THE CITY OF NEW YORK  
DEPARTMENT OF INFORMATION TECHNOLOGY &  
TELECOMMUNICATIONS  
FRANCHISE AGREEMENT  
FOR THE INSTALLATION, OPERATION, AND MAINTENANCE  
OF PUBLIC COMMUNICATIONS STRUCTURES IN THE BOROUGHS OF THE BRONX, BROOKLYN,  
MANHATTAN, QUEENS AND STATEN ISLAND  
Contract No:  
Bill de Blasio, Mayor  
Anne Roest, Commissioner  
FRANCHISEE: CityBridge, LLC  
CONTRACT No.  
DATE:  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
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This is a PUBLIC COMMUNICATIONS STRUCTURE FRANCHISE AGREEMENT, fully  
executed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, between the City Of New York (the “City”) through its  
Department of Information Technology and Telecommunications (“DoITT” or the  
“Department”) and CityBridge, LLC, with its principal place of business at 100 Park Avenue,  
New York, NY 10017 and designated location for service of process at 100 Park Avenue,, New  
York, NY (the “Franchisee”) (each a “party” collectively the “parties”).  
BACKGROUND AND AUTHORITY  
Section 1072(c) of the New York City Charter (the “Charter”) authorizes DoITT to  
administer franchises related to telecommunications, which franchises are to be issued and  
operated pursuant to the provisions of Chapter 14 of the Charter.  
On April 30, 2014, DoITT issued a Request for Proposals for a Franchise to Install  
Operate and Maintain Public Communications Structures in the Boroughs of the Bronx,  
Brooklyn, Manhattan, Queens and Staten Island (“the RFP”). The RFP was issued pursuant to  
and was determined by the New York City Corporation Counsel (pursuant to Section 363.e of  
the Charter) to be consistent with, City Council Authorizing Resolution No. 2309 adopted by the  
City Council on December 21, 2009 and City Council Authorizing Resolution No. 191 adopted by  
the City Council on August 25, 2010 (collectively, “the Authorizing Resolutions”)  
The New York City Department of City Planning determined, as evidenced in its letter  
dated April 28, 2014, that a franchise consistent with the RFP would not have land use impacts  
or implications and that review under Section 197-c of the Charter would not be necessary.  
The action being taken hereunder has been reviewed for its potential environmental  
impacts and a negative declaration has been issued finding that such proposed action will not  
result in any significant adverse environmental impacts, all in accordance with the New York  
State Environmental Quality Review Act (“SEQRA”), and the regulations set forth in Title 6 of  
the New York Code of Rules and Regulations, Section 617 et seq., the Rules of Procedure for  
City Environmental Quality Review (“CEQR”) (Chapter 5 of Title 62 and Chapter 6 of Title 43 of  
the Rules of the City of New York).  
On December 8, 2014, the New York City Franchise and Concession Review Committee  
(“FCRC”) held a public hearing on the Franchisee’s proposal for a franchise to install, operate,  
and maintain Public Communications Structures (defined below) on, over, and under the  
Inalienable Property of the City, which was a full public proceeding affording due process in  
compliance with the requirements of Chapter 14 of the New York City Charter (the “Charter”).  
The FCRC, at its duly constituted meeting held on December 10, 2014, voted on and approved  
the grant to the Franchisee of a franchise as contemplated by the RFP.  
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FRANCHISE GRANT  
As further described hereinafter, DoITT hereby grants to CityBridge LLC a non-exclusive  
Public Communications Structure franchise for good and valuable consideration, and subject to  
the mutual covenants, terms, and conditions, set forth in this Franchise Agreement, including  
its attachments, exhibits, and appendices.  
ARTICLE I. DEFINITIONS  
Whenever used in this Agreement, the terms, phrases, and words listed below, and their  
derivatives, have the meanings given below.  
1.1 Defined Terms  
“Advertising” has the meaning expressed in subsection 5.1.2.  
“Advertising Structure” means a PCS on which the Franchisee has the right to display  
Advertising.  
“Affiliate” or “Affiliated Person” means each Person who falls into one or more of the  
following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the  
Franchisee; (ii) each Person in which the Franchisee has directly or indirectly, a Controlling  
Interest; and (iii) each Person directly or indirectly, controlling, controlled by or under common  
Control with the Franchisee; provided that “Affiliated Person” shall in no event mean any  
creditor of the Franchisee solely by its status as a creditor and which is not otherwise an  
Affiliated Person.  
“Agreement” means this agreement, including all attachments, exhibits, and  
appendices, as it may be amended from time to time.  
“Books and Records” means all information, documents, and databases whatsoever  
created or maintained in the performance, or ancillary to the performance, of this Agreement  
by, or on behalf of, the Franchisee, in any physical or electronic form whatsoever, including but  
not limited to, ledgers, sales journals, charts of accounts, trial balances, invoices,  
contracts, accounting records, prepared statements, sales control reports, designs, maps,  
drawings, construction schedules, results of performance standard testing and  
manuals. Financial records shall be kept and prepared in accordance with GAAP.  
“City” means the City of New York, or as appropriate in the case of specific provisions of  
this Agreement, any board, bureau, authority, agency, commission, department or any other  
entity of the City of New York, or any authorized officer, official, employee or agency.  
“City Delays” has the meaning expressed in Section 15.23.1  
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“Claim” has the meaning expressed in Section 11.1.  
“Commencement Date” has the meaning expressed in Section 2.1.  
“Commissioner” means the Commissioner of DoITT or his or her designee.  
“Compensation” means that portion of the consideration provided by the Franchisee to  
the City in exchange for the franchise grant requiring payment, as detailed in Article VI.  
“Comptroller” means the Comptroller of the City of New York or designee.  
“Contract Year” means each period from and including the Commencement Date or an  
anniversary thereof to and including the day preceding the next anniversary of the  
Commencement Date.  
“Control” or “Controlling Interest” means, with respect to any Person, possession,  
directly or indirectly, of the power to direct, or cause the direction of, the management and  
policies of such Person, whether through the ownership of voting securities, by contract or  
otherwise. “Control” or “Controlling Interest” with respect to the System or the franchise  
granted hereunder means possession, directly or indirectly, of Control over or of a Controlling  
Interest in the Person that at the time owns the System or is the Franchisee under this  
Agreement.  
“Curb” means a raised stone or concrete edging along the side of a roadway (or, where  
no such raised edging exists, the similar line of separation between those portions of the  
Inalienable Property of the City used primarily for pedestrian and sidewalk uses and those  
portions used primarily for vehicular and roadway use).  
“Current Affiliate” means, with respect to any Person, an Affiliate of such Person on the  
Execution Date.  
“Damages” has the meaning expressed in subsection 11.1.  
“Default” has the meaning expressed in subsection 13.2.1.  
“DoITT” or the “Department” means the Department of Information Technology and  
Telecommunications of the City, or designee.  
“District” means the Inalienable Property of the City (as defined in this Section 1.1)  
located within the Boroughs of Manhattan, Brooklyn, Staten Island, Queens and the Bronx.  
“Effective Date” means the one hundred twentieth (120th) day after the Art  
Commissioner approves the design of the PCS.  
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“Exchange Act” means the Securities Exchange Act of 1934, and the rules and  
regulations of the Securities and Exchange Commission promulgated thereunder, in each case,  
as amended from time to time.  
“Execution Date” means the date that the Agreement is fully executed.  
“Equipment” means, individually and collectively, all of the materials comprising, or  
associated with, any individual PCS, one or more groups of Structures, or the entire System,  
including Wi-Fi Equipment and wiring, or cables that connect Structures to the network  
interface device of the switched telephone network or similar type conduit or power  
source. Fiber is deemed part of the System unless otherwise specified in the Agreement.  
“Existing PPTs” means all PPTs installed on the Inalienable Property as of April 30, 2014.  
“Existing PPT System” means all of the PPTs operated by a particular Holdover PPT  
Operator.  
“Existing PPT Replacement Schedule” has the meaning provided in Section 1.2.7 of  
Attachment SRV.  
“Extended Term” has the meaning expressed in Section 2.2.1.  
“FCC” means the Federal Communications Commission.  
“FCRC” means the Franchise and Concession Review Committee of the City of New York.  
“Fiber” means cable, wire, fiber optic communications cable (or other closed-path  
transmission medium that may be used in lieu of cable wire or fiber optic communications  
cable for the same purposes), network capacity, and related equipment and facilities, within  
the Inalienable Property, which is used by the Franchisee to provide the Services that are being  
delivered from the Structures.  
“Fiber Licensor” has the meaning expressed in Section 3.13.2.  
“Franchisee” means CityBridge, LLC.  
“Franchisee Confidential Information” has the meaning expressed in Section 9.4.1.  
“Franchise Fee” has the meaning expressed in Section 6.1.  
“Good Working Order" has the meaning expressed in Section 5.2.1 of Attachment SRV.  
“Gross Revenues” has the meaning expressed in Section 6.1.  
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“Historic Districts” means those districts so designated by the Landmarks Preservation  
Commission.  
“Holdover Period” has the meaning expressed in Section 2.5.1.  
“Holdover PPT Operator” means an entity that operates one or more Existing PPTs on  
the Inalienable Property as of the Commencement Date.  
“Inalienable Property of the City” means the rights of the City in its waterfront, ferries,  
wharf property, bridges, land under water, public landings, wharves, docks, streets, avenues,  
highways, parks, waters, waterways and all other public places, as set forth in Section 383 of  
the New York City Charter.  
“Indemnitees” has the meaning expressed in Section 11.1.  
“Indemnitors” has the meaning expressed in Section 11.1.  
“Initial Term” means the period from the Commencement Date until the earlier of June  
24, 2026 or the earlier termination of this Agreement pursuant to the provisions herein.  
“Installation Date” means the verifiable date of installation of a new PCS that comports  
to all of the requirements and specifications set forth in this Agreement.  
“Landmarks” means the Landmarks Preservation Commission of the City or designee.  
“Landmark Site” means a property so designated by the Landmarks Preservation  
Commission.  
“Licensed Software” has the meaning expressed in Section 3.3.1  
“Litigation Delay” has the meaning expressed in Section 15.23.1  
“Maintenance and Monitoring System” or “MMS” means a computer system with the  
capability to monitor all of the Services provided by the System and perform all of the functions  
delineated in Part VI of Attachment SRV.  
“Mayor” means the chief executive officer of the City or designee.  
“Member(s)” has the meaning expressed in Section 10.1.  
“Minimum Annual Guarantee” has the meaning expressed in Section 6.1.  
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“MMS Software” means, individually and collectively, all source code and object code  
comprising or associated with the Maintenance and Monitoring System.  
“Non-Advertising Structure” means a PCS that provides Wi-Fi Services, but does not  
include Advertising.  
“NYSPSC” means the New York State Public Service Commission or its designee.  
“PCS Software” means, individually and collectively, all source code and object code  
used by an individual PCS, one or more groups of Structures, or the entire System.  
“Permitted Transferee” has the meaning expressed in Section 10.6  
“Person” means any natural person or any association, firm, partnership, joint venture,  
corporation, or other legally recognized entity, whether for profit or not for profit, but does not  
mean the City.  
“Public Communications Structure,” “PCS,” or “Structure” means any of the following: (i)  
a PPT; (ii) a non-Advertising Structure that provides free Wi-Fi Services; or, (iii) a telephone  
installation that was installed or maintained prior to the Commencement Date pursuant to a  
now-expired PPT franchise agreement. Upon transfer of ownership to the Franchisee, each PPT  
that was installed and or maintained prior to the Commencement Date pursuant to a now-  
expired PPT franchise agreement is deemed a PCS.  
“Public Pay Telephone” or “PPT” means a telephone installation: (i) from which calls can  
be paid for when made by a coin, credit card, prepaid debit card or in any other manner; (ii)  
available for use by the public; and (iii) which provides access to a switched telephone network  
or similar type conduit for voice or data communications. The term “Public Pay Telephone” or  
“PPT” includes any pedestal or telephone bank supporting one or more telephones, PPT  
Enclosures, signage and other associated equipment.  
“Public Pay Telephone Rules” or “PPT Rules” means Chapter 6 of Title 67 of the Rules of  
the City of New York as they may be amended from time to time. Each PCS that provides  
telephone service is deemed a Public Pay Telephone under the PPT Rules, and, unless provided  
to the contrary, the PPT Rules apply to Structures with the same force and effect as they apply  
to PPTs operated under the Public Pay Telephone Franchise, including all provisions setting  
forth penalties for failure to comply.  
“Public Pay Telephone Enclosure” or “PPT Enclosure” means any associated housing or  
enclosure attached to a pedestal, telephone bank, or affixed to a building, and partially or fully  
surrounds a PPT.  
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"Public Service Advertising" means advertising, the purpose or effect of which is to  
communicate information pertaining to the public health, safety, and welfare of the citizens of  
the City, as determined by DoITT in its sole discretion.  
“Security Fund” has the meaning expressed in Article VII.  
“Service(s),” “PCS Service(s),” or “Public Communications Structure Service(s)” means,  
individually and collectively, all work, goods, and services that the Franchisee is obligated to  
provide under this Agreement.  
“Software” means, individually and collectively, all source code and object code used by  
the Franchisee in performing the Services, including the PCS Software and the MMS Software.  
“System” means all of the Structures owned, operated, or maintained by the Franchisee  
pursuant to this franchise. Fiber is deemed part of the System unless otherwise specified in the  
Agreement.  
“Term” means the term of the Agreement, including the Initial Term and the Extended  
Term, if any.  
“Termination Default” has the meaning expressed in Section 13.3.1.  
“Third Party Claim” has the meaning expressed in Section 11.1.  
“Transition Period” has the meaning expressed in Section 3.13(i).  
“Unavoidable Delay” has the meaning expressed in Section 15.23.1.  
1.2 Other Definitions  
1.2.1 The words “section” and “subsection" in the Agreement, an attachment, an  
exhibit, or an appendix refer to sections and subsections of, respectively, the Agreement, the  
attachment, the exhibit, or the appendix, unless stated otherwise. A reference to  
“attachments” or “appendices” means, respectively, the attachments and the appendices to  
the Agreement unless provided otherwise. The words “include” and “including” are not terms  
of limitation and will be interpreted as “including, but not limited to.” The word “or” means  
“and/or” unless the context requires otherwise, the word “all” means “any and all,” and the  
words “writing” or “written” mean preserved or presented in retrievable or reproducible  
written form, whether electronic (including e-mail, but excluding voice-mail) or hard copy,  
unless otherwise stated. The words “commercially reasonable efforts” means undertaking all  
available measures that a reasonable person would pursue to satisfy an obligation in good faith.  
The words “best practices” means employing the method or technique that has consistently  
shown results superior to those achieved with other means, and that is a benchmark in the  
industry. Definitions of City, state or federal agencies, offices, departments, department heads,  
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or employees include, if applicable, any successor in function or interest. The word “applicable  
law,” “law,” or “laws” means all federal, state, or local statutes, rules, codes, regulations, or  
judicial or executive orders applicable to the subject matter of the corresponding obligation,  
representation, warranty, or acknowledgement, or this Agreement generally.  
1.2.2 The words “construct,” "install,” “operate,” and “maintain," individually or  
collectively, in any form, combination, or variation, include all construction, installation,  
operation, maintenance, repair, upgrading, renovation, removal, relocation, alteration,  
replacement or deactivation, as appropriate to perform the Services.  
1.3 References to Time  
The words “day,” “month,” and “year” mean, respectively, calendar day, calendar  
month and calendar year. “Business hours” or “business day” means 9:00 a.m. through 5:00  
p.m. Monday through Friday, excluding the following City holidays, unless otherwise agreed to  
by the parties: New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents Day, Memorial  
Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, Thanksgiving  
Day, and Christmas Day. If one of these days falls on a Saturday, the preceding Friday is a  
holiday and if one of these days falls on a Sunday, the following Monday is a holiday. The word  
“current” means contemporaneous with the date the obligation arises.  
1.4 Undefined Terms  
Words not otherwise defined in the Agreement are given their common and ordinary  
meaning appropriate to the context in which they appear.  
ARTICLE II. TERM AND PRECONDITIONS TO EXECUTION  
2.1 Initial Term  
The Initial Term of this Agreement and the franchise granted commences on the  
Commencement Date, and will expire on June 24, 2026, unless extended by the DoITT pursuant  
to Section 2.2, or unless terminated earlier as provided by Section 13.3 or for any other reason  
in this Agreement. The Commencement Date will be 12:01 a.m. on the tenth (10) day after the  
date on which all of the following conditions have been met:  
(i) this Agreement has been registered with the Comptroller as provided in Sections  
375 and 93.p. of the City Charter;  
(ii) all the documents have been submitted as required by Section 2.3;  
(iii) the City’s Vendex review process of the Franchisee has been favorably  
completed; and  
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(iv) payment has been made to the City of the Security Fund and the FCRC  
publication costs as described in Section 371 of the Charter.  
For example, if all of the conditions listed above are met on December 1, 2014, the  
Commencement Date will be December 11, 2014.  
2.2 Extended Term  
2.2.1 Provided the Agreement remains in effect immediately prior to its scheduled  
expiration on June 24, 2026, the Commissioner, in his or her discretion, may after a request by  
the Franchisee pursuant to Section 2.2.2, extend the Agreement for an Extended Term to expire  
no later than the day preceding the fifteenth (15th) anniversary of the Commencement Date.  
2.2.2 If Franchisee wishes to extend the Franchise beyond the Initial Term then  
Franchisee must submit a written request to DoITT to extend this Agreement and the Franchise  
granted hereunder, as described in the preceding Section 2.2.1, not later than June 24, 2025.  
