franchise Structures, except as otherwise provided in Sections 2.4.6 and 3.1.4(b) herein.

9.17 Amenities. DOT at its option may require during the first five years of the Term that the Company provide certain amenities to the Coordinated Franchise Structures, the value of which shall not exceed \$2,500,000 in the aggregate. Such amenities may include, but are not limited to solar panels, battery recycling containers, installation of water fountains in APTs and support of the integration of new technology. Notwithstanding the foregoing, the City acknowledges that the Company shall have satisfied its obligation to install amenities under the 2006 Agreement by constructing, installing and maintaining 30 New Bus Shelters at locations to be determined by DOT, and which shall not include Reciprocal Bus Shelters or Fifth Avenue Bus Shelters.

SECTION 10

OVERSIGHT AND REGULATION

10.1 Confidentiality. To the extent permissible under applicable law, the City shall protect from disclosure any trade secret materials or otherwise confidential information submitted to or made available by the Company to the City under this Agreement provided that the Company timely notifies the City of, and clearly labels, the information which the Company deems to be trade secret materials or otherwise confidential information as such. Such notification and labeling shall be the sole responsibility of the Company.

In the event that the City becomes legally compelled to disclose the trade secret materials or otherwise confidential information of the Company, it shall provide the Company with prompt written notice of such requirement so that the Company may seek a protective order or other remedy. In the event that such protective order or other remedy is not obtained, the City agrees to furnish only that portion of such information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information.

Notwithstanding the foregoing, this Section 10.1 shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this Agreement, or (ii) was available publicly without a breach of an obligation of confidentiality by a third party, or (iii) was learned from a third party who was not under an obligation of confidentiality.

The Company expressly acknowledges and agrees that neither DOT nor the City of New York will have any obligation or liability to the Company in the event of disclosure of materials, including materials labeled by the Company as trade secret materials, or otherwise confidential information.

10.2 Oversight. DOT shall have the right at all times to oversee, regulate and inspect periodically the installation, operation, and maintenance of the System, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to demonstrate, in reasonable detail, to the reasonable satisfaction of the City at all times throughout the Term, that the Company is in compliance with this Agreement. The Company shall retain such records for not less than 6 years following expiration or termination of this Agreement.

10.3 State-of-the-Art. State-of-the-art construction methods and building materials must be integrated into the Coordinated Franchise Structures as they become available at the sole cost and expense of the Company. Nothing in this Section requires the Company to replace or reinstall a Coordinated Franchise Structure solely for the purpose of complying with this Section.

10.4 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 such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its powers, including, but not limited to, its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

10.5 Office in New York City. The Company shall have and maintain an office in the City where all books and records referenced in, and pertaining to, this Agreement shall be maintained and where the Company's accounting, billing, and clerical functions pertaining to this Agreement shall be performed.

10.6 Reports.

10.6.1 Financial Reports. In the event the City has a good faith reason to believe that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into consideration the guaranty of Guarantor), the Company shall submit to DOT, upon its request, a complete set of the latest general purpose financial statements for a specified past fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from an independent Certified Public Accountant ("CPA") who performed a review of the statements in accordance, with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, not later than 20 business days from the date such financial statements become available to the Company from its CPA. All such statements shall be accurate and complete in all material respects. In the event the City reviews such financial statements and determines in its reasonable discretion that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (taking into account the Guaranty), the City may require the Company to submit, and obtain the Commissioner's approval of, a plan setting forth the steps the Company will take to continue to be able to comply with this Agreement.

10.6.2 Other Reports. Upon the written request of the Commissioner, the Company shall promptly submit to DOT or the City, any non-Privileged Information reasonably related to the Company's obligations under this Agreement, its business and operations, or those

of any Affiliated Person, with respect to the System or its operations, or any Service, in such form and containing such information as the Commissioner shall specify in writing. Such information or report shall be accurate and complete in all material respects. The Commissioner or the City may provide notice to the Company in writing, as set forth in Section 14.5 hereof with regard to the adequacy or inadequacy of such reports pursuant to the requirements of this Section 10.6.

10.6.3. Guarantor Financials Statements. The Company shall cause Guarantor to yearly submit to DOT a complete set of the latest general purpose financial statements for the prior fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from the independent Certified Public Accountant (“CPA”) who performed a review of the statements in accordance with the American Institute of Certified Public Accountants’ (“AICPA”) Professional Standards, not later than 20 business days from the date such financial statements become available to the Guarantor from its CPA. All such financial statements shall be accurate and complete in all material respects.

10.7 Books and Reports/Audits.

10.7.1. Books and Records. Throughout the Term the Company shall maintain complete and accurate books of account and records of the business, ownership, and operations of the Company with respect to the System in a manner that allows the City to determine whether the Company is in compliance with the Agreement. Should the City reasonably determine that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section. All financial books and records which are maintained in accordance with generally accepted accounting principles shall be deemed to be acceptable under this Section. The Company shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.

10.7.2. Right of Inspection. The City, the Commissioner and the Comptroller, or their designated representatives, shall have the right upon written demand with reasonable notice to the Company under the circumstances to inspect, examine or audit during normal business hours all documents, records or other information which pertain to the Company or any Affiliated Person related to the Company’s obligations under this Agreement. All such documents shall be made available at the Company’s New York City office. All such documents shall be retained by the Company for a minimum of six years following expiration or termination of this Agreement. All such documents and information that are identified by the Company as trade secret materials or otherwise confidential information shall be treated as such in accordance with Section 10.1 hereof, and the City shall make reasonable efforts to limit access to the alleged trade secret materials or otherwise confidential information to those individuals who require the information in the exercise of the City’s rights under this Agreement. In the event any information the City claims the right to inspect pursuant to this Section 10.7.2 constitutes Privileged Information, then the Company will not be required to disclose such information and the City shall instead have the right to review a reasonably detailed log of the Privileged Information. The City shall not share any information obtained through the City’s audit and

inspection rights under this Section 10.7.2 or otherwise under this Agreement with any media agency retained pursuant to Section 9.4.1. Notwithstanding the foregoing, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

10.8 Compliance with “Investigations Clause”. The Company agrees to comply in all respects with the City’s “Investigations Clause,” a copy of which is attached as Exhibit G hereto.

SECTION 11

RESTRICTION AGAINST ASSIGNMENT AND OTHER TRANSFERS

11.1 Transfer of Interest. Except as provided in this Section 11, neither the franchise granted herein nor any rights or obligations of the Company in the System or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, without the prior written consent of the City, pursuant to Section 11.3 hereof. In the event any transfer of interest which requires consent of the City takes place without such consent, such transfer shall constitute a Termination Default and the City may exercise any rights it may have under this Agreement.

11.2 Transfer of Control or Ownership. Notwithstanding any other provision of this Agreement, except as provided in this Section 11, no change in Control of the Company or the franchise granted herein shall occur after the Effective Date, by act of the Company, by act of any Person holding control of the Company or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City. The requirements of Section 11.3 hereof shall also apply whenever any change is proposed of 10% or more of the direct ownership of Cemusa, Inc. (the “Parent”), the Company, or the franchise granted herein (but nothing herein shall be construed as suggesting that a proposed change of less than 10% does not require consent of the City acting pursuant to Section 11.3 hereof if it would in fact result in a change in Control of Parent, the Company, or the franchise granted herein), and any other event which could result in a change in Control of the Company. For the avoidance of doubt, nothing in this Section 11 shall prohibit, restrict or subject to any approval a change in Control of any entity that Controls, directly or indirectly, the Parent, and such change in Control of any entity that Controls, directly or indirectly, the Parent shall not constitute a change in Control of the Parent, the Company, or the franchise granted hereby for purposes of this Section 11.2, or any transfer of any interest to which Section 11.1 applies.

