



**Concession Services Agreement**

**between**

**The Oklahoma City Airport Trust**

**and**

**Concourse Communications Illinois, LLC**

**Effective Date: November 1, 2023**

## Concession Agreement

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## **CONCESSION SERVICES AGREEMENT**

This Concession Services Agreement (“Agreement”) is made and entered into by and between the Trustees of the Oklahoma City Airport Trust (“Trust”), a public trust, and Concourse Communications Illinois, LLC, an Illinois Limited Liability Corporation, having authority to do business in Oklahoma, hereinafter called (“Concessionaire”).

### **W I T N E S S E T H:**

**WHEREAS**, the Trust leases, operates, and maintains certain real estate for the benefit of The City of Oklahoma City (“City”) know as Will Rogers World Airport (“Airport”) which is located in Oklahoma and Cleveland County, Oklahoma; and

**WHEREAS**, the Trust previously determined the need to provide for the operation of a Wireless Local Area Network (“WLAN”) in the Airport and solicited and received proposals for the installation, operation, and maintenance of a WLAN concession at the Airport; and

**WHEREAS**, the Trust determined that Concessionaire submitted the best proposal for the services needed, and the Trust and Concessionaire entered into a Concession Services Agreement, dated October 26, 2005 to define the terms of the installation, operation, and maintenance of a WLAN which was subsequently amended by Supplement No. 1, dated February 22, 2006, Supplement No. 2, dated December 17, 2008, and Supplement No. 3, dated April 24, 2014 (collectively “Original Agreement”); and

**WHEREAS**, also under the Original Agreement Concessionaire installed and implemented a 100% free Wi-Fi access model at the Airport, in conjunction with Concessionaire’s premium access model; and

**WHEREAS**, the Original Agreement between the Trust and Concessionaire is set to expire on October 31, 2023; and

**WHEREAS**, the Trust is developing a solicitation for wireless services, to include a Wi-Fi solution; and

**WHEREAS**, the Concessionaire is the current single provider of Wi-Fi at the Airport and desires to not let the Wi-Fi services go dark until a new wireless services agreement is awarded and a new contract can be reasonably implemented; and

**WHEREAS**, the Trust and Concessionaire desire to enter into this new Agreement for an interim period.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, both parties agree as follows, to wit:

### **ARTICLE 1. RIGHT TO OPERATE**

#### **1.01 Wireless Local Area Network**

Concessionaire concedes that it is the owner and operator of a certain WLAN, and the Trust

hereby gives and provides to Concessionaire the right and privilege to install, operate, and maintain on its Airport premises, to include, the terminal's first and second floors' secured and unsecured areas and the basement pedestrian tunnel ("Airport premises") a WLAN. The parties hereto agree that the number of WLAN units/equipment, as applicable, will be by mutual written consent and that the installation of additional units/equipment, if applicable, on any portion of the Airport will be by mutual written consent, at locations which shall be authorized by the Director of Airports or his designated representative ("Director"). As consideration for this right and privilege, Concessionaire agrees to provide and is hereby obligated to maintain and operate said equipment in accordance with the terms and conditions set forth herein.

#### 1.02 Free/Sponsored Services and Paid Access

Concessionaire will provide two public Wi-Fi service offerings at the Airport: (i) a sponsored service ("Sponsored Access") which provides 100% free Wi-Fi service to users; and (ii) paid service ("Paid Access").

Upon the Agreement's Effective Date, Concessionaire will implement, maintain and support, at its sole cost and expense, in accordance with Paragraph 8, CONCESSIONAIRE'S OPERATIONS, of the Original Agreement, the Sponsored Access which shall provide one hundred percent (100%) free for use and/or advertising sponsored Wi-Fi access to users at the Airport. In this connection, users of the Sponsored Access shall be provided Wi-Fi access between 1 MB and 5 MBs of network usage. Users will be able to access the complimentary Wi-Fi service by viewing 30 second advertisements in rolling sessions every 20 minutes of network usage by the customer but shall have the option to bypass the advertisements after 15 seconds of the advertisements have lapsed. At the discretion of the Director, Concessionaire may be directed to and agrees to increase such rolling sessions up to a timeframe which shall not exceed every 45 minutes.

Paid access shall include an option for premium connectivity service ("Premium Wi-Fi") for customers who desire higher bandwidth activities such as streaming videos, use of Voice over Internet Protocol (VoIP) services, etc. and for higher data usage above the free Wi-Fi service. Pricing and other administrative aspects of the Paid Access shall continue to be at the sole discretion of Concessionaire.

Concessionaire shall have the right to solicit advertisements to be displayed on either the Sponsored Access or Paid Access Wi-Fi offerings. The Trust, by and through the Director, shall have the right to ask the Concessionaire to remove any advertisement from the display on the Airport's Wi-Fi offerings that is not considered appropriate or consistent with the operations and missions of the Airport or the City.

The Concessionaire shall have the right to limit and/or block accounts/individuals/users for abuse of the Wi-Fi service. Abuse as used herein shall include, but not be limited to, such activities as, overuse of the system, disproportionate amounts of data usage, individual/business using Wi-Fi to facilitate their business, and conduct that is illegal (e.g., illegal file sharing) or any other matters consistent with Concessionaire's acceptable use policies. Concessionaire shall immediately notify the Director of those accounts/individuals/users that have been blocked for abuse of the Wi-Fi service. Concessionaire should not limit or otherwise block accounts/individuals/users in any

manner that may be discriminatory or contrary to the provisions contained in this Agreement.

If Trust requires any upgrades to the existing Wi-Fi infrastructure that are not provided for by the Concessionaire in connection with this Agreement, then it would be subject to further agreement of the parties and incorporated thereby by an additional supplemental agreement.

## **ARTICLE 2. TERM**

The term of this Agreement shall commence on November 1, 2023 ("Effective Date") and shall be for up to a two (2) year term, unless otherwise terminated early as provided herein.

## **ARTICLE 3. CONCESSION FEES**

### **3.01 Concessionaire Responsibilities**

Commencing on the Effective Date of this Agreement, Concessionaire hereby agrees to pay the Trust, in consideration of its use of the Airport premises, facilities, rights, licenses, services, and privileges provided herein the following:

- A. Gross Revenues from Wi-Fi Services  
Twenty-five percent (25%) of Concessionaire's gross revenues derived from the sales of its Premium Wi-Fi service at the Airport;
- B. Gross Revenues from Advertising  
Twenty-five percent (25%) of Concessionaire's gross revenues derived from all advertising; and
- C. Gross Revenues from Roaming Related Services  
Twenty-five percent (25%) of Concessionaire's gross revenues derived from roaming related services such as "Passpoint".

Concessionaire shall submit payment by the twentieth (20<sup>th</sup>) day of each month, accompanied by a statement of monthly gross revenue, for the previous month's activity, which identifies the monthly activity for each category listed in Subparagraphs (a) through (d) above, by applicable percentage of gross revenues. Gross revenues as used herein shall mean the total of all amounts actually received by Concessionaire for or in connection with this Agreement through its operations and business of operating a WLAN service at the Airport, and shall be calculated on a monthly basis, commencing as of the Agreement's Effective Date. The format for the reporting of such revenues shall be agreed upon by the Director or his designated representative and the Concessionaire.

In February 2024, the Concessionaire and Trust will discuss the internet circuit pricing impacts.

### **3.02 Trust Responsibilities**

Reserved.

Sponsorship Payments shall be paid to Concessionaire by Trust no later than the last day of the month following the month in which said Sponsorship Payment becomes due.

