

ORDINANCE #67500
Board Bill No. 21

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® (the "Airport") "Operating Agreement" (Wireless Internet Access System) (AL-472) between the City and Concourse Communications St. Louis, LLC, a Limited Liability Corporation organized and existing under the laws of the State of Delaware; the Operating Agreement, which was recommended and approved by the City's Selection Committee for the installation, operation, marketing, maintenance, and management of a Wireless Internet Access System at the Airport and the City's Airport Commission, is attached hereto as **ATTACHMENT "1"** and is made a part hereof; containing a severability clause; and an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® (the "Airport") "Operating Agreement" (Wireless Internet Access System) (AL-472) between the City and Concourse Communications St. Louis, LLC, a Limited Liability Corporation organized and existing under the laws of the State of Delaware; the Operating Agreement is to read in words and figures substantially as set out in ATTACHMENT "1" and is attached hereto and made a part hereof

SECTION TWO. The sections, conditions, and provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof contained herein is held invalid by the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION THREE. This being an Ordinance for the preservation of public peace, health, or safety, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City Charter and shall become effective immediately upon its approval by the Mayor of the City.

Lambert St. Louis International Airport®



Concourse Communications ST. LOUIS, LLC

Operating Agreement NO. AL- 472

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**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
OPERATING AGREEMENT
(WIRELESS INTERNET ACCESS SYSTEM)**

THIS AGREEMENT, made and entered into as of the ____ day of _____, 2007, by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri (“**City**”) and Concourse Communications St. Louis, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“**Operator**”).

WITNESSETH, THAT:

WHEREAS, the City now owns, operates and maintains an international airport known as “Lambert-St. Louis International Airport®” (“**Airport**”), located in the County of St. Louis, Missouri;

WHEREAS, a wireless internet access system (the “**System**”) at the Airport is essential for proper accommodation of the traveling public;

WHEREAS, the City has determined that it is in the public interest for the following objectives to be met in the provision of a wireless internet access system:

- to provide an enterprise class, multi-user wireless internet access system designed to provide comprehensive wireless internet coverage that meets Airport users’ needs and adds value to other Airport services;
- to provide high quality, secure, reliable and easy to use wireless internet access to the public, qualified Internet Service Providers (“**ISPs**”) and Airport Authority staff, airlines, concessionaires, tenants, contractors, and public safety and operational groups (“**Private Side Users**”) at the Airport, such services will be provided at a cost attractive to Airport users;
- to provide secure access, authentication and accounting (“**AAA**”) mechanisms with an efficient administrative interface for the Airport that allows timely access to detailed usage, revenue, and other statistical reports;
- to manage the System to ensure optimal uptime and performance, to offer neutral host wireless access to all qualified ISPs, and a high quality customer service experience, providing superior network support, at both the physical and customer level;
- to leverage the value of the Airport's passenger market, facilities and infrastructure to maximize potential revenue to the Airport, capitalizing on proven revenue opportunities as well as those that may present themselves as the wireless industry develops, e.g. content, advertising, Voice over Wireless, etc.;

- to enable equal, open access, consistent terms and opportunity to all wireless ISPs, attracting as many service providers as possible, with an eye towards maximizing revenues;
- to accommodate current technological and capacity requirements for wireless services, with the capability to add capacity and coverage to support increased demand as the needs arise; and
- to be responsive to both Federal Aviation Administration (“FAA”) and City goals for Disadvantaged Business Enterprise (“DBE”) participation in Airport business opportunities.

WHEREAS, the City has advertised and issued a Request For Proposals with Qualifications (“RFP”) dated September 11, 2006 and received proposals for the right to operate and manage a wireless internet access system, and by this process the City has determined that the Operator is a qualified operator of this service and has submitted a proposal deemed to be the best proposal and the most advantageous to the public, Private Side Users, and the City.

NOW, THEREFORE, for and in consideration of the payments, promises, and of the mutual covenants and agreements herein contained, and other valuable considerations, the City and the Operator agree as follows:

ARTICLE I DEFINITIONS

Section 101. Definitions. The following words and phrases shall have the following meanings:

“**Agreement**” shall mean this Operating Agreement for a Wireless Internet Access System, duly approved by the parties hereto.

“**Agreement Term**” as stated in Article IV, Section 402 herein.

“**Airport**” as stated in the preamble hereof.

“**Airport Properties Department**” shall mean that department or successor department of the City of St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, Operator and other space at the Airport, and shall be the Operator’s point of contact with the Airport on all issues related to this Agreement.

“**Airport Authority**” or “**Authority**” shall mean the City of St. Louis Airport Authority, the City department responsible for managing and operating the Airport.

“**City**” as stated in the preamble hereof.

“**Contract Year**” shall mean one of not more than seven (7) consecutive twelve month periods commencing on the first day following the Initial Term (as defined below) of the Agreement, as specified in Article IV, Section 402 and Section 403.

“**days**” shall mean consecutive calendar days unless otherwise expressly stated.

“**Designated Areas**” shall mean those areas of the Airport terminal complex designated by the Director where the System shall be available and operational. Initial coverage areas include the Airport ticket lobbies and associated offices, administrative offices, concourses, gate areas, concession areas, baggage claim areas and associated offices, and rental car counters. This area is subject to expansion as the Director may deem necessary.

“**Director**” shall mean the Director of the Airport for the City or his/her designated representative, and incorporates the granting of approval requirements of Section 1415 hereof.

“**Disadvantaged Business Enterprise**” or “**DBE**” shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted

permanent residents) and who are refutably presumed to be Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian Indian Americans and any other individuals or groups found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended.

“Gross Receipts” shall mean the total revenues generated by the operation of the System from all sources and all service categories at this Airport under the Agreement and any derivative thereof performed by Operator, its subcontractors, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order. This includes all revenue generated from sponsorship, advertising and other indirect sources of revenue. Only the following may be excluded or deducted, as the case may be, from Gross Receipts:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for unperformed services purchased at the Airport;
- receipts in the forms of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- the sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Operator;
- capital contributions, loan proceeds, or other revenues, proceeds or receipts of the Operator or its affiliates that do not arise from the charges and fees for use of, connection to, and advertising on the System.
- cash in the form of payment from the City to the Operator connected to the operation and maintenance of stationary internet access points as outlined in Section 618.

“Improvements” shall mean without limitation all equipment, hardware, cabling, wiring, conduits, antennas, and other associated equipment, and fixtures installed, built or erected by the Operator, and forming a part of the Premises and/or is a part of or a component of the System as more fully described in Section 709 herein.

“Initial Term” as stated in Section 401 herein.

“Minimum Annual Guarantee” or “MAG” shall mean Operator’s minimum annual obligation as specified in Article V, Section 502(A) hereof.

“Operator” (or **“Contractor”**) as stated in the preamble hereof.

“Option Term” shall mean one of not more than two (2) consecutive twelve month periods subject to Article IV, Section 403 herein.

“Percentage Fee” shall mean the product of (i) the Gross Receipts for service multiplied by (ii) the percentage set out in Article V, Section 502(B) hereof.

“Premises” shall mean a location or locations described in Section 201 that have been designated by the City for installation or housing of equipment, hardware, conduit, cable runs, wiring, antennas and other associated equipment or fixtures necessary for the proper performance of the System, for the sale of Operator’s services, and for other uses provided specifically herein, together with all Improvements thereon (see Sections 201 and 709).