11.3 Petition. The Company shall promptly notify the Commissioner of any proposed action requiring the consent of the City pursuant to Sections 11.1 or 11.2 herein by submitting to the City, pursuant to Section 14.5 hereof, a petition either (a) requesting the approval of the Commissioner and submission by the Commissioner of a petition to the FCRC and approval thereof by the FCRC or (b) requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each such petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Company’s argument as to why such action would not involve a change in

Control of the Company, the System or the franchise, or a transfer of interest in the franchise granted herein or any rights or obligations of the Company in the System or pursuant to this Agreement and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Company in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Company that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval.

11.4 Consideration of the Petition. The Commissioner and the FCRC, as the case may be, may take such actions as it deems appropriate in considering the petition and determining whether consent is needed or should be granted. In considering the petition, the Commissioner and the FCRC, as the case may be, may inquire into: (i) the qualifications of each Person involved in the proposed action; (ii) all matters relevant to whether the relevant Person(s) will adhere to all applicable provisions of this Agreement; (iii) the effect of the proposed action on competition; and (iv) all other matters it deems relevant in evaluating the petition. After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the Commissioner and the FCRC may review the Company's performance under the terms and conditions of this Agreement. The Company shall provide all requested assistance to the Commissioner and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

11.5 Permitted Encumbrances. Nothing in this Section shall be deemed to prohibit any mortgage, lien, security interest, or pledge being granted to any banking or lending institution which is a secured creditor of the Company or any of its Affiliates with respect to any stock of the Company or any of its Affiliates, any rights granted pursuant to this Agreement, or any rights of the Company or any of its Affiliates in the System, including the assets of the Company and its Affiliates which comprise the System, provided that any such mortgage, lien, security interest or pledge shall be subject to the interests of the City as franchisor under this Agreement (and, in the case of any newsstand, any rights of the newsstand operator hereunder or under applicable law), including without limitation the City's right of approval with respect to any transfer of the franchise rights hereunder.

11.6 Subcontracts. The Company agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior written approval of DOT, provided that if the proposed subcontractor is not required to comply with VENDEX such prior written approval shall not be required. Two copies of each such proposed subcontract requiring approval shall be submitted to DOT with the Company's written request for approval. All such subcontracts shall contain provisions specifying:

(a) That the work performed by the subcontractor must be in accordance with the terms of this Agreement;

(b) That nothing contained in the subcontract shall impair the rights of DOT or the City;

(c) That nothing contained in the subcontract, or under this Agreement, shall create any contractual relation between the subcontractor and DOT or the City.

The Company agrees that it is fully responsible under this Agreement for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it. The Company shall not in any way be relieved of any responsibility under this Agreement by any subcontract. All subcontracts submitted by the Company to the City for approval in accordance with this Section 11.6 shall be approved (or reasons for failure to approve shall be provided) as soon as reasonably practicable in view of the time sensitive nature of the obligations of the Company under this Agreement.

11.7 Consent Not a Waiver. The grant or waiver of any one or more consents under this Section 11 shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section 11.

SECTION 12

LIABILITY AND INSURANCE

12.1 Liability and Indemnity.

12.1.1. Company. The Company shall indemnify, defend and hold the City, its officers, agents and employees (the "Indemnitees") harmless from any and all liabilities, suits, damages, claims and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or asserted against any of the Indemnitees arising out of the Company's performance of, or its failure to perform, its obligations under this Agreement, including, but not limited to the design, installation, operation and maintenance of the System, or any part thereof, provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 12.1.1 shall not apply to any Damages to the extent arising out of any willful misconduct or gross negligence of the City, its officers, employees, or agents. This Section shall supersede the indemnification provisions of section 19-128.1 of the New York City Administrative Code or any Rules promulgated thereunder, with respect to multi-rack newsracks. Insofar as the facts and law relating to any Damages would preclude the City from being completely indemnified by the Company, the City shall be partially indemnified by the Company to the fullest extent provided by law, except to the extent such Damages arise out of any willful misconduct or gross negligence of any Indemnitee. This indemnification is independent of the Company's obligations to obtain insurance as provided under this agreement.

12.1.2. City. The Company will not be liable for any Damages to the extent arising from the gross negligence or willful misconduct of any Indemnitee.

12.1.3. No Liability for Public Work, Etc. The Indemnitees shall have no liability to the Company for any Damages as a result of or in connection with the installation, operation and maintenance, of any part of the System by or on behalf of the Company or the City 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, unless and to the extent such Damages are due to the gross negligence or willful misconduct of any Indemnitee. To the extent practicable under the circumstances, the Company shall be consulted prior to any such activity and shall be given the opportunity to perform such work itself, but the City shall have no liability to the Company, except as expressly set forth above, in the event it does not so consult the Company. All costs to install, operate and maintain the System or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company; except to the extent such Damages arise out of any willful misconduct or gross negligence of the Indemnitees.

12.1.4. No Liability for Damages. None of the Indemnitees shall have any liability to the Company for any Damages as a result of the proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 12.1.4 shall not apply to any liabilities, suits, damages (other than special, incidental, consequential or punitive damages), penalties, claims, costs, and expenses to the extent arising out of any willful misconduct or gross negligence of the Indemnitees.

12.1.5. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 12.1.1 herein, then upon demand by City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for or approved by the Company's insurance carrier (if the defense of such claim, action or proceeding is provided by the insurance carrier) or by the Company's attorneys. The foregoing notwithstanding, in the event an Indemnitee believes additional representation is needed, such Indemnitee may engage its own attorneys to assist such Indemnitee's defense of such claim, action or proceeding, as the case may be, at its sole cost and expense. The Indemnitees shall not settle any claim with respect to which the Company is required to indemnify the Indemnitees pursuant to Section 12.1.1 without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.

12.1.6. Intellectual Property Indemnification. The Company shall defend, indemnify and hold the City harmless from and against any and all Damages, to which it may be subject because of or related to any claim that the Plans and Specifications and/or the Preliminary Plans and Specifications, the Coordinated Franchise Structures, any intellectual property of the Company incorporated in the Ad-Bearing Street Furniture/ and/or Non-Ad-Bearing Street Furniture (to the extent such are designed during the Term of this Agreement) 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;

provided, however, that the Company shall not be obligated to indemnify the City for any Damages to the extent such Damages arise out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and Specifications, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. This indemnification is independent of the Company's obligations to obtain insurance as provided under this Agreement. Furthermore, the Company shall defend and settle at its sole expense all suits or proceedings brought against Company arising out of the foregoing. No such settlement, however, shall be made that prevents the City or the Company from continuing to use the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software without the City's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event an injunction or order shall be obtained against the City's use of Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software under this Agreement by reason of the allegations, or if in the Company's opinion the Plans and Specifications, and the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software is likely to become the subject of a claim of infringement or violation of a copyright, trade secret or other proprietary right of a third party, or if the City's ability to enjoy use of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software has become materially disrupted by a claim of a third party, the Company shall at its expense, and at its option: (i) procure the right to allow the City to continue using the alleged infringing material; or (ii) modify the applicable portion(s) of the Plans and Specifications, the Preliminary Plans and Specifications (to the extent incorporated in the Plans and Specifications), the Coordinated Franchise Structures, or Software so that it becomes non-infringing, or replace the infringing materials or Software with non-infringing materials or Software, but only if the modification or replacement does not materially change the design of the affected Coordinated Franchise Structures; provided, however, that the Company shall not be obligated to take the actions described in clauses (i) and (ii) if the injunction, order or claim in question arises out of the gross negligence or willful misconduct of the City or the failure of the City to comply with the terms of any license or sublicense to which the City is a party applicable to the Plans and Specifications, the Preliminary Plans and Specifications, the Coordinated Franchise Structures, the Ad-Bearing Street Furniture, the Non-Ad-Bearing Street Furniture or the Software. The modifications discussed in the previous sentence are subject to the City's prior written approval. The obligations to indemnify pursuant to this Section 12.1.6 shall survive the expiration or termination of this Agreement.