#### **ARTICLE 4. DELINQUENCIES**

It is hereby agreed by and between the Trust and Concessionaire that should Concessionaire fail, for any reason whatsoever, to timely remit the concession fees as required under any of the provisions hereof, then and in that event, the payment shall be immediately delinquent, and the Trust may impose as additional fees a delinquency charge on all overdue payments, at the rate of one and one-half percent (1.5%) per month; and said additional fees shall be additional compensation and shall become due and payable to, and received by, Trust on or before the last day of each month of the term hereof.

#### **ARTICLE 5. BOOKS AND RECORDS RETENTION**

Concessionaire shall keep and maintain a complete and adequate set of books and records of all receipts and all other income from said operation for three years and shall make such books available on Airport premises for inspection by the Trust or its authorized representative at any and all reasonable hours and times.

##### **5.01 Books and Records**

In order to ensure that the Trust, by and through the Director, is able to adequately monitor the Concessionaire's performance under the terms of this Agreement, the Concessionaire will keep and maintain true and accurate records relating to the service provided herein in accordance with generally accepted accounting principles ("GAAP"). Books and records shall be kept in the United States, and Concessionaire shall make the same readily available for examination and audit by the Director or designee during normal business hours during the term of this Agreement within five (5) business days of written notice to produce such books and records. Books and records shall be maintained throughout the term of this Agreement and for a period of no less than five (5) years after the expiration or termination of this Agreement. Books and records, subject to audit and inspection, (in whatever form the information may be kept, whether written, electronic, or other form) shall be interpreted in the broadest sense.

##### **5.02 Records Maintenance**

The books and records shall include, without limitation, true copies of all federal, state and local sales and use tax returns and reports, daily receipts from all sales (including those from mail, electronic or telephone orders), duplicate bank deposit slips, invoices, journals, ledgers and other pertinent original sales records and records of any other transactions conducted in or from the locations on the Airport premises. Pertinent original sales records shall also include an electronic system of record keeping and such other reasonable documentation which would normally be examined by an independent accountant pursuant to GAAP in performing an audit of Concessionaire's sales sufficient to provide determination and verification of fees and the exclusions therefrom.

##### **5.03 Audit Right**

A. Concessionaire shall permit during ordinary business hours during the term of this Agreement, and for five (5) years after the expiration or termination of this



Agreement, the right to audit, examine, copy or extract from any records relating to or pertaining to this Agreement by the officers, employees and representatives of the Trust of the Books and Records of Concessionaire (and where applicable, all individuals or other business entities who are party to this Agreement) to substantiate the accuracy of reported fees and Concessionaire's compliance with other provisions of this Agreement such records subject to audit and inspection (in whatever form the information may be kept, whether written, electronic or other form), but not limited to records pertinent to the collection of any fees. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, bills of lading, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance agreements, records of refunds or voids, and joint venture or partnership agreements. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire's suppliers or others, assisting the Trust in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which fees are deposited) as reasonably considered necessary by the Trust's representatives to complete the audit. To such extent, Concessionaire expressly waives any claim of confidentiality which it may have in connection therewith.

- B. If Concessionaire fails to produce all the requested books or records, Concessionaire shall pay liquidated damages in the amount of fifty dollars (\$50.00) per day until the books and records are produced. As an alternative, Concessionaire may notify Trust within two (2) business days of receipt of the Trust's audit notice that Concessionaire elects to pay all reasonable expenses including, but not limited to, transportation, food, reproduction expenses, and lodging necessary for an examiner(s) selected by Trust to examine said books and records at any site selected by Concessionaire other than on the Airport. Trust's rights and Concessionaire obligations in this Article extend to Concessionaire's employees, agents, assigns, successors, and subcontractors, and shall be included in any agreements formed between the Concessionaire and any employees, agents, assigns, successors, and subcontractors to the extent that those agreements relate to fulfillment of the Concessionaire's obligations to Trust.
- C. Trust will be responsible for the cost of an audit pursuant to this Article with the exception of off-Airport audit expenses noted in Paragraph 5.03 (B) above; provided however, Trust may recoup the entire cost of the audit or inspection from the Concessionaire if 1) the audit discovers substantive findings related to fraud, misrepresentation, or non-performance of the Concessionaire, or 2) Concessionaire underreported or underpaid fees related to the Agreement by one percent (1%) or more for the period audited.
- D. Pursuant to Article 4, the Concessionaire shall be responsible for the payment of interest as a Delinquency Fee on any such underpayment of fees from the time the underpayment was due/owed to the Trust.
- E. If Concessionaire underreported or underpaid fees by three percent (3%) or more

for the period audited, then in addition to the payment of the audit cost, the underpayment, and any Delinquency Fees, the Trust shall be entitled to terminate this Agreement for cause pursuant to Article 16, regardless of whether the deficiency is paid.

- F. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Concessionaire's invoices and/or records shall be made within sixty (60) days from delivery of Trust's audit or inspection findings to Concessionaire.

#### **ARTICLE 6. INGRESS AND EGRESS**

Upon paying the concession fee hereunder and performing the covenants of this Agreement, the Concessionaire shall have the right of ingress to and egress from the Airport premises for the Concessionaire, its officers, employees, agents, servants, customers, vendors, suppliers, patrons, and invitees over the roadway provided by the Trust serving said premises jointly with other tenants on the Airport; and the Concessionaire shall not interfere with the rights and privileges of other persons or firms using said Airport premises.

#### **ARTICLE 7. EXCLUSIVE PROPERTY OF CONCESSIONAIRE**

It is understood and recognized that said WLAN and all associated equipment shall at all times remain the sole and exclusive property of the Concessionaire, its agents and assigns, except as otherwise provided in Paragraph 17 (Removal of Personal Property) hereof. The areas wherein the WLAN units/equipment, as applicable, are to be installed are to be mutually agreed upon between the parties hereto, and no equipment shall be installed without prior approval of the Director. It is agreed that the Concessionaire may, with the prior written permission of the Director, remove and/or relocate said equipment, from time to time, to locations on the Airport premises, which in its opinion may be more desirable. Further, Concessionaire understands and agrees that, should the Director determine the need and directs the Concessionaire to relocate any equipment, Concessionaire shall comply with said request, provided that Concessionaire is given a reasonably comparable space under which it can perform its obligations under this Agreement. Should said equipment be relocated, Concessionaire agrees to be responsible for the relocation cost as well as for repairing any damage or injury to the Trust or its premises in any way caused by the removal of the equipment. Said equipment, and all other property of Concessionaire which may at any time be located on the premises of the Trust, shall be at the sole risk of Concessionaire or those claiming under it; and the Trust shall not be liable for theft or loss of such property, or damage or injury thereto, from whatsoever cause.

#### **ARTICLE 8. CONCESSIONAIRE'S OPERATIONS**

Concessionaire shall have the full responsibility for the installation, operation, servicing, maintenance, and repair of said WLAN. Said responsibility shall include but is not limited to: (i) collection and reporting of all revenues, (ii) providing a 24-hour toll-free number for responding to all service/emergency calls regarding the WLAN, and (iii) providing a four-hour response time to requests from the Trust for repairing of the WLAN. Concessionaire shall furnish at its sole cost all parts and supplies necessary for the care, servicing, cleaning, operation, and maintenance of said WLAN, as applicable.

The Trust shall provide its regular electrical current for the operation of Concessionaire's WLAN, and Concessionaire shall utilize existing electrical outlets, as applicable. In the event additional outlets are required, Concessionaire shall submit a prior written request to the Trust, by and through the Director detailing the number, exact locations, and methods of installation of the additional outlets. In the event new areas are designated or existing outlets are inadequate, electrical hook-ups and all associated costs will be the responsibility of the Concessionaire.

Upon approval by and proper coordination with the Director, the Concessionaire shall have the privilege of entering upon premises of the Trust to such extent as is necessary for the installing, operating, servicing, and maintaining of said WLAN, with such installation, operation, servicing, and maintenance to be at Concessionaire's sole cost and expense. Provided, however, the Director may halt or curtail the above-described activities at any time in the event the Director deems such activities interfere with the normal functioning of the Airport. Further, Concessionaire agrees to be liable for the costs of repairing any damage or injury to the Trust's premises in any way caused, directly or indirectly, by the activities of the Concessionaire, its employees or agents, while in the performance of this Agreement.