The Franchisee shall thereafter submit to DoITT all information and documentation requested  
by DoITT in connection with the evaluation of Franchisee’s request for an extension. Nothing in  
this section will be construed to obligate DoITT to thus extend this Agreement or the Franchise.  
2.3 Preconditions to Execution, Security Fund Documentation  
The following actions are preconditions for execution of the Agreement by the City.  
2.3.1 The Franchisee represents that it has submitted to the Mayor’s Office of  
Contract Services current and up-to-date questionnaires required with the City’s Vendor  
Information Exchange System (“VENDEX”). The VENDEX questionnaires must be fully completed  
by the Franchisee and have received a favorable review by the City.  
2.3.2 The Franchisee represents that it has submitted to DoITT the following  
documents on or before the date of execution of this Agreement by the City:  
(i) an insurance certificate that satisfies the requirements set forth in Section  
12.3.1;  
(ii) certified copies of documentation showing (a) the Franchisee is duly organized,  
in good standing, and authorized to do business in New York as a corporation,  
partnership, limited liability company or sole proprietorship, and (b) the person  
or persons who will execute this Agreement on the Franchisee’s behalf is (or are)  
authorized to execute and deliver the Agreement on the Franchisee’s behalf as a  
legal, binding and enforceable agreement of the Franchisee;  
(iii) an opinion from the Franchisee’s counsel dated as of the date of execution by  
the Franchisee in a form to be approved by DoITT;  
(iv) document evidencing that the Security Fund required under Article VII has been  
created; and  
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(v) a certification from the Franchisee confirming that: (A) binding and enforceable  
agreements between each individual Member and the Franchisee have been  
executed and are in full force and effect, and (B) such agreements contain  
commitments (in the aggregate) of not less than $100 million in total of equity  
contributions by all Members of the Franchisee as required for the Franchisee to  
fulfill its obligations to the City.  
In light of changes to the rollout schedule for structures to be installed hereunder,  
which changes were requested by the City and agreed to by the Franchisee shorty before  
execution of this Agreement, the MSA contemplated by Section 3.13.3 will be provided as  
described in Section 3.13.3 rather than delivered as a condition to such execution.  
2.4 Effect of Expiration  
Upon expiration or termination of this Agreement — and if no new franchise of similar  
effect has been granted to the Franchisee under the New York City Charter, any authorizing  
resolution or other applicable law in effect when the franchise expires — all rights of the  
Franchisee in the franchise will cease with no value allocable to the franchise itself; and the  
rights of the City and the Franchisee to the System, or any part, will be determined as provided  
in Section13.5.  
2.5 Holdover Period  
2.5.1 Any period of time during which the Franchisee is performing any of the Services  
or is occupying the Inalienable Property with the Structures other than during (i) the Initial  
Term or (ii) the Extended Term constitutes a Holdover Period.  
2.5.2 Unless specified in a particular clause of this Agreement, terms and conditions  
governing Franchisee’s obligations with respect to the Services and its occupation of the  
Inalienable Property succeed the termination or expiration of this Agreement during the  
Holdover Period.  
2.5.3 The Franchisee acknowledges and accepts that DoITT, in its sole discretion, may  
require the Franchisee to immediately cease performing any part of the Services or to remove  
any one or more Structures or the entire System during any Holdover Period. Continued  
occupancy or operation during a Holdover Period subject to the obligations described in this  
Section 2.5 shall not be construed as a renewal or other extension of this Agreement or the  
Franchise granted pursuant to this Agreement, nor as a limitation on the remedies, if any,  
available to the City as a result of such continued operation after the Term, including, but not  
limited to, damages and restitution.  
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ARTICLE III. GRANT OF FRANCHISE  
3.1 Nature and Limitation of Franchise  
The City grants the Franchisee, subject to the terms and conditions of this Agreement, a  
non-exclusive franchise providing the right and consent to design, install, operate, repair,  
maintain, upgrade, remove and replace Public Communications Structures, including  
Equipment, on, over and under the Inalienable Property of the City as described in this  
Agreement. Exercising this franchise is subject to the obligations in this Agreement and all  
applicable laws.  
3.2 Ownership of Structures  
3.2.1 During the Term all Structures are deemed the property of the Franchisee,  
except as provided to the contrary in this Section 3.2.  
3.2.2 It is the intention of the parties that to the extent it is within the control of the  
parties, each acting reasonably, the Franchisee shall take ownership and, subject to the  
provisions of Section 3.2.4, be responsible for the operation and maintenance of all Existing  
PPTs as of the Commencement Date, and the parties shall take all reasonable steps within their  
respective rights to achieve that end. To the extent that the Franchisee does not have  
ownership and control of some or all of the Existing PPTs as of the Commencement Date, the  
Franchisee and DoITT shall continue to cooperate reasonably, within their respective rights, to  
arrange for ownership and control to be achieved as promptly as practical after the  
Commencement Date.  
3.2.3 The Franchisee acknowledges that the City neither warrants nor makes any  
representations whatsoever concerning any Existing PPT(s) or Existing PPT Enclosure(s) physical  
condition, structural integrity, electrical or network connectivity, cost of operations, revenue  
projections, or any other consideration.  
3.2.4 The Franchisee agrees to take ownership of all Existing PPTs "as is," and  
acknowledges that at no time before, during, or after the Term is the City liable or responsible  
for the repair, maintenance, operation, or upgrade of any Existing PPT or PCS. The City and the  
Franchisee acknowledge that, as of the Commencement Date, some of the Existing PPTs may  
fail to meet the standards provided in the PPT Rules. The Franchisee will determine the  
operability of each Existing PPT within twenty (20) business days of the later of: (i) the  
Commencement Date, or (ii) the date that the Franchisee acquires the Existing PPT. With  
respect to each Existing PPT that is inoperable, the Franchisee may file a Notice of No Dial Tone,  
and, pursuant to the PPT Rules, is entitled to ninety (90) days to return the PPT to operability.  
The Franchisee may provide dial tone service from Existing PPTs by upgrading phones with  
cellular technology or it may continue to utilize Verizon through its copper lines or it may use a  
combination of copper and cellular, provided the Verizon copper lines provide reliable dial tone  
service. If, through no fault of its own and notwithstanding commercially reasonable efforts,  
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the Franchisee is unable to make an Existing PPT operable within the ninety (90) day period, the  
Franchisee may temporarily remove the payphone instrument within the Existing PPT and may  
continue to display Advertising on the Existing PPT for up to an additional ninety (90) days  
temporary removal period.  
3.2.5 At the end of the Term, disposition of the Structures will be as provided in  
Section 13.5 and 13.6.  
3.3 Ownership of Intellectual Property  
3.3.1 Definitions  
“City Products” means any intellectual property, or embodiments thereof, whether  
preliminary, final or otherwise, created or developed by (i) the City or (ii) for the City by (a) the  
Franchisee (or an Affiliated Person) at the specific request of the City and pursuant to the City’s  
written specifications or (b) any other third-party where the Franchisee, Affiliated Person, or  
third party has transferred the ownership rights in such intellectual property to the City. With  
respect to City Products that are software, City Products includes both the source code and the  
object code. An example of a City Product would be a mobile app, created by or for the City,  
which provides a mapped list of all PCS locations.  
“Documentation” means the complete set of manuals (e.g., user, installation,  
instruction and diagnostic manuals) in either hard or electronic copy, that are necessary to  
enable the City to properly test, install, operate and enjoy full use of the Licensed Software.  
“Licensor” means the entity with the ownership rights to permit the Franchisee and the  
City to use the Licensed Software for the business use contemplated by this Agreement.  
“Licensed Software” means, individually and collectively, all of the software licensed to  
the City by or through the Franchisee under the Agreement. “Licensed Software” includes error  
corrections, upgrades, updates, enhancements or new releases required under the license  
terms, and any deliverables due under maintenance and support requirements (e.g., patches,  
fixes, program temporary fixes, programs, code or data conversion, or custom programming).  
“Object Code” means the machine-executable code that can be directly executed by a  
computer’s central processing unit(s).  
“Source Code” means the programming statements or instructions written or expressed  
in any language understandable by a human being skilled in the art, which are translated by a  
language compiler to produce executable machine Object Code.  
3.3.2 The Franchisee hereby grants to the City a paid-up, royalty-free, worldwide, non-  
exclusive, irrevocable license to use the Licensed Software, as necessary for the City to use the  
System for its intended purpose during and after the Term. The Franchisee warrants and  
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represents that it has the right or will obtain the right to grant the license for the City to use any  
third-party Software, for the intended purpose.  
3.3.3 The Franchisee is not authorized to include in the System any Licensed Software  
without the prior written approval of DoITT’s General Counsel or designee. Prior to the  
incorporation of the Licensed Software, the Franchisee shall present the proposed license  
agreement or other document setting forth the conditions on the ability of the Franchisee or  
the City to make use of the Licensed Software to the DoITT’s General Counsel or designee for  
review and approval.  
3.3.4 City Ownership of City Products  
(i) City Products may be used by the Franchisee for no purpose other than in the  
performance of its responsibilities under the Agreement, without the prior  
written permission of the City.  
(ii) The Franchisee acknowledges that the City may, in its sole discretion, register  
copyright, trademark, patent and patent designs in the City Products with the  
United States Copyright Office, the United States Patent and Trademark Office,  
respectively, or any other entity authorized to grant copyright, trademark or  
patent registrations. The Franchisee shall fully cooperate in this effort, and shall  
provide all Documentation necessary to accomplish this.  
(iii) The Franchisee shall not undertake any action that may prevent the City from at  
all times having immediate access to the most current version of the City  
Products, such that the City, independent of the Franchisee, may utilize the City  
Products in whatever manner it determines appropriate.  
(iv) The City hereby grants to Franchisee the non-exclusive and fully paid-up, license  
during the Term to use, adapt and modify the City Products in solely for the  
purposes of providing the Services. In the event the City Product generates  
revenue, the City is entitled to any revenue.  
3.3.5 Ownership of Licensed Software  
(i) Title and ownership of the Licensed Software is and shall remain with the  
Licensor.  
(ii) To the extent that the Franchisee is the Licensor, the Franchisee hereby grants to  
the City a paid-up, royalty-free, worldwide, non-exclusive, irrevocable license to  
use the Licensed Software, as necessary to fully effectuate the purposes of the  
Agreement and the business purposes of the City.  
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(iii) The Franchisee shall present to the City all agreements that permit the  
Franchisee to use and sublicense PCS Software, and the right to future  
maintenance, to the City. Franchisee shall continuously maintain, update, and  
make available to DoITT a catalog of the PCS Software currently in use.  
3.3.6 Nothing precludes either party from otherwise using any general knowledge,  
skills, ideas, concepts, know-how, techniques, and experience learned during the performance  
of its obligations under the Agreement. For avoidance of doubt, except for the City Products,  
all intellectual property, all embodiments thereof, and all technology or software that is  
created, conceived, or used by Franchisee or Licensor in connection with the Services or this  
Agreement is owned by Franchisee or Licensors.  
3.4 Warranty of Title  
The Franchisee represents and warrants that all Equipment and Software provided by or  
through the Franchisee:  
(i) are original to the Franchisee or validly licensed or sublicensed to the Franchisee;  
(ii) do not infringe, dilute, misappropriate, or improperly disclose any intellectual  
property or proprietary rights of any third party, or otherwise violate any law;  
and  
(iii) do not constitute defamation or invasion of the right of privacy.  
3.5 Non-exclusivity  
This franchise grant is non-exclusive. The City retains the absolute right to grant to any  
other Person a franchise, consent, or right to occupy and use the Inalienable Property of the  
City for the installation, operation, or maintenance of facilities including Public Communications  
Structures, with or without advertising. To the extent the City grants one or more additional  
franchises for Public Communications Structures prior to the City having issued permits for  
installation of 4,000 new Advertising Structures as contemplated in Section 1.2 of Attachment  
SRV, the Franchisee will be entitled to an equitable reduction in the amount of the Minimum  
Annual Guarantee payable under Section 6.3.1 reflecting the fact that the Minimum Annual  
Guarantee amount as stated in Section 6.3.1 is based on an assumption that no less than the  
4,000 new Advertising Structures contemplated in Section 1.2 of Attachment SRV will be  
authorized for installation prior to the grant of additional franchises for PCSs.  
3.6 No Waiver  
Nothing in this Agreement will be construed as a waiver of any law or of the City's right  
to require the Franchisee to secure the appropriate permits or authorizations necessary to  
install the Structures to be installed hereunder and perform the Services.  
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3.7 No Release  
Nothing in this Agreement constitutes a waiver or release of the rights of the City in and  
to its Inalienable Property. If all or a portion of the Inalienable Property of the City is eliminated,  
discontinued, closed or demapped, then all rights and privileges granted under this Agreement  
regarding the affected portion of the Inalienable Property ceases on the effective date of the  
elimination, discontinuance, closing or demapping.  
3.8 Compliance with the ADA  
The Franchisee shall require and ensure that the System comports to the current  
requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA"), the  
Architectural and Transportation Barriers Compliance Board Guidelines, and any other current  
applicable laws relating to accessibility for persons with disabilities. All Structures built after the  
Commencement Date shall include a tactile key pad and braille lettering, and be equipped with  
volume control equipment and Telecoil compatible technology to enable hearing impaired  
persons to access and utilize telecommunication services.  
3.9 Software Escrow Agreement  
3.9.1 All software created by or licensed to the Franchisee or the City in connection  
with the creation, operation or maintenance of the MMS or any replacement of the MMS is  
subject to the minimum software escrow requirements of this Section 3.9. This Section 3.9 does  
not apply to "off-the-shelf' software or “software as a service” created or maintained by a third-  
party other than the Franchisee or an Affiliate.  
3.9.2 The Franchisee shall (i) cause the Licensor to enter into, and maintain in full force  
and effect a source code escrow agreement with an escrow agent (the "Software Escrow  
Agent") and (ii) ensure that all Source Code and Documentation for the Licensed Software shall  
be under escrow deposit pursuant to said escrow agreement. The Franchisee shall cause its  
software Licensor to provide thirty (30) days prior written notice of a change of the Software  
Escrow Agent. The escrow agreement must be in effect within sixty (60) days of the Effective  
Date and provide materially the same terms and conditions as set forth below:  
(i) The Software Escrow Agent must hold the Source Code for the benefit of the  
City;  
(ii) All major updates (e.g., new versions and critical patches and fixes) must be  
escrowed promptly after issuance; minor updates may be escrowed in batches  
no less frequently than monthly;  
(iii) The Software Escrow Agent shall verify deposit of the source code and all  
updates and so notify the City;  
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(iv) The City may require periodic testing by the Software Escrow Agent of all Source  
Code held in escrow; and  
(v) If the Licensor: (a) becomes insolvent or ceases to exist as a business entity; or  
(b) fails to perform its obligations under the license agreement or escrow  
agreement, and is unable to cure such failure within ten (10) days of notice  
thereof by Franchisee, the City shall have the right to so certify to the Software  
Escrow Agent and to direct the Software Escrow Agent to provide the City with a  
copy of the Source Code and Documentation for the installed release level of the  
MMS software. All Source Code materials granted under this clause shall be  
maintained subject to the confidentiality provisions of this Agreement and shall  
be used solely for the internal business purposes of the City. Title to any source  
code released to the City remains the property of the Licensor.  
3.9.3 The Franchisee shall provide to the City all information necessary for the City to  
comply with registration requirements of the Software Escrow Agent. The Franchisee shall  
adhere to the obligations in any agreement with the Licensor or the Software Escrow Agent as  
they relate to the deposit of software in escrow. The escrow agreement shall provide that the  
City shall have the opportunity to cure any default of the Franchisee, at the sole cost and  
expense of the Franchisee, that jeopardizes the ability of the City to access the escrowed source  
code as provided for under this Agreement. The escrow agreement provisions in this Section  
3.9 will apply with equal force to any software licensed to the City by the Franchisee or an  
Affiliate.  
3.10 No Discrimination  
The Franchisee shall not discriminate in the provision of Services on the basis of race,  
creed, color, national origin, sex, age, disability, perceived disability, marital status, sexual  
affectation, or real or perceived sexual orientation.  
3.11 Tariffs  
Upon the written request of the Commissioner, and at his or her sole discretion, the  
Franchisee shall submit to DoITT a list of all tariffs or tariff applications, and all amendments or  
modifications that the Franchisee has filed with any federal, state or local regulatory authorities  
or other government agencies regarding, associated with, or arising from the Franchisees  
performance of the Services. The Franchisee shall submit the list in a form acceptable to the  
Commissioner within thirty (30) calendar days of the request. Upon a written request of the  
Commissioner and at his or her sole discretion, the Franchisee shall promptly, but in no case  
later than thirty (30) calendar days following the request, deliver to DoITT a complete copy,  
including all amendments or modifications, of any tariff or tariff applications.  
3.12 Data Rights  
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3.12.1 The Franchisee retains ownership rights in all data created in the course of  
providing the Wi-Fi Services to the extent that such data doesn’t include Personally Identifiable  
Information, and subject to the requirements of subsection 4.4.4 of Attachment SRV. The  
Franchisee retains no ownership rights in Personally Identifiable Information.  
3.12.2 The City retains exclusive title and ownership rights in (i) all non-public  
information concerning or embodying the processes, statistics, software, systems, programs,  
research, development, strategic plans, or the like with respect to the operations and activities  
of the City (ii) all non-public information concerning the City’s infrastructure, public safety, or  
other data set that the City has identified as “sensitive” (“City Data”).  