12.1.7. No Claims Against Officers, Employees, or Agents. Company agrees not to make any claim against any officer or employee of the City or officer or employee of an agent of the City, in their individual capacity, for, or on account of, anything done or omitted in connection with this Agreement. Nothing contained in this Agreement shall be construed to hold the City liable for any lost profits, or any consequential damages incurred by Company or any Person acting or claiming by, through or under Company.

12.2 Insurance.

12.2.1. Types of Insurance. The Company shall continuously maintain one or more liability insurance policies meeting the requirements of this Section 12.2 throughout the Term and thereafter until completion of removal of the System, or any part thereof, on, over, or under the Inalienable Property of the City including all reasonably associated repair of the Inalienable Property of the City or any other property to the extent such removal and or restoration is required pursuant to this Agreement. The Company has provided Proof of Insurance pursuant to Section 12.2.3(a) hereof, and shall effect and maintain the following types of insurance as indicated in Schedule E attached hereto (with the minimum limits and special conditions specified in Schedule E attached hereto). Such insurance shall be issued by companies that meet the standards of Section 12.2.2(a) hereof and shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

(a) The Company shall provide a Commercial General Liability Insurance policy covering the Company as Named Insured and the City as an Additional Insured. Coverage for the City as Additional Insured shall specifically include the City's officials, employees and agents, and shall be at least as broad as Insurance Services Office ("ISO") Form CG 2010 (11/85 ed.) (No later edition of ISO Form CG 2010, and no more limited form or endorsement, is acceptable.) This policy shall protect the City and the Company from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Agreement. Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (1/96 ed.), must be "occurrence" based rather than "claims-made", and shall 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. If such insurance contains an aggregate limit, it shall apply separately to this Project.

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

(i) The City of New York together with its officials, employees and agents is an Additional Insured with coverage as broad as ISO Forms CG 2010 (11/85 ed.) and CG 0001 (1/96 ed.); and

(ii) The Duties in the Event of Occurrence, Claim or Suit condition of the policy is amended per the following: if and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City of New York as Additional Insured under this policy, such 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 following position shall have received notice thereof from such agent, servant, official, or employee: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

(iii) Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall 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; and

(iv) 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.

(b) The Company shall provide, and ensure that each subcontractor provides, Workers Compensation Insurance and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Agreement.

(c) The Company shall provide, and ensure that each subcontractor provides, Employers Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his/her employment under this Agreement.

(d) The Company shall provide a Comprehensive Business Automobile Liability policy for liability arising out of 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").

(e) The Company shall provide a Professional Liability Insurance Policy covering Breach of Professional Duty, including actual or alleged negligent acts, errors or omissions committed by the Company, 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. 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 Company'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 three-year extended reporting period for acts or omissions that occurred but were not reported during the policy period.

(f) All insurers shall waive their rights of subrogation against the City, its officials, employees and agents.

(g) 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 given as a matter of law.

(h) The Company shall provide such other types of insurance, at such minimum limits, as are specified in Schedule E attached hereto.

12.2.2. General Requirements for Insurance Policies.

(a) All required insurance policies shall be maintained 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, unless prior written approval is obtained from the Mayor's Office of Operations.

(b) The Company shall be 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.

(c) 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 such schedule or (ii) the limits provided to the Company as Named Insured under all primary, excess and umbrella policies of that type of coverage.

(d) Except for insurance required pursuant to Sections 12.2.1(b) and 12.2.1(c) herein, all policies shall be endorsed to provide that the policy may not be cancelled, terminated, modified or changed unless 30 days prior written notice is sent by the Insurance Company to the Named Insured (or First Named Insured, as appropriate), the Commissioner, and to Comptroller, attn: Office of Contract Administration, Municipal Building, Room 1005, New York, New York 10007.

(e) Within 15 days of receipt by the City of any notice as described in 12.2.2(d) hereof, the Company shall obtain and furnish to DOT, with a copy to the Comptroller, replacement insurance policies in a form acceptable to DOT and the Comptroller together with evidence demonstrating that the premiums for such insurance have been paid.

12.2.3. Proof of Insurance.

(a) The Company has, for each policy required under this Agreement, filed a Certificate of Insurance with the Commissioner pursuant to Section 12.2.6 hereof.

(b) All Certificates of Insurance shall be in a form acceptable to the City and shall certify the issuance and effectiveness of the Types of Insurance specified in Schedule E, each with the specified Minimum Limits and Special Conditions.

(c) Certificates of Insurance confirming renewals of, or changes to, insurance shall be submitted to the Commissioner not less than 30 Days prior to the expiration date of coverage of policies required under this Agreement. Such Certificates of Insurance shall comply with the requirements of Sections 12.2.3(a) and 12.2.3(b) herein.

(d) The Company shall be obligated to provide the City with a copy of any policy required by this Section 12 upon the demand for such policy by the Commissioner or the New York City Law Department.

12.2.4. Operations of the Company.

(a) Acceptance by the Commissioner of a certificate hereunder does not excuse the Company from securing a policy consistent with all provisions of this Section 12 or of any liability arising from its failure to do so.

(b) The Company shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to perform Services only during the effective period of all required coverage.

(c) In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Company shall immediately stop all Services, and shall not recommence Services until authorized in writing to do so by the Commissioner. Notwithstanding the above, if any or all of the Services are being provided by a subcontractor that maintains insurance satisfactory to the City that names the City as additional insured, and such insurance is in full force and effect and remains in full force and effect during the period of the lapse, then the Company, acting through its subcontractor, may continue to provide such Services as directed by DOT.

(d) The Company shall notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of the Company or its subcontractors, promptly, but not later than 20 days after such event. The Company'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 Company as Named Insured." The Company's notice to the insurance carrier shall contain the following information: the name of the Company, 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 Company, the identity of the persons or things injured, damaged or lost. Additionally,

(i) At the time notice is provided to the insurance carrier(s), the Company shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street Room 1222, New York, New York 10007. Notice to the Commissioner shall be sent to the address set forth in Schedule E attached hereto; and

(ii) If the Company fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Company 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.

12.2.5. Subcontractor Insurance. The Company shall ensure that each subcontractor name 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 Company. The foregoing requirements shall not apply to insurance provided pursuant to Sections 12.2.1(b) and 12.2.1(c) herein.

12.2.6. Insurance Notices, Filings Submissions. Wherever reference is made in Section 12.2 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Schedule E attached hereto. In the event no address is set forth in such schedule, such documents are to be sent to the Commissioner's address as provided in Section 14.4 hereof.

12.2.7. Disposal. If pursuant to this Agreement the Company is involved in the disposal of hazardous materials, the Company shall dispose such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least \$2,000,000 for losses arising from such disposal site.

12.2.8. Adjusted Insurance Coverage. The Company agrees to adjust the minimum coverage of the liability insurance policy or policies required in this Section 12.2 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 with respect to 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. Such notice shall specify in reasonable detail why the City is requiring such additional amounts or types of insurance.

12.2.9. Other Remedies. Insurance coverage in the minimum amounts provided for herein shall not relieve the Company or subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

SECTION 13

DEFAULTS AND REMEDIES; TERMINATION

13.1 Defaults.

(a) In the event any requirement listed in Appendix A is not performed to the standard set forth in Appendix A and this Agreement, the Company shall be obligated to pay the liquidated damages described in Appendix A. The Company agrees that any failure to perform such requirements to such standard shall result in injuries to the City and its residents, businesses and institutions the compensation for which will be difficult to ascertain. Accordingly the Company agrees that the liquidated damages in the amounts set forth in Appendix A are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. Liquidated damages payable by the Company under this Agreement shall cease to accrue following expiration or termination of this Agreement for any reason, but shall accrue or be imposed during any holdover period.