“Wireless Internet Access System” or “System” shall mean a fully operational enterprise-class, non-proprietary, 802.11 standards based Wireless Local Area Network (**WLAN**) capable of accommodating the needs of multiple users groups within the Airport terminal complex. The System will allow public users to access the Internet on a transaction (per-use) basis or via qualified ISP, with whom the user has a subscription. The System shall be made available to all reasonably qualified ISP’s in a nondiscriminatory manner, under established and consistent business terms.

ARTICLE II PREMISES

Section 201. Premises. City hereby permits the Operator to install, operate, manage, support and maintain the System, including equipment space, cable, conduit and power runs, at the locations within the Designated Areas of the Airport terminal complex, as described in Exhibit "A-1," entitled "Premises," attached hereto and made part hereof, in accordance with rights granted under Section 301. Rights.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Operator. The City shall not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Operator of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises, provided however that if any such addition, substitution, relocation, or deletion of the Premises that reduces the total square footage of the Premises by greater than fifteen percent (15%) of the total Premises originally apportioned as the Designated Areas for operation of the System, then the MAG shall thereafter be decreased in proportion to the amount of such percentage reduction, until sufficient space of similar quality is provided to the Operator.

Operator accepts the Premises "AS IS" with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives. City without limitation expressly disclaims and negates as to the Premises; a) any implied or expressed warranty of merchantability, b) any implied or expressed warranty for a particular purpose, and c) any expressed or implied warranty with the respect to the Premises or any portion thereof.

Section 202. Access. Subject to and in accordance with the terms, covenants and conditions of this Agreement, the Operator shall have the right of free access, ingress to and egress from the Premises for the Operator's employees, agents, contractors, guests, patrons and invitees.

ARTICLE III OPERATOR RIGHTS

Section 301. Rights. City hereby grants to the Operator, subject to and in accordance with all of the terms, covenants, warrants and conditions of this Agreement the nonexclusive right, license and privilege to operate, manage, market, support and maintain the System and Operator hereby assumes the obligation to design, install, construct and to operate, manage, market, support and maintain the System within the Premises.

Section 302. Advertising. City hereby grants the Operator the nonexclusive right to sell advertisements on the System splash page, which is the first page that appears on a user's computer screen when using the System. Operator may use the Airport's logo and trademarks upon written approval of the Director (See Section 1420). Advertising categories must be approved in advance in writing by the Director. Additionally, the Operator shall promptly remove any advertisement or advertisements which the Director, at his/her sole discretion, designates for removal from the System.

Section 303. Limitation of Rights. The Operator is not granted the right to offer for sale any merchandise, products, or services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the Operator, the Operator will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

ARTICLE IV TERM

Section 401. Initial Term. The "Initial Term" of this Agreement shall consist of sixty (60) days commencing on the Director's written approval of the design of the System. During the Initial Term, the Operator will be under no obligation to pay any fees and/or rentals as described in Article V herein. All other terms, covenants, warrants and conditions shall remain in full force and effect.

Section 402. Agreement Term. Following the completion of the Initial Term as described in Section 401 herein, the Agreement will automatically continue into the "Agreement Term" which shall commence at the end of the Initial Term and shall be for five (5) Contract Years, which commencement and expiration date shall be written below unless sooner terminated in accordance with other provisions of this Agreement.

Commencement Date: _____

Expiration Date: _____

Section 403. Option Terms. The Director or his/her designee, at his/her sole option, may grant up to two (2) one (1) Contract Year “**Option Term**” following the Agreement Term by giving one-hundred and twenty (120) days advance written notice to the Operator, which shall then have thirty (30) days to accept or decline each Option Term.

Section 404. Holdover Provision. If Operator shall, with the prior written approval of the Director, continue to use the Premises after the expiration of the Agreement Term or Option Term, if applicable, the resulting use shall, unless otherwise agreed to in writing by the Director, be at will, and on a month-to month basis. During such month-to month use, Operator shall pay to City the same Minimum Annual Guarantee and revenue share as set for the final Contract Year unless different fees shall be agreed to in writing by the Director, and shall be bound by all terms, covenants and conditions of this Agreement.

Section 405. Surrender of Possession. No notice to quit possession at the expiration date of this Agreement shall be necessary. The Operator covenants and agrees that at the Expiration Date of the Agreement Term or Option Term if granted, or at the earlier termination hereof, it shall peaceably surrender possession of the Premises, in accordance with Section 709. The City shall have the right to take possession of the Premises with or without due process of law.

**ARTICLE V
FEES**

Section 501. General. The Operator, for and in consideration of the rights and privileges granted herein, agrees to pay the operating fees set forth below in Sections 502, 505 and 510 and the utilities described in Section 804 of this Agreement, without demand during the Term of this Agreement and Option Term if applicable.

Section 502. Operator’s Fee Payments.

A. The Operator agrees to pay to City, for each Contract Year, a sum equal to the greater of the Minimum Annual Guarantee as set out below, or the Percentage Fee as set out in Part B of this Section 502, and which shall be applied to Gross Receipts.

The MAG for Contract Year One shall be One Hundred Thousand Dollars (\$100,000.00).

The MAG for Contract Year Two shall be One Hundred and Ten Thousand Dollars (\$110,000.00).

The MAG for Contract Year Three shall be One Hundred and Twenty Thousand Dollars (\$120,000.00).

The MAG for Contract Year Four shall be One Hundred and Thirty Thousand Dollars (\$130,000.00).

The MAG for Contract Year Five shall be One Hundred and Forty Thousand Dollars (\$140,000.00).

The MAG for Contract Option Year One (see Section 403) shall be One Hundred and Fifty Thousand Dollars (\$150,000.00).

The MAG for Contract Option Year Two (see Section 403) shall be One Hundred and Sixty Thousand Dollars (\$160,000.00).

B. Operator shall pay a Percentage Fee of 40% of Gross Receipts.

Section 503. Payment. Monthly payments to the City for each month of the entire Agreement Term, including any Option Term if applicable, shall consist of:

(a) a **Monthly MAG Payment** - an amount paid in advance on or before the first day of each month, without the need for invoice or notice, equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year, and

(b) a **Monthly Percentage Fee Payment** - an amount paid on or before the 15th day of the following month, for the preceding month, by which the Percentage Fee exceeds the Monthly MAG Payment, if applicable. (See Section 505 Unpaid Fees

for the amount of any applicable service charge). If the Percentage Fee for the preceding month does not exceed the applicable Monthly MAG Payment, then no Monthly Percentage Fee Payment shall be made by the Operator.

For each partial calendar month during the Agreement Term, including any Option Term, if applicable, the applicable Monthly MAG Payment shall be prorated based on the actual days in such partial calendar month during which the Agreement was effective.

Section 504. Reports.

A. The Operator shall submit to the City by the 15th day of the second and each succeeding month of the entire Agreement Term, two copies of an accurate statement of Gross Receipts. This statement shall separately state usage and Gross Receipts for each of the various user groups, with an attached breakdown for each ISP and Private Side User. Such statement shall be certified as accurate by an officer of the Operator. The final statement of Gross Receipts shall be due by the 15th day of the month following expiration or earlier termination of this Agreement. The Operator shall report Gross Receipts, on a form(s) reasonably approved by the Director. The City reserves the right to use these statements of Gross Receipts as a source of information to proposers or bidders in a future solicitation for bids or request for proposals for this service.