3.12.3 The Franchisee shall hold confidential, both during and after the expiration or  
termination of this Agreement, all City Data furnished to or used by the Franchisee. The  
Franchisee shall not make any City Data available to any person or entity without the prior  
written approval of DoITT. The Franchisee shall maintain the confidentiality of City Data by  
using a reasonable degree of care, and using at least the same degree of care that the  
Franchisee uses to preserve the confidentiality of its own confidential information. The  
Franchisee may not—without DoITT’s express written consent—merge City Data with other  
data, keep a copy of it, commercially exploit it, or use it for any purpose other than providing  
the Services. All City Data will be treated as confidential except to the extent the data is (i)  
already known by the Franchisee at the time it is obtained, free from any obligation to keep the  
City Data confidential; (ii) is or becomes publicly known through no wrongful act of the  
Franchisee; (iii) is rightfully received by the Franchisee from a third party without restriction  
(other than an Affiliated Person) and without breach of this Agreement; or (iv) is independently  
developed by the Franchisee without using any City Data.  
3.12.4 Disclosure of City Data does not violate the confidentiality obligations imposed by  
this Section to the extent that City Data must be disclosed pursuant to a court order or as  
required by a regulatory agency or other government body of competent jurisdiction. Upon  
receipt of a request under this subsection, the Franchisee shall notify the City immediately  
upon receipt of such an order or requirement to disclose and use reasonable efforts to resist, or  
to assist the City in resisting, such disclosure and, if such disclosure must be made, to obtain a  
protective order or comparable assurance that the City Data disclosed will be held in  
confidence and not be further disclosed absent the City’s prior written consent.  
3.12.5 The Franchisee shall grant the City a perpetual, unhindered, irrevocable right to  
use any anonymized aggregated data created in the provision of the Wi-Fi Services. The  
ongoing irrevocable right to use such data — created at any time during the Term or any  
Holdover Period — is provided in exchange for the franchise granted to the Franchisee under  
this Agreement. The City will not have any rights to use Personally Identifiable Information.  
3.13 Franchise Fiber – Definitive MSA  
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3.13.1 For the purposes of this Section, the terms “System” and “Equipment” are  
exclusive of all Fiber except Fiber that was provided by the Franchisee under this Franchise  
Agreement. To the extent that Fiber was installed pursuant to another franchise agreement and  
provided through Franchisee by a Fiber Licensor, that Fiber does not constitute Equipment, and  
is not included in the System. The Franchisee is required to maintain, at all times, an agreement  
between the Franchisee and one or more Fiber Licensors that specifies which Fiber is provided  
by the Franchisee pursuant to this Agreement and which Fiber is provided through the  
Franchisee by a Fiber Licensor (the “Definitive MSA”).  
3.13.2 Definitions  
“Transition Period” means a period of up to 3 years, at the option of the City,  
following termination or expiration of this Agreement, during which time the  
Franchisee shall provide the Services set forth below.  
“Fiber Licensor” means an Affiliate, Member in its individual capacity, or other  
third party that provides the Franchisee with Fiber for the performance of the  
Franchisee’s obligations under the Agreement.  
3.13.3 Not later than sixty (60) days from the Commencement Date, Franchisee shall  
reach agreement with the Fiber Licensor on a Definitive MSA that meets the requirements  
below for Fiber that is to be provided by a Fiber Licensor. The Definitive MSA must be reviewed  
and approved by DoITT, the approval of which shall not be unreasonably withheld. The  
Definitive MSA must include the following provisions:  
(i) Upon expiration or termination of this Agreement, the City will have an  
irrevocable right to continue to use the Fiber (subject to the same minimum  
technical requirements concerning capacity, service levels and maintenance) as  
exists between the Franchisee and the Fiber Licensor during the Term of this  
Agreement and the Transition Period.  
(ii) In the event the City, or a third party acting on the City’s behalf, assumes the  
Franchisee’s rights with respect to Fiber, the City or such third party will be  
obligated to pay the Fiber Licensor a reasonable market rate of compensation for  
the provision of Fiber and those other obligations assumed by the third party to  
the Franchisee which the City elects to continue.  
(iii) The City and the third party will reasonably cooperate with the Franchisee and  
the Fiber Licensor to effect an orderly transition without interruption of service  
and to determine an appropriate market rate of compensation.  
(iv) If the parties are unable to agree on an appropriate rate of compensation the  
parties shall submit the matter to a single arbitrator assigned by the American  
Arbitration Association (“AAA”) who shall act in accordance with the rules of the  
AAA to determine a fair market compensation. (In connection with any such  
arbitration the City shall not assert that the compensation paid by Franchisee to  
a Member party reflects a market rate of compensation nor shall such rate of  
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compensation be disclosed to or taken into account by the Arbitrator.) The cost  
of any such arbitration shall be shared equally by the parties, unless the  
arbitrator determines that an alternative allocation is more appropriate.  
(v) It is the intent of the parties that the City be a third party beneficiary to the  
Definitive MSA.  
(vi) The term of the Definitive MSA shall be for the Initial Term, the Extended Term  
(if any), Transition Period, and any Holdover Period.  
(vii) The indemnification requirements set forth in Sections 11.4 and 11.5.  
(viii) The limitation of liability requirements set forth in Section 11.7.  
(ix) The insurance requirements set forth in Article XII.  
3.13.4 The services to be provided pursuant to the Definitive MSA may be further  
modified as necessary to be consistent with the obligations under this Agreement. Nothing  
herein shall preclude Franchisee from requesting City approval of more than one Definitive  
MSA or to request approval of changes to any Definitive MSA previously approved.  
ARTICLE IV. CONSIDERATION AND SCOPE OF SERVICES  
4.1 Consideration and General Description of Services  
4.1.1 In exchange for the City’s granting of a non-exclusive franchise to Franchisee  
pursuant to Section 3.1, the Franchisee shall fulfill all of its obligations under the Agreement,  
including payment to the City of all Compensation and satisfactory performance of the Services  
identified below, as more fully described in Attachment SRV. This Section 4.1.1 is intended to  
provide a summary of the Franchisee’s obligations and is not intended to modify or supersede  
the scope of the Public Communications Structure Services described in Attachment SRV.  
(i) Assume ownership of all Existing PPT Systems.  
(ii) Design, install, operate, and maintain the System, including the replacement of  
Existing PPTs with New Structures.  
(iii) Provide free or pay telephone service.  
(iv) Provide free public Wi-Fi.  
4.1.2 The provision of all of the Services, individually and collectively, will be provided  
at the sole expense of the Franchisee. Unless a provision of this Agreement specifies to the  
contrary, the Franchisee is liable and responsible for payment of any costs incurred in order to  
perform any of the Services, including administrative costs, ancillary costs, permit fees, costs to  
repair City sidewalks or other property, electrical costs, telecommunications costs, licensing  
fees, costs to install, maintain, operate, or upgrade the Structures (including costs to purchase  
and replace Existing PPTs), taxes, or any other charge, fee, expense, or cost whatsoever arising  
out of the Franchisee’s performance of its obligations under this Agreement. The Franchisee is  
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not entitled to reimbursement or a credit against the Compensation owed for any outlay of  
costs made by the Franchisee under this Agreement. However, if the Franchisee becomes liable  
for the New York City Commercial Rent Tax attributable to the Structures, it may deduct the full  
amount of such taxes that it pays from any payment owed to the City pursuant to Section 6.3.  
4.2 Permits, Authorizations, Approvals, Consents and Licenses  
4.2.1 Before installing any Structure, the Franchisee must obtain all necessary permits,  
authorizations, approvals, consents, licenses, and certifications required for each Structure,  
including, but not limited to: (i) those required under law related to materials and construction  
and all applicable sections of the building, plumbing and electrical codes of the City; (ii) all  
permits, authorizations, approvals, consents, licenses and certifications required by the City’s  
Department of Transportation, Landmarks and the Public Design Commission, and any other  
agency of the City with jurisdiction over the property on which the Structure is located; (iii) any  
permits, authorizations, approvals, consents, licenses, and certifications required by law,  
including under Section 6-35 of Title 67 of the Rules of the City of New York, under Section 23-  
402 of the City Administrative Code, and under Section II(C) of the RFP; and (iv) any necessary  
permits, authorizations, approvals, consents, licenses and certifications from Persons to use  
easements, poles, conduits or other private property that the Franchisee seeks to use in  
connection with the provision of the Services. The Franchisee acknowledges that the City, in  
exercising its rights and obligations under the Agreement, will act consistent with any  
memoranda of understanding entered into between DoITT and the Borough Presidents. Where  
work to be done pursuant to this Agreement requires work to be performed by an electrician,  
the Franchisee shall employ and utilize only licensed electricians.  
4.2.2 The Franchisee agrees that fees it pays to obtain any permits, consents, licenses,  
or any other forms of approval or authorization are not in any manner a tax, or compensation  
for this franchise in lieu of the Compensation.  
4.2.3 The Franchisee acknowledges and accepts that the City has the sole discretion in  
the management of its rights-of-way to approve or deny any request by the Franchisee, or  
other Person, for a permit to install a Structure in a particular location.  
ARTICLE V. ADVERTISING DISPLAYS  
5.1 General Requirements  
5.1.1 In consideration of the Franchisee's performance of the Services, and payment  
by the Franchisee of the Compensation, the City hereby grants to the Franchisee the right  
throughout the Term to display Advertising, and to lease space for the display of Advertising on  
the Structures that are the subject of this Agreement, provided that Advertising displays will  
only be permitted on Structures that offer public pay telephone service (or are in the transition  
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period contemplated in Section 3.2.4) and that are located in commercial or manufacturing  
zoning districts (defined as zoning districts where commercial or manufacturing uses are  
permitted as of right), and provided also that the authority to display Advertising on Structures  
is subject to the terms, conditions and limitations on advertising rights as are described in this  
Agreement. The Franchisee shall provide the information and certifications required by  
Section J.(8)(i),(ii)and (iii) of City Council Resolution 2309 of 2009.  
5.1.2 The term “Advertising” means any printed matter or electronic display including  
words, pictures, photographs, symbols, graphics or visual images, in connection with the  
promotion or solicitation of sale or use of a product or service or not-for-profit, public service  
or governmental messages, other than information required to be posted on a PCS in  
accordance with this Agreement or applicable law.  
5.2 Location of Advertising; Permitted Advertising Methods  
5.2.1 Non-digital and Static digital Advertising. Printed poster Advertising (with  
backlighting at the Franchisee’s option) and static digital Advertising are permitted on all  
Structures where Advertising is permitted as described in Section 5.1.1, provided however that  
digital Advertising and backlit poster advertising may not be used within an historic district or  
adjacent to a site that Landmarks has designated a “landmark site” except with the prior  
approval of Landmarks by rule or on an individual basis. Static digital Advertising for purposes  
of this agreement is defined as Advertising in which a series of fixed digital images are displayed  
electronically, and each fixed image must be displayed for a minimum of fifteen (15) seconds  
and fade in and fade out no faster than one (1) second, except as may be authorized by the NYC  
Department of City Planning. For the avoidance of doubt, the references to commercial and  
manufacturing zoning districts in Section 5.1.1 include commercial overlay districts adjacent to  
residential zoning districts. In the case of any ambiguity regarding which zoning district a  
Structure is in, the Structure is deemed to be in the zoning district that includes the property  
closest to the Structure that is not Inalienable Property.  
5.2.2 Slow motion digital. The electronic display of advertising images that include  
motion at slow speeds may be permitted but only in high density commercial districts, and only  
with the prior written approval of the Commissioner, in his or her sole discretion.  
5.2.3 Other media and new technologies. Requests to display “zippers,” scrolling  
poster ads, innovative advertising and electronic advertising media not expressly covered in this  
Agreement will be evaluated on a case-by-case basis and will be subject to the zoning  
regulations applicable to the property adjacent to the site.  
5.2.4 Audio advertising is not permitted in connection with advertising displays.  
However, an audio component used in connection with telecommunications services may be  
permitted in the sole discretion of the Department.  
5.3 Advertising Siting and Clearance.  
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5.3.1 Advertising on Public Communications Structures is not permitted:  
(i) on Building-line Structures as defined by PPT Rules;  
(ii) within Historic Districts or adjacent to a landmark site unless the  
Advertising complies with the rules and other requirements of the  
Landmarks Preservation Commission.  
5.3.2 Advertising Display Panels  
(i) Advertising on display panels on Structures may not exceed 1,539 square  
inches;  
(ii) Advertising on Existing PPTS, prior to their replacement with a Structure,  
shall be permitted pursuant to the old Franchise;  
(iii) Each PCS may have no more than 2 advertising panels.  
5.4 [RESERVED]  
5.5 Restrictions  
5.5.1 The Franchisee shall not sell or place Advertising that is false or misleading;  
promotes unlawful conduct or illegal goods, services or activities; or, is otherwise unlawful or  
obscene, as determined by the City, including advertising tobacco products or trademarks and  
advertising that constitute a public display of offensive sexual material in violation of Penal Law  
245.11.  
5.5.2 Tobacco advertising and electronic cigarette advertising are not permitted. The  
term “electronic cigarette” is defined for this purpose as set forth in Section 17-502 of the  
Administrative Code of the City of New York. Alcohol advertising within two hundred feet of a  
building used exclusively as school, day care center, or house of worship is not permitted. The  
200 feet shall be measured in straight lines from the center of the nearest entrance of the  
school, day care center or house of worship to the nearest outer edge of the PCS.  
5.6 Maintenance of Advertising Displays  
5.6.1 The Franchisee shall maintain all advertising display panels in a clean and  
attractive condition at all times and is responsible for the cost of any power consumption used,  
electrical and network connectivity, and all other costs arising from the display of Advertising.  
5.6.2 The Franchisee shall require and ensure that all Advertising display panels are  
safe, secure and sturdy throughout the Term. If the Franchisee becomes aware, or is informed  
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by the City, that a panel is unsafe, insecure, not sturdy, or otherwise poses a threat to public  
safety, the Franchisee shall repair or remove or otherwise secure the panel promptly and in any  
event within four hours of notification.  
5.7 Removal of Advertising  
5.7.1 Within forty-eight (48) hours of receipt of written notice (which may be provided  
by email) that Advertising on a PCS is either unauthorized, prohibited, or otherwise fails to  
comply with any requirement of the Agreement, as determined by the City, the Franchisee  
must remove the Advertising or cure the failure. If the Franchisee fails to remove the  
Advertising or otherwise cure the failure, the City may, at the Franchisee’s expense, perform  
any efforts it determines appropriate to remove the advertising or otherwise cure the failure.  
The Franchisee must reimburse the City for all costs or damages incurred by the City,  
including repair and restoration costs arising out of the performance of the work, no later than  
thirty (30) days after the City cures the Franchisee’s failure.  
5.7.2 Any action by DoITT under this subsection will be in addition to and cumulative  
of all rights and remedies set forth in Article XIII and all other rights or remedies, expressed or  
implied, available to the City at law or in equity.  
5.8 NYC Program Advertising  
5.8.1 NYC Program Advertising (NYCPA) as described in this Agreement will be  
administered on behalf of the City by NYC & Company or such other entity or agency as  
the City may from time to time direct (the NYCPA Manager). In each year of the Term,  
Franchisee shall provide advertising space to the NYCPA Manager for NYC Program Advertising  
(NYCPA) at no cost to the City or the NYCPA Manager consisting of 5% of the total value of  
the advertising space on the Structures then available to Franchisee under this Agreement. At  
the NYCPA Manager’s option, such space provided to the NYCPA Manager shall be comprised  
of an agreed-upon set of particular panels at agreed-upon locations. Alternatively, if  
agreeable to the NYCPA Manager, some or all of the NYCPA Advertising space may be  
allocated on a time-based fractional basis such that certain panels are used by the NYCPA  
Manager for NCCPA Advertising at certain times or during certain periods rather than set aside  
entirely for NYCPA Advertising. In either case, if at any time the NYCPA Manager and the  
Franchisee cannot agree on an allocation that equals such 5% of value, then the NYCPA  
Manager and the Franchisee shall each provide a proposed allocation to an arbitrator assigned  
by the American Arbitration Association (“AAA”), who shall select (using the procedures of the  
AAA) one of the two proposals submitted, whichever is determined by the arbitrator to better  
reflect the required 5% of the total value advertising space on the structures, in which case the  
arbitrator’s selection shall be treated as compliant with the 5% requirement. The cost of any  
such arbitration shall be shared equally by the Franchisee and the City. NYCPA Advertising  
shall mean, for purposes of this Agreement, advertisements reasonably determined by the  
NYCPA Manager to be within its corporate or charter purpose, including but not limited to  
commercial advertisements, advertisements promoting New York City, and public service  
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advertisements, but NYCPA shall not include “spot market advertising”. For purposes of the  
preceding sentence “spot market advertising shall mean advertising sold by the NYCPA  
Manager to commercial advertisers (whether for cash, trade or barter) in a manner unrelated  
to any broader sponsorship or partnership arrangement between such advertiser and either  
the NYCPA Manager or the City and unrelated to any event, sponsorship or support efforts, or  
intergovernmental agreement, of the NYCPA Manager or the City (for this purpose,  
“intergovernmental agreements” shall mean agreements between the City and/or the NYCPA  
Manager and other governmental or quasi-governmental entities).  