(b) In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement, which breach or default is not cured within the specific cure period provided for in this Agreement (each such breach or default referred to herein as a “Default”), then the City may:

(i) cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

(ii) make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

(iii) draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

(iv) pursue any rights the City may have under the Guaranty;

(v) seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

(vi) seek to restrain by injunction the continuation of the Default;

(vii) and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

(c) In the event of any breach of any provision by the Company or default by the Company in the performance of any obligation of the Company under this Agreement for which breach or default a specific time period to cure is not expressly identified in this Agreement, and, except as provided in the last paragraph of this Section 13.1(c) below, which breach or default is not cured within ten days after notice from the City (each such breach or default also referred to herein as a “Default”), then the City may:

(i) cause a withdrawal from the Security Fund, pursuant to the provisions of Section 6 herein;

(ii) make a demand upon the Performance Bond pursuant to the provisions of Section 7 herein;

(iii) draw down on the Letter of Credit pursuant to the provisions of Section 7 herein;

(iv) pursue any rights the City may have under the Guaranty;

(v) seek and/or pursue money damages from the Company as compensation for such Default (except that if the Default is one to which subsection (a) of this Section 13.1 is applicable then the liquidated damages set forth in Appendix A shall be the only damages available to the City related to such Default, subject to Section 14.9);

(vi) seek to restrain by injunction the continuation of the Default;

(vii) and/or pursue any other remedy permitted by law or in equity or in this Agreement provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Termination Default (defined hereinafter).

Notwithstanding the above, the 10-day cure period is not applicable to (x) any matters contemplated by Section 2.5.4.4 herein, (y) any breach of the Company's obligations set forth in Section 3.1.5(e) herein (with respect to its obligation to remove broken glass within 24 hours), 3.1.5(f)(1) herein, or 4.4.9 herein (with respect to the obligation to remove material in violation of Section 4.4.1 herein), or (z) the breach of any other obligation of the Company which adversely impacts public safety, and the City may exercise any of the rights enumerated in this paragraph arising from such breach.

(d) 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 Company shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

(e) The rights and remedies described in the preceding subsections (b) and (c) shall not be exclusive (except as specifically set forth therein with regard to liquidated damages), but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any liability under this Agreement. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City. The provisions of this Section 13.1(e) shall at all times be subject to Section 13.5(b).

13.2 Termination Defaults.

13.2.1. Definition of Termination Default.

(a) Any failure by the Company to comply with the material terms and conditions of this Agreement, as such failures are described in the following subsections (i) through (xiv) shall be a “Termination Default” hereunder:

(i) material failure to comply with the Company’s obligations to install Coordinated Franchise Structures in accordance with this Agreement (including the specified timeframes);

(ii) material failure to comply with the Company’s obligations to maintain the Coordinated Street Furniture as described in this Agreement;

(iii) persistent or repeated failures to timely pay amounts due hereunder that are not being disputed by the Company in good faith, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

(iv) persistent or repeated failures to timely abide by the Company’s obligations under this Agreement, with such failures materially and adversely affecting the benefits to be derived by the City under this Agreement;

(v) if the Company fails to maintain in effect the Letter of Credit in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.5(b)), and such failure continues for ten business days after notice;

(vi) if the Company fails to maintain in effect the Performance Bond in accordance with the provisions of Section 7 herein (subject, however, to the penultimate sentence of Section 7.1(b)), and such failure continues for ten business days after notice;

(vii) if the Company fails to replenish the Security Fund as required under the provisions of Section 6 herein and such failure continues for ten business days after notice;

(viii) if the Company fails to establish or maintain the Escrow Fund or to cause the establishment or maintenance of the Supplemental Escrow Fund as required under the provisions of Section 9.5 herein and such failure continues for ten business days after notice;

(ix) if, in connection with this Agreement, the Company (x) intentionally or recklessly makes a material false entry in the books of account of the Company or intentionally or recklessly makes a material false statement in the reports or other filings submitted to the City, or (y) makes multiple false entries that are material in the aggregate in the books of account of the Company or multiple false statements that are material in the aggregate in the reports or other filings submitted to the City;

(x) if the Company fails to maintain insurance coverage or otherwise materially breaches Section 12.2 herein and such failure continues for ten business days after notice from the City to the Company;

(xi) if the Company engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;

(xii) if the Company, 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;

(xiii) the occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other similar judicial or non judicial sale of all or any material part of the System, and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner within 20 business days after notice from the City to the Company that such event will not lead to such foreclosure or other judicial or non judicial sale. Such an event may include, without limitation: (a) default under any loan or any financing arrangement material to the System or the obligations of the Company under this Agreement; (b) default under any contract material to the System or the obligations of the Company under this Agreement; or (c) default under any lease or mortgage covering all or any material part of the System;

(xiv) if: (aa) the Company shall make an assignment or other transfer of interest of the Company or the System, or there is any change in Control, in each case prohibited by or in violation of Section 11, or if the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any part of the System; (bb) a writ or warranty of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (cc) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings which is unstayed for 60 days (provided that the 60 day period shall not apply if as a result of such final order, judgment or decree the Company will be unable to perform its obligations under this Agreement); or (dd) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company;

(xv) the Company sets a charge for use of the APTs that exceeds the maximum permitted charge hereunder.

(b) Relation To Other Defaults. The Company acknowledges that a Termination Default may exist pursuant to one or more of the provisions of the preceding subsection 13.2.1(a) even if such defaults on an individual basis have subsequently been cured after their original occurrence, were the subject of liquidated damages and such liquidated damages have been paid, or were subsequently remediated by recourse to the Security Fund, Letter of Credit, Performance Bond or Guaranty or by collection of judicially awarded damages.

(c) Prior Notice of Certain Events. The City shall give the Company reasonable notice of the existence of any events or circumstances that the City reasonably believes would give rise to a Termination Default under Section 13.2(a)(i)-(iv) if such events or circumstances were to continue.

(d) Remedies of the City for Termination Defaults. In the event of a Termination Default, the City may (in addition to any other remedy which the City may have under Section 13.1 hereof) at its option, give to the Company a notice, in accordance with Section 14.5 hereof, stating that this Agreement and the franchise granted hereunder shall terminate on the date specified in such notice (which date shall not be less than ten days from the giving of the notice), and this Agreement and the franchise granted hereunder shall terminate on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the franchise granted herein.

13.3 Expiration and Termination for Reasons Other Than Termination Default.

(a) Termination for Reasons Other Than Termination Default.

(i) In the event of the condemnation by 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 Company to carry out its obligations and the purposes of this Agreement and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner, within 20 business days after notice that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Company, then and in such event the City may, at its option, to the extent permitted by law, terminate this Agreement by notice within 60 days after the expiration of the foregoing 20 business day notice period as set forth in Section 14.5 hereof.

(ii) In the event the Company shall fail to promptly (A) terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement or (B) suspend pending final resolution of the matter its relationship with any Affiliated Person, any employee or agent of the Company who is indicted 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 pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

(iii) In the Event that the Company is indicted 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 pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to 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 14.5 hereof.

(b) Expiration. This Agreement, if not previously terminated pursuant to the terms of the Agreement, shall expired at the end of the scheduled Term.

13.4 Disposition of System.

13.4.1. Expiration. Upon expiration of this Agreement, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option, to be exercised at least 60 days prior to the expiration, Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 180 days of expiration of this Agreement, which the Company agrees to undertake and complete.