B. The Operator shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports shall be prepared by an independent Certified Public Accountant. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Receipts, broken out by category; (ii) a calculation of total fees due the City for the entire Contract Year; and (iii) schedule showing the total of actual payments to the City during the Contract Year. The audit reports shall also state an opinion as to the correctness of the computation of Gross Receipts without exception.

If, upon completion of such audit report (including the resolution of disputes thereof), it is established that additional fees are due City, Operator shall pay such additional fees to City not later than fifteen (15) days after completion of such statement and receipt of written notice from the Director. If it is established that Operator has overpaid City, then such overpayment from Operator shall be credited to the fees and charges next thereafter due from Operator or paid to Operator after the last Contract Year. Operator shall immediately notify City of the results of any audit conducted by Federal, State or local authorities.

C. Within thirty (30) days after the close of each Contract Year, except the last Contract Year, the Operator shall provide the City with an estimate of projected monthly Gross Receipts for the subsequent Contract Year.

D. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Section 1101 (B) (10) herein.

E. Operator shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the Airport Authority to determine compliance with the DBE participation requirement. The Airport Authority reserves the right to investigate, monitor and/or review records for compliance. The Operator shall submit monthly DBE activity reports to the Airport Authority in a form approved by the Director.

Section 505. Unpaid Fees. All unpaid fee payments due the City hereunder shall bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due. Operator shall pay and discharge all costs and expenses including attorneys' fees, court costs and litigation costs incurred or expended by the City in collection of said delinquent amounts due including service charges.

Section 506. Performance and Payment Bond. Operator agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount equal to Twenty Five Thousand Dollars (\$25,000.00) prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the Agreement Term, or Option Term, if applicable and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement. In the event that said bond should expire prior to expiration or early termination of this Agreement, Operator covenants and agrees to provide City a renewal bond sixty (60) days prior to expiration date of the expiring bond. Such bond shall guarantee the payment of all fees and performance of all other terms, covenants, conditions, and obligations of this Agreement. The Performance and Payment Bond shall be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A and with a "Best" Financial Size

Category of not less than Class VIII and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an “underwriting limitation” of at least the amount of the penal sum of the bond. The bond shall be kept in full force and effect during the Agreement Term and Option Term if applicable. City may agree to another form of security which may provide equal protection of City’s interest. If City cashes the bond or other form of security agreed to by the City, Operator agrees to furnish a replacement Performance and Payment Bond or other form of security in the same principal amount within fifteen (15) days.

Section 507. Prompt Payment of Taxes and Fees. The Operator covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to obtain and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport or under this Agreement, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 508. Accounting Records and Reports. During the Agreement Term hereof, and Option Term if applicable, the Operator shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Operator shall make same records available in the St. Louis area for one year following the termination of this Agreement. These records shall be accessible during usual business hours to the City or its duly appointed agents or auditors. The Operator is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City or its’ duly appointed agents or auditors at the Operator’s place of records.

Section 509. Audit. City, or its duly appointed agents or auditors, reserves the right to audit Operator, its subcontractors or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. Such audit requests shall be limited to one request per Contract Year, unless the City shall reasonably conclude that an additional audit is required to verify Gross Receipts. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Operator and Gross Receipts determined by the audit, the cost of the audit shall be reimbursed by the Operator within thirty (30) days of the City’s written request.

Section 510. Additional Fees, Charges and Rentals. The Operator shall pay additional fees, charges and rentals under the following conditions:

A. if the City has paid any sum(s) or has incurred any obligation(s) or expense(s) for which the Operator has agreed to pay or reimburse the City, or

B. if the City is required or elects to pay any sum(s) or incurs any obligation(s) or expense(s) because of the failure, neglect or refusal of the Operator to perform or fulfill any term, covenant or condition of this Agreement.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum(s) by the City for any work done or material furnished will be prima facie evidence against Operator that the amount of such payment was necessary and reasonable.

Section 511. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Operator.

ARTICLE VI OPERATOR’S OPERATIONS

Section 601. Obligations of Operator.

Operator shall assume full responsibility for the design, installation, management, operation, ongoing support, maintenance, and marketing of an enterprise class, multi-user, neutral-host Wireless Local Area Network (“WLAN”) providing wireless internet telecommunications access to airport passengers, tenants, employees, contractors, and visitors throughout the Designated Areas (the System) as provided for in Operator’s Proposal to: Lambert-St. Louis International Airport® RFP for Wireless Internet Access System, dated September 11, 2006, as amended, which is incorporated herein by reference, and in accordance with the final design approved

by the City. In addition, the Operator hereby covenants, warrants, stipulates, and agrees that:

- A. All costs for the design, installation, management, operation, maintenance and ongoing support, and possible future expansion of the System will be borne by the Operator, pursuant to its obligations herein. To the maximum extent reasonably possible the installation and operation of the System must be undertaken to minimize disruption to the Airport's facilities and operations. Operator shall ensure that the System is installed and operated in a manner that complies with applicable building codes and standards and Airport Tenant Design Standards and subject to the terms and conditions of ARTICLE VII, IMPROVEMENTS AND ALTERATIONS of this Agreement;
- B. Operator will measure and document System coverage upon completion of installation, and shall be responsible for ensuring that coverage does not materially degrade during the term of the Agreement. A copy of final as-built WLAN design documentation, including system configuration and coverage patterns, must be provided to the Airport within thirty (30) days of network launch;
- C. Operator(s) is solely responsible for the management, operation, maintenance and ongoing support of the System, and will provide high quality, secure, reliable, easy to use, enterprise class service, supporting both the physical network and the various user groups;
- D. Operator will provide all services reasonably necessary to ensure optimal System performance and uptime and a high quality user experience; including free access to an 'airport-branded' welcome and information splash page, secure access and authorization, as well as 24 hours per day, 7 days per week, 365 days per year superior customer support and network monitoring;
- E. Operator will provide, on a continual basis, a fully managed WLAN system that provides secure access, authentication and accounting (AAA) mechanisms that accurately measure and identify wireless traffic through the System;
- F. Operator will make the System available to participating qualified Internet Service Providers ("ISPs") so that they may provide wireless services to their subscribers while at the Airport. The System will be designed and managed in a brand neutral, nondiscriminatory manner so that all qualified ISPs have equal access to the System, under consistent terms and requirements, and so that their subscribers may access the System via their selected provider. Interested users should be able to access subscription offerings from all participating qualified ISPs;
- G. The Operator will provide wireless service and support to those users who do not have or wish to utilize a subscription internet service, on a transaction basis ("**Transaction Based Users**") without requiring the use of any special software or commitment to an ongoing relationship between the Operator and Transaction Based User. In order to ensure Operator's neutral status in the operation and management of the System, Operator shall not offer subscription type plans or services directly to public users of the System;
- H. Operator will make the System available to Private Side Users at the Airport, to serve the wireless internet access requirements of these users, enabling support for multiple private networks;
- I. Operator shall manage and administer access agreements, utilizing fair and consistent business terms, in substantially the form submitted in Operator's Proposal to: Lambert-St. Louis International Airport® RFP for Wireless Internet Access System, dated September 11, 2006, as amended, to accommodate commercial and private users of the System;
- J. Operator will make up to one (1) megabyte of bandwidth of the System available to Airport staff for support of Airport operations and wireless internet communications, at no charge. At the City's sole option, this may include a designated VLAN;
- K. At the City's option, the Authority's staff shall be briefed on the components and operation of the on-site network upon completion of the installation. This training is intended to acquaint Airport personnel with the features and performance of the wireless network; however, the Operator accepts full responsibility for the on-going use, operation, care and maintenance of the network and its various components, including all customer service issues;
- L. Operator will develop an Operating and Procedures Manual prior to the start of operations, to address relevant quality assurance, safety, security, system testing, and maintenance issues at initiation of the project as well as periodically during the term of the Agreement. The City shall have a minimum of ten (10) days to review and accept such procedures; and

- M. The System must be compliant with all-applicable laws, rules, regulations and license requirements of the Federal Communications Commission, the FAA, and the Airport.