5.8.2 The administration of NYCPA, including posting, planning, installation,  
maintenance, removal and reporting shall be performed by Franchisee at no cost to the City  
or the NYCPA Manager (except that Advertising posters shall be provided to or at the  
direction of Franchisee), shall be implemented in accordance with the same standards and  
best practices and utilization of the same materials and methods as used by Franchisee for  
displays of its paying commercial clients, which shall include, at a minimum: sufficient lead  
time for planning, a copy change every four weeks (or equivalent industry standard for digital  
displays), location lists with spotted maps provided to the NYCPA Manager and DoITT two  
weeks prior to the posting date of any campaign, a completion report including at least six  
quality photographs of distinct panels for every campaign and an affidavit certifying the date  
that materials were received and posted provided to the NYCPA Manager and DoITT within 6  
weeks of the posting completion. In programming the NYCPA, the NYCPA Manager shall  
provide Franchisee with a monthly inventory of the NYCPA locations and the advertising  
campaign requested at each location.  
5.8.3 For the purposes of this Section 5.8, an exclusive advertising campaign shall  
be any campaign whereby Franchisee agrees to limit its rights to enter into advertising  
agreements with entities that compete with a particular advertiser. If the Franchisee wishes  
to enter into an exclusive advertising campaign, and the City controls NYCPA Advertising  
in a geographic area which would be valuable to the Franchisee and the particular  
advertiser for use in such exclusive advertising campaign, then Franchisee may  
propose to the NYCPA Manager that the NYCPA Manager honor the terms of  
exclusivity for the NYCPA, or in the alternative to cooperate in good faith with  
Franchisee to address any potential issues that may arise out of an accommodation by the  
NYCPA Manager of such exclusivity arrangement, including, for example, consideration of  
an in-kind exchange of panel locations on a one for one basis to accommodate a specified  
geographic exclusivity. For the avoidance of doubt, NYCPA has no obligation beyond such  
good faith cooperation to accommodate any such exclusivity commitment sought by  
Franchisee, and Franchisee is expressly prohibited from entering into any agreement with an  
advertiser that places restrictions on NYCPA Manager’s use of the NYCPA. The notice to the  
NYCPA manager described in this paragraph shall contain information as to the schedule,  
duration, geographic reach and number of panels involved in the proposed exclusive  
advertising campaign.  
ARTICLE VI. COMPENSATION AND OTHER PAYMENTS  
Page 32 of 71  
6.1 Defined Terms  
Whenever used in this Agreement, the terms, phrases, and words listed below, and their  
derivatives, have the meanings given below.  
“Franchise Fee” means the amount of annual compensation paid to the City in exchange  
for the franchise, calculated in accordance with Section 6.3.1.  
"Gross Revenues" means the sum of all revenues paid or obligated to be paid to the  
Franchisee, its subsidiaries, affiliates or third parties as a result of the installation, operation,  
maintenance or removal (temporary or otherwise) of the Public Communications Structures  
and Existing PPTs, including for the display of advertising, the provision of communications  
services, sponsorship, and the like.  
"Minimum Annual Guarantee” or “MAG” means, for each year during which the  
Franchisee performs the Services (including during any Extended Term or Holdover Period), the  
amount set forth in Section 6.3.1, subject to any adjustment under Section 6.3.3.  
6.2 Gross Revenues  
6.2.1 [RESERVED]  
6.2.2 Gross Revenues will be calculated on the basis of the total amounts of revenue  
from whatever source derived, (net of bad debts) but without any other deduction  
whatsoever for commissions, fees, brokerage, labor charges or other expenses or costs, as  
determined in accordance with generally accepted accounting principles, on an accrual basis,  
paid or obligated to be paid, directly or indirectly, to the Franchisee, its subsidiaries,  
affiliates, or any parties directly or indirectly retained by the Franchisee to generate  
revenue (not including amounts paid or obligated to be paid to third parties by or on behalf  
of the Franchisee or any subsidiary or affiliate of the Franchisee).  
6.2.3 Gross Revenues includes the fair market value of any non-monetary  
consideration (in kind) in the form of materials, services or other benefits, tangible or  
intangible, or in the nature of barter the Franchisee may receive.  
6.2.4 In the event that the Franchisee provides any advertising space pursuant to  
any transaction which is not an arm's-length or free-standing transaction (because, for  
example the transacting Persons share some common ownership, or one party is controlled by  
the other party or the transaction involves the Franchisee's including or grouping advertising  
on the Public Communications Structures with other assets in the Franchisee's inventory (in  
New York City or elsewhere), the amount to be included in Gross Revenues will be no less than  
the then-current Rate Card value as defined below in this Section 6.2.4 .  
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(i) In the event that Franchisee sells Advertisements bundled with any other goods  
or services offered by or for Franchisee, Franchisee shall not: (1) sell the  
Advertisements at a higher discount than any good or service in such bundle or  
(2) act or fail to act in any way that results in Advertisements being sold in a  
manner to reduce the amounts payable to the City hereunder or to increase the  
amounts allocable to Franchisee’s other goods or services.  
(ii) No later than thirty (30) days after the Commencement Date, the Franchisee  
shall submit to DoITT a Rate Card reflecting a set of values corresponding to the  
purchase of advertising space on the Structures. Each rate on the Rate Card must  
reflect a rate not less than the average amount actually charged by the  
Franchisee during the twelve (12) months preceding the Commencement Date.  
The Rate Card may include different rates for different types of advertising  
space, different locations, different size purchases (for example, different rates  
that reflect volume discounts), provided that in each case the listed rate reflects  
the Franchisee’s average prevailing rate for arm’s length, free-standing  
transactions in the previous year as described in the preceding sentence.  
(iii) No more than thirty (30) days after each anniversary of the Commencement  
Date, the Franchisee shall submit to DoITT an updated Rate Card, based upon  
the rates actually charged in the preceding year.  
6.2.5 Gross Revenues do not include (i) collection of any sales taxes or similar taxes  
which the Franchisee is obligated by law to collect on behalf of and remit to a government  
entity or (ii) revenues generated as a result of charges for print production and other Creative  
Services provided by the Franchisee. Creative Services means services provided to advertisers  
by Franchisee with the creation of advertising copy for display on a PCS pursuant to a separate  
agreement. The Franchisee may not offer a discount on the Advertising to advertisers  
purchasing Creative Services, subject to Section 6.2.4(i). Gross Revenues shall be reduced by  
the amount of any payment made by the Franchisee to a Special Assessment District (“SAD”)  
association (in connection with the location of Existing PPTs or Structures on sidewalks in the  
applicable SAD) that had previously been receiving payment from holders of now expired PPT  
franchises.  
6.2.6 The Franchisee shall not divert or re-characterize revenue that would  
otherwise have been considered Gross Revenues for purposes of this Agreement. Violation of  
this provision constitutes a material breach of the Agreement.  
6.3 Compensation  
6.3.1 The Franchisee shall pay to the City a Franchise Fee, with respect to each  
Contract Year, in an amount equal to the greater of (i) fifty percent (50%) of Gross Revenues for  
that Contract Year or (ii) the Minimum Annual Guarantee payment, as detailed in the table  
below. In Contract Year Eight, the Percentage of Gross Revenue payable to the City shall  
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increase to fifty-five (55%) percent for Gross Revenues derived by Franchisee from the display  
of Advertising on the PCS, but shall remain at fifty (50%) percent for all other Gross Revenues.  
In the event that the Agreement expires or is terminated by reason other than a Termination  
Default, before the completion of a Contract Year, the Franchisee shall pay to the City a pro-  
rated amount of the Minimum Annual Guarantee (based on the number of days in the Contract  
Year prior to such expiration or termination divided by 365). If within any Contract Year  
Franchisee makes payment to DoITT to satisfy any permitting fee relating to the installation of a  
Structure, such payment will be credited as payment towards the Minimum Annual Guarantee.  
Contract Year Minimum Annual Percentage of Gross Percentage of Gross Revenue  
Guarantee Revenue Advertising – Non Advertising  
Contract Year 1 $20,000,000 Fifty (50%) Percent Fifty (50%) Percent  
Contract Year 2 $22,500,000 Fifty (50%) Percent Fifty (50%) Percent  
Contract Year 3 $25,000,000 Fifty (50%) Percent Fifty (50%) Percent  
Contract Year 4 $27,500,000 Fifty (50%) Percent Fifty (50%) Percent  
Contract Year 5 $42,000,000 Fifty (50%) Percent Fifty (50%) Percent  
Contract Year 6 $47,000,000 Fifty (50%) Percent Fifty (50%) Percent  
Contract Year 7 $51,500,000 Fifty (50%) Percent Fifty (50%) Percent  
Contract Year 8 $57,983,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
Contract Year 9 $59,722,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
Contract Year 10 $61,514,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
Contract Year 11 $63,291,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
Contract Year 12 $65,119,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
Contract Year 13 $67,001,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
Contract Year 14 $68,938,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
Contract Year 15 $70,932,000 Fifty-Five (55%) Percent Fifty (50%) Percent  
In no event will the dollar figure in the first column of the above table for any Contract  
Year commencing after January 1, 2016 be less than the amount which equals $20,000,000  
(Twenty Million Dollars) multiplied by a fraction the numerator of which is the CPI in effect on  
the first day of the Contract Year and the denominator of which is the CPI that was in effect on  
the Commencement Date. The CPI for this purpose shall mean the Consumer Price Index (All  
Urban Consumers, All Items, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 1982-  
84=100)  
6.3.2 [RESERVED]  
6.3.3 If in DoITT’s good faith determination, or as a consequence of the removal of  
Advertising Structures pursuant to Section 3.7, the Franchisee’s total number of advertising  
installations falls below 4,000 at any time during the Term, and the reason the total number  
falls below 4,000 is not the fault of Franchisee, and the percentage of Gross Revenues due to  
the City falls below the Minimum Annual Guarantee payment for that Contract Year then, if the  
failure is a consequence of City Delay or Litigation Delay (as defined in Section 15.23.1), the  
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Minimum Annual Guarantee will be reduced by a percentage commensurate with the number  
of advertising installations short of the 4,000 number and the percentage of the year that the  
advertising installation number fell short of 4,000.  
6.4 Payment  
6.4.1 On or before the 17th day of each calendar month, the Franchisee shall pay to  
the City one twelfth (1/12) of the Minimum Annual Guarantee accrued in previous month. The  
first payment will be made forty-seven (47) days after the Commencement Date and  
subsequent payments will be made on the seventeenth (17th) day of each month. With each  
payment, Franchisee shall submit a report, in a format acceptable to the Department, showing  
Gross Revenues accrued that month. The report must include, at a minimum, a comprehensive  
itemized list of all Gross Revenues received and any other information reasonably required by  
the City.  
6.4.2 Twice annually, the Franchisee shall provide a report (the “True-Up Report”)  
showing total Gross Revenues generated during the first six months of the current Contract  
Year and for the full twelve months of the recently completed Contract Year. The report must  
be in a format reasonably acceptable to DoITT. The Franchisee shall simultaneously submit a  
payment for any amount owed reflecting a true-up of the full amount payable to the City under  
Section 6.3.1 above based on the information reflected in the true-up report.  
(i) The Franchisee shall submit the first true-up report no more than thirty (30) days  
following the date falling six months after the commencement of the current  
Contract Year; and shall submit the second true-up report no more than thirty  
(30) days following the end of the previous Contract Year.  
(ii) In the event the year’s second True-Up Report shows that the City has been  
overpaid (i.e. – the City has received more than the greater of (i) the percentage  
of Gross Revenues set forth in Section 6.3.1 for that Contract Year or (ii) the  
Minimum Annual Guarantee payment), the Franchisee shall be entitled to a  
credit in the amount of such overpayment against the next Franchise Fee  
payment or payments due.  
6.5 Sponsorship  
6.5.1 Subject to the Commissioner’s approval, the Franchisee may enter into an  
agreement (a “Sponsorship Agreement”) with an entity whereby the entity (a “Sponsor”) will be  
given sponsorship recognition or similar recognition as a provider of key support of one or more  
of the Services.  
6.5.2 Prior to entering into a Sponsorship Agreement, the Franchisee must receive the  
express written permission of DoITT. The Franchisee shall present to DoITT a proposal that  
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includes the proposed details of the sponsorship, including designs of any proposed  
sponsorship logo(s), and the draft sponsorship agreement. DoITT may, in its discretion,  
approve, deny, or in lieu of denial propose changes to the Sponsorship Agreement or other  
proposed details that would be sufficient to grant DoITT’s approval.  
6.5.3 The Franchisee’s obligations under this Agreement, including this Section, are  
not affected by the performance or non-performance of the Franchisee’s obligations under the  
Sponsorship Agreement.  
6.5.4 Gross Revenues includes all payments that the Sponsor agrees to pay in  
connection with the System, including in exchange for recognition and/or acknowledgement of  
the Sponsor’s role.  
6.5.5 More than one Sponsor and Sponsorship Agreement may be requested by the  
Franchisee and permitted by DoITT, in its discretion, subject to the provisions of this Section 6.5  
being applicable to each.  
6.6 City Incurred Cost  
The City shall provide five (5) business days’ notice of its intention to perform any work  
that is the responsibility of the Franchisee and Franchisee shall have such five (5) business days  
to perform such work, or, in an emergency, such shorter notice as the City may deem  
reasonable under the circumstances. In the event such work is not performed by the  
Franchisee, the City shall have the option to perform such work and the Franchisee shall  
reimburse the City for all costs and expenses incurred by the City in the course of the City  
performing any work that should have been performed by the Franchisee. Payment under  
this Section is due thirty (30) days after receipt of an invoice from the City setting forth the  
amount to be reimbursed.  
6.7 Future Costs  
In the event of a Default by the Franchisee, the Franchisee shall pay to the City or  
to third parties, at the direction of DoITT, an amount equal to the reasonable costs and  
expenses which the City incurs for the services of third parties (including attorneys and other  
consultants) in connection with enforcement of remedies including termination for cause.  
Before any reimbursable work is performed, the City will advise the Franchisee that the City  
will be incurring the services of third parties pursuant to the preceding sentence. However,  
in the event the City terminates this Agreement or brings an action for other enforcement  
of this Agreement against the Franchisee, or the Franchisee brings an action against the  
City, and the Franchisee finally prevails, then the Franchisee shall have no obligation to  
reimburse the City or pay any sums directly to third parties, at the direction of the City,  
pursuant to this Section with respect to such termination or enforcement. In the event the  
Franchisee contests the charges, it shall pay any uncontested amounts. DoITT shall review  
the contested charges and the services rendered and shall reasonably determine whether such  
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charges are reasonable for the services rendered. In addition to the foregoing, the Franchisee  
shall pay to the City or to third parties, at the direction of DoITT, an amount equal to the  
reasonable costs and expenses which the City incurs for the services of third parties  
(including, but not limited to, attorneys and other consultants) in connection with any  
renewal or transfer, amendment or other modification of this Agreement or the franchise to  
be made at the request of the Franchisee. Before any reimbursable work is performed, the  
City will advise the Franchisee that the City will be incurring the services of third parties  
pursuant to the preceding sentence. The Franchisee expressly agrees that the payments made  
pursuant to this Section are in addition to and not in lieu of, and shall not be offset against,  
the compensation to be paid to the City by the Franchisee pursuant to any other provision  
of this Article.  
6.8 Limitations on Credits or Deductions  
6.8.1 The Franchisee acknowledges and agrees that:  
(i) the Compensation and Services provided under this Agreement, as well as  
costs and expenses incurred by the Franchisee in performing its obligations  
under the Agreement, do not constitute a tax and must be provided in addition  
to all taxes, fines, fees, or other charges of all kind levied by any governmental  
entity, all of which remain separate and distinct obligations of the Franchisee;  
(ii) Franchisee knowingly and intentionally relinquishes and waives its rights and  
the rights of any Affiliated Person to a deduction or other credit pursuant to  
Section 626 of the New York State Real Property Tax Law and any successor or  
amendment thereto, and to any subsequent law, rule, regulation, or order  
which would purport to permit any of the acts prohibited by this Section 6.8,  
and shall not cooperate with, encourage or otherwise support any attempt by  
an Affiliated Person to make any such deduction or other credit;  
(iii) except as expressly permitted under this Agreement, the Franchisee shall not  
claim a deduction or credit for any part of the Compensation or Services  
provided under this Agreement, or the costs and expenses incurred by the  
Franchisee in performing its obligations under the Agreement, against any  
taxes, fines, fees, or other charges of any kind levied by any governmental  
entity (other than income taxes);  
(iv) except as expressly permitted by this Agreement, the Franchisee shall not  
apply taxes, fines, fees, or other charges of any kind levied by any governmental  
entity as a deduction or credit against the Compensation or Services that the  
Franchisee is obligated to provide under this Agreement.  
6.8.2 The Franchisee shall not cooperate with, encourage, or otherwise support any  
attempt by an Affiliated Person to undertake, for the benefit of the Franchisee, an Affiliated  
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Person, or a third party, any action that the Franchisee is prohibited from undertaking itself  
under Section 6.8.1.  
6.8.3 Nothing in this Agreement is intended to prevent the Franchisee from  
treating the Compensation or costs incurred in connection with providing the Services as  
an ordinary expense of doing business for the purposes of its City, state, or federal tax  
liabilities.  
6.9 Interest on Late Payments  
If any payment required by this Agreement is not timely received by the City as required  
by the Agreement, the Franchisee shall pay interest on the amount due commencing on the  
due date until payment is received at an annual rate per year equal to the rate for delinquent  
payment of water charges in effect as of the Execution Date.  