13.4.2. After Termination Upon Termination Default. In the event of any termination of this Agreement due to a Termination Default by the Company, the City shall have full title, free and clear of liens and encumbrances, to any or all of the then existing Coordinated Franchise Structures and appurtenances, without payment of compensation. At the City's option to be exercised within 30 days of the date of termination, the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore the respective sidewalks and curbs to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.4.3. After Termination For Reason Other Than A Termination Default. In the event of any termination of this Agreement by the City in accordance with Section 13.3(a), within 30 days of the date of such termination, at the City's option (a) the City may purchase from the Company the System, or any portion thereof, at a purchase price determined by

calculating 100% of the actual cost of fabricating and installing the structures, less depreciation on a straight line basis using an annual depreciation of 10% starting from the initial Installation Date of the applicable Coordinated Franchise Structure; or (b) the Company shall remove any or all of the Coordinated Franchise Structures (in which case the Company shall remain the owner thereof) and restore their site to the condition that existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code at the Company's sole cost and expense within 240 days of termination of this Agreement, which the Company agrees to undertake and complete.

13.5 Effect of Expiration or Termination.

(a) For Reason Other Than A Termination Default. Following expiration or sooner termination of this Agreement pursuant to Section 13.3(a), the Company shall not be obligated to pay the Franchise Fee, other than in accordance with Section 9.5(b) herein. The City shall refund to the Company within 30 days of the date of such termination, any portion of the Advance Payment which, had the Advance Payment been payable over the first four years of the Term in accordance with the annual amounts set forth on Schedule C, would not yet have become payable to the City in accordance with the terms of Section 9.5 herein.

(b) Upon a Termination Default. Following termination of this Agreement upon a Termination Default, except with respect to the Company's indemnification obligations for third-party claims under Section 12.1, any amounts that may be owed pursuant to Section 4.7 for amounts deferred but not repaid, or any unpaid compensation accrued through the date of termination, the maximum amount of damages that the Company may be liable for in connection with this Agreement (whether as liquidated damages, actual contract damages, or under any theory of recovery whatsoever) shall be limited to, subject to the City's mitigation of damages obligations as set forth in Section 14.23 hereof, the greater of:

(i) the Cash Component for the first three years after any judgment is entered against the Company (or what would have been the last three years of the Term if judgment is entered after what would have been the 16th year of the Term); or

(ii) three times the cash portion of the Franchise Fee owed to the City for the last year of the Term before this Agreement was terminated after adjusting for inflation in the amount of 2.5% per year up to the date the judgment is entered,

plus the full amount of the Security Fund, recourse to the Performance Bond and the full amount of the Letter of Credit then required pursuant to this Agreement.

13.6 Procedures for Transfer After Expiration or Termination. Upon the acquisition of the System by the City or the City's designee pursuant to Section 13.4 herein, the Company shall:

(a) cooperate with the City to effectuate an orderly transfer to the City (or the City's designee) of all records and information reasonably necessary to maintain and

operate the System being transferred (such part of the System referred to hereafter as the “Post Term System”); and

(b) at the City’s option promptly supply the Commissioner with all existing records, contracts, leases, licenses, permits, rights-of-way, and any other materials necessary for the City or its designee to operate and maintain the Post Term System.

13.7 Removal Upon Expiration or Termination.

13.7.1. Removal Procedures. If, upon expiration or any termination of this Agreement, all or any part of the Coordinated Franchise Structures is to be removed pursuant to this Section 13, the following procedures shall apply:

(a) in removing the System, or part thereof, the Company shall restore all Inalienable Property of the City and any other property affected by the actions of the Company under this Agreement (“Other Affected Property”) to its condition as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, and shall have received all applicable approvals from DOT and any other applicable City approvals;

(b) the City shall have the right to inspect and approve the condition of such Inalienable Property of the City after removal and, to the extent that the City reasonably determines that said Inalienable Property of the City and Other Affected Property have not been restored to its condition, as it existed immediately prior to the date of such removal and in compliance with the New York City Administrative Code, the Company shall be liable to the City for the cost of restoring the Inalienable Property of the City and Other Affected Property to said condition; and

(c) the Security Fund, Performance Bond, Letter of Credit, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal of all or any of the Coordinated Franchise Structures and/or restoration and associated repair of all Inalienable Property of the City or Other Affected Property, and for not less than 120 days thereafter, or for such longer periods as set forth in this Agreement.

13.7.2. Failure to Commence or Complete Removal. If, in the reasonable judgment of the Commissioner, the Company fails to commence removal or if the Company fails to substantially complete such removal, 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 Section 13, the Commissioner may, at his or her sole discretion authorize removal of the System, or part thereof, at the Company’s cost and expense, by another Person or remove such System, or part thereof, at the Company’s cost and expense, itself.

13.7.3. No Condemnation. None of the declaration, connection, use, transfer or other actions by the City or the Commissioner under this Section 13 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

13.7.4. Other Provisions. The City and the Company shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that the Company hereby waives its rights, if any, to relocation costs that may be provided by law and except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

SECTION 14

MISCELLANEOUS

14.1 Appendices, Exhibits, Schedules. The Appendices, Exhibits and Schedules to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are except as otherwise specified in said Appendices, Exhibits and Schedules and in Schedule F, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices, Exhibits and Schedules shall be the same as those applicable to any amendment or modification hereof.

14.2 Order of Governance. The following order of governance shall prevail in the event of a conflict between this Agreement and any attachments hereto: 1. Authorizing Resolution; 2. this Agreement; 3. the Schedules, Appendices and Exhibits attached hereto, excluding, however, the BAFO, Proposal and the RFP; 4. BAFO; 5. Proposal; 6. RFP.

14.3 Coordination. The Company and DOT acknowledge and agree that the nature of the relationship created by this Agreement requires extensive and ongoing long-term coordination between the parties. Accordingly, no later than ten business days after the Effective Date, the City shall designate a director of Coordinated Franchise Structures and the Company shall designate the Director of Inter-governmental Relations, as the individual responsible for coordinating with the other party with respect to all matters that may arise from time to time, including matters arising under Section 2.4.4, in the course of the Term relating to the installation, maintenance, and operation of the System. When at any time during the Term of this Agreement any notice is required to be sent to the Company, other than a notice pursuant to Section 14.5 hereof, such notice shall 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. Any such oral notice shall only be effective if (a) given to the person identified in this Section 14.3 or a designee of such person whose designation is notified to the other party hereto in writing and (b) followed reasonably promptly by written notice, which may for such purposes be given by e-mail.

14.4 Publicity. The prior written approval of DOT is required before the Company or any of its employees, servants, agents or independent contractors may, at any time, 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 of communication bearing on the work

performed or data collected under this Agreement. If the Company publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, DOT shall 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, such portion of the publication.

14.5 Notices. All notices required to be given to the City or the Company pursuant to Sections 1.27, 6.6, 7.1, 7.2(c), 7.7, 9.4.1, 9.4.1(d), 10.6.2, 11.3, 12.1.5, 13.2.1(b), 13.2.1(c), 13.2.1(d), 13.3(a), 13.4.1, 13.4.2, 14.10, and 14.11 shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by overnight mail, by fax, or by personal delivery to the address or facsimile number listed below, or to such other location or person as any party may designate in writing from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to “the City,” in which case such communication shall be sent to:

If to the City:

The Commissioner of DOT at 55 Water Street, New York, New York 10041;

with a copy to

General Counsel, New York City Department of Transportation, 55 Water Street, New York, New York 10041

If to the Company:

Cemusa NY, LLC at 420 Lexington Avenue, Suite 2533, New York, NY 10170 or fax # 212-599-7999, Attention: Director of Inter-governmental Relations;

with a copy to

Greenberg Traurig, LLP, MetLife Building, 200 Park Avenue, New York, New York, 10166, or fax # 212-805-9299, Attention: Edward C. Wallace

Except as otherwise provided herein, the mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when mailed or when received if transmitted by facsimile. Any notice required to be given to the Company pursuant to Section 13 herein for which a cure period is ten days or less, which requires action to be taken within ten days or less, or notifies the Company of an event or action that will occur in 10 days or less must be given by personal delivery, overnight mail service or facsimile transmission.