Section 602. Service Levels. Operator shall comply with service levels for the System's operation at the Airport as described in this Section 602:

- A. The Operator shall provide, or cause to be provided, Tier 1 customer service via a dedicated toll-free number on a twenty-four (24) hours per day, each and every day of the year, basis for the Term of this Agreement and Option Term if applicable. Aforementioned customer service will answer and respond to all calls related to billing support, information regarding the System services and technical support. Customer service shall be staffed by knowledgeable employees of the Operator and/or subcontractors capable of providing assistance relating to the System.
- B. The System shall have an "**Uptime**" rate of no less than ninety-eight percent (98%) and "**Connection Rate**" of ninety-eight percent (98%), on an annual basis for the Term of this Agreement and Option Term, if applicable, assuming that all users connect with the appropriate hardware and software. **Uptime** means the absence of "**Downtime**," which is defined as any interruption in the availability of the System services due to issues with Operator's, or any of its subcontractor's, provided equipment and notwithstanding the foregoing includes unavailability associated with System maintenance. Downtime does not include interruptions based on outages due to force majeure (see Section 1404). Any planned maintenance activities will be scheduled between 11:00 p.m. and 6:00 a.m. local time. Any maintenance to be performed other than the hours listed above shall require the Director's approval in writing.
- C. The Operator shall have a System network operations center available on a twenty-four (24) hours per day, each and every day of the year, basis for the Term of this Agreement and Option Term, if applicable. This center shall provide monitoring and surveillance of the System. This center will provide technical support on System network design issues, equipment issues and outages, and will provide communications directly to the Operator's designated technical group. Each System network link, down to each access point shall be polled a minimum of every five (5) minutes to ensure connectivity. The System network operations center shall immediately answer all calls by the Interactive Voice Response ("**IVR**") system. Eighty percent (80%) of all calls will be answered within forty-five (45) seconds of the conclusion of the IVR recording.
- D. Operator shall provide on-site repair and maintenance of Operator's System equipment and equipment of its contractors and subcontractors at the Airport and use its reasonable efforts to resolve all such repair and maintenance issues within seventy-two (72) hours of the time the Operator or its contractors and /or subcontractors becomes aware from any source that an outage condition or problem is caused by or related to such System equipment.

Section 603. Compliance with Security Regulations and Laws.

- A. Operator shall fully comply with all FCC regulations applicable to the operation of the System, all FAA regulations applicable to the operation of the Airport, and all Transportation Security Administration ("**TSA**") security requirements. In addition, Operator shall fully comply with all Airport rules and regulations and Airport security plan. Employees of the Operator shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with TSA's regulation 1542 regarding conduct and access to the Airport Operations Area ("**AOA**") when entering the AOA.
- B. Operator shall submit to the City for approval on or before **Commencement Date** detailed written operating and security procedures. City shall have a minimum of twenty-one (21) days to review such procedures.

Section 604. Hours of Operation. Operator shall operate the System twenty four (24) hours a day, each day of the year.

Section 605. Promotion. The Operator warrants, covenants, represents, and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. The Operator shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method over which it has control. Any action taken by the Operator to diminish the Gross Receipts of the Operator under this Agreement shall constitute a material breach hereof for which the City may terminate this Agreement and/or seek other remedies at law or in equity.

Section 606. Maintenance Personnel.

- A. Operator shall have available qualified maintenance personnel in adequate numbers to provide routine maintenance of the System and to respond to any emergency outages of the System. The Operator shall require its employees (except managerial and supervisory employees) to wear appropriate badges to indicate the fact and nature of their employment. The Operator shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of the System. The Operator shall be responsible for ensuring that its employees abide by all applicable laws, rules and regulations.
- B. The Operator, at its cost, shall conduct employee background checks of each of its personnel if required by the FAA, TSA, and/or the Airport. The Operator recognizes and agrees that security requirements may change and the Operator agrees that it shall comply with all such changes throughout the Term of this Agreement, and Option Term, if applicable.

The Operator understands and agrees that fines and/or penalties may be assessed by the FAA or the TSA for the Operator's noncompliance with the provisions of the TSA regulation 1542 as amended or other applicable laws or regulations. The Operator shall promptly reimburse the City (within 30 days of the City's request) for any fines or penalties paid by the City due to Operator's noncompliance with said laws or regulations.

Section 607. Onset of Service. Operator shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the Improvements, Removable Fixtures and equipment as is necessary to provide the service pursuant to this Agreement

Section 608. Pricing.

- A. The Operator shall charge fair, reasonable and nondiscriminatory retail prices that are attractive to the public and substantially similar to the prices charged at comparable locations for comparable transaction based, retail usage. Initial pricing is detailed in **Exhibit B-1**, entitled "Pricing Structure," which is attached hereto and incorporated herein, provided, however, that the Operator may reduce such pricing as it deems appropriate, subject to the requirements set forth in this Section 608(A).
- B. The Operator shall charge fair, consistent and nondiscriminatory wholesale prices to all reasonably qualified ISPs seeking to offer service to their subscribers via the System. Initial pricing is detailed in Exhibit B-1. Operator may reduce such pricing as it deems appropriate, subject to the requirements set forth in the first sentence of this Section 608(B).
- C. The Operator shall charge private side users fair, reasonable and nondiscriminatory prices that are comparable for similar services at similar facilities. Pricing should be structured to encourage use of the System by tenants and other private-side users at the Airport. Initial pricing is detailed in Exhibit B-1. Operator may reduce such pricing as it deems appropriate, subject to the requirements set forth in the first sentence of this Section 608(C).
- D. The Operator shall not increase any prices in excess of those set forth in Exhibit B-1 without the prior written approval of the Director. The Operator's prices shall be subject to review for increases only once per year unless agreed to the contrary in writing by the Director. The Operator's prices may normally only be increased following substantiation of cost increases from service vendors and presentation of similar price increases at comparable locations.

Section 609. Relationship Manager. The Operator shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Operator. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 610. Local Representative. The Operator shall at all times retain one or more qualified, competent and experienced local technician(s) (i.e. a person having a place of residence within the St. Louis metropolitan region) to assist (in such matter as the Operator and such local technician may agree) Operator in fulfilling its obligations with respect to System maintenance, response to outages, and emergency repairs.

Section 611. Conflicts. The Operator shall monitor the movement of its vehicles or equipment to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users.