In the above connection, Concessionaire agrees that should any equipment installed by it become inoperable or defective and cannot be repaired within twenty-four hours, said equipment shall be removed from the Trust's premises and replaced. In the event any such defective or inoperable equipment shall be removed as aforesaid, Concessionaire shall, within twenty-four (24) hours, install the necessary replacement equipment, as approved by the Director.

The parties agree that if any material objection is raised by any public authority, ordinance, or statute questioning the legality or lawful use of the WLAN covered by this Agreement, either party hereto shall have the right to forthwith remove said WLAN. Moreover, Concessionaire, its agents and employees, shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations, and standards applicable to Concessionaire or its activities on the Trust's premises, including but not limited to, rules and regulations promulgated from time to time by the Director for administration of the Airport.

Concessionaire shall ensure workable procedures are displayed for public use concerning the use of the equipment/service and to assure the public of the integrity of the Concessionaire and its equipment in the event of default in the equipment. In this connection, Concessionaire shall post instructions indicating how patrons can receive refunds. Further, Concessionaire must obtain the Director of Airports' prior written approval of any and all rate changes charged to the public.

## **ARTICLE 9. ADVERTISING**

It is agreed that no signs, legends, advertising, or posters may be affixed to any Airport Premises, except informational signs advising the public of the use and availability of said WLAN, **to include Paid Access and Sponsored Access**; and provided, the size and design of the last-mentioned signs shall be subject to the prior approval of the Director. No other signage or advertising of any kind is permitted under this Agreement to be erected or displayed by Concessionaire upon the premises of the Airport without first obtaining the written approval of the Director, such approval not to be unreasonably withheld.

## **ARTICLE 10. SECURITY**

The Trust agrees to notify Concessionaire or its agent when the Trust recognizes that any of said WLAN components are malfunctioning or in need of repair or maintenance. Provided, however, the WLAN and all associated property of Concessionaire shall be installed and remain on the Airport premises at the sole risk and expense of Concessionaire.

## **ARTICLE 11. HAZARDOUS MATERIAL(S) AND COMPLIANCE WITH ENVIRONMENTAL LAW(S)**

### **11.01 Definitions**

For the purpose of this article, the following definitions apply:

- A. “*Contamination*” shall mean the presence of any Hazardous Materials in concentrations exceeding those identified as relevant and appropriate pursuant to Environmental Laws.
- B. “*Hazardous Material(s)*” shall mean any hazardous or toxic substance, material or waste, regulated, considered or addressed by any Environmental Law, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law. Hazardous Materials shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, caustic, corrosive, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, chemical paint removers and other caustics, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released.
- C. “*Environmental Law(s)*” shall mean in the broadest sense any and all applicable federal, state and local statutes, ordinances, regulations, rules, guidance, or guidelines now or hereafter in effect, as the same may be amended from time to time relating to the protection of human health, safety or the environment and those substances defined as hazardous waste, hazardous substances, hazardous materials, toxic, pollutants or otherwise regulated under the analogous laws of Oklahoma and/or the United States or in regulations promulgated pursuant to such laws.

### **11.02 Hazardous Material(s)**

Concessionaire hereby covenants not to permit or introduce any Hazardous Materials to be brought upon, kept, generated, or used in or about the Airport premises, by Concessionaire,

its agents, employees, contractors, or invitees without first obtaining Director's written consent, which shall not be unreasonably withheld as long as Concessionaire demonstrates such Hazardous Materials are necessary to Concessionaire's operation hereunder and such Hazardous Materials must be used, kept, generated and stored in a manner complying with all applicable federal, state, and local environmental laws or ordinances pertaining to the transportation, storage, use, generation, or disposal of such Hazardous Materials. Concessionaire shall be responsible for obtaining any permits and shall only store Hazardous Materials temporarily with the approval of the Director while further disposition is pending.

#### 11.03 Notification and Immediate Response

After notifying 9-1-1, Concessionaire agrees to notify the Airport Operations Center at (405) 316-3300 immediately of any leak, discharge, Contamination, release of Hazardous Materials, fuel, oil, petroleum products, or other fluids, claim of Contamination, loss, or damage. Concessionaire shall immediately respond to leaks and spills of material that is or may become Hazardous Material in order to contain, remove, recover, clean, and dispose as necessary and shall remove, to the extent reasonably practicable, all spilled, leaked, released, or accumulated fuel, oil, grease or Hazardous Material or Contamination caused by Concessionaire's operations. In the event of a release of Hazardous Material in a reportable amount, Concessionaire must fulfill all required reporting obligations to the regulatory agency or agencies with jurisdiction over the Hazardous Material release.

#### 11.04 Remediation

After consultation and approval by the Director, Concessionaire shall clean up and remediate permanently any Contamination caused by or permitted by Concessionaire or its agents, employees, contractors or invitees in full compliance with all applicable statutes, regulations, and standards so that the Airport premises is permanently mitigated to prevent further reoccurrence and remediated to such a condition that a "No Further Action" determination of completion or its equivalent is obtained from the regulatory or equivalent agency or agencies with jurisdiction over the Hazardous Material release and/or the Airport's property is reasonably demonstrated as having been returned to the condition existing prior to the introduction of any such Hazardous Materials or Contamination, or as otherwise agreed to by the Director in his or her reasonable discretion.

#### 11.05 Environmental Indemnification

In addition to all other indemnities provided in this Agreement, Concessionaire agrees to defend, indemnify, and hold the Trust and the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the generation, manufacture, processing, use, release or other spills or leaks of chemicals and products that are or may become Hazardous Materials, the existence or discovery of any Hazardous Materials in excess of the levels allowed by Environmental Laws or violations of the Environmental Laws on the premises, the subsurface or the migration of any Hazardous Material from the Airport premises to other properties or into the surrounding environment, caused by the Concessionaire or its

operations whether: (a) made, commenced or incurred during the Term; or (b) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the Term; provided, however, Concessionaire's obligation to indemnify the Trust and City pursuant to this Paragraph shall not apply with respect to either: (a) any Hazardous Material released by the Trust, its Trustees, officers, agents and employees; or (b) any Hazardous Material (for which Concessionaire is not otherwise responsible) clearly demonstrated to be migrating onto the Airport premises from some other location through no fault of Concessionaire.

The foregoing indemnity shall survive the expiration or earlier termination of this Agreement and will not be affected in any way by the amount of or the absence in any case of covering insurance or the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Airport premises. In addition, Concessionaire shall be responsible for any environmental cost associated with negligence or willful acts or omission by Concessionaire, and notifications to appropriate regulatory agencies arising therefrom.

## **ARTICLE 12. TRUST'S RESERVED RIGHT**

### **12.01 Airport Development Reservation**

Trust reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting or permitting to be erected, any building, other structure, or equipment on the Airport which, in the opinion of Trust, would limit the usefulness of the Airport or constitute a hazard to aircraft.

### **12.02 War or National Emergency**

During the time of war or national emergency declared by Congress, Trust shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the lease to the Government shall be suspended and in that event a just and proportionate part of the rent hereunder shall be abated.

### **12.03 Subordination**

Any other provision of this Agreement notwithstanding, this Agreement shall be subordinate to the provisions of any existing or future Agreement between Trust and the United States, relative to the operation or maintenance of the Airport, the terms and execution of which has been or may be required as a condition precedent to the expenditure or reimbursement to Trust of Federal funds for the development of the Airport. To the extent any provision of this Agreement is in conflict with any grant assurance, rule or regulation imposed on the Trust by the United States Government or other regulatory entity, the provision of the grant assurance, rule, or regulation shall be incorporated in this Agreement as if written specifically herein and Concessionaire shall agree to abide by such grant assurance, rule, or regulation as a condition precedent to the use of any facilities or premises of the Trust.