14.6 General Representations, Warranties and Covenants of the Company. In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which

representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City), as set forth in Sections 14.6.1 and 14.6.2 as of the date of this Agreement.

14.6.1. Organization, Standing and Power. The Company is an entity of the type described in Appendix E attached hereto, validly existing and in good standing under the laws of the State specified in Appendix E attached hereto and is duly authorized to do business in the State of New York and in the City. Appendix E attached hereto represents a complete and accurate description of the organizational and ownership structure of the Company and a complete and accurate list of all Persons which hold, directly or indirectly, a 10% interest in the Company, and all entities in which the Company, directly or indirectly, holds a 10% or greater interest. The Company 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 in connection with or as contemplated hereby. The Company is qualified to do business and is in good standing in the State of New York.

14.6.2. Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the certified copies of authorizations for the execution and delivery of this Agreement provided to the City pursuant to Section 2.2 herein are true and correct. This Agreement and all other agreements, if any entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms. The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Neither the execution and delivery of this Agreement by the Company nor the performance of its obligations contemplated hereby will:

(a) conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of the Company or to the Company's knowledge, any agreement among the owners of the Company, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;

(b) result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of the Company except permitted encumbrances under Section 11.5 herein; or

(c) terminate, breach or cause a default under any provision or term of any contract, arrangement, agreement, license or commitment to which the Company is a party, except for any event specified herein or in (a) or (b) above, which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company or the System.

14.6.3. Fees. The Company has paid all material franchise, permit, or other fees and charges to the City which have become due prior to the date of this Agreement pursuant to any franchise, permit, or other agreement.

14.6.4. Criminal Acts Representation. Neither the Company nor, any Affiliated Person or any employee or agent of the Company, has committed and/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 (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, or (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided pursuant to this Agreement.

14.6.5. Criminal Acts Covenant. The Company shall promptly terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is 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: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement.

14.6.6. Relationship with the City. The Company affirms and declares that 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 Company to receive a franchise or other public contracts.

14.6.7. Misrepresentation. No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, in connection with any submission to DOT or the Commissioner, including the Proposal, in connection with the negotiation of this Agreement.

14.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement shall apply to the City and the Company and their successors and assigns.

14.8 Comptroller Rights. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

14.9 Remedies. The payment of liquidated damages pursuant to the provisions of this Agreement is intended solely to compensate the City for damages incurred from the actual failure to meet the particular obligation and not for failure to meet other obligations that may be construed as related (for example, the obligation to reimburse the City if the City, pursuant to this Agreement, performs or arranges for the performance of the obligation the failure of which gave rise to the liquidated damages obligation, indemnification obligations, and monetary consequences of Termination). Nothing in this paragraph or in this Agreement is intended to authorize or shall result in double recovery of damages by the City.

14.10 No Waiver; Cumulative Remedies. No failure on the part of the City or the Company to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City or the Company, as applicable under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City or the Company, as applicable at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City or the Company, as applicable at any other time. In order for any waiver of the City or the Company, as applicable to be effective, it must be in writing. The failure of the City to take any action regarding a Default or a Termination Default by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such Default or Termination Default.

14.11 Partial Invalidity. The clauses and provisions of this Agreement are intended to be 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, such provision shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are not undermined. If, however, the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part) are undermined as a result of any clause or provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration

is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other party in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity, provided, however, that any such modifications shall be subject to all 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 (which 120-day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences as would ensue if it had been terminated by the City pursuant to Section 13.3(a).

In addition, in the event any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing applicable federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the fundamental assumptions underlying this Agreement (not including restrictions on alcohol advertising content which are covered by Section 4.7 or any other restriction on advertising content, and not including matters that are covered by Section 9.7, as long as such Section 9.7 is not declared invalid in whole or in part), the adversely affected party shall notify the other party in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such change, provided, however, that any such modifications shall be subject to all City approvals and authorizations and compliance with all City procedures and processes.

14.12 Survival. Any provision of this Agreement which should naturally survive the termination or expiration of this Agreement shall be deemed to do so.

14.13 Headings and Construction. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder” and “hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term “may” is permissive; the terms “shall,” “must,” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

14.14 No Subsidy. No public subsidy is provided to the Company pursuant to this Agreement.

14.15 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

14.16 Governing Law. This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York,

irrespective of conflict of laws principles, as applicable to contracts entered into and to be performed entirely within the State.

14.17 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive the Term.

14.18 Claims Under Agreement. The City and the Company agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall 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”). To effect this Agreement and intent, the Company agrees that:

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 14.20 hereof,

(b) With respect to any action between the City and the Company in New York State Court; the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non convenience; (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;

(c) With respect to any action between the City and the Company in Federal Court, the Company 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; and

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

14.19 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 shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and, approved as required by applicable law.

14.20 Service of Process. If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its address as set forth in this Agreement, or to such other address as the Company may provide to the City in writing.

14.21 Compliance With Certain City Requirements. The Company agrees to comply in all respects with the City's "MacBride Principles", a copy of which is attached at Appendix F hereto. The Company agrees to comply in all respects with VENDEX, as the same may be amended from time to time.

14.22 Compliance With Law, Licenses.

(a) The Company at its sole cost and expense shall comply with all applicable City, state and federal laws, regulations and policies.

(b) The Company at its sole cost and expense shall obtain all licenses and permits that are necessary for the provision of the Services from, and comply with all rules and regulations of any governmental body having jurisdiction over the Company with respect to the Services.

14.23 Mitigation. In the event of a breach of this Agreement by any of the parties hereto, the other parties will act in good faith and exercise commercially reasonable efforts to mitigate any damages or losses that result from such breach. Notwithstanding the foregoing, nothing contained in this Section 14.23 shall limit in any respect the parties' right to indemnification pursuant to Section 12 herein.

14.24 Force Majeure and Other Excused Failure to Perform. Neither party shall be liable (including, without limitation, for payment of liquidated damages) for failure to perform any of its obligations, covenants, or conditions contained in this Agreement when such failure is caused by the occurrence of an Event of Force Majeure, and such party's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period. Notwithstanding anything to the contrary set forth in this Agreement, to the extent that the Company is unable to timely perform any of its obligations, covenants, or conditions contained in this Agreement due to the fault of the City, the Company's obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay and no breach or default shall exist or liquidated damages be payable with respect to such extended period.

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

IN WITNESS WHEREOF, the party of the first part, by its Deputy Mayor, duly authorized by the Charter of The City of New York, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and by its Commissioner of The New York City Department of Transportation, duly authorized, has caused its name to be hereunto signed 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.