Section 612. Record Keeping. The Operator agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Operator under this Agreement (these records are to be retained by the Operator). The Operator must also maintain records that document, in a format acceptable to the Director, the utilization of DBE participants.

Section 613. Transition Period. If applicable, during any future transition to another Operator, the incumbent Operator hereby warrants, represents, covenants and agrees that the Operator shall use its commercially reasonable best efforts, in good faith, to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 614. Operation.

- A. The Operator shall be responsible for all aspects of the management and operation of the System and services as required herein. Further, the Operator shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.
- B. The City shall not be responsible for any equipment, Improvements, supplies or fixtures of Operator that are used, maintained or stored on the Premises, nor will it be responsible for damage to such items resulting from flood, fire, explosion, vandalism or other causes outside the control and responsibility of the City.

Section 615. Communication.

- A. The Operator's Relationship Manager shall schedule monthly or quarterly meetings or telephone conference calls (at the Airport Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect the Operator's operation at the City. The Operator's Relationship Manager shall also be available for meetings at other times as reasonably necessary.
- B. The Operator shall be responsible for notifying the Airport Properties Department of any problem known to the Operator that reduces service or sales levels or in any way impairs the Operator's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

Section 616. Customer Complaints. Operator shall establish procedures for handling all customer complaints. Operator shall respond in writing to every complaint, written or oral, within seven (7) calendar days of the complaint and will make good faith efforts to explain, resolve or rectify the cause of the complaint. Operator shall provide the Director with a copy of each such complaint and its written response thereto. Operator shall also provide the Director with a monthly summary of complaints received together with the resolution/disposition of the complaints.

Section 617. Deliveries. Operator shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of the Operator and not the City.

Section 618. Internet Access Points for Use by Traveling Public. Operator shall provide, install, operate, manage, and maintain up to six (6) stationary high speed devices (the "Access Points") offering high speed internet access for the use of the traveling public during the Agreement Term, including any Option Term if applicable, at no charge to the traveling public or users. The location, installation, and deployment of the Access Points shall be approved in advance and in writing by the Director.

- A. The initial costs for the purchase and installation of the Access Points shall be borne by the Operator, provided that all reasonable costs associated with the purchase and installation of the Access Points shall be reimbursed by the City to the Operator within sixty (60) days of the Access Points connection to the System, as provided for in this Section 618(A). All reasonable costs associated with the purchase and installation of the Access Points shall be approved in advance and in writing by the Director. The City's reimbursement shall be in the form of authorization to the Operator to reduce its monthly payment due to the City for the proceeding month after installation of each Access Point by the approved installation costs.
- B. The Operator shall bear all costs associated with upkeep, maintenance, operation, management, and repair of the Access Points during the Agreement, including any Option Term, if applicable; provided, however, if an Access Point requires maintenance or repair in an amount greater than ten percent (10%) of the replacement cost therefore, then Operator shall

be permitted to replace such Access Point and City will reimburse such costs as described in Section 618(A) above. The Operator is hereby authorized to reduce its monthly payment due to the City for each month pursuant to Article V of this Agreement by one hundred dollars (\$100.00) for each Access Point in use during such month.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Operator.

- A. Operator takes the Premises “**AS IS**” as provided for in Section 201 above and agrees, at Operator’s sole cost and expense, to design, construct, equip and furnish all necessary Improvements and equipment and make related facility changes as needed to provide a fully operational and properly functioning System, pursuant to this Agreement, in accordance with plans prepared by Operator and approved by the Director subject to the requirements of this Article VII.
- B. Operator agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
- Operator shall submit a signed Tenant Construction or Alteration Application (**TCA**) including complete sealed construction drawings and specifications, as required by Section 703, to the Airport Properties Department for its initial as well as future construction.
 - Operator shall submit a St. Louis County building permit number not more than 30 days following submission of the TCA to the Airport Properties Department. (A building permit number is required before construction can begin.)
 - Operator shall submit the contractor's liability insurance certificates and performance and payment bonds, required by Sections 704 and 705, to the Airport Properties Department not more than 45 days following the TCA approval by the Airport Properties Department and prior to beginning of work.
 - Operator shall complete all construction and the System shall be fully tested and operational no later than sixty (60) days following the Director’s written approval of the design of the System, subject to the provisions of Article XIII.
 - Operator shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit, to the Airport Properties Department, as required by Section 707.

In the event Operator encounters material believed to be asbestos or polychlorinated biphenyl (**PCB**) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Operator shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and Operator if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and Operator. Operator shall not be required to perform, without their consent, any work related to asbestos or PCB.

Section 702. Design Criteria and Technical Specifications. Operator shall design and construct the System in accordance with the plans and specifications as provided in its Proposal to: Lambert-St. Louis International Airport® RFP for Wireless Internet Access System, dated September 11, 2006, as amended, which is incorporated herein by reference; and the final WLAN design approved by the City. Any deviations from the aforementioned plans and specifications must be approved by the Director in writing.

Section 703. Preparation of Plans and Specifications. The Operator shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. The Operator may begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 704. Operator’s Liability Insurance. In any contract that pertains to improving and equipping the Premises, Operator shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$2,000,000 for bodily injury and property damage and include the City as an Additional Insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the

Director for approval before any constructing, improving or equipping of Premises commences.

Section 705. Performance and Payment Bonds. The Operator shall require each of its contractors and suppliers of construction materials to furnish Performance Bonds and Payment Bonds each in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

Section 706. Mechanics' and Materialmen's Liens. The Operator shall not permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 707. Certificates of Completion. Upon the completion of the improvements hereunder, the Operator shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Operator.

Section 708. Signs.

- A. The Operator shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Operator may install such advertising and identification signs as may be necessary for the proper conduct of the System's services as contemplated hereunder. The Operator shall comply with all rules promulgated by the Director regarding the placement of physical signs and advertising in the Premises.
- B. The Operator shall be responsible for the cost of any new physical signs or modifications to Airport directories and other existing signs, including sign systems reasonably required by the Director. All modifications to these signs must be approved by the Director and Operator and are subject to all applicable requirements of this Section 708 and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, the Operator shall submit to the Director for approval all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such physical signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. The Operator shall not place any physical advertising matter, displays or other literature not directly pertaining to the System's services without the City's prior written consent or except as explicitly provided for herein.

Section 709. Title to Improvements. At the City's sole discretion, all Improvements constructed, installed, or placed in or on the Premises by the Operator and/or comprising a part of or a component of the System, including without limitation all conduits, cabling, hardware, and other associated equipment, as well as all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to the Operator's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy in accordance with this Agreement.

The City reserves the right and the Operator agrees that the Director may require the Operator to promptly and timely remove any or all Improvements and structures and restore the Premises and Airport facilities to their original condition at the time the Operator took possession of the Premises. The Operator agrees to bear all costs of such removals and restorations. If the City so demands, all Improvements shall be removed by the Operator at date of expiration or early termination of this Agreement and Operator shall, as reasonably as possible, restore the Airport facilities to their former condition. Within sixty (60) days of the commencement of the operation in the Premises, a list of such Improvements shall be submitted in writing to the Director by Operator for the Director's approval, and such list shall be periodically updated by Operator.