**12.04 Right to Enter**

Trust, through its duly authorized agent, shall have at any and all times the full and unrestricted right to enter the Airport premises for the purpose of inspection or maintenance and for the purpose of doing any and all things which it is obligated and has a right to do under this Agreement during normal business hours with advanced notice provided to the Concessionaire when reasonably possible.

**12.05 Reservation Right**

Trust reserves all rights and remedies that Trust may otherwise have at law or in equity and the exercise of one or more rights or remedies will not prejudice the concurrent or subsequent exercise of other rights of remedies.

### **ARTICLE 13. NONINTERFERENCE WITH OPERATION OF AIRPORT**

Concessionaire covenants and agrees that it will not allow any condition on the Airport premises, nor permit the conduct of any activity on such premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities; nor will Concessionaire use or permit the Airport premises to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard. If any proscribed or prohibited condition or activity, as described above, shall be permitted to exist on the Airport premises, the Trust may terminate the Agreement. Provided, however, should the condition create a health, safety, or welfare condition necessitating immediate abatement or correction of the condition interfering with operation of Airport, the Trust, by and through the Director, may immediately abate or correct the condition at Concessionaire's expense without the prior notice.

### **ARTICLE 14. MISCELLANEOUS COVENANTS**

**14.01 Rules and Regulation Compliance**

Concessionaire shall observe and comply with any and all present and future requirements of the constituted public authorities and with all federal, state, or local laws, policies, administrative regulations, and standard rules applicable to Concessionaire or Trust for the intended use of the Airport premises, including by way of example, but not of limitation, all general rules and regulations promulgated from time to time by the Director of the City in connection with the administration of the Airport.

**14.02 Noise or Sound Shock Waves**

Concessionaire hereby agrees to make no claims or file or cause to be filed any legal or equitable actions against the Trust or the City for any kind of damages which results from noise, vibration, or sound shock waves due to aircraft use of said Airport's facilities.

**14.03 Communications Equipment**

Except as specifically set forth in this Agreement, Concessionaire shall not install, maintain, or operate, or to grant to any third party the right to install, maintain, or operate any wireless network, satellite dish, antenna, wireless communications equipment, meteorological, aerial navigation, distributed antenna system, UHF and VHF radio system, internet access equipment or systems, or other similar related equipment or systems (collectively "Communications Equipment") that could cause or be used to create electrical

interference with communications between the Airport, the control tower, and any aircraft, make it difficult for flyers to distinguish between airport lights and others, impair visibility in the vicinity of the Airport, or endanger the landing, take off, or maneuvering aircraft or interfere with security systems or the services provided by any Airport communications.

Concessionaire must first obtain written approval of the Director, such approval being at the sole discretion of the Director before installing any Communications Equipment. In the event that any of Concessionaire's Communication Equipment should create an airport interference or violate this section at any time, the Concessionaire shall disable such system immediately upon notification from the Director and collaboratively work with Trust's staff to resolve any conflicts before such Communications Equipment may resume operations.

Should Concessionaire be permitted to use such Communication Equipment or system, then such use is pursuant to the following:

A. Restricted to Designated Area

Concessionaire's wireless communication system and/or related Communications Equipment shall be installed and operated within the areas designated by the Airport only, and at no other location on or about the Airport.

B. No Use by Third Parties

Concessionaire shall not solicit, suffer, or permit other Concessionaires, tenants, occupants, visitors, or passengers of the Airport to use the Concessionaire's network or any other communications service, including, without limitation, any wired or wireless internet service that passes through, is transmitted through, or emanates from the Airport premises.

C. Interference

Concessionaire agrees that Concessionaire's Network and any other Communications Equipment and the Communications Equipment of Concessionaire's service providers and contractors located on the designated areas or installed on the Airport to service the designated areas including, without limitation, any antennas, switches, or other equipment (collectively, "Concessionaire's Communications Equipment") shall be of a type and, if applicable, a frequency that will not cause radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, Trust, other Concessionaires, tenants, occupants, visitors, passengers, or any other party. In the event that Concessionaire's Communications Equipment causes or is believed to cause any such interference, upon receipt of notice from Trust of such interference, Concessionaire will take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within twenty-four (24) hours (or a shorter period if Trust believes a shorter period to be appropriate) then, upon request from Trust, Concessionaire shall shut down the Concessionaire's Communications Equipment pending resolution of the interference, with the exception of intermittent testing upon prior notice to and with the approval of Trust.



D. Non-Exclusivity

Concessionaire acknowledges that Trust has granted and/or may grant lease rights, licenses, and other rights to various other tenants and occupants of the Airport and to telecommunications service providers for the installation of a Wi-Fi network and related equipment at the Airport.

14.04 Wildlife Attractants

Concessionaire shall not use or permit the use of the Airport premises in a manner that could attract birds and other wildlife, or which may pose a hazard to aircraft. Concessionaire shall not use plants or live materials on the Airport, which attract wildlife as identified by the USDA (see Wildlife Mitigation and Best Practices reference document at [flyokc.com/rules-regulations](http://flyokc.com/rules-regulations)).

## **ARTICLE 15. INDEMNITY AND INSURANCE**

15.01 Indemnity

Except as otherwise provided in Article 11, Concessionaire hereby agrees to release, defend, indemnify, and save harmless the Trust and the City and their officers, agents, and employees from and against any and all loss of or damage to property or injuries to or death of any person, or all claims, damages, suits, costs, expense, liability, actions, demands, liens, fines, encumbrances, or proceedings (including all reasonable legal fees and expenses) of any kind or nature whatsoever in matters resulting from, or arising out of: (a) Concessionaire's intentional acts or omissions, negligence, misconduct, operations, or activities under or in connection with this Agreement or (b) in matters resulting from, or arising out of Concessionaire's use and occupancy of any portion of the Airport, and including, without limiting the generality of the foregoing, acts and omissions of Concessionaire's officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents. Provided, however, Concessionaire shall not be liable or be required to release the Trust for any loss, damage, claims, suits, cost, expense, or actions occasioned by the negligence or willful misconduct of the Trust, the City, or their officers, Trustees, and employees. The parties covenant to give each other prompt notice of any claims. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

15.02 Liability Insurance

Concessionaire shall purchase, or cause to be purchased, and maintained in effect during the term of this Agreement with insurance carriers or risk retention groups authorized to do business in the State of Oklahoma and approved by the Director, any insurance required by this paragraph. The insurance and additional insured requirements contained in this Agreement are considered minimum coverage amounts and Concessionaire may elect greater coverage limits than what is specified in this Agreement or as may be required by law. All applicable coverage, unless specified otherwise, shall remain in full force and effect until the expiration, cancellation, or termination of the Agreement and for the subsequent two (2) years following the expiration, cancellation, or termination for loss covered by and occurring during the term of the Agreement.

A. Workers' Compensation and Employer's Liability Insurance

Concessionaire shall maintain during the term of the Agreement, Workers'

Compensation Insurance and Employer's Liability Insurance in amounts as prescribed by laws of the State of Oklahoma.

B. Commercial General Liability Insurance

Concessionaire shall carry a policy of Commercial General Liability Insurance, which must include coverage for contractual liability, to protect the Concessionaire and any additional insured parties from claims for bodily injury, including death, as well as from claims for property damages or loss which may arise from activities, omissions, and operations of the Concessionaire under the Agreement, whether such activities, omissions, and operations be by the Concessionaire, subcontractor, or by anyone employed by or acting for the benefit of the Concessionaire in conjunction with this Agreement in a combined single occurrence or accident of \$1,000,000 for any number of property or bodily injury claims arising out of a single act, accident, or occurrence.