THE CITY OF NEW YORK

By: _____
Deputy Mayor of The City of New York

THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

By: _____
Commissioner

Approved as to form,
Certified as to Legal Authority

Acting Corporation Counsel

CEMUSA NY, LLC

By: _____
Name:
Title:

Attest: _____
City Clerk

CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

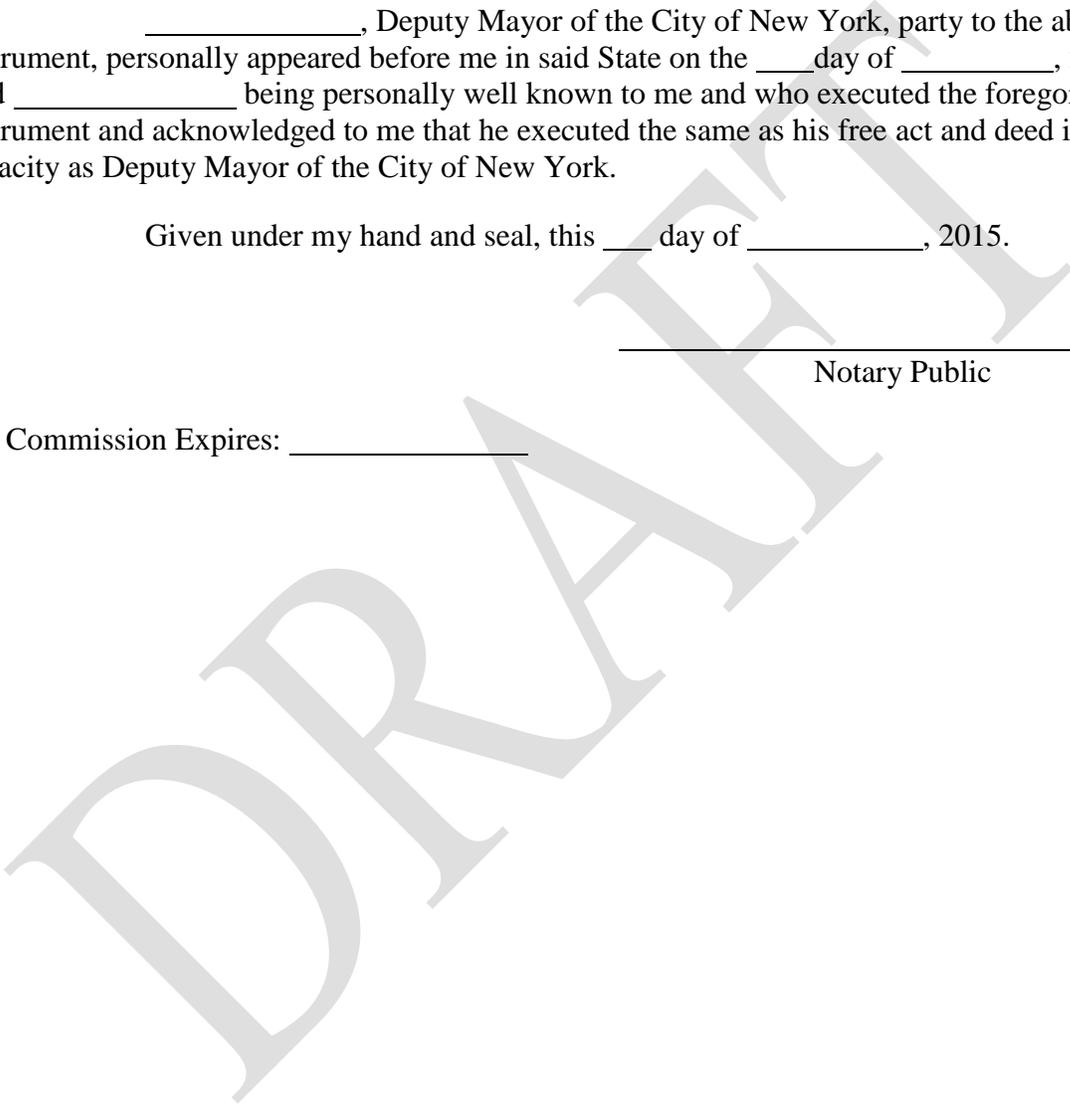
I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, Deputy Mayor of the City of New York, party to the above instrument, personally appeared before me in said State on the ___ day of _____, 2015, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as Deputy Mayor of the City of New York.

Given under my hand and seal, this ___ day of _____, 2015.

Notary Public

My Commission Expires: _____



CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

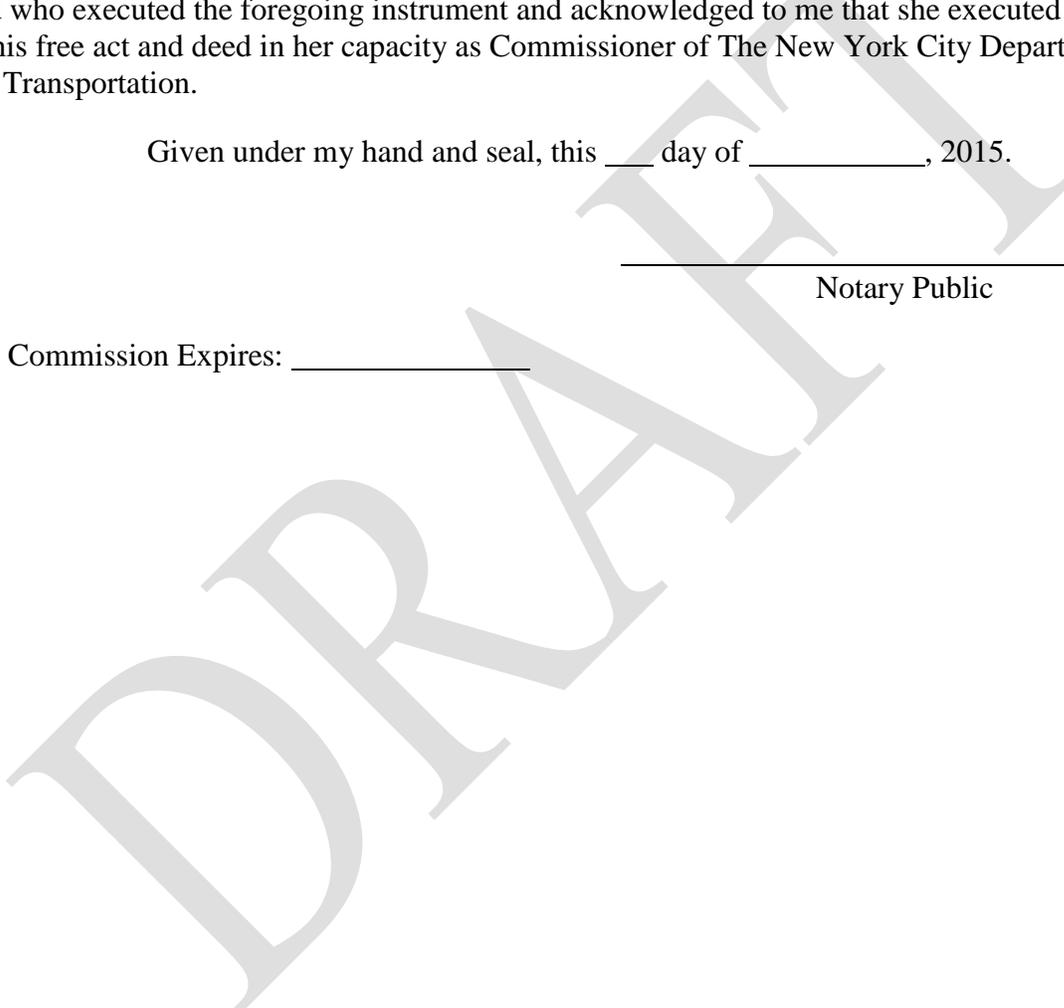
I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, Commissioner of The New York City Department of Transportation, party to the above instrument, personally appeared before me in said State on the ____ day of _____, 2015, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that she executed the same as his free act and deed in her capacity as Commissioner of The New York City Department of the Transportation.

Given under my hand and seal, this ____ day of _____, 2015.

Notary Public

My Commission Expires: _____



CITY OF NEW YORK)
) SS:
STATE OF NEW YORK)

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that

_____, _____ of CEMUSA NY, LLC., party to the above instrument, personally appeared before me in said State on the ___ day of _____, 2015, the said _____ being personally well known to me and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed in his capacity as _____ of CEMUSA, INC.