At the expiration of or in the event of the early termination of the Agreement between the City and the Operator for any reason, unless the City requires the operator to restore the Premises to their original condition (see above), the City may need to continue the operation of the wireless system providing service to Airport administrative functions. All installation and construction information, hardware, software, manuals, user names, maps, passwords, network diagrams, and other information necessary for the efficient,

proper and safe operation and the maintenance of the System must be provided to the City immediately upon the expiration or the early termination of the Agreement as requested by the City.

ARTICLE VIII USE OF PREMISES

Section 801. Compliance with Laws and Regulations.

The Operator shall comply with all rules and regulations which the Director may reasonably establish from time to time. In addition, the Operator shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

Section 802. Repairs and Maintenance. The Operator shall provide and pay for all repairs and maintenance of the System, except the following which shall be the responsibility of the City:

- A. The structural components of the terminal buildings.
- B. The utility system up to the Operator's point of connection, except where the utility systems are owned or controlled by the utility companies.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Operator understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Operator hereby releases and discharges the City from any and all inconvenience claims, liability, losses, or causes of action arising out of or incidental to the good faith closing of any right-of-way, including without limitation loss of profit or business, actual, incidental, consequential, or special damages.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the Operator's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such Premises to determine whether the Operator has complied and is complying, with the terms, covenants or conditions of this Agreement.
- B. In the event the Operator is obligated but has failed or refused to perform maintenance and make repairs within thirty (30) days of receipt of notice to do so from the City, the City may perform all corrective work required, and the Operator shall promptly reimburse the City for the cost thereof.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To gain access to the Premises in order to perform studies, inspections, assessments or environmental inspections, etc.

Section 804. Utilities. The City shall provide sufficient electrical facilities from which the Operator shall obtain electricity at a cost based upon metered usage. The Operator shall be responsible for the cost of electric meters and sockets and all connections to and within the Operator's communication hub room(s) within the Premises. The Operator shall be responsible for any needed modification or upgrade in electrical supply caused by changes to the Premises made by the Operator.

The Operator shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to Operator for the System, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Operator shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Operator shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Operator shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Operator for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Operator does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of or incidental to such good faith interruption, including, without limitation, loss of profit or business or actual, incidental, consequential, or special damages.

Section 805. Interference to Air Navigation. The Operator warrants, represents, and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation regulations or subsequent and additional regulations of the Federal Aviation Administration, may be constructed by the Operator or permitted to remain on the Premises. Any obstructions so constructed shall be immediately removed by the Operator at its expense. The Operator further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aides, the safe and efficient operations of the Airport, or the operations of other tenants and users of the Airport.

ARTICLE IX LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Operator, at its expense and, at all times during the Agreement Term, and Option Term if applicable, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Operator to be insured **on an occurrence basis** against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the operation of the System or a breach by the Operator of the terms of this Agreement or by the activities or omissions of the Operator, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors pursuant to this Agreement, whether on or off of the Premises or the Airport, under the following types of coverage:

- A. Comprehensive Commercial General Liability;
- B. Comprehensive Automobile Liability (all vehicles, including hired and non-owned).

The minimum limits of coverage for the above classes of insurance shall equal a single limit of Two Million Dollars (\$2,000,000.00) comprised of such primary and excess policies of insurance as the Operator finds feasible to purchase during the Agreement Term, and Option Term, if applicable.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City and its Board of Aldermen, Airport Commission, officers, agents, and employees shall be named as an **“Additional Insured.”** Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Operator, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors. In addition, such insurance shall include contractual liability sufficient to cover Operator's indemnity obligation hereunder. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City and its Board of Aldermen, Airport Commission, officers, agents and employees as an Additional Insured is not intended to, and shall not make the City a partner or joint venturer with the Operator in its operations hereunder.

Operator shall maintain, and upon request furnish evidence to City, adequate provisions for workers compensation insurance, Social Security and Unemployment Compensation in at least statutory limits to the extent such provisions are applicable to Operator's operations hereunder.

Section 902. Property Insurance. The Operator shall provide fire, lightning, extended coverage and other related insurance coverage for the full value of the Improvements and equipment existing or installed on the Premises.

Section 903. Damage or Destruction of Terminal. The building in which the Premises are located will be insured by the City under a policy of fire and extended coverage.

If the building is destroyed or damaged to such an extent as to be economically irreparable, the City may terminate this Agreement by written notice to the Operator. All Operator's Fee payments will cease as of the date of the destruction or damage.

If the building is repairable, the City will begin such repairs as soon as is practicable. Operator's Fee payments on unusable portions will cease as of the date of the damage. Operator's Fee payments will continue to be due on the usable areas. The City will attempt to find temporary facilities for use by the Operator during the repairs and the Operator shall pay Operator's Fees for the temporary

facilities. City shall not be liable or responsible for any losses of any kind whatsoever, including, without limitation, any inconvenience or loss by Operator of business or profit resulting from such damage or any incidental, actual, consequential, or special damages.

Section 904. Evidence of Insurance. Certificates or other evidence of insurance coverage required of the Operator in this Article IX shall be delivered to the Director in form and content satisfactory to the City.

At least fifteen (15) days prior to the expiration of any such policy, the Operator shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Operator shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage file with the Director a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by the City and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving thirty (30) days written notice to the Director. Each such insurance policy shall also provide primary coverage to the City when any policy issued to the City provides duplicate or similar coverage and in such circumstances the City's policy shall be excess over Operator's policy which shall be primary.

Section 905. Conditions of Default. This Agreement shall be considered in default when the Operator fails to comply with any material term, covenant or condition of this Agreement. Said default shall constitute a material breach hereof for which the City, at its sole option, may terminate this Agreement (as provided for in Article XI) and/or seek other remedies at law or in equity.

Section 906. Indemnification. The Operator shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever, arising out of or incident to, this Agreement and/or the use or occupancy of the Premises and/or the acts or omissions of the Operator's officers, agents, employees, consultants, contractors, subcontractors, independent contractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his/her designee shall give to the Operator reasonable notice of any such claims or actions. The Operator shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his/her designee, after consultation with the Airport Director or his/her designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The Operator shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Operator under this Agreement.

Section 908. Occupancy of Premises. The Operator accepts the Premises "AS IS". The Operator shall not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance. Operator agrees to pay the City upon demand any increase in premiums for insurance that may be charged resulting from a breach of the foregoing sentence.

Section 909. Waiver of Subrogation. Operator on behalf of itself and its insurers, hereby waives any claim or right of recovery from the City, its Board of Aldermen, Airport Commission, officers, agents and employees for any loss or damage to Operator's officers, agents, or employees or its property or the property of others under Operator's control, to the extent that such loss is covered by a valid insurance policy or could be covered by an "all risk" physical damage property insurance policy. Operator shall provide notice of this waiver of subrogation to its insurer(s).

ARTICLE X ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Operator shall not assign or transfer this Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after

the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Operator's right, title and interest in the Operator's equipment, Removable Fixtures, or the Operator's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.

B. The Operator shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least sixty (60) days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, the Operator must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all System services are available during the hours of operation required in Section 604 of this Agreement.

The parties understand and agree that the Operator is responsible for the performance of its assignees, sublessees, and subcontractors under this Agreement. The Operator agrees to initiate and take all corrective action should a subcontractor or sublessee fail to comply with its contract with the Operator or any provision of this Agreement. There shall be no reduction of the Minimum Annual Guarantee payable to the City during any such period of change-out or vacancy of a subcontractor or sublessee.