15.03 Contents

The Trust's property insurance does not insure Concessionaire's contents, property, furniture, fixtures, equipment, materials, displays, or other property in any building, structure or the Facilities owned by the Trust even if a property loss is the result of a loss covered by Trust's property insurance. Concessionaire is encouraged to insure any of its property, contents, furniture, fixtures, improvements, displays, or equipment located on the Airport premises.

15.04 Certificates of Insurance

A. Deductibles

Any policy, except Worker's Compensation and Employer's Liability, having a deductible or retained self-insurance that exceeds \$25,000 shall not be allowed unless such insurance program is approved in advance by the Director, such approval shall not be unreasonably withheld. Concessionaire shall notify the Director immediately if Concessionaire has deductibles or retains self-insurance in excess of this stated amount. Concessionaire shall be solely responsible for any allowed deductible or retained self-insurance amounts. Any elected deductible or self-insured retention of the Concessionaire will not diminish Concessionaire's liability under this Agreement for claims or losses falling within any such deductible or self-insured retention amounts. Failure by Concessionaire to assume and pay for any deductible or retained self-insurance amount may be considered a material breach and may result in immediate termination, at the Trust's option. If, during the term of the Agreement, the Concessionaire's elected insurance program exceeds any approved deductible or retained self-insurance amount, or if there is a change in the financial conditions of the Concessionaire which in the Director's sole discretion may impact the Concessionaire's ability to satisfy any deductible or retained self-insurance, then the Director may require Concessionaire to take such reasonable actions to ensure first dollar of loss coverage to the Trust and City including reducing or eliminating such deductibles or self-insured retentions or providing a financial guarantee for the deductible or retained self-insurance amount.

B. Form of Certificate

Certificates of Insurance, acceptable to the Trust, in the form as shown on Exhibit "A," attached to this Agreement or a form substantially similar thereto such as an approved ACORD form which includes the applicable line(s) of insurance, name(s) of insurance companies, policy number(s), amount of any deductible or self-insurance retainage, coverage amounts, all additional insured parties, and contractual liability coverage, shall be submitted to Trust in conjunction with the signed Agreement.

C. Additional Insured

The Certificates of Insurance shall name Concessionaire as insured and the Oklahoma City Airport Trust and The City of Oklahoma City as additional insured (including any actual policy endorsement numbers) on any general liability insurance policy, in a manner of equal standing to that of any named insured under said policy. Any insurance policy or liability coverage of the City or the Trust shall be considered subordinate, if applicable at all, to the primary coverage of the Concessionaire. Copies of additional insured or notice provision endorsements shall be submitted to the Trust along with any Certificates of Insurance. Copies of all insurance policies required herein naming the City or Trust as an additional insured shall be made available for review by the Trust or the City at the Trust's principal place of business on a timely basis when requested.

D. Notice of Change in Policy

Concessionaire must provide the Trust at least thirty (30) days prior written notice of any cancellation or material coverage change in their policies or to have an endorsement made to each policy to include such notice periods in the event the policy provides a different notice period for any additional insured(s). For the purpose of this provision, a material change shall be considered any deductible or self-insurance that exceeds \$25,000 or any coverage amount that does not meet the minimum requirements contained herein or any coverage that is adverse to any terms that received approval by the Director.

E. Signatory

The Certificates of Insurance must be signed by the Authorized Representatives of the insurance company(s) shown on the certificate with proof that he/she is an authorized representative thereof.

F. Contractual Liability

The Certificate of Insurance for the Commercial General Liability Insurance shall also include evidence of coverage for Concessionaire's contractual liabilities as required herein. In the event the Certificate of Insurance does not delineate coverage for Concessionaire's contractual liabilities or the Concessionaire's insurance policy does not provide sufficient coverage for the Concessionaire's contractual obligations contained in this Agreement, Concessionaire agrees that Concessionaire's contractual obligations to the Trust are not diminished by the Concessionaire's elected insurance provisions.

G. Failure to Maintain Insurance

If Concessionaire fails to comply with any of the foregoing, the Trust may obtain such insurance and Concessionaire shall reimburse the Trust, as additional rent, within ten (10) days of Concessionaire's receipt of written demand of payment hereunder plus twenty percent (20%) of Trust's cost for said insurance.

**ARTICLE 16. TERMINATION FOR EVENT OF DEFAULT**

16.01 Termination by Trust

In the event that Concessionaire shall fail to perform, keep, and observe any of the terms, covenants, or conditions herein contained to be performed, kept, and observed ("Event of Default"), Trust may terminate the agreement. Prior to termination for non-monetary Events of Default, Trust shall give thirty (30) days written notice to Concessionaire to use diligence to correct such condition or Event of Default. If Concessionaire shall not abate or correct such condition or Event of Default within thirty (30) days after receipt of such notice, or such other time as agreed to in writing by the Trust, the Trust may terminate this Agreement after giving ten (10) day termination notice and the term hereby dismissed shall thereupon cease and expire at the end of such ten (10) day notice period in the same manner and effect as if it were the expiration of the lease term. Prior to termination for Events of Default for the non-payment of rent, fees, or other monies as set forth in this Agreement and also known as monetary Events of Default, the Trust shall give thirty (30) days written notice to Concessionaire to pay said delinquent amount and if said amount is not paid in full by the expiration of the thirty (30) day notice period, Trust may elect to immediately terminate the Agreement without further notice or time to cure provided to the other party.

16.02 Trust's Option to Eliminate Event of Default

As an alternative to termination of the Agreement for any non-monetary Event of Default by the Concessionaire, Trust may enter the Airport Premises itself or by its agents, servants, or employees, during normal business hours with advanced notice provided to the Concessionaire when reasonably possible, without such entering causing or constituting a termination of this Agreement or an interference with possession of the premises by the Concessionaire, and the Trust may correct such condition and the Concessionaire shall pay the Trust, within thirty (30) days after submission of an invoice, the expenses Trust incurred to correct such condition.

16.03 Meeting

Within the thirty (30) day notice period set forth in paragraph 16.01 for monetary or non-monetary Events of Default, the parties may meet to discuss and to try to resolve any Events of Default in lieu of termination of this Agreement.

16.04 Notices

The parties shall provide notice in accordance with Paragraph 26.01.

16.05 Strict Performance

No failure by Trust to insist upon the strict performances of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach

or of any such term.

**16.06 Breach**

In the event of any breach or threatened breach by Concessionaire of any of the terms contained in this Agreement, Trust shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise, except this Agreement shall be terminated only in the manner set forth herein.

**16.07 Termination**

Notwithstanding any provision in this Article, after the twelfth calendar month of the Agreement, the Trust, by and through the Director, has the right to terminate this Agreement without cause and for any reason whatsoever by giving one-hundred and twenty (120) days written notice to the Concessionaire.

**ARTICLE 17. REMOVAL OF PERSONAL PROPERTY**

It is mutually covenanted and agreed that all personal property, including furniture, fixtures, and equipment, that is owned and not affixed to the Airport premises, or personal property that is affixed to the Airport premises, but which can be removed without causing any damage to the Airport premises, shall be removed by the Concessionaire by the termination or expiration of this Agreement. Any damage resulting from the removal of personal property shall be repaired by Concessionaire by the termination or expiration date of this Agreement. Should the Concessionaire fail to remove said personal property by the time stated herein, title to all such personal property shall vest in the Trust and the Trust may cause the removal of all or any portion of such property at the sole risk and expense of the Concessionaire.