6.10 Method of Payment  
Except as provided elsewhere in this Agreement, the Franchisee shall direct all  
payments to the City under this Agreement by check or wire (if approved by DoITT), payable to  
“The New York City Department of Information Technology and Telecommunications,”  
addressed to: Director of Franchise Audit and Revenue, Department of Information Technology  
and Telecommunications, 2 MetroTech Center, 4th Floor, Brooklyn, NY 11201, or as otherwise  
directed by DOITT.  
6.11 Continuing Obligation and Holdover  
6.11.1 If the Franchisee continues to operate all or any part of the System, including  
placing Advertising, and the collection of revenue related to the Franchise or System, after the  
expiration or termination of this Agreement, then the Franchisee shall continue to comply with  
all provisions of this Agreement as if the Agreement was still in force and effect, including  
providing Compensation to the City as required under the Agreement and the maintenance of  
the Security Fund throughout the Holdover Period.  
6.11.2 The Franchisee acknowledges and agrees that the parties do not intend that  
continued operation by the Franchisee during any Holdover Period will constitute a renewal or  
other extension of this Agreement—even if the Franchisee performs otherwise in compliance  
with this Agreement.  
6.11.3 If the Franchisee fails to perform as required under this Agreement during any  
Holdover Period, the Franchisee acknowledges and accepts that the City may exercise any of  
the City’s rights and remedies under Article XIII, as it would during the Term.  
ARTICLE VII. SECURITY FUND AND MINIMUM EQUITY CONTRIBUTIONS  
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7.1 Letter of Credit & Additional Security  
7.1.1 No later than five (5) business days after the Execution Date, Franchisee shall  
provide to the City an irrevocable letter of credit in favor of the City in the initial amount of  
$20,000,000. Such letter of credit shall provide for scheduled increases or, no later than 20  
days prior to the end of the applicable Contract Year, shall be supplemented or replaced by  
additional letters of credit such that the aggregate face amount of such letter(s) of credit shall  
equal the required amounts, increasing as indicated in the table below. Each such letter of  
credit or letters of credit must include cancellation and renewal provisions compliant with  
Section 7.1.4 below. If Franchisee fails to deliver the letter of credit as required, City may deem  
Franchisee to be in default in the performance of its obligations hereunder. The letter of credit  
must provide that payment of its entire face amount, or any portion thereof, will be made to  
City upon presentation of a written demand to the bank by the City. In addition, no later than  
20 days prior to the commencement of each Contract Year beginning with the seventh Contract  
Year, the Franchisee shall provide the City with the Additional Security indicated in the table  
below. The Additional Security will be in the form of a Letter of Credit, a surety bond or cash  
deposited with a third party escrow agent selected by Franchisee and reasonably acceptable to  
the City, the selection among the letter of credit, bond, or cash format for the Additional  
Security shall be at the discretion of Franchisee. Franchisee will provide the Additional Security  
for the upcoming Contract Year no later than twenty (20) days before the end of each Contract  
Year.  
Contract Year Letter of Credit Additional Security  
Contract Year 1 $20,000,000 N/A  
Contract Year 2 $22,500,000 N/A  
Contract Year 3 $25,000,000 N/A  
Contract Year 4 $25,000,000 N/A  
Contract Year 5 $25,000,000 N/A  
Contract Year 6 $25,000,000 N/A  
Contract Year 7 $25,000,000 $750,000  
Contract Year 8 $25,000,000 $3,992,000  
Contract Year 9 $25,000,000 $4,861,000  
Contract Year 10 $25,000,000 $5,757,000  
Contract Year 11 $25,000,000 $6,646,000  
Contract Year 12 $25,000,000 $7,560,000  
Contract Year 13 $25,000,000 $8,501,000  
Contract Year 14 $25,000,000 $9,469,000  
Contract Year 15 $25,000,000 $10,466,000  
7.1.2 The letter of credit must be issued by a financial institution with a long term credit  
rating of not less than “A2” by Moody’s and “A” by S&P or a short term credit rating of not less  
than “P-1” by Moody’s and “A-1” by S&P and be in form and substance reasonably acceptable  
to the City.  
7.1.3 The letter of credit and the Additional Security described in Section 7.1.1 above  
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(together the “Security Fund”) will constitute a security deposit guaranteeing faithful  
performance by Franchisee of the material terms, covenants, and conditions of this Agreement,  
including all monetary obligations set forth in such terms. The City may make a demand under  
Security Fund for all portions of the Security Fund to compensate the City for any loss or  
damage (in each case, as reasonably documented by the City) that they may have incurred by  
reason of Franchisee's material default or material breach of this Agreement; provided,  
however, that the City will present its written demand to a bank for payment under a Security  
Fund only after the City first has made its demand for payment directly to Franchisee, and five  
full Business Days have elapsed without Franchisee having made payment to the City. Should  
the City terminate this Agreement due to a breach by Franchisee, the City shall have the right to  
draw from the Security Fund those amounts necessary to pay any fees or other financial  
obligations under the Agreement and perform the services described in this Agreement until  
such time as the City arranges for another contractor and the agreement between the City and  
that contractor becomes effective. The City need not terminate this Agreement in order to  
receive compensation for its damages. If any portion of the Security Fund is so used or applied  
by the City (other than in connection with a termination of this Agreement), Franchisee, within  
ten (10) business days after written demand by City, shall reinstate the Security Fund to its  
original amount; Franchisee’s failure to do so will be a material breach of this Agreement. In  
the event this Agreement is terminated pursuant to Section 13.4.2, the City agrees to return the  
Security Fund upon the request of Franchisee (except that in the event of a Holdover Period,  
the City shall not be required to return the Security Fund until the Holdover Period ends).  
7.1.4 Any letter of credit that is to constitute all or part of Security Fund required  
hereunder must provide that it will not be cancelled, and will not expire without renewal,  
except after at least thirty (30) days' notice to the City of the impending cancellation, or  
expiration without renewal, of such letter of credit. Any failure to replace or renew a Security  
Fund letter of credit by a date which is thirty (30) days prior to the impending cancellation or  
expiration of such a letter of credit will constitute Default under this Agreement, which the City  
may cure by (i) drawing on the Security Fund and itself holding the proceeds as a replacement  
Security Fund (with all rights to draw on the proceeds for Security Fund purposes as provided  
under this Agreement) until such time as the Company completes the required letter of credit  
replacement or renewal, or (ii) exercising any other lawful remedy or remedies. Interest earned  
on proceeds held by the City as a replacement Security Fund will be retained by the City.  
7.2 Performance Bond  
7.2.1 Effective upon the Commencement Date of the Franchise Agreement, Franchisee  
will deliver a Performance and Payment Bond, in a form approved by DoITT, in the penal sum of  
$75,000,000 for the construction and installation of the Public Communication Structures.  
7.2.2 Performance Bond Reduction. The penal sum of $75,000,000 for the  
Performance Bond may be reduced to $60,000,000 at such time as a sufficient number of  
Structures have been constructed and installed as contemplated in Section 1.2.3 of Attachment  
SRV, such that no more than 2,000 Structures remain to be installed in order to complete the  
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full set of schedules described in Section 1.2.3 of Attachment SRV. The penal sum of the  
Performance Bond may be further reduced to $45,000,000 at such time as a sufficient number  
of Structures have been constructed and installed as contemplated in Section 1.2.3 of  
Attachment SRV, such that no more than 1,500 Structures remain to be installed in order to  
complete the full set of schedules described in Section 1.2.3 of Attachment SRV. The penal sum  
of the Performance Bond may be further reduced to $30,000,000 at such time as a sufficient  
number of Structures have been constructed and installed as contemplated in Section 1.2.3 of  
Attachment SRV, such that no more than 1,000 Structures remain to be installed in order to  
complete the full set of schedules described in Section 1.2.3 of Attachment SRV. The penal sum  
of the Performance Bond may be further reduced to $15,000,000 at such time as a sufficient  
number of Structures have been constructed and installed as contemplated in Section 1.2.3 of  
Attachment SRV, such that no more than 500 Structures remain to be installed in order to  
complete the full set of schedules described in Section 1.2.3 of Attachment SRV. For purposes  
of implementing the reductions contemplated in this Section 7.2.2, at such time as a reduction  
is permitted, the City shall at Franchisee’s request issue a letter to the Surety confirming the  
new, reduced penal sum of the bond amount may be affected.  
7.3 Minimum Equity Contributions  
The Franchisee shall maintain the minimum commitment of total equity contributions  
by Members of the Franchisee as described in Section 2.3.2(vi) until the Franchisee has  
completed installation of the quantity of Structures set forth in Section 1.2.3(vi) of Attachment  
SRV, provided, however, such total minimum equity commitment requirement shall be reduced  
by such amount as has already been funded to the Franchisee by one or more Members.  
ARTICLE VIII. EMPLOYMENT AND PURCHASING  
8.1 Right to Bargain Collectively  
The Franchisee shall recognize the right of its employees to bargain collectively through  
representatives of their own choosing in accordance with applicable law. The Franchisee shall  
recognize and deal with the representatives duly designated or selected by the majority of its  
employees for collective bargaining regarding rates of pay, wages, hours of employment or any  
other terms, conditions or privileges of employment. The Franchisee shall not dominate,  
interfere with, participate in the management or control of, or give financial support to any  
union or association of its employees.  
8.2. Local Opportunities  
The Franchisee shall use commercially reasonable efforts to recruit, educate, train and  
employ residents of the City, for opportunities created by the construction, installation,  
operation, management, administration, marketing, and maintenance of the System.  
Recruitment activities will include provisions for coordinating with the City’s workforce  
development and training programs (such as the Per Scholas and Red Hook Initiatives), and  
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posting employment and training opportunities at appropriate City agencies responsible for  
encouraging employment of City residents. The Franchisee shall ensure the promotion of equal  
employment opportunity for all qualified persons employed by, or seeking employment with,  
the Franchisee.  
8.3. Obligation to Use Domestic and Local Contractors and Subcontractors  
The Franchisee certifies that at least 80 percent of the overall costs incurred by the  
Franchisee for the labor and materials involved in the manufacture, including without  
limitation, assembly, of the Structures will be within the United States and that at least 50  
percent of the overall costs incurred by the Franchisee for the labor and materials involved in  
the manufacture, including without limitation, assembly of the Structures will be within the City  
of New York.  
8.4. No Discrimination  
8.4.1 The Franchisee shall not: (i) refuse to hire, train, or employ; or (ii) bar, layoff,  
discharge, modify compensation or hours, promote, demote, transfer, or take any other  
employment action based to any extent on an individual’s race, creed, color, national origin,  
religion, gender or gender identity, age, disability, perceived disability, marital status, military  
status, sexual affectation, or real or perceived affectional preference, or sexual orientation.  
8.4.2 The Franchisee shall comply with all federal, state and local labor and  
employment laws.  
8.5 Employment Projections  
The Franchisee currently expects that the Franchise will create an estimated 100-150  
direct jobs through the platforms development, manufacturing, installation, maintenance, data  
analytics, and application development, plus an estimated 650 additional support jobs. The  
Franchisee will submit to DoITT and the FCRC by the thirtieth of January of each year during the  
term of this Agreement and any renewals, a report documenting its progress on the job  
creation described in this section.  
ARTICLE IX. OVERSIGHT  
9.1 Records  
9.1.1 Throughout the Term, and for a minimum of six (6) years after Franchisee ceases  
to provide any of the Services, the Franchisee shall maintain complete and accurate Books and  
Records of the business, ownership, and operations of the Franchisee regarding the System to  
allow the DoITT or the Comptroller to determine whether the Franchisee is in compliance with  
the Agreement.  
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9.1.2 If DoITT or the Comptroller determines that the Franchisee is not in compliance  
with Section 9.1.1, the Franchisee shall alter the manner in which the Books and Records and  
the accounting and commission reporting system is organized and maintained as directed by  
the City in order to comply. All financial books and Books and Records must be maintained in  
accordance with generally accepted accounting principles either in electronic or paper format,  
or both. The Franchisee shall also maintain and provide any additional Books and Records as  
the Comptroller or DoITT determine necessary to ensure proper accounting of all payments due  
the City. At all times the Franchise shall maintain its Books and Records regarding advertising-  
based revenues in a manner which allows DoITT and the Comptroller to evaluate compliance  
with Section 6.2 above.  
9.2 Right of Inspection  
9.2.1 DoITT or the Comptroller may, upon written demand with reasonable notice to  
the Franchisee, inspect, examine, or audit during normal business hours, at the Franchisee’s  
New York City office, all documents, records, computer systems or other information in the  
Franchisee’s possession related to or affecting the Franchisee's obligations under this  
Agreement and to interview staff that perform functions related to these records. If access to  
computer systems, related documents and records, and related staff cannot be provided in  
New York City then Franchisee will provide access elsewhere and provide transportation and  
accommodations for a minimum of two auditors.  
9.2.2 Access by DoITT or the Comptroller to any of the documents in Section 9.1 shall  
not be denied by the Franchisee on the grounds that such documents are alleged by the  
Franchisee to contain confidential, proprietary or privileged information, provided that the  
requirement shall not be deemed to constitute a waiver of the Franchisee’s right to assert that  
confidential, proprietary or privileged information contained in such documents should not be  
disclosed to a third party pursuant to Section 9.4.1.  
9.3 Compliance with Investigation Clause  
The Franchisee acknowledges, accepts, and shall comply with, the Investigation Clause,  
attached as Appendix A.  
9.4 Confidentiality  
9.4.1 To the extent permissible under applicable law, the City shall protect from  
disclosure any documents or information that is both (i) labeled by the Franchisee as a trade  
secret or otherwise confidential (“Franchisee Confidential Information”) and (ii) identified with  
specificity in a written communication to the Assistant Commissioner for Franchises. Labeling  
and written notification are the responsibility of the Franchisee.  
9.4.2 If the City is requested to disclose Franchisee Confidential Information pursuant  
to law, the City shall undertake commercially reasonable efforts to provide the Franchisee with  
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prompt written notice. If a protective order or other remedy is not obtained, the City shall  
furnish the Franchisee Confidential Information only to the extent legally required, and will  
exercise commercially reasonable efforts to obtain assurances that confidential treatment will  
be accorded the Franchisee Confidential Information.  
9.4.3 Information that, at the time of disclosure, (i) was available publicly and not  
disclosed in breach of this Agreement, (ii) was available publicly without a breach of an  
obligation of confidentiality by a third party, or (iii) was learned from a third party not under an  
obligation of confidentiality, is not Franchisee Confidential Information for the purposes of this  
Agreement.  
9.4.4 Notwithstanding the obligations in this section or any other provision of this  
agreement, the Franchisee acknowledges and accepts that the city of New York does not have  
any financial liability to the Franchisee for disclosure of Franchisee confidential information.  
The Franchisee hereby waives any right to recovery of pecuniary damages for breach by the city  
of its obligations under this section.  
9.5 Oversight  
9.5.1 At its discretion, DoITT may oversee, regulate, and inspect the installation,  
maintenance, operation and upgrade of the System, or delegate its rights under this section to  
a third party.  
9.5.2 The Franchisee shall establish and maintain managerial and operational records,  
standards, procedures, controls, and reports as requested by the City that establish, to the  
satisfaction of the City, that the Franchisee is performing in accordance with the requirements  
of the Agreement.  
9.5.3 The Franchisee may use functionality in the MMS to meet the requirements of  
this section, but technical failure of the MMS does not relieve the Franchisee of its obligations  
under this section.  
9.6 Regulation by City  
To the full extent permitted by applicable law either now or in the future, the City  
reserves the right to adopt or issue rules, regulations, orders, or other directives governing the  
System(s) and Services that the City determines necessary or appropriate in the lawful exercise  
of its powers under the New York City Charter. The Franchisee acknowledges and accepts, and  
shall comply with all rules, regulations, orders, or other directives.  
ARTICLE X. ASSIGNMENT AND OTHER TRANSFERS; LIMITATIONS  
10.1 City Approval Required  
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10.1.1 Appendix D hereof sets forth, as of the date of execution of this Agreement (the  
“Execution Date”), a listing of each of the members of the Franchisee (“Members”), including,  
with respect to each such initial Member, the number of units of membership interest in the  
Franchisee held by such initial Member. Subject to the provisions of this Article X, each of the  
following transactions shall be subject to the prior approval of the City, provided that the City  
may not be arbitrary and capricious in denying or conditioning any request for such approval or  
in the timing of its decision with respect to any request for such approval: (i) any sale,  
assignment or transfer of the Franchisee’s interest in the System, the franchise granted  
hereunder or the Franchisee’s rights and obligations under this Agreement (other than  
assignments of rights and delegations of obligations expressly permitted hereunder), (ii) any  
transaction (or series of related transactions) which would result in the beneficial ownership  
(within the meaning of Section 13(d)(3) of the Exchange Act) of more than forty percent (40%)  
of the outstanding voting or non-voting membership interests of the Franchisee being held by  
any single Person or group of Affiliated Persons, (iii) any transaction (or series of related  
transactions) which would result in any of the initial Members listed on Appendix D owning less  
than fifty percent (50%) of the outstanding membership interests of the Franchisee held by  
such initial Member on the Execution Date, (iv) any transaction (or series of related  
transactions) which would result in the transfer of all or substantially all of the System assets to  
Persons other than the initial Members listed on Appendix D, or (v) any transaction (or series of  
related transactions) which would result in the acquisition of Control of the Franchisee, the  
System or the franchise granted hereunder or of a Controlling Interest in the Franchisee, the  
System or the franchise granted hereunder by any Person or group of Affiliated Persons;  
provided, however, that the requirements of this Section 10.1 will not be applicable with  
respect to any “Permitted Transfers” (as defined in Appendix E attached hereto and made a  
part hereof). The transactions described in clauses (i) through (v) of this Section 10.1.1 are  
herein referred to as “Covered Transactions”.  