C. No subcontract, sublease, or other agreement shall be effective as it pertains to the City until such time as the City receives a fully executed copy of the approval, subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, shall constitute a default on the part of the Operator under this Agreement, and the City may terminate this Agreement as provided for in Section 1103 and/or seek other remedies at law or in equity. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision.

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

Section 1101. The City's Right to Terminate. The City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a material breach of the Agreement justifying the termination of this Agreement in its entirety.

A. If the fees, charges, or other money payments which the Operator herein agrees to pay, or any part thereof, remain unpaid after thirty (30) days following the notice from the City that such payments are past due.

B. If during the Agreement Term or Option Term, if applicable, the Operator shall:

1. apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
2. file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
3. make a general assignment for the benefit of creditors;
4. file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
5. file an answer admitting the material allegations of a petition filed against any said assignee or sub lessee in any bankruptcy, reorganization or insolvency proceedings; or if during the Agreement Term or Option Term, if applicable, an order, judgment or decree shall be entered by any court of competent jurisdiction; or the application of a creditor, adjudicating the Operator as bankrupt or insolvent; or approving a petition seeking a reorganization of the Operator, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
6. fail to maintain the quality of services and prices to the reasonable satisfaction of the Director as required

hereunder;

7. fail to take reasonable measures to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Operator under this Agreement;

8. allow a lien to be filed against the Operator or any of the equipment or furnishings therein because of or resulting from any act or omission of the Operator that is not removed or enjoined within thirty (30) days;

9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the reasonable opinion of the Director results in a failure to provide the public and others the service contemplated hereunder; or

10. fail in the performance of any material term, covenant or condition herein required to be performed by the Operator within thirty (30) days after receipt of notice from the City of such failure.

On the date set forth in the notice of termination, the Agreement Term or Option Term, if applicable, and all right, title and interest of Operator shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any term, covenant or condition required to be performed, kept and observed by the Operator shall not be construed to be or act as a waiver of default or in any subsequent default of any term, covenant or condition herein contained to be performed, kept and observed by Operator. The acceptance of monies by the City from the Operator for any period or periods after a default by the Operator of any term, covenant or condition herein required to be performed, kept and observed by the Operator shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Operator to so perform, keep or observe any said term, covenant or condition.

Section 1102. The Operator's Right to Terminate.

The Operator, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.

B. If the City abandons the Airport for a period of at least sixty (60) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. If the City fails in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Operator's failure to make any payments or to maintain and provide the Performance and Payment Bond specified in Article V or maintain and provide any insurance coverage specified in Article IX. The effective date of termination shall be thirty (30) days from the payment(s) due date with notice to the Operator or thirty (30) days from the date the insurance coverage or Performance and Payment Bond is not provided with notice to the Operator; and no such termination, except for termination for the Operator's failure to make any payments or provide insurance coverage or Performance and Payment Bond, shall be effective if the party at default (1) cannot by the nature of the default cure it within such thirty (30) day period, (2) commences to diligently correct such default within said thirty (30) days and (3) corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by the City upon the default of payment of charges and fees as provided herein and the City is the prevailing party, then the Operator agrees also to pay reasonable attorneys' fees, litigation fees, and court costs associated with such suit.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and the Operator specified in this Agreement are not intended to be and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto or any other remedies otherwise available to the parties at law or in equity.

**ARTICLE XII
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

Section 1201. Compliance.

A. During the construction and implementation of the System, the Operator agrees as a condition hereunder to meet a minimum DBE participation goal of not less than thirty percent (30%) participation in the ownership, and/or management and control of the business by the methods of participation allowed by DOT 49 CFR Part 26. The goal shall be measured as a percentage of total dollars spent on installation and implementation of the System, including construction costs. The goal remains in effect throughout the Agreement Term, and Option Term if applicable, of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

B. At the end of the construction and implementation of the System, and for the remaining Agreement Term, the Operator agrees as a condition hereunder to meet a minimum DBE participation goal of not less than ten percent (10%) participation in the ownership, and/or management and control of the business by the methods of participation allowed by DOT 49 CFR Part 26. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the Agreement Term, and Option Term if applicable, of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

C. If good faith efforts resulted in the fulfillment of either of the DBE goals, the Operator will not be required to perform additional good faith efforts, except in the event that the Operator's DBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event the Operator's DBE participation fails to continue to meet the goal or comply with applicable federal regulations, the Operator will be required to perform the good faith efforts procedure specified in the applicable federal regulations for the type of participation sought within four (4) months following the loss of DBE participation and continue at intervals of not less than twelve (12) months, or until the DBE goal is reached by the Operator.

D. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26. The Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any agreement covered by 49 CFR Part 26. The Operator agrees to include the above statements in any subsequent agreements that it enters into with respect to the System and shall cause those businesses to covenant to similarly include the statements in further agreements.

E. The Operator shall operate the System in accordance with the Agreement in compliance with all other requirements imposed by or pursuant to 49 CFR. Part 26, as applicable, and as said regulations may be amended or new regulations promulgated (as provided herein). The Operator shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

**ARTICLE XIII
LIQUIDATED DAMAGES**

Section 1301. Liquidated Damages. Operator recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expense, the amounts of which are difficult to ascertain, if Operator fails to satisfy or comply with certain requirements or provisions enumerated below. Therefore, the Operator agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Operator of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach and/or seek other remedies at law or in equity. The "**First Breach**" in any category will result in a warning letter. The "**Second Breach**" in any category will require Operator to pay liquidated damages in the amount listed below. For the "**Third Breach**" in the same category, Operator will pay City liquidated damages in the amount listed under Third Breach" below. For the fourth and each subsequent cumulative breach, Operator shall pay to City the applicable Third Breach amount for liquidated damages plus an additional 100%. Such liquidated damages shall be due and payable by the Operator within thirty (30) days of the City's request or notice. The defaults or breaches listed below are cumulative over the Agreement Term and Option Term, if applicable, and are in addition to any other remedies that the City may have under this Agreement or at law or in equity. The City agrees to provide immediate written notice via facsimile and overnight courier of any such failure or breach, including the amount of liquidated damages.

LIQUIDATED DAMAGES FOR BREACH OF OPERATING STANDARDS

| BREACH | SECOND BREACH | THIRD BREACH |
|---|----------------------|---------------------|
| A. Unapproved equipment or placement of equipment in areas not authorized by City. | \$500.00 | \$750.00 |
| B. Late monthly reporting of gross receipts in violation of Article V | \$25.00 per day | \$50.00 per day |
| C. Failure to deliver, on time, required items such as reports, schedules, manuals or other materials as specified in this Agreement. | \$200.00 | \$300.00 |
| D. Other non-monetary defaults that disrupt operations, traffic in terminal or customer service. | \$500.00 | \$750.00 |
| E. Inoperable equipment or equipment otherwise not in presentable condition. | \$200.00 | \$300.00 |
| F. Late annual financial reporting in Violation of Article V | \$50.00 per day | \$100.00 per day |

**ARTICLE XIV
MISCELLANEOUS PROVISIONS**

Section 1401. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director, St. Louis Airport Authority, 10701 Lambert International Boulevard, P.O. Box 10212 Lambert Station, St. Louis, MO 63145. A copy of all notices shall also be mailed to the Airport Business and Marketing Manager at the same address. All notices, demands, and requests by the City to the Operator shall be sent by certified mail, return receipt requested addressed to: Mr. Jon Irwin, Concourse Communications St. Louis, LLC, Two N. Lasalle Street, Suite #1725, Chicago, IL 60602.