**ARTICLE 18. WAIVER OF STATUTORY NOTICE**

In the event Trust exercises its option to terminate this Agreement for any reason, any notice of termination given by the Trust to Concessionaire as provided in this Agreement shall be sufficient to cancel and terminate this Agreement. In this connection, Concessionaire hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by the Trust under any provisions of the laws of the State of Oklahoma, including, but not limited to, notices required to be given under any section of Title 41 of the Oklahoma Statutes. Upon such termination, Concessionaire hereby agrees that it will forthwith surrender possession of the demised premises to the Trust.

**ARTICLE 19. ASSIGNMENT**

The privileges granted Concessionaire hereunder are personal, and Concessionaire agrees that it will not assign or subcontract the same or any part hereof without the express written consent of the Trust.

**ARTICLE 20. GENERAL CIVIL RIGHTS PROVISION**

The Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no

person shall, on the grounds of race, creed, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964

If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire. The above provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the Trust remains obligated to the Federal Aviation Administration.

## **ARTICLE 21. CIVIL RIGHTS TITLE VI ASSURANCE**

### **21.01 Title VI Clauses for Compliance with Nondiscrimination Requirements**

During the performance of this Agreement, the Concessionaire, for itself, its assignee, and successor in interest agrees as follows:

**A. Compliance with Regulations**

The Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

**B. Non-discrimination:**

The Concessionaire, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the [Title VI] Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

**C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment**

In all solicitations, either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this Agreement and the [Title VI] Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**D. Information and Reports**

The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Trust or the Federal Aviation Administration to be pertinent to ascertain compliance with such [Title VI] Nondiscrimination Acts and Authorities and instructions. Where any information required of a Concessionaire is in the

exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the Trust or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance

In the event of a Concessionaire's noncompliance with the nondiscrimination provisions of this Agreement, the Trust will impose such contract sanctions [in accordance with any applicable notice and cure provisions provided for in the Agreement] as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- i. Withholding any payments to the Concessionaire under this Agreement until the Concessionaire complies; and/or
- ii. Cancelling, terminating, or suspending a n Agreement, in whole or in part.

F. Incorporation of Provisions

The Concessionaire will include the provisions of [Paragraphs 21.01, subparagraphs] A. through F. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the Trust or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the Trust to enter into any litigation to protect the interests of the Trust. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

21.02 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Concessionaire, for itself, its assignee, and successor in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Nondiscrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 47123), as amended,

- (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-259), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*), which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
  - The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 (2005));
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

**ARTICLE 22. TITLE VI CLAUSES FOR THE TRANSFER OR  
CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED OR IMPROVED  
UNDER THE AIRPORT IMPROVEMENT PROGRAM**

22.01 Property Acquired or Improved Under Airport Improvement Program

The following clause will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Trust pursuant to the provisions of the Airport Improvement Program grant assurances.

The Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will



be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

**22.02 Construction/Use/Access to Property Under Activity, Facility, or Program**

The following clause will be included in deeds, licenses, permits, or similar instruments entered into by the Trust pursuant to the provisions of the Airport Improvement Program grant assurances.

The Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (a) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) that the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

**ARTICLE 23. EMPLOYEE BADGING AND BACKGROUND CHECKS**

**23.01 Requirements**

Concessionaire shall be responsible for requesting the issuance of Airport security badges to all officers, invitees, employees, suppliers, contractors, and agents who will be employed in the terminal building or will need access to secured areas at the Airport. Concessionaire's officers, invitees, employees, suppliers, contractors, and agents must abide by all applicable security regulations of the Department of Airports (DOA), Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA). Any of Concessionaire's officers, invitees, employees, suppliers, contractors, and agents who require unescorted access to any secured areas of the Airport where access is controlled for security reasons must make application for, and wear, the properly designated Airport security badge. Those employees or contractors seeking access to secured areas must submit a set of fingerprints for a Criminal History Records Check (CHRC) conducted by the Federal Bureau of Investigation (FBI) as required by TSA Regulation Part 1542. In addition, the applicant must submit biographical information for a Security Threat Assessment (STA) conducted by the TSA. At the time the application is made, Concessionaire shall be responsible for payment of the then current fee for fingerprinting and the fee for issuance of an initial security badge. The current fee for fingerprinting is \$35.00 per person. The current cost of an initial security badge is \$20.00 per person. Upon satisfactory completion of the CHRC and STA, the applicant must then attend a security badging session to receive training and have a security badge issued.

**23.02 Lost, Stolen Badges, or Termination of Employment**

Concessionaire shall or cause its officers, invitees, employees, suppliers, contractors, and agents to: (a) immediately report lost or stolen security badges; (b) immediately return security badges of all personnel transferred, or terminated, from Airport assignment; (c) immediately return all security badges of personnel terminated from the Concessionaire's

employment; (d) immediately return all security badges upon termination or cancellation of this Agreement; and (e) immediately report to the Director or his designated representative the names of all persons from whom Concessionaire is unable to obtain the return of security badges.

23.03 Renewal of Badges

Upon expiration of any badge, Concessionaire shall ensure that all officers, invitees, employees, suppliers, contractors, and agents timely renew their badge and pay the then applicable badge renewal fee which is currently \$15.00 per person.

**ARTICLE 24. CIVIL PENALTIES**

24.01 Assessment

Concessionaire shall be responsible for any civil penalties which may be assessed upon it, or the Trust, or the City, for violations occurring at the Airport by Concessionaire, its officers, invitees, employees, suppliers, contractors, and/or agents. Should a civil penalty assessment be made to Concessionaire, the Trust, or the City as a result of the actions of Concessionaire, its officers, invitees, employees, suppliers, contractors, and/or agents, the Trust shall also charge and bill Concessionaire a processing fee of two hundred fifty dollars (\$250.00) plus the amount of any civil penalty. Concessionaire shall pay Trust such an amount immediately upon receipt of such invoice.

24.01 Indemnification

In this regard, Concessionaire will indemnify, defend and hold the Trust and the City harmless from and against any claims, suits, causes of action, costs and fees, including attorney's fees, arising from or connected with any such civil penalty assessment, or claim of such civil penalty assessment. This provision shall survive the termination of this Agreement.

**ARTICLE 25. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**

25.01 ACDBE Participation

The Trust, as a recipient of federal financial assistance, is required to develop a program aimed at strengthening the participation of Airport Concessions Disadvantaged Business Enterprises ("ACDBE") in the Airport's programs, projects, and facilities.

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or agreement covered by 49 CFR Part 23.

The Concessionaire agrees to include the above statements in any subsequent concession agreement, subcontract, or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## 25.02 ACDBE GOAL

The Airport has an annual non-rental car overall goal of 5.93% for ACDBE participation in Airport concession agreements. This Agreement has an annual ACDBE concession specific participation goal of 20%. Prior to establishing this concession specific goal, Concessionaire mutually agreed with the Trust on the appropriate goal for this concession. Concessionaire understands that it may satisfy any goal specific requirements herein by direct certification as an ACDBE, through an approved joint venture arrangement, or by contracting with a certified ACDBE for the purchase of supplies, goods, or services associated with this Agreement.

In order to be considered as an ACDBE, the Concessionaire or its contractor/subcontractor must be certified as such by the State of Oklahoma, Department of Transportation ("ODOT") under its Uniform Certification Program. Contact information for such certification may be obtained by contacting The State of Oklahoma Department of Transportation website at <http://www.okladot.state.ok.us/> or by phone (405) 522-3379.

## 25.03 Reporting Requirements

An ACDBE concession specific goal or ACDBE participation when no specific goal is established in this Article is based on a percentage of the gross revenues or gross sales of the ACDBE's to the Concessionaire and Concessionaire shall report the gross revenues or gross sales of an ACDBE along with the Concessionaire's gross revenues monthly/annually in writing to the Director or his designated representative for this concession.