Given under my hand and seal, this ___ day of _____, 2015.

Notary Public

My Commission Expires: _____

SCHEDULE C - GUARANTEED MINIMUM; ALTERNATIVE COMPENSATION

	Guaranteed Minimum		C
	A	B	
Year	Cash Component (\$\$)	Alternative Compensation Non-cash (\$\$)	Alternative Compensation Floor (\$\$)
Year 1 (1)	21,299	18,000*	NA
Year 2 (1)	26,951	15,900	No Floor
Year 3 (1)	33,477	16,300	No Floor
Year 4 (1)	36,733	16,700	12,000
Year 5	39,606	17,100	12,360
Year 6	45,663	17,500	12,731
Year 7	46,898	18,000	13,113
Year 8	48,261	18,400	13,506
Year 9	49,663	18,900	13,911
Year 10	51,106	20,996,008 ¹	14,329
Year 11	52,588	21,396,008	14,758
Year 12	54,113	21,896,008	15,201
Year 13	55,682	22,396,008	15,657
Year 14	57,295	22,996,008	16,127
Year 15	58,954	23,496,008	16,611
Year 16	60,660	23,996,008	17,109
Year 17	62,401	24,596,008	17,622
Year 18	64,176	25,196,008	18,151
Year 19	65,891	25,796,008	18,696
Year 20	67,538	26,396,008	19,256
TOTALS	998,954	415,956.087	

Dollars are in Thousands

(1) Represents Advance Payment of the Cash Component for the first four years of the Term, to be made in accordance with Section 9.3 of the Franchise Agreement

* \$2.5 million of this set amount will be provided in the form of amenities at any time during the first five years of the Term in accordance with Section 9.17 of the Franchise Agreement

¹ Reflects an additional \$17,556,087 in Alternative Compensation pro rated over the remaining years of the Term, beginning in the current Year 10 of the Term. This will be adjusted prior to closing, as of the date of closing.

Excluded JCDecaux In-Kind Markets

The list of markets includes markets in which advertising media may not be lawfully displayed without the JCDecaux In-Kind Market operator being required to make an out-of-pocket expenditure to the JCDecaux In-Kind Market locality.

Date	Market
September 9, 2015	As of this date, no such markets exist.

DRAFT

SCHEDULE D – FRANCHISE FEE REVISIONS

PSS REVISION

A. Multi-Rack Newsracks.

(i) Deduction in Cash. For each newsrack requested by DOT the Company shall make a one time deduction of \$4,570 from the cash portion of the Franchise Fee. Such deduction shall be made from the fourth quarter payment of the year in which such multi-rack newsrack was installed. Additionally, for each installed multi-rack newsrack the Company shall make a yearly deduction of \$1120 (evenly divided among each quarterly payment following installation) from the cash portion of the Franchise Fee.

(ii) Addition to the Franchise Fee. No revenue shall be generated by the Company from the multi-rack newsracks.

B. Trash Receptacles.

(i) Deduction in Cash. For each trash receptacle requested by DOT the Company shall make a one time deduction of \$624 from the cash portion of the Franchise Fee. Such deduction shall be made from the fourth quarter payment of the year in which such trash receptacle was installed. Additionally, (a) for each trash receptacle installed on or within a Bus Shelter the Company shall make a yearly deduction of \$2160 (evenly divided among each quarterly payment following installation) from the cash portion of the Franchise Fee and (b) for every other trash receptacle installed the Company shall make a yearly deduction of \$720 (evenly divided among each quarterly payment following installation) from the cash portion of the Franchise Fee.

(ii) Addition to the Franchise Fee. Should the Company place sponsorship recognition on Trash Receptacles as permitted by the Agreement, it shall quarterly pay to the City, in accordance with Section 9 of the Agreement, 70% of PSS Gross Revenues derived from such trash receptacle.

C. Information/Computer Kiosks.

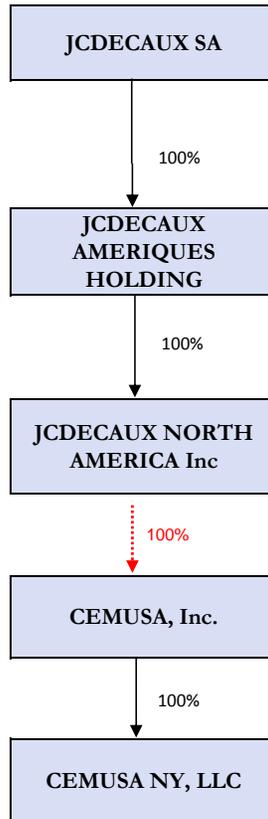
(i) Deduction in Cash. For each information/computer kiosk requested by DOT the Company shall make a one time deduction of \$22,300 from the cash portion of the Franchise Fee. Such deduction shall be made from the fourth quarter payment of the year in which such information/computer kiosk was installed. Additionally, for each installed information/computer kiosk the Company shall make a yearly deduction of \$3000 (evenly divided among each quarterly payment following installation) from the cash portion of the Franchise Fee.

(ii) Addition to the Franchise fee. Should the Company place sponsorship recognition on a information/computer kiosk as permitted by the Agreement, it shall quarterly pay to the City, in accordance with Section 9 of the Agreement, 70% of PSS Gross Revenues derived from such information/computer kiosk.

D. Installation and Maintenance Costs. The one time and quarterly deductions, as set forth above in A(i), B(i) and C(i), shall be yearly increased by 2.5% on each anniversary of the Effective Date.

APPENDIX E - CERTAIN COMPANY INFORMATION

ORGANIZATIONAL CHART



Schedule X

Fifth Avenue Bus Shelters

The following sites on Fifth Avenue have been determined by DOT to meet the requirements contained in Exhibit B to this Agreement.

No.	CAD Drawing	Location
1.	MN01496	Approximately 390 5 th Avenue, between 35 th and 36 th Streets
2.	MN01498	Approximately 424 5 th Avenue, between 38 th and 39 th Streets
3.	MN01499	Approximately 434 5 th Avenue, between 38 th and 39 th Streets
4.	MN01500	Approximately 442 5 th Avenue, between 39 th and 40 th Streets
5.	MN01685	Northwest corner of 40 th Street and 5 th Avenue, between 40 th and 41 st Streets (New York Public Library)
6.	MN01689	Southwest corner of 42 nd Street and 5 th Avenue, between 41 st and 42 nd Streets (New York Public Library)
7.	MN01503	Approximately 522 5 th Avenue, between 43 rd and 44 th Streets
8.	MN01539	Approximately 572 5 th Avenue, between 46 th and 47 th Streets
9.	MN01506	Approximately 610 5 th Avenue, between 49 th and 50 th Streets
10.	MN01512	Approximately 650 5 th Avenue, between 51 st and 52 nd Streets
11.	MN01514	Approximately 668 5 th Avenue, between 52 nd and 53 rd Streets
12.	MN01515	Northwest corner of 54 th Street and 5 th Avenue, between 54 th and 55 th Streets (University Club)
13.	MN01518	Approximately 720 5 th Avenue, between 56 th and 57 th Streets
14.	MN01519	Approximately 754 5 th Avenue, between 57 th and 58 th Streets
15.	TBD	TBD

Reciprocal Bus Shelters

In exchange for the right to install the fifteen (15) Fifth Avenue Bus Shelters identified above, the Company shall install thirty (30) Reciprocal Bus Shelters at the direction of DOT. In addition to any other remedy available under this Agreement, the Company's failure to complete installation of the Reciprocal Bus Shelters within thirty days after DOT's written notice directing the Company to install such Reciprocal Bus Shelters, shall result in the assessment of liquidated damages as set forth in Appendix A.