10.1.2 Application to the City for any approval required hereunder must be made at  
least forty-five (45) calendar days prior to the proposed effective date of the applicable Covered  
Transaction. Such application must be in writing and must contain a reasonably detailed  
description of all of the material terms of the Covered Transaction that are relevant to the City,  
including reasonably detailed information with respect to the ownership and control of the  
applicable transferee and the relevant financial, technical, and other qualifications of the  
transferee, including, without limitation, the following information:  
(i) any reports being provided to the shareholders of, or other investors in,  
the applicable transferor any filings with the Securities and Exchange Commission, in  
each case, that pertain to the Covered Transaction;  
(ii) a description of any changes in ownership of voting or non-voting equity  
interests of Members in the Franchisee (or of investors in the Members, to the extent  
relevant) that relate to such Covered Transaction;  
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(iii) other information that is necessary to provide an accurate understanding  
of the financial position of the Franchisee and the System before and after the Covered  
Transaction;  
(iv) information regarding any potential impact of the Covered Transaction on the  
Services; and  
(v) any material contracts that relate to the Covered Transaction as it affects the  
City and, upon reasonable request by the City, all material documents and other  
information related or referred to therein and which are necessary to understand the  
proposed Covered Transaction;  
provided, however, that if the Franchisee believes that the requested information is  
confidential and proprietary, then the Franchisee may withhold such information if it provides  
the following documentation to the City: (a) specific identification of the nature of the  
information; (b) a statement attesting to the reason(s) the Franchisee believes the information  
is confidential; and (c) a statement that the documents are available at the Franchisee’s  
designated offices for inspection by the City. Any such information so withheld shall be made  
available at the Franchisee’s designated offices for inspection by the City.  
10.2 City Action on Transfer  
To the extent not prohibited by federal law, the City may, with respect to any Covered  
Transaction: (i) grant its approval thereof on an unconditional basis; (ii) grant its approval  
thereof subject to conditions; or (iii) deny its approval of the Covered Transaction, provided  
that the City may not be arbitrary and capricious in denying or conditioning any request for  
such approval or in the timing of its decision with respect to any request for such approval.  
10.3 Waiver of Transfer Application Requirements  
To the extent consistent with federal law, the City may waive in writing any requirement  
that information be submitted, as part of the transfer application covered by Section 10.1.2,  
without thereby waiving any rights the City may have to request such information after the  
application is filed.  
10.4 Subsequent Approvals  
The City’s approval of a Covered Transaction described in Section 10.1.1 in one instance  
will not render unnecessary approval of any subsequent transaction.  
10.5 Approval Does Not Constitute Waiver  
Approval by the City of a transfer described in Section 10.1 will not constitute a waiver  
or release of any of the rights of the City under this Agreement, whether arising before or after  
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the date of the transfer, except that such transfer will be deemed to have been permitted for  
all purposes of this Agreement and, upon full assumption of the terms of this Agreement by an  
approved transferee, the transferor shall be fully released from any obligations accruing after  
the date of such assumption.  
10.6 Managing Member  
Titan Outdoor LLC (“Titan”) will be the managing member of CityBridge LLC (“Managing  
Member”). Titan shall not reduce its ownership interest below 20% nor relinquish or diminish  
its role as Managing Member at any time before the 4th anniversary of the effective date  
without prior written approval of DoITT. DoITT will not unreasonably withhold or condition  
approval if Titan would be replaced by a company of comparable expertise and financial  
wherewithal.  
ARTICLE XI. LIABILITY  
11.1 Definitions  
“Claim” means any claim other than a Third Party Claim.  
“Damages” means all losses, liabilities, costs, expenses, damages, including attorneys'  
fees and disbursements, whether imposed, finally awarded, or negotiated.  
“Indemnitees” the City, its agencies, departments, offices, affiliated municipal entities,  
officers, agents and employees.  
“Indemnitors” means the Franchisee and its subsidiaries.  
“Third Party Claims” occur if any third party makes any claim or brings any action, suit,  
or proceeding against any Indemnitee.  
11.2 Liability and Indemnity  
11.2.1 The Indemnitors assume all risks of (i) damage or injury to property or persons  
used or employed on or in connection with providing the Services; and (ii) damage or injury to  
any persons or property wherever located resulting from any action, failure to act, or operation  
under this Agreement. The Indemnitors shall indemnify and hold Indemnitees harmless for any  
Damages, to which it may be subject arising from or related to any Claim or Third Party Claim.  
11.2.2 The liability and indemnity obligation of the Franchisee under Section 11.2.1 do  
not apply to any Damages to the extent caused by willful misconduct or gross negligence on the  
part of the City.  
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11.2.3 If the facts or law relating to any Damages preclude the City from being  
completely indemnified by the Franchisee, the Franchisee shall indemnify the City to the fullest  
extent permitted by law, subject to any limitation set forth in this Agreement.  
11.2.4 Indemnification pursuant to Article 11 is independent of the Franchisee's  
obligations to obtain insurance as provided under this agreement.  
11.3 City Liability  
11.3.1 The Indemnitees are not liable to the Franchisee or any Affiliated Person for any  
Damages from Third Party Claims except direct Damages caused by the gross negligence or  
willful misconduct of an Indemnitee.  
11.3.2 The Indemnitees have no liability to the Franchisee or any Affiliated Person for  
any Damages related to or arising from the design, installation, operation, maintenance,  
removal or upgrade of any part of the System by or on behalf of the Franchisee or the City,  
including in connection with any emergency, public work, public improvement, alteration of any  
municipal structure, any change in the grade or line of any Inalienable Property of the City, or  
the elimination, discontinuation, closing or demapping of any Inalienable Property of the City,  
except as set forth in Section 11.3.1.  
11.4 Defense of Claim  
11.4.1 The Indemnitors shall defend the Indemnitees against all Claims and Third Party  
Claims arising out of or relating to the risks, damages, and injuries described in Section 11.2.1.  
11.4.2 The Indemnitors (through their insurance carrier(s) if appropriate) are  
responsible for any professionals’ fees and expenses, including reasonable attorneys’ fees and  
disbursements.  
11.5 Intellectual Property Indemnification  
11.5.1 The Franchisee shall defend, indemnify, and hold the City harmless from and  
against all Damages, to which it may be subject arising from or related to any Third Party  
Claim that any product, material, or work provided or used by the Franchisee in the provision of  
any of the Services, including any designs, drawings, reports, or Software infringes, dilutes,  
misappropriates, improperly discloses, or otherwise violates the copyright, patent, trademark,  
service mark, trade dress, rights of publicity, moral rights, trade secret, or any other  
intellectual property or proprietary right of any third party.  
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11.5.2 The Franchisee is not obligated to indemnify the City for Damages solely to the  
extent the Damages are based upon the failure of the City to comply with the terms of any  
license to which the DoITT General Counsel and the Assistant Commissioner for Franchises have  
been advised infringe upon a third party’s rights.  
11.5.3 The Franchisee shall not negotiate any settlement that prevents the City or the  
Franchisee from continuing to use the Design, the Preliminary Plans and Specifications (to the  
extent incorporated in the Plans and Specifications), the Structures, or the Software without  
the City's prior written consent, which consent shall not be unreasonably withheld or delayed.  
11.5.4 If the City's use of the Design, the Preliminary Plans and Specifications (to the  
extent incorporated in the Plans and Specifications), the Structures, or Software under this  
Agreement becomes the subject of an infringement Claim; or in the Franchisee's opinion may  
become the subject of an infringement Claim, then the Franchisee shall, at its expense and at its  
option:  
(i) procure the right for the City to continue using the potentially infringing  
materials;  
(ii) modify the portion(s) of the Plans and Specifications, the Preliminary Plans and  
Specifications (to the extent incorporated in the Plans and Specifications), the  
Structures, or Software so that it is no longer includes the potentially infringing  
materials; or  
(iii) replace the potentially infringing materials with non-infringing materials or  
Software, but only if the modification or replacement does not materially change  
the design of the affected Structures or lessen the provision or quality of the  
Services.  
11.6 No Claims Against Officers, Employees, or Agents  
The Franchisee waives and shall not make any claim against any officer or employee of  
the City or an agent of the City, in their individual capacity, arising from or relating to any act  
performed or omitted in the lawful performance of this Agreement.  
11.7 Limitation on Liability  
11.7.1 Except with respect to the Franchisee’s obligations to indemnify the City under  
Section 11.2 and warranties on non-infringement under Section 3.4(ii), and costs associated  
with unauthorized disclosure by the Franchisee of Personal Protected Information, neither the  
City nor the Franchisee are liable to the other for indirect, incidental, special, exemplary,  
punitive, or consequential damages, damages for loss of goodwill or profits, loss or destruction  
or inaccuracy of data, or other business loss, arising out of or resulting from performing their  
respective obligations under the Agreement, whether liability is under contract, tort, strict  
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liability, or other legal or equitable theory, even if previously advised of the possibility of such  
damages.  
11.7.2 In the event of a lawful termination or cancellation of the Agreement, the City  
will not be liable for damages, loss of profits, expenses, specific performance or remuneration  
for future performance of any kind provided, however, that such limitation shall not be  
applicable in the event it is finally determined by a Court of competent jurisdiction (after all  
appeals have been exhausted or the period for any applicable appeal right has lapsed) that the  
City’s termination or cancellation of the Agreement was not authorized or proper.  
11.7.3 Neither party’s liability for damages — other than tort liability, breach of  
contract, or infringement of a third-party’s intellectual property —under any theory of liability  
or form of action including negligence will not exceed ten million dollars ($10,000,000).  
ARTICLE XII. INSURANCE  
12.1 Types of Insurance  
12.1.1 The Franchisee shall maintain one or more primary liability insurance policies  
that satisfy the requirements of this Section throughout the Term, any Holdover Period, and  
any time during which the Franchisee owns or maintains a PCS, or any part thereof, on, over, or  
under the Inalienable Property of the City. The Franchisee shall effect and maintain the  
following insurance.  
12.1.2 The insurance policy(ies) must protect the City and the Franchisee from claims  
for property damage or bodily injury, including death, which may arise or relate to the Services.  
Coverage under this policy must be "occurrence" based rather than "claims- made," and will  
include, without limitation, the following types of coverage: premises operations, products and  
completed operations, contractual liability (including the tort liability of another assumed in a  
contract), broad form property damage, medical payments, independent contractors, personal  
injury (contractual exclusion deleted), cross liability, explosion, collapse and underground  
property, and incidental malpractice.  
12.1.3 If the insurance policy contains an aggregate limit, it shall apply separately to this  
project, with coverage as broad as ISO Forms CG 0001 (1196 ed.).  
12.1.4 The Commercial General Liability Insurance policy provided shall contain each of  
the following endorsements:  
(i) The Franchisee as “Named Insured.”  
(ii) Commercial General Liability Insurance shall be in the amount of ten million  
dollars ($10,000,000) aggregate and ten million dollars ($10,000,000 per  
occurrence).;  
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(iii) The City of New York, its officials, employees and agents as “Additional Insured”,  
with coverage at least as broad as the most recently issued ISO Form CG 2026.  
(iv) The condition of the policy titled “Duties in the Event of Occurrence, Claim or  
Suit” is amended per the following: to the extent that knowledge of an  
"occurrence", "claim", or "suit" is relevant to the City of New York as Additional  
Insured under this policy, knowledge by an agent, servant, official, or employee  
of the City of New York will not be considered knowledge on the part of the City  
of New York of the ''occurrence", "claim", or "suit" unless the City receives notice  
as provided below.  
(v) Any notice, demand or other writing by or on behalf of the Named Insured to the  
insurance company is deemed to be a notice, demand, or other writing on behalf  
of the City as Additional Insured. Any response by the Insurance Company to the  
notice, demand or other writing will be addressed to Named Insured and to the  
City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1  
Centre Street Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist,  
Affirmative Litigation Division, New York City Law Department, 100 Church  
Street, New York, NY 10007.  
12.1.5 The limit of coverage under this policy applicable to the City as Additional  
Insured is equal to the limit of coverage applicable to the Named Insured.  
12.1.6 The Franchisee shall maintain, and require that each subcontractor maintains,  
Workers Compensation Insurance and Disability Benefits Insurance under the Laws of the State  
of New York for all employees providing services under this Agreement.  
12.1.7 The Franchisee shall maintain, and require that each subcontractor maintains,  
employer’s liability insurance affording compensation due to bodily injury by accident or  
disease sustained by any employee arising out of and in the course of employment under this  
Agreement.  
12.1.8 The Franchisee shall maintain a comprehensive business automobile liability  
policy for liability arising out of or relating to any automobile including owned, non-owned,  
leased, and hired automobiles to be used in connection with this Agreement (ISO Form  
CAOOOl, ed. 6/92, code 1 "any auto"). Automobile liability insurance shall be in the amount of  
two million dollars ($2,000,000) aggregate and one million dollars ($1,000,000 per occurrence).  
12.1.9 The Franchisee shall maintain a professional liability insurance policy covering  
breach of professional duty, including actual or alleged negligent acts, errors or omissions  
committed by the Franchisee, its agents or employees, arising out of the performance of  
professional services rendered to or for the City. The policy shall provide coverage for bodily  
injury, property damage and personal injury arising directly from any negligent act, error or  
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omission of the Franchisee in rendering professional services. If the professional liability  
insurance policy is written on a claims-made basis, such policy shall provide that the policy  
retroactive date coincides with or precedes the Franchisee's initial services under this  
Agreement and shall continue until the expiration or termination of the Agreement. The policy  
must contain no less than a two-year extended reporting period for acts or omissions that  
occurred but were not reported during the policy period.  
12.1.10 All insurers waive their rights of subrogation against the City, its officials,  
employees and agents.  
12.1.11 The required insurance to be carried is not limited by any limitations expressed  
in the indemnification language in this Agreement or any limitation placed on indemnity in this  
Agreement as a matter of law.  
12.2 General Requirements for Insurance Policies  
12.2.1 The Franchisee shall maintain an insurance policy, only with companies that may  
lawfully issue the required policy and have an A.M. Best rating of at least A- VII or a Standard  
and Poor's rating of at least AA.  
12.2.2. The Franchisee is solely responsible for the payment of all premiums for all  
required policies and all deductibles and self-insured retentions to which such policies are  
subject, whether or not the City is an insured under the policy. Any self-insured retention must  
be reasonable and is subject to approval by the City.  
12.2.3 The City's limits of coverage for all types of insurance required pursuant to  
Schedule E attached hereto shall be the greater of (i) the minimum limits set forth in the  
schedule or (ii) the limits provided to the Franchisee as Named Insured under all primary,  
excess and umbrella policies of that type of coverage.  
12.2.4 All policies shall be endorsed to provide that the policy may not be cancelled,  
terminated, modified or changed unless thirty (30) days prior written notice is sent by the  
Insurance Company to the Named Insured (or First Named Insured, as appropriate) and DoITT  
at the address in Section 15.3.  
12.2.5 Within 15 days of receipt by the City of any notice as described in Section 12.2.4,  
the Franchisee shall obtain and furnish to DoITT, with a copy to the Comptroller, replacement  
insurance policies in a form acceptable to DoITT and the Comptroller with evidence  
demonstrating that the premiums for such insurance have been paid.  
12.3 Proof of Insurance  
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12.3.1 The Franchisee must, for each policy required under this Agreement, file a  
Certificate of Insurance with DoITT, accompanied by a duly executed “Certification by Broker”  
in the form attached as Appendix C.  
12.3.2 The Franchisee shall provide the City with a copy of any policy required by this  
Article XII upon demand by the DoITT or the New York City Law Department.  
12.4 Operations of the Franchisee  
12.4.1 Acceptance by DoITT of a certificate does not excuse the Franchisee from  
securing a policy consistent with all provisions of this Article XII or of any liability arising from its  
failure to do so.  
12.4.2 The Franchisee shall provide continuous insurance coverage in the manner,  
form, and limits required by this Agreement and may only perform Services during the effective  
period of all required coverage.  
12.4.3 If any required insurance policies lapse, are revoked, suspended or otherwise  
terminated, for whatever cause, the Franchisee shall immediately stop all Services, and shall  
not recommence Services until authorized in writing to do so by DoITT. However, if any of the  
Services are being provided by a subcontractor that maintains insurance satisfactory to the City  
that names the City as additional insured, then the Franchisee, acting by its subcontractor, may  
continue to provide such Services as directed by DoITT.  
12.4.4 The Franchisee shall provide written notification of any loss, damage, injury, or  
accident, and any claim or suit arising under this Agreement from the operations of the  
Franchisee or its subcontractors to the appropriate insurance carriers promptly, but not later  
than 20 days after the event. The Franchisee's notice to the commercial general liability  
insurance carrier must expressly specify that "this notice is being given on behalf of the City of  
New York as Additional Insured as well as the Franchisee as Named Insured." The Franchisee's  
notice to the insurance carrier must contain the following information: the name of the  
Franchisee, the number of the policy, the date of the occurrence, the location (street address  
and borough) of the occurrence, and, to the extent known to the Franchisee, the identity of the  
persons or things injured, damaged or lost.  
12.4.5 The Franchisee shall provide copies of any notices sent to an insurance carrier to  
the Comptroller and the DoITT. Notice to the Comptroller will be sent to the Insurance Unit,  
NYC Comptroller's Office, 1 Centre Street - Room 1222, New York, New York 10007. Notice to  
DoITT shall be sent to the address in Section 15.3.  