Concessionaire will be required to submit the following information:

- i. Documentation that the ACDBE participant(s) are properly certified with ODOT.
- ii. The names and addresses of ACDBE companies and/or suppliers that will participate in the concession.
- iii. A copy of an agreement(s) with ACDBE participant(s).
- iv. A description of the type of business or businesses that ACDBE participant will operate or goods or services to be provided to Concessionaire by the ACDBE participant.
- v. The dollars paid to an ACDBE, or the gross revenues or gross payments made for the participation of each ACDBE firm participating in this Agreement.
- vi. Information on the estimated investment required on the part of the ACDBE and any unusual management or financial arrangements between the Concessionaire and ACDBE.
- vii. Information on the estimated gross receipts and net profit to be earned by the ACDBE.
- viii. Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal.
- ix. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment.
- x. If the contract goal stated above is not met for each year of the Agreement, or if there is no stated concession specific goal, evidence of good faith efforts.

#### 25.04 Monitoring and Good Faith Efforts – Specific Goal

The Concessionaire shall make good faith efforts, as required in Part 23 and defined in 49 CFR Part 26, Appendix A, to meet the concession specific goal for ACDBE participation in the performance of this concession. The Trust reserves the right to implement monitoring and enforcement mechanisms to ensure the Concessionaire's compliance with 49 CFR Part 23. Concessionaire must make reasonable efforts to provide any requested documents to assist the Trust in its enforcement and monitoring efforts. At any time, a Concessionaire fails to reach its contractually required goal, said Concessionaire will be required to substantiate its good faith efforts to return to compliance. These reports will be required on a quarterly basis until compliance is achieved or until it is determined that the Concessionaire's efforts are insufficient.

#### 25.05 Good Faith Efforts When Terminating or Substituting an ACDBE

Good Faith Efforts when terminating or substituting an ACDBE sub-concessionaire. Concessionaire shall make good faith efforts to replace or to substitute an ACDBE sub-concessionaire that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE to the extent needed to meet any concession specific goal. Concessionaire must give five (5) days prior written notice to the ACDBE sub-concession and to Trust of its intent to request to terminate and/or substitute and the reason for the request before such termination and/or substitution is effective. The Concessionaire must give the ACDBE sub-concessionaire at least five (5) days to respond to the Concessionaire's notice if the ACDBE objects with the termination or substitution. Such a response by the ACDBE shall be provided to the Concessionaire and the Trust. Trust shall then have five (5) days to approve or to deny the Concessionaire's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the Trust may provide a response period shorter than five (5) days. No termination or substitution of an ACDBE shall be effective until approved by the Trust.

Concessionaire's good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE shall include reasonable efforts in a timely manner to find another ACDBE to perform at least the same amount of work under the agreement as the ACDBE that was terminated, to the extent needed to meet the agreement goal that the Trust established for the procurement. The good faith efforts shall be documented by the Concessionaire. If the Trust requests documentation from the Concessionaire under this provision, the Concessionaire shall submit the documentation to Trust within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the Concessionaire, and the Trust shall provide a written determination to the Concessionaire stating whether or not good faith efforts have been demonstrated.

#### 25.06 Failure to Comply

Concessionaire further understands that failure to cooperate in good faith with these provisions may result in:

- A. Suspension or debarment pursuant to 49 CFR Part 23 and 2 CFR parts 180 and 1200;
- B. Enforcement action pursuant to 49 CFR Part 31;
- C. Prosecution pursuant to 18 USC § 1001; or
- D. Termination of this Agreement as provided in this Agreement.

## **ARTICLE 26. GENERAL CONDITIONS**

### **26.01 Notices**

Notices to the Trust or Concessionaire pursuant to the provisions hereof shall be sufficient if sent by: (a) registered or certified mail, return receipt requested, postage prepaid, and deemed received on the third business day after the date mailed if recipient refused proper delivery; (b) a nationally recognized overnight courier (receipt requested) and deemed received the next business day following the date it was sent if the recipient refused proper delivery; (c) electronic mail and deemed received on the date sent if sent during normal business hours of the recipient and on the next business day if sent after normal business hours of the recipient; or (d) hand delivered to:

For the Trust:	Oklahoma City Airport Trust Will Rogers World Airport 7100 Terminal Drive, Unit 937 Oklahoma City, Oklahoma, 73159-0937 Telephone: (405) 316-3311
For the Concessionaire:	Concourse Communications Illinois, LLC 200 West Madison Street, Suite 2810 Chicago, IL, 60606 c/o Boingo Wireless, Inc. 10960 Wilshire Blvd., 23 <sup>rd</sup> floor Los Angeles, CA 90024 Telephone: 310-586-5180 Email: <a href="mailto:Legalnotices@boingo.com">Legalnotices@boingo.com</a>

A party may designate a change to the physical address by written notice given to the other party in accordance with this paragraph 26.01.

Unless otherwise stated herein, notice to each party shall be sufficient and deemed received on the third business day if sent by U.S. Postal Service regular mail, postage prepaid, to the address listed herein whether accepted, or if hand delivered. Bills, statements, and other communication to Concessionaire or Trust may be through telephone or sent through the U.S. Postal Service regular delivery, or electronic mail.

### **26.02 Non-Waiver**

The waiver by Trust of any breach of the Concessionaire of any term, covenant, provision, or condition hereof shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, term, provision, or condition hereof, nor shall any forbearance by the non-breaching party to seek a remedy for any breach by the breaching party be a waiver by the non-breaching party of its rights and remedies with respect to such or any subsequent breach of the same or with respect to any other breach.

### **26.03 Binding Effect**

This Agreement shall be binding upon the parties and their respective successors and assigns as of the Effective Date.

26.04 Severability

In the event any terms, covenants, conditions, or provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term, covenant, condition, or provision hereof.

26.05 Entire Agreement; Modification Hereof

This Agreement (including the Exhibits hereto) expresses the entire understanding of Trust and the Concessionaire concerning the Agreement at the Airport and all agreements of Trust and of Concessionaire with each other, and neither Trust nor Concessionaire has made or shall be bound by any agreement or any representation to the other concerning the Agreement which is not expressly set forth in this Agreement (including the Exhibits hereto). This Agreement (including the Exhibits hereto) may be modified only by a written agreement of subsequent date hereto signed by Trust and Concessionaire.

26.06 Execution of Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

26.07 Effect of Saturdays, Sundays, and Legal Holidays

Whenever this Agreement requires any action to be taken on a Sunday, a Saturday, or a legal holiday, such action shall be taken on the first business day occurring thereafter in the place where the action is to be taken. Whenever in this Agreement the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on Sunday, a Saturday, or a legal holiday recognized by the City, such time shall continue to run until 11:59 p.m. on the next succeeding business day.

26.08 Descriptive Headings: Table of Contents

The descriptive headings of the sections of this Agreement and any table of contents annexed thereto or copies hereof are inserted or annexed for convenience of reference only and do not constitute a part of this Agreement, and shall not affect the meaning, construction, interpretation, or effect of this Agreement.

26.09 Construction and Enforcement

This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. Whenever in this Agreement it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.

26.10 Venue

The parties acknowledge and agree that in the event of any dispute or disagreement that necessitates court intervention, the venue for all litigation shall be the District Court of Oklahoma County, Oklahoma.

26.11 Construction of Agreement

In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

26.12 Recitals Contractual in Nature

The parties acknowledge and agree that the recitals as contained hereinabove in this Agreement are contractual in nature and binding on the parties.

26.13 Holding Over

If Concessionaire shall hold over without the written consent of Trust, by and through the Director and remain in possession of the Airport premises after the expiration of the term specified herein, such possession by Concessionaire shall be deemed to be merely a month-to-month tenancy for up to six (6) months from the expiration date, terminable earlier at any time by either party upon thirty (30) day written notice, party. During any such month-to-month tenancy, for a holdover not consented to by the Trust, Concessionaire shall promptly pay at a rate of 125% of the total monthly rentals, fees and charges. All other provisions of this Agreement shall apply to said month-to-month tenancy. A holdover agreed to by the parties shall be at the terms set forth herein unless otherwise agreed upon by the parties at the time of holdover.