Either or both parties may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to the Operator or said Director.

Section 1402. Non-Discrimination and Affirmative Action Program.

A. The Operator hereto understands and agrees that the City in the operation and use of Lambert-St. Louis International Airport® will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. The Operator hereby agrees that his premises shall be posted to such effect as required by said regulations.

B. The Operator agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. The Operator will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit, expel, discharge, demote or transfer, layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Operator will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Operator state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". The Operator shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.

D. The Operator agrees that should it be determined by the Operator or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Operator to achieve the provisions of his program.

E. The Operator will permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

F. The Operator further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by the Operator in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

G. Whenever the Operator is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, the Operator shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.

H. The Operator will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

I. The Operator assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Operator assures that it will require that its covered sub organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1403. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of the City shall be personally liable under or in connection with this Agreement.

Section 1404. Force Majeure. Neither the City nor the Operator shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, terrorism or any other circumstances for which it is not responsible and which is not within its control.

Section 1405. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1406. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the Operator on paying the fees and otherwise performing its covenants and other obligations hereunder shall have quiet and peaceable possession of the Premises.

Section 1407. Operation and Maintenance of the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1408. Title to the Site. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the use thereof by the City as herein provided.

Section 1409. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to

the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1410. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Operator agrees, without cost, to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1411. Governing Law. This Agreement shall be deemed to have been made and be construed in accordance with the laws of the State of Missouri, and is subject to the City Charter and ordinances, as may be amended from time to time.

Section 1412. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1413. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1414. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Operator and the City.

Section 1415. Required Approvals. When the consent, approval, waiver, or certification ("**Approval**") of either party is required under the terms of this Agreement, such Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City, the Authority, or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. The City and Operator agree that extensions of time for performance may be made by the written mutual consent of the Director and the Operator or its designee.

Section 1416. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. Any waiver must be in writing and signed by the party waiving.

Section 1417. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or the Operator in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1418. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. This Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

Section 1419. Not a Lease. This Agreement is not a lease, and the right to use the Premises is entirely dependent upon the rights and privileges granted hereunder. The Operator shall in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1420. Advertising. The Operator shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director. (See Section 302).

Section 1421. Conflict Between Tenants. In the event of a conflict between the Operator and any tenant, licensee or concessionaire at the Airport as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party and shall make a final decision to which the Operator agrees to be bound. All determinations by the Director are final.

Section 1422. Prevailing Wage. Operator shall, as a condition of the Agreement, include in all contracts pertaining to the Premises language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the contractor to employees of said contractor. This section is in accordance with and is subject to City Ordinance No. 62124.

Section 1423. Request for Proposals. The Operator's proposal, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Request for Proposals for a Wireless Internet Access System, dated September 11, 2006, as amended, is hereby made a part of this Agreement and is incorporated herein by reference. If an express provision of this Agreement or the Exhibits attached hereto is in conflict with any provision of the Operator's proposal or the Request for Proposals referred to above, the provisions of this Agreement and the Exhibits attached shall prevail.

Section 1424. Americans with Disabilities Act ("ADA"). Operator shall be responsible for compliance with the Federal ADA, plus any federal, state, or local laws and City Ordinances pertaining to the disabled individual having access to Operator's services.

Section 1425. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1426. Acknowledgement of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms, covenants, conditions and requirements of this Agreement shall be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1427. Security Plan and Facilities. Operator hereby acknowledges that City is required by the Transportation Security Administration's regulation 1542, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. City has met said requirements by developing a master security plan for the Airport, and Operator warrants, covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Operator's exercise of the privileges granted to the Operator hereunder. Operator shall promptly (within 30 days of the City's request) reimburse City for all fines or penalties imposed upon City by the TSA resulting from Operator's negligence or failure to act in relation to regulation 1542.

Section 1428. Environmental Notice. Operator shall promptly notify the Director of (1) any change in the nature of the Operator's operations on the Premises that will materially and/or substantially change the City's or Operator's potential obligations or liabilities under the environmental laws, or (2) the commencement of any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Operator's operations on the Premises.

ARTICLE XV LIVING WAGE PROVISIONS

Living Wage Compliance Provisions: This Agreement is subject to the St. Louis Living Wage Ordinance Number 65597 (the "**Ordinance**") and the "**Regulations**" associated therewith, as may be amended from time to time, both of which are incorporated herein by this reference. The Ordinance and Regulations require the following compliance measures, and Operator hereby warrants, represents, stipulates, and agrees to comply with these measures.:

Section 1501. Minimum Compensation. Operator hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (See "**Exhibit C-1**") which is incorporated herein. The initial rate shall be adjusted each year no later than April 2, and Operator hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Living Wage Bulletin at the time the Living Wage Bulletin is issued.

Section 1502. Notification. Operator shall provide the Living Wage Bulletin to all employees together with a "Notice of Coverage," in English, Spanish, and other languages spoken by a significant number of the Operator's employees within thirty (30) days of the execution of this Agreement for existing employees and within thirty (30) days of employment for new employees.

Section 1503. Posting. Operator shall post the Living Wage Bulletin, together with a "Notice of Coverage," in English, Spanish, and other languages spoken by a significant number of the Operator's employees, in a prominent place in a communal area of each worksite covered by this Agreement.

EXHIBIT “B-1”

PRICING STRUCTURE

PRICING STRUCTURE

| | |
|---|--|
| Transaction Based Users | \$7.95 Per 24 hour period of unlimited access |
| WISP Roaming Access | \$2.50 Per 24 hour period of unlimited access, Per user connect. Charged to WISP. |
| Airport Authority Administrative & Operational Use | No Charge See Section 601(J) |
| Private Side Users High Speed Wireless Service | Set Up Fee: \$499.00 Monthly Fee: \$79.00 |
| Private Side Users Customer Managed VLAN (interconnect of multiple devices to corporate network) | Set Up Fee: \$1,000.00 Monthly Fee: Varies (per device) |

EXHIBIT “C-1”

LIVING WAGE BULLETIN

ST. LOUIS LIVING WAGE ORDINANCE

LIVING WAGE ADJUSTMENT BULLETIN

**NOTICE OF ST. LOUIS LIVING WAGE RATES
EFFECTIVE APRIL 1, 2006**

In accordance with Ordinance No. 65597, the St. Louis Living Wage Ordinance (“Ordinance”) and the Regulations associated therewith, the City Compliance Official for the City of St. Louis has determined that the following living wage rates are now in effect for employees of covered contracts:

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$10.31** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$13.18** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$2.87** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of **April 1, 2006**. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

The Ordinance applies to employers who are covered by the Ordinance as defined in the Ordinance, where the contract or grant is entered into or renewed after the effective date of the Ordinance, which is November 3, 2002. A copy of the Ordinance may be viewed online at <http://www.mwdbe.org/livingwage> or obtained from:

City Compliance Official
DBE Program Office
11495 Natural Bridge Road
Bridgeton, MO 63044
(314) 551-5000

Dated: March 21, 2006

Approved: May 31, 2007