12.4.6 If the Franchisee fails to provide any of the foregoing notices to any appropriate  
insurance carrier(s) in a timely and complete manner, the Franchisee shall indemnify the City  
for all losses, judgments, settlements and expenses, including reasonable attorneys' fees,  
arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.  
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12.5 Subcontractor Insurance  
The Franchisee shall require and ensure that each subcontractor maintain insurance  
that includes the City as Additional Insured under all policies covering Services performed by  
such subcontractor under this Agreement. The City's coverage as Additional Insured shall  
include the City's officials, employees and agents and be at least as broad as that provided to  
the Franchisee. The foregoing requirements shall not apply to insurance provided pursuant to  
Sections 12.1.6, 12.1.7, and 12.1.9.  
12.6 Disposal  
If under this Agreement the Franchisee is involved in the disposal of hazardous  
materials, the Franchisee shall dispose of the materials only at sites where the disposal site  
operator maintains Pollution Legal Liability Insurance for at least $2,000,000 for losses arising  
from the disposal site.  
12.7 Adjusted Insurance Coverage  
The Franchisee shall adjust the minimum coverage of the liability insurance policy or  
policies required in this Article within three months of receiving written notice from the City  
that the City has reasonably determined that additional amounts or types of insurance are  
being commonly carried regarding systems of a size and nature similar to the System or other  
circumstances have arisen which make it reasonably prudent to obtain such additional amounts  
or types of insurance. The notice shall specify in reasonable detail why the City is requiring the  
additional amounts or types of insurance.  
12.8 Other Remedies  
The Franchisee’s obligation to maintain insurance coverage in the minimum amounts  
does not relieve the Franchisee or subcontractors of any liability under this Agreement. The  
Franchisee acknowledges and accepts that the City is not precluded from exercising any other  
right or taking any actions available to the City pursuant to the Agreement or law.  
ARTICLE XIII. SPECIFIC RIGHTS AND REMEDIES  
13.1 Not Exclusive  
The Franchisee acknowledges and accepts that the City has the specific rights and  
remedies set forth in this Article XIII, and that these rights and remedies are in addition to and,  
not in lieu of any other rights or remedies, existing or implied, now or hereafter available to the  
City pursuant to the Agreement or law in order to enforce the provisions of this Agreement.  
The Franchisee acknowledges and accepts that the rights and remedies are not exclusive, but  
every right and remedy may be exercised as determined appropriate by the City. Exercising or  
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waiving one or more rights or remedies does not constitute a waiver of the right to exercise at  
the same time or thereafter any other right or remedy. Delay or omission will not be construed  
as a waiver or acquiescence to any default.  
13.2 Defaults  
13.2.1 Any failure by the Franchisee to perform any of its obligations in accordance with  
the requirements of the Agreement constitutes a breach. Any breach that is not cured within  
the cure period specified corresponding to the breached obligation constitutes a "Default."  
13.2.2 Subject to the provisions of Section 13.2.5, if no cure period is specified, the cure  
period is deemed to be ten (10) business days after notification by the City of the breach.  
13.2.3 If the Franchisee is in Default, then the City may at its discretion and without  
further notice or an opportunity to be heard:  
(i) undertake withdrawal from the Security Fund;  
(ii) exercise the City’s rights under the Performance Bond to the extent applicable  
(iii) pursue any rights the City may have against the Franchisee;  
(iv) assert a claim for money damages from the Franchisee as compensation for the  
Default (except to the extent that the City is entitled to—and has recovered—  
Liquidated Damages);  
(v) seek to restrain by injunction the continuation of the Default.  
13.2.4 The Franchisee acknowledges and accepts that its failure to pay a finally  
adjudicated violation arising out of or related to the Services is deemed a breach of this  
Agreement. The cure period applicable to a breach under this subsection is fifteen (15) days  
after notification by the City that it is in breach of this subsection.  
13.2.5 Notwithstanding anything in this Agreement to the contrary, no Default shall  
exist if a breach or Default is curable, and a cure period is provided therefor in this Section 13 or  
otherwise, but work to be performed, acts to be done, or conditions to be removed to effect  
such cure cannot, by their nature, reasonably be performed, done or removed within the cure  
period provided, so long as the (i) the Franchisee is undertaking continuous diligent efforts to  
cure the breach, and (ii) the Franchisee’s efforts commenced prior to the cure period expiring.  
13.3 Termination Defaults  
13.3.1. “Termination Default” means any failure by the Franchisee to comply with the  
material terms and conditions of this Agreement, including the failures identified below:  
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(i) A material failure to comply with the Franchisee's obligations to install Structures  
under this Agreement (including the specified timeframes).  
(ii) A material failure to comply with the Franchisee's obligations to maintain the  
PCS as described in this Agreement.  
(iii) Persistent or repeated failures to timely perform the Franchisee's obligations  
under this Agreement, including timely payment of Compensation that are not  
being disputed by the Franchisee in good faith.  
(iv) Failure to maintain the Security Fund under Article 7, and such failure continues  
for ten business days after notice.  
(v) If, in connection with this Agreement, the Franchisee (a) intentionally or  
recklessly makes a material false entry in the Records of the Franchisee or  
intentionally or recklessly makes a material false statement in the reports or  
other filings submitted to the City, or (b) makes multiple false entries that are  
material in the aggregate in the Records of the Franchisee or multiple false  
statements that are material in the aggregate in the reports or other filings  
submitted by or on behalf of the Franchisee to the City.  
(vi) If the Franchisee fails to maintain insurance coverage or otherwise materially  
breaches Article XII and such failure continues for ten business days after notice  
from the City to the Franchisee.  
(vii) If the Franchisee engages in a course of conduct intentionally designed to  
practice fraud or deceit upon the City.  
(viii) If the Franchisee, intentionally or as a result of gross negligence, engages or has  
engaged in any material misrepresentation to the City, either oral or written, in  
connection with the award of this franchise or the negotiation of this Agreement  
(or any amendment or modification of this Agreement) or in connection with any  
representation or warranty contained herein.  
(ix) The occurrence of any event relating to the financial status of the Franchisee  
which is reasonably likely to lead to the foreclosure or other similar judicial or  
non-judicial sale of all or any material part of the System, and the Franchisee fails  
to demonstrate to the reasonable satisfaction of DoITT within 20 business days  
after notice from the City to the Franchisee that such event will not lead to such  
foreclosure or other judicial or non-judicial sale. Such an event may include,  
without limitation: (a) uncured default extending beyond any time permitted to  
cure such default under any loan or any financing arrangement material to the  
System or the obligations of the Franchisee under this Agreement; (b) uncured  
default extending beyond any time permitted to cure such default under any  
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contract material to the System or the obligations of the Franchisee under this  
Agreement; or (c) uncured default extending beyond any time permitted to cure  
such default under any lease or mortgage covering all or any material part of the  
System.  
(x) If the Franchisee makes an unauthorized assignment or other transfer of interest  
or control of the Franchisee or the System (including an assignment for the  
benefit of creditors).  
(xi) If the Franchisee becomes insolvent, or petitions or applies to any tribunal for, or  
consent to, the appointment of, or taking possession by, a receiver, custodian,  
liquidator or trustee or similar official for it or any substantial part of its property  
or assets, including all or any part of the System.  
(xii) If a writ or warranty of attachment, execution, distraint, levy, possession or any  
similar process is issued by any tribunal against any material part of the  
Franchisee's property or assets.  
(xiii) If any creditor of the Franchisee petitions or applies to any tribunal for the  
appointment of, or taking possession by, a trustee, receiver, custodian,  
liquidator or similar official for the Franchisee or of any material parts of the  
property or assets of the Franchisee, and a final order, judgment or decree is  
entered appointing a trustee, receiver, custodian, liquidator or similar official, or  
approving the petition in any such proceedings which is unstayed for sixty (60)  
days (the sixty (60) day period will not apply if, as a result of the final order,  
judgment, or decree the Franchisee will be unable to perform its obligations  
under this Agreement.  
(xiv) A final order, judgment or decree is entered in any proceedings against the  
Franchisee decreeing the voluntary or involuntary dissolution of the Franchisee.  
13.3.2 The Franchisee acknowledges that, subject to Section 1.4.1 of Attachment SRV, a  
Termination Default may exist under one or more provisions of the preceding Section 13.3.1  
even if the defaults individually were the subject of liquidated damages and liquidated damages  
have been paid or were subsequently remediated by recourse to the Security Fund or by  
payment in satisfaction of a violation of the PPT Rules.  
13.3.3 The City shall give the Franchisee reasonable notice of any events or  
circumstances that the City believes may give rise to a Termination Default under Section 13.3.1  
should the events or circumstances continued.  
13.3.4 If a Termination Default occurs, DoITT may at its option (in addition to any other  
remedy which the City may have under the Agreement), notify the Franchisee that the  
Agreement and the Franchise will terminate on the date specified in the notice (which date will  
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be no fewer than ten (10) days following the date of receipt of the notice), and the Agreement  
will be deemed expired on that date.  
13.4. Expiration and Termination for Reasons Other Than Termination Default  
13.4.1 If a condemnation occurs by a public authority, other than the City, or sale or  
dedication under threat or in lieu of condemnation, of all or substantially all of the System, the  
effect of which would materially frustrate or impede the ability of the Franchisee to carry out  
its obligations and the purposes of this Agreement — and the Franchisee fails to demonstrate  
to the reasonable satisfaction of DoITT within twenty (20) business days the Franchisee’s ability  
to provide the Services would not be materially frustrated or impeded — then DoITT or  
Franchisee may, at its option, terminate this Agreement by notice within sixty (60) days after  
the expiration of said twenty (20) business day notice period.  
13.4.2 If an employee or agent of the Franchisee is convicted (where such conviction is  
a final, non-appealable judgment) of any criminal offense, including without limitation bribery  
or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise  
granted under this Agreement, (iii) any act to be taken under this Agreement by the City, its  
officers, employees or agents, or (iv) the business activities and services to be undertaken or  
provided by the Franchisee under this Agreement, and the conviction is a final, non-appealable  
judgment or the time to appeal the judgment has passed, the Franchisee must terminate its  
relationship with the employee, or agent or suspend its relationship pending final resolution of  
the matter. If Franchisee does not terminate or suspend its relationship with the employee or  
agent within five (5) days of final resolution of the matter, DoITT may, at its option, to the  
extent permitted by law, terminate this Agreement immediately by notice as set forth in  
Section 15.3.  
13.4.3 If the Franchisee is convicted in connection with any alleged criminal offense,  
including without limitation bribery or fraud, arising out of or in connection with: (i) this  
Agreement, (ii) the award of the franchise granted under this Agreement, (iii) any act to be  
taken under this Agreement by the City, its officers, employees or agents, or (iv) the business  
activities and services to be undertaken or provided by the Franchisee under this Agreement,  
then the City may, at its option, to the extent permitted by law, terminate this Agreement  
immediately by notice as set forth in Section 13.3.4.  
13.4.4 Expiration. This Agreement, if not previously terminated pursuant to the terms of  
the Agreement, shall expire at the end of the scheduled Term.  
13.5 Disposition of System  
13.5.1 At the expiration or termination of this Agreement, the Franchisee shall remove  
all Structures from the Inalienable Property of the City, in accordance with Section 13.7  
13.5.2 Notwithstanding the foregoing, at the expiration or termination of this  
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Agreement, the Franchisee, at the City’s election, shall sell to the City or to the City’s designee  
any and all portions of the System including all associated Equipment necessary for the proper  
functioning of such portion(s) of the System.  
13.5.3 Disposition of Fiber  
At the expiration or termination of this Agreement, the disposition of the Fiber shall be  
in accordance with Section 3.13 of this Agreement.  
13.6 Price  
13.6.1 The price to be paid to the Franchisee upon an acquisition pursuant to Section  
13.5 shall be the fair value), with no value allocable to the franchise itself, which price shall be  
the fair value as provided in Section 363(h)(5) of the City Charter, as may be amended, or under  
any successor provision. Notwithstanding the preceding, in the case of a termination after a  
Termination Default, the last paragraph of Section II. A. 5 of the RFP shall apply.  
13.6.2 The date of valuation for purposes of Section 13.5 shall be the date of expiration  
or termination of the Agreement. For the purpose of such valuation, the parties shall select a  
mutually agreeable independent appraiser to compute the purchase price in accordance with  
industry practice and standards. If the parties cannot agree on an appraiser in ten (10) days,  
the parties will seek an appraiser from the American Arbitration Association. The appraiser  
shall be instructed to make the appraisal as expeditiously as possible, but in no more than sixty  
(60) days and shall submit to both parties a written appraisal. The appraiser shall be afforded  
access to the Franchisee’s Books and Records, as necessary to make the appraisal. The parties  
shall share equally the costs and expenses of the appraiser.  
13.6.3 The City will notify the Franchisee, within thirty (30) days after receipt of the  
appraisal, of electing its rights pursuant to Section 13.5. If the City elects to make the purchase  
pursuant under Section 13.5, such purchase shall occur within a reasonable time.  
13.7 Procedures for Transfer and Removal after Termination  
13.7.1 DoITT may waive its rights under Section 13.5.2 for any one or more of the Public  
Communications Structures and require that the Franchisee, at its own cost and expense,  
remove any or all of the Structures on, over, or under the Inalienable Property and replace the  
sidewalk flags and curbs with the same materials as the adjacent flags and curbs and in  
compliance with the New York City Administrative Code, within 180 days of expiration of this  
Agreement, subject to extension by mutual agreement of the Franchisee and the City. DoITT  
shall notify the Franchisee of its intention to exercise its rights pursuant to this Section at least  
sixty (60) days prior to expiration.  
13.7.2 The Franchisee shall cooperate with the City to effectuate an orderly transfer to  
the City (or the City's designee) of all records, contracts, leases, licenses, permits, rights-of-way,  
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and all other materials and information reasonably necessary to maintain and operate the  
System, to the extent it is transferred (“Post-Term System") pursuant to Section 13.5.2.  
13.7.3 If, pursuant to Section 13.5, DoITT requires the Franchisee to remove any or all  
of the Structures, the following procedures apply:  
(i) the Franchisee shall restore all Inalienable Property of the City and any other  
property affected by the actions of the Franchisee under this Agreement to like new  
condition, including replacement of the sidewalk flags and curbs with the same  
materials as the adjacent flags, and in compliance with the New York City  
Administrative Code, and shall have received all applicable approvals from DoITT and  
any other applicable City approvals;  
(ii) the City may inspect the Inalienable Property after removal and the Franchisee is  
liable to the City for the cost of restoring the Inalienable Property of the City and  
other affected property; and  
(iii) the Security Fund, liability insurance and indemnity provisions of this Agreement,  
and the Performance Bond if applicable, shall remain in full force and effect during  
the entire period of removal of all or any of the Structures and/or restoration and  
associated repair of all Inalienable Property of the City or Other Affected Property,  
and for no fewer than 120 days thereafter, or for such longer periods as set forth in  
this Agreement.  
13.7.4 If, in the reasonable judgment of DoITT, the Franchisee fails to commence  
removal or if the Franchisee fails to substantially complete removal of the Structures, including  
all associated repair and restoration of the Inalienable Property of the City or any other  
property in accordance with the time frames set forth in this 13.7, DoITT may, at its sole  
discretion authorize removal of any part of the System by the City, or a third party, at the  
Franchisee's cost and expense.  
13.7.5 None of the declaration, connection, use, transfer or other actions by the City or  
DoITT under Article 13 constitutes a condemnation by the City or a sale or dedication under  
threat or in lieu of condemnation.  
13.7.6 The City is not required to assume any of the obligations of collective bargaining  
agreements or any other employment contracts held by the Franchisee or any other obligations  
of the Franchisee or its officers, employees, or agents, including, without limitation, any  
pension or other retirement, or any insurance obligations; and the City may lease, sell, operate,  
or otherwise dispose of all or any part of the System in any manner.  
ARTICLE XIV. SUBSEQUENT ACTION  
14.1 Procedure for Subsequent Invalidity  
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14.1.1 If any court, agency, commission, legislative body, or other authority of  
competent jurisdiction because of a change in law or otherwise:  
(i) declares this Agreement invalid, in whole or in part, or  
(ii) requires the City or the Franchisee to: (a) perform an act inconsistent with any  
provision of this Agreement or (b) cease performing any act required by this  
Agreement, then the Franchisee or the City, as the case may be, shall promptly  
notify the other party in writing.  
14.1.2 Upon the occurrence of any event described in Section 14.1.1, the Franchisee  
and the City shall continue to comply with all provisions of this Agreement, including the  
affected provision, until the validity of the declaration or requirement is finally adjudicated or a  
court orders the Franchisee or the City to comply with the declaration or order, provided that  
either party may comply with any court order not stayed during the pendency of any appeal  
leading to final adjudication.  
14.2 Agreement Documents  
The Agreement is comprised of the following documents:  
(i) This document, titled “Franchise Agreement.”  
(ii) Attachments: (1) Services, and (2) Resiliency and Disaster Recovery.  
(iii) Exhibits: (1) Wi-Fi Terms of Service, (2) Wi-Fi Privacy Policy, (3) Service Level  
Agreement and Schedule of Liquidated Damages, (4) Siting Criteria, and (5)  
Structure Designs.  