26.14 Conflicts

If there is a conflict between any provision within the Agreement or any Exhibit, then the language contained in any article, paragraph or section with the Agreement shall govern and control over any conflicting language, term, or provisions in any Exhibit.

26.15 Surrender of the Airport Premises

Except as otherwise expressly provided in this Agreement, at the expiration or sooner termination of this Agreement, or any extension hereof, Concessionaire agrees to surrender possession of Airport premises peacefully and promptly to Trust in as good condition as existed at the Effective Date of this Agreement, ordinary wear, tear and obsolescence only excepted.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands to this Agreement as of the Effective Date stated above.

**Concourse Communications Illinois, LLC,  
CONCESSIONAIRE**

DocuSigned by:  
*Peter Hovenier*  
DED1FAC294BC421...  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Peter Hovenier  
Printed Name

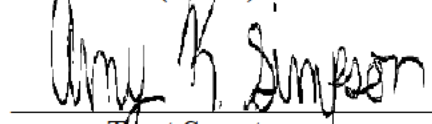
\_\_\_\_\_  
CFO  
Title

**APPROVAL RECOMMENDED:**

  
\_\_\_\_\_  
Director of Airports

**APPROVED** by the Oklahoma City Airport Trust and signed by the Chairman this 25TH day of JANUARY 2024.

**ATTEST: (SEAL)**

  
\_\_\_\_\_  
Trust Secretary



**OKLAHOMA CITY AIRPORT TRUST**

  
\_\_\_\_\_  
Chairman


**REVIEWED** for form and legality.



\_\_\_\_\_  
Assistant Municipal Counselor/  
Attorney for the Trust



**EXHIBIT A – FORM OF CERTIFICATE OF INSURANCE**

 <b>OKLAHOMA CITY AIRPORT TRUST CERTIFICATE OF INSURANCE</b>		PROJECT OR CONTRACT NUMBER: _____		
ISSUE DATE: _____				
PRODUCER  ADDRESS		NOTE: THIS CERTIFICATE CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER, NOR DOES IT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY POLICIES BELOW, EXCEPT AS SHOWN BELOW.		
		<b>COMPANIES AFFORDING COVERAGE</b>		
INSURED  ADDRESS		COMPANY A LETTER		
		COMPANY B LETTER		
		COMPANY C LETTER		
		COMPANY D LETTER		
		COMPANY E LETTER		
COVERAGES: THIS IS TO CERTIFY THAT THE INSURANCE POLICIES LISTED BELOW HAVE BEEN ISSUED TO THE INSURED, FOR THE POLICY PERIOD INDICATED HEREIN. THE POLICIES SHOWN IN THIS CERTIFICATE ARE DEEMED PRIMARY TO ANY INSURANCE CARRIED BY THE INSURED FOR THE SPECIFIC LOCATION, PROJECT OR EVENT.				
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS
<b>GENERAL LIABILITY</b> _____ OCCURRENCE _____ CLAIMS MADE AND TAIL COVERAGE _____ CONTRACTUAL LIABILITY _____ Ded/SIR \$ _____				GENERAL AGGREGATE BODILY INJURY (Per Person) PROPERTY DAMAGE (Per Accident) EACH OCCURRENCE MEDICAL EXPENSES (Any One (1) Person) COMBINED SINGLE LIMIT
<b>AUTOMOBILE LIABILITY</b> _____ ANY AUTO _____ ALL OWNED AUTOS _____ SCHEDULED AUTOS _____ HIRED AUTOS _____ NON-OWNED AUTOS				BODILY INJURY (Per Person) BODILY INJURY (Per Accident) PROPERTY DAMAGE
<b>WORKER'S COMPENSATION AND EMPLOYER LIABILITY</b> Standard Compliance for the State of Oklahoma				EACH ACCIDENT DISEASE - POLICY LIMIT DISEASE - EACH EMPLOYEE
<b>VALUABLE PAPERS INSURANCE</b> (If required by Contract)				
<b>EXCESS LIABILITY</b> (If required by Contract)				EACH OCCURRENCE AGGREGATE
<b>OTHER</b> (If required by Contract)				
<b>DESCRIPTION OF OPERATION(S)/VEHICLES/SPECIAL ITEMS</b> THE CITY OF OKLAHOMA CITY AND THE OKLAHOMA CITY AIRPORT TRUST ARE ADDITIONAL INSURED, WITH RESPECT TO LIABILITY. CONTRACTUAL LIABILITY INCLUDED.				
<b>CERTIFICATE HOLDER(S)</b> The City of Oklahoma City and The Oklahoma City Airport Trust 7100 Terminal Drive, Unit 937 Oklahoma City, OK 73159-0937		<b>CANCELLATION</b> IT IS AGREED THAT NONE OF THESE POLICIES WILL BE CANCELLED OR CHANGED EXCEPT IN THE APPLICATION OF THE AGGREGATE LIABILITY LIMIT PROVISIONS, SO AS TO AFFECT THE INSURANCE DESCRIBED IN THIS CERTIFICATE UNTIL AFTER 30 DAYS PRIOR WRITTEN NOTICE OF SUCH CANCELLATION, REDUCTION IN COVERAGES, OR NONRENEWAL FOR NONPAYMENT OF PREMIUM HAS BEEN DELIVERED TO THE CERTIFICATE HOLDER.		
		AUTHORIZED REPRESENTATIVE SIGNATURE TELEPHONE NUMBER ( )		

**CERTIFICATE OF INSURANCE EXPLANATION OF  
THE CITY OF OKLAHOMA CITY AND PARTICIPATING TRUST(S)**

The Certificate Holder(s) require the use of this Certificate of Insurance as evidence that the insurance requirements of the contract have been complied with and will continue as long as the contract is in force. The City and/or Trust rely on this Certificate as proof of compliance with the insurance requirements agreed upon. The City and/or Trust must be advised of any cancellation or nonrenewal of the insurance coverages required or any reduction in the coverages provided, in compliance with the contract, as shown in the Certificate of Insurance. Thirty (30) days prior written notice of cancellation, reduction in coverages (other than an aggregate limit provision reduction) or nonrenewal for nonpayment of premium must be provided to the City and/or Trust so that the City and/or Trust may take appropriate action.

Many certificates of insurance are received by the City and its Trusts and many contain statements claiming that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example is "Should any of the above described policies be canceled before the expiration date hereof, the issuing company will endeavor to mail (number of days) days written notice to the named holder, but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives." This is unacceptable.

The City and Trust have the right of notice of cancellation, nonrenewal and reduction of coverage, as a requirement in the contract. The City and Trust rely upon the Certificate of Insurance as evidence of contract compliance.

The authorization requirement (that the authorized representative signing the Certificate of Insurance provide written acknowledgment by the insurance company or companies to the City and/or Trust) is written proof that the person signing the Certificate is legally authorized by the insurance company or companies to obligate them, as shown in the Certificate.

The City and/or Trust must have positive evidence in the form of the Certificate of Insurance that the insurance requirements of the contract have been met and will continue to be met without interruption during the term of the contract. Neither the named insured nor its insurance company may attach any endorsement(s) or rider(s) to the insurance policy or this Insurance Certificate that change or modify the insurance requirements, obligations, or additional insured status of the Trust or City in any manner. To the extent the insurance policy or any endorsement or rider is inconsistent with the contractual insurance obligations, the contractual agreement between the insured and the Trust and/or City shall control.

No activity will begin until the insurance Certificate is received. Your cooperation in providing the City and/or Trust with acceptable evidence of insurance compliance will prevent confusion and delay.