

**FIRST AMENDMENT TO LICENSE AND OPERATING AGREEMENT
FOR A WI-FI SYSTEM
BETWEEN
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND
INMOTION WIRELESS INC.**

This First Amendment (the "Amendment") to the License and Operating Agreement for a Wi-Fi System dated July 23, 2014 between the Massachusetts Bay Transportation Authority (the "MBTA") and InMotion Wireless Inc. (the "Licensee") is made effective as of February __, 2017 (the "Effective Date").

Recitals

- A. WHEREAS, MBTA and Licensee are parties to that certain License and Operating Agreement for a Wi-Fi System dated July 23, 2014 (the "Agreement"); and
- B. WHEREAS, MBTA and Licensee have agreed to certain amendments to the Agreement and to clarify certain matters with respect thereto, subject to the terms and conditions set forth in this Amendment.

Agreement

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, MBTA and Licensee hereby amend the Agreement as follows:

- 1. Definitions. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.
- 2. Use. The following phrase shall be inserted after the second use of the word "Infrastructure" in Section 1.3 (a) (ii):

"...in the MBTA Commuter Rail Rights of Way or outside the Commuter Rail Rights of Way, provided, that Licensee obtains all necessary rights from third parties owning land and/or equipment adjacent to the MBTA Commuter Rail Rights of Way and conditionally assigns these rights to the MBTA, which conditional assignment is automatically effective upon an Event of Default."

- 3. Term. Section 2. of the Agreement is hereby deleted in its entirety and replaced with the following section:

“2. Term.

The term (“Term”) of this Agreement shall extend for a period of twenty-four (24) years commencing on the date of the last execution of this Agreement (the “Commencement Date”). The first four (4) years of the Term (the “Installation Term”) shall be used as an installation period for build-out and startup. After the Installation Term, the remaining Term shall be known as the “Operating Term” whether or not Licensee has completed its installation during the Installation Term.

4. Revenue Share. Section 3.1 of the Agreement is hereby deleted in its entirety and replaced with the following section:

“3.1 Revenue Share.

After Licensee has recovered Licensee’s documented and commercially reasonable development costs and expenses attributable to building out the Wi-Fi Network, Licensee shall share with the MBTA seven and one half percent (7.5%) of the net revenue proceeds, as defined herein, from all revenue sources in connection with the Wi-Fi Network and Infrastructure, including without limitation, revenue generated from sublicenses or any users of the Infrastructure and/or third party sponsorship of the Wi-Fi Network, if any. Net Revenue Proceeds shall mean all revenue, less Licensee’s capital expenses and operating expenses, as defined herein. Operating Expenses shall include, but not be limited to, direct payroll expenses and other common expenses to maintain the Wi-Fi Network; however, Operating Expenses shall not include any initial capital expenses to construct and implement the Wi-Fi Network or continuing capital expenses to maintain the Wi-Fi Network. Capital Expenses shall mean the funds used to acquire, build, upgrade and maintain the Wi-Fi System. Licensee must provide annual statements of Licensee’s Operating Expenses to the MBTA no later than January 15 of each calendar year. To the extent the MBTA is due the revenue share of seven and one half percent (7.5%) of Net Revenue Proceeds, then said revenue share payment shall be sent to the MBTA no later than January 15 of each calendar year. In the event the MBTA seeks to audit Operating Expenses associated with the operation of the Wi-Fi Network, then the MBTA shall send notice to Licensee no later than March 1 of each calendar year. Additionally, commencing one (1) year from the completion of the Wi-Fi Network, Licensee shall provide the MBTA with quarterly financial statements for the rest of the Term.”

5. Construction Progress Updates. The following Section 5.3.14 shall be added to the Agreement:

“5.3.14 *Construction Progress Updates*. Licensee must provide the MBTA with monthly detailed progress updates, including, but not limited to, the status and progress of the construction, installation and implementation of the Wi-Fi Network.”

6. Non-Disturbance and Attornment. The following Section 19.5 shall be added to the Agreement:

“19.5 Non-Disturbance and Attornment.

(a.) As a condition precedent to triggering Section 19.5 (ii.), the MBTA must review and approve in writing, in the MBTA’s sole discretion, any and all executed sublicense agreements with Licensee. If the MBTA does not approve a sublicense agreement pursuant to this section, then Section 19.5 (b.) shall not apply to that unapproved sublicense agreement. If the MBTA does approve of a sublicense agreement in writing, then the condition precedent requirement stated herein shall be satisfied for that particular sublicense agreement and Section 19.5 (ii) shall be applicable to that approved sublicense agreement.

(ii.) In the event that this Agreement is terminated prior to the end of the Term, then the MBTA will make a commercially reasonable effort to enter into a license or agreement with a replacement Wi-Fi system operator (the “Replacement Agreement”). The MBTA shall not be obligated to provide and/or perform any services or actions for the sublicensee, regardless of what any sublicense agreement may otherwise state during the period between the termination of the Agreement prior to the end of the Term and the effective date of the Replacement Agreement or for the balance of the term of any sublicense agreement in the event the MBTA is unable to enter into a Replacement Agreement. In the event of such termination, then the sublicensee will not be disturbed and the MBTA will assume the obligations of the sublicensor under the sublicense and the sublicense shall then automatically become a direct license between the MBTA and the sublicensee only so long as the sublicensee is not in default in the performance of any of the terms and conditions of its sublicense agreement with Licensee and is in full compliance with the terms specific to Sections 6, 9, 10.2 and 12 of this Agreement and any future amendments thereto that do not materially change the sublicensee’s rights or obligations or to which the sublicensee