(iv) Appendices: (1) Investigation Clause, (2) MacBride Principles, (3) Certification by  
Broker, (4) Initial Members of Franchisee, (5) Permitted Transfers, and (6)  
Franchisee Lender Provisions  
ARTICLE XV. MISCELLANEOUS  
15.1. Appendices, Exhibits, Schedules  
The Attachments, Appendices, Exhibits, and Schedules referenced in Section 14.2 are,  
unless otherwise specified, a part of this Agreement. The procedures to approve any  
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subsequent amendment or modification to the Appendices, Exhibits and Schedules are the  
same as those applicable to any amendment or modification.  
15.2 Merger  
15.2.1 This Agreement and attachments, appendices, and exhibits contain the entire  
agreement of the parties with respect to the subject matter of this Agreement, and supersede  
all prior negotiations, agreements and understandings with respect thereto. This Agreement  
may only be amended by a written document duly executed by all parties.  
15.2.2 Any assumptions, exceptions or terms and conditions in the Franchisee’s  
proposal documents that are not included in this document entitled “Agreement” are deemed  
inconsistent with the Agreement.  
15.3 Notices  
Unless otherwise expressly provided in this Agreement, every notice, order, petition,  
document, or other direction or communication to be served upon the City or the Franchisee  
will be in writing and sent by registered or certified mail, return receipt requested or by first  
class mail. The Franchisee will designate, by letter delivered to the City simultaneous with the  
Franchisee’s execution of this Agreement, the address where it will receive these  
communications. Franchisee may from time to time designate other locations. Franchisee will  
send communications to the individual, agency or department designated in this Agreement,  
unless it is to “the City,” in which case the communication will be sent to the Commissioner of  
DoITT at 255 Greenwich Street, 9th Floor, New York 10007. Franchisee will also send a required  
copy of each communication to Corporation Counsel, New York City Law Department, 100  
Church Street, New York, New York 10007, Attn: Chief, Economic Development Division. Except  
as otherwise provided, mailing the notice, direction, or order is equivalent to direct personal  
notice deemed to be given when mailed. Any notice the Commissioner must give to the  
Franchisee pursuant to Section 13.2 for which a cure period is ten (10) days or fewer must be  
served by personal delivery, overnight mail service or facsimile transmission.  
15.4 Coordination  
The Franchisee and DoITT acknowledge and accept that this Agreement creates a  
relationship that requires extensive and ongoing long-term coordination between the parties.  
No later than ten (10) business days after the Commencement Date, DoITT and the Franchisee  
will each designate a project manager, as the individual responsible for coordinating with the  
other party regarding all matters that may arise during the Term relating to the permitting,  
installation, maintenance, and operation of the System. During the Term all notices must be  
sent to the Franchisee, other than a notice pursuant to Section 14.3, the notice will be sufficient  
if sent to the above designated individual or his or her representative by e-mail, facsimile, hand  
delivery, or mail, or to the extent oral notice is specifically permitted in this Agreement,  
communicated by telephone. Oral notice is only effective if (a) given to the person identified in  
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this Section 14.3 or a designee of the person whose designation is notified to the other party in  
writing and (b) followed reasonably promptly by written notice, which may be given by e-mail.  
15.5 Publicity  
DoITT’s prior written approval is required before the Franchisee or its employees,  
servants, agents or independent contractors may, either during or after completion or  
termination of this Agreement, make any statement to the press or issue any material for  
publication through any media bearing on the work performed under this Agreement, provided  
however that Franchisee (and its employees, servants, agents or independent contractors) may  
engage, without DoITT’s prior approval, in routine interactions with the press regarding ongoing  
operation of the System (ongoing operation of the System for these purposes does not include  
the rollout of new services or applications, significant service issues that may arise, and similar  
non-routine matters). If the Franchisee publishes a work dealing with any aspect of  
performance under this Agreement, or of the results and accomplishments attained in such  
performance, DoITT will have a royalty-free, non-exclusive and irrevocable license to  
reproduce, publish, or otherwise use and to authorize others to use the publication, or, in the  
event that only a portion of the publication deals with an aspect of performance under this  
Agreement, that portion of the publication.  
15.6 General Representations, Warranties and Covenants of the Franchisee  
15.6.1 The Franchisee makes the represents that:  
(i) The Franchisee is a validly existing entity in good standing under the laws of  
Delaware, and is duly authorized to do business in the State of New York and in  
the City.  
(ii) Appendix D sets forth a complete and accurate description of the organizational  
and ownership structure of the Franchisee and a complete and accurate list of all  
Persons who hold, directly or indirectly, an interest in the Franchisee of ten  
percent (10%) or greater.  
(iii) The Franchisee has all requisite power and authority to own or lease its  
properties and assets, to conduct its business as currently conducted and to  
execute, deliver and perform this Agreement and all other agreements entered  
into or delivered with or as contemplated here.  
(iv) The execution, delivery and performance of this Agreement is validly authorized  
by all necessary action by the Franchisee and the certified copies of  
authorizations for the execution and delivery of this Agreement provided to the  
City pursuant to Section 2.3.2 are true and correct.  
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(v) This Agreement and all other agreements entered into in connection with the  
transactions contemplated here have been duly executed and delivered by the  
Franchisee and constitutes (or upon execution and delivery will constitute) the  
binding obligations of the Franchisee, and is enforceable (or upon execution and  
delivery will be enforceable).  
(vi) The Franchisee has obtained the authority to authorize, execute, and deliver this  
Agreement and to consummate the transactions contemplated here and no  
other proceedings or other actions are necessary by the Franchisee to authorize  
the execution and delivery of this Agreement and the consummation of the  
transactions contemplated here.  
(vii) Neither the execution and delivery of this Agreement by the Franchisee nor the  
performance of its obligations contemplated will:  
(a) conflict with, materially breach, or constitute a material default under (1)  
any governing document of the Franchisee, or to the Franchisee’s  
knowledge, any agreement among any Affiliated Persons or (2) any  
statute, regulation, agreement, judgment, decree, court or administrative  
order or process or any commitment to which the Franchisee is a party or  
by which it (or its properties or assets) is subject or bound;  
(b) create, or give any Person the right to create, any material lien, charge,  
encumbrance, or security interest on the property and assets of the  
Franchisee; or  
(c) terminate, modify, accelerate, or give any Person the right to terminate,  
modify or accelerate, any provision or term of any contract, arrangement,  
agreement, license agreement or commitments, except to the extent  
there would be no adverse impact on the financial assets and liabilities of  
the Franchisee or the System.  
(viii) The Franchisee paid all material franchise, permit, or other fees and charges to  
the City which became due prior to this Agreement under any franchise, permit,  
or other agreement.  
(ix) No Franchisee, or employee or agent of the Franchisee, has committed or been  
convicted (where such conviction is a final, non-appealable judgment or the time  
to appeal such judgment has passed) of any criminal offense, including without  
limitation bribery or fraud, arising out of or in connection with (a) this  
Agreement, (b) the award of the franchise granted pursuant to this Agreement,  
or (c) any act to be taken under this Agreement by the City, its officers,  
employees or agents, or (d) the business activities and services to be undertaken  
or provided under this Agreement.  
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15.6.2 The Franchisee shall promptly terminate its relationship with any employee  
or agent of the Franchisee, who is convicted (where the conviction is a final, non-appealable  
judgment or the time to appeal the judgment has passed) of any criminal offense, including  
without limitation bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii)  
the award of the franchise granted under this Agreement, (iii) any act to be taken under this  
Agreement by the City, its officers, employees or agents, or (iv) the business activities and  
services to be undertaken or provided by the Franchisee under this Agreement.  
15.6.3 The Franchisee affirms it is not in arrears to The City of New York upon any debt,  
contract or taxes and that it is not a defaulter, as a surety or otherwise, upon any obligation to  
The City of New York, and has not been declared not responsible, or disqualified, by any agency  
of The City of New York, nor is there any proceeding pending relating to the responsibility or  
qualification of the Franchisee to receive a franchise or other public contracts.  
15.6.4 No material misrepresentation has been made, either oral or written,  
intentionally or negligently, by or on behalf of the Franchisee in this Agreement, in connection  
with any submission to DOITT or the Commissioner, in connection with the negotiation of this  
Agreement.  
15.7 Binding Effect  
This Agreement binds and benefits both parties and their successors and permitted  
transferees and assigns. All of this Agreement applies to the City and the Franchisee and their  
successors, transferees and assigns.  
15.8 Comptroller Rights  
Nothing in this Agreement can diminish compromise or abridge the powers, duties, and  
obligations of the Comptroller under the New York City Charter.  
15.9 No Waiver; Cumulative Remedies  
15.9.1 Neither party waives any right by failing to exercise that right. The rights and  
remedies in this Agreement are cumulative and not exclusive of any remedies provided by law,  
and nothing in this Agreement impairs the rights of the City or the Franchisee under applicable  
law, subject in each case to the terms and conditions of this Agreement.  
15.9.2 A waiver of any right or remedy by the City or the Franchisee at any one time will  
not affect the exercise of that right or remedy or any other right or other remedy by the City or  
the Franchisee at any other time.  
15.9.3 For any waiver of the City or the Franchisee to be effective, it must be in writing.  
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15.10 Partial Invalidity  
15.10.1 The clauses and provisions of this Agreement are severable. If any clause or  
provision is declared invalid, in whole or in part, by any court, agency, commission, legislative  
body, or other authority of competent jurisdiction, that provision is deemed a separate,  
distinct, and independent portion, and the declaration will not affect the validity of the  
remaining portions, which other portions continue in full force and effect, but only if the  
material obligations of the parties regarding advertising, Compensation, and the Services  
remain valid.  
15.10.2 If any material obligation of the parties regarding Advertising, Compensation, or  
the Services is declared invalid, in whole or in part, and the declaration is not stayed within  
thirty (30) days by a court pending resolution of a legal challenge or appeal, the adversely  
affected party shall notify the other party in writing of the declaration of invalidity and the  
effect of the declaration of invalidity and the parties shall enter into good faith negotiations to  
modify this Agreement to compensate for the declaration of invalidity, provided. Any  
modifications will be subject to the appropriate City approvals and authorizations and  
compliance with all City procedures and processes. If the parties cannot come to an agreement  
modifying this Agreement within 120 days of such notice (which 120-day period will be tolled  
during any stay contemplated above), then this Agreement terminates with such consequences  
as would ensue if it had been terminated by the City pursuant to subsection 13.4.4.  
15.11 Survival  
Any provision which naturally survives the termination or expiration of this Agreement  
does so.  
15.12 Headings and Construction  
15.12.1 The headings in this Agreement are for reference only, do not form a part of this  
Agreement, and do not affect the construction or interpretation. Any reference by number is  
deemed to include both the singular and the plural, as the context may require.  
15.12.2 Each party has participated in negotiating and drafting this Agreement. If an  
ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if  
the parties had drafted it jointly, as opposed to being construed against a party because it was  
responsible for drafting one or more provisions of this Agreement.  
15.13 No Subsidy  
No public subsidy is provided to the Franchisee under this Agreement.  
15.14 No Agency  
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The Franchisee will conduct the work to be performed under this Agreement as an  
independent contractor and not as an agent of the City.  
15.15 Governing Law.  
The Agreement is deemed executed in the City of New York, State of New York and will  
be governed, including validity, interpretation and effect and construed in accordance with the  
laws of the State of New York, as applicable to contracts entered into and to be performed  
entirely within the State.  
15.16 Survival of Representations and Warranties  
All representations and warranties in this Agreement will survive the Term.  
15.17 Claims Under Agreement  
15.17.1 The Franchisee acknowledges and accepts that, except to the extent  
inconsistent with law, all claims asserted by or against the City arising under or related to this  
Agreement will be heard and determined either in a court of the United States located in New  
York City (“Federal Court”) or in a court of the State of New York located in the City and County  
of New York (“New York State Court”).  
15.17.2 If the City initiates any action against the Franchisee in Federal Court or in New  
York State Court, service of process may be made on the Franchisee as provided in Section  
15.19.  
15.17.3 With respect to any action between the City and the Franchisee in New York  
State Court, the Franchisee expressly waives and relinquishes any rights it might otherwise have  
(i) to move or dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court  
outside of the City of New York; and (iii) to move for a change of venue to a court of the State  
of New York outside New York County.  
15.17.4 With respect to any action between the City and the Franchisee in Federal  
Court, the Franchisee expressly waives and relinquishes any right it might otherwise have to  
move to transfer the action to a United States Court outside the City of New York.  
15.17.5 If the Franchisee commences any action against the City in a court located other  
than in the City and State of New York, then, upon request of the City, the Franchisee will either  
consent to transferring the action to a court of competent jurisdiction located in the City and  
State of New York or, if the court where the action is initially brought will not or cannot transfer  
the action, the Franchisee shall consent to dismiss such action without prejudice and may  
reinstitute the action in a court of competent jurisdiction in the City of New York.  
15.18 Modification  
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Except as otherwise provided in this Agreement, any Appendix, Exhibit or Schedule to  
this Agreement or applicable law, no provision of this Agreement nor any Appendix, Exhibit or  
Schedule to this Agreement will be amended or otherwise modified, except by a written  
instrument, duly executed by the City and the Franchisee, and, approved as required by  
applicable law.  
15.19 Service of Process  
If the City initiates any action against the Franchisee in Federal Court or in New York  
State Court, service of process may be made on the Franchisee either in person, wherever such  
Franchisee may be found, or by registered mail addressed to the Franchisee at the address set  
forth in this Agreement.  
15.20 Compliance with Certain City Requirements  
The Franchisee acknowledges, accepts, and shall comply with the City's "MacBride  
Principles" and the “Investigation Clause,” which are attached as Appendix B and Appendix A,  
respectively.  
15.21 Compliance with Law, Licenses  
15.21.1 The Franchisee shall comply with all laws and City policies.  
15.21.2 The Franchisee at its sole cost and expense shall obtain and shall comply with all  
requirements of any licenses and permits necessary for the provision of the Services from any  
governmental body having jurisdiction over the Franchisee regarding the Services.  
15.22 Mitigation  
If a breach of this Agreement occurs by any of the parties, the non-breaching party will  
act in good faith and exercise commercially reasonable efforts to mitigate any damages or  
losses that result from the breach. Notwithstanding the foregoing, nothing in this Section 15.22  
shall limit the parties' right to indemnification under Article XI.  
15.23 Unavoidable Delay  
15.23.1 "Unavoidable Delay" means a delay in the performance of any obligation under  
this Agreement resulting from a strike; war or act of war (whether an actual declaration of war  
is made or not); terrorism; insurrection; riot; injunction; litigation arising from a challenge (by  
an entity other than the Franchisee or its Affiliates) to the City’s authority to enter into this  
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agreement, to grant the franchise granted hereunder or to take any governmental action  
necessary to allow Franchisee to perform its obligations under the Agreement (“Litigation  
Delay”), fire, flood, similar severe weather related event, or similar act of providence; delay in a  
decision by a City agency or office (“City Delay” as described in subsection 15.23.4); third party  
utility power outage; or other similar causes or events to the extent that such causes or events  
are beyond the control of the party claiming an Unavoidable Delay.  
15.23.2 As a condition of claiming, and continuing to claim, that one or more of its  
obligations under the Agreement are delayed under this Section, the claiming party must in  
each case demonstrate that it has taken and continues to take all reasonable actions to avoid or  
mitigate the delay.  
15.23.3 The party claiming an Unavoidable Delay must notify the non-claiming party in  
writing of the occurrence of the events giving rise to the delay within five (5) business days, or if  
not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon  
which the party claiming an Unavoidable Delay learns or should have learned of its occurrence.  
15.23.4 A delay in a decision by a City office or agency, the approval of which is a  
condition to an occurrence, does not constitute a City Delay unless the delay is beyond the  
normal period in which the agency or office generally acts with respect to the type of decision  
being sought and only if the Franchisee has taken and continues to take all reasonable steps to  
pursue such decision (and in any event the period of Unavoidable Delay ends with the City  
agency’s or office’s final decision). In any event, City Delay shall include the City’s delay in  
repealing Section 6-06(c) and 6-06(d) of the PPT Rules beyond the Effective Date.  
15.23.5 Financial incapacity of the Franchisee or its Affiliates does not constitute an  
Unavoidable Delay.  
15.23.6 This Section applies to all of Franchisee’s performance obligations under the  
Agreement. Notwithstanding the foregoing, an Unavoidable Delay does not excuse the  
Franchisee’s payment obligation including the obligation to pay the Minimum Annual  
Guarantee, except with respect to City Delays and Litigation Delays to the extent provided in  
subsection 6.3.3.  
15.24 Counterparts  
This Agreement may be executed in one or more counterparts which, when taken  
together, constitute one and the same.  
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IN WITNESS WHEREOF, the party of the first part, by its Department of Information  
Technology and Telecommunications and its Deputy Mayor, duly authorized by the Charter of  
the City of New York, has caused the corporate name of the City to be hereunto signed and the  
corporate seal of said City to be hereunto affixed and the party of the second part, by it officers  
thereunto duly authorized, has caused its name to be hereunto signed and its seal to be  
hereunto affixed as of the date and year first above written.  
CITY OF NEW YORK CITYBRIDGE, LLC  
DEPARTMENT OF INFORMATION 100 Park Avenue, 6th Floor  
TECHNOLOGY AND New York, NY 10017  
TELECOMMUNICATIONS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
255 Greenwich St. [NAME], [TITLE] Date  
New York, NY 10007  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)  
Anne Roest, Commissioner Date Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
CITY OF NEW YORK  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Deputy Mayor Date  
(Seal)  
Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Approved as to form and  
certified as to legal authority:  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Acting Corporation Counsel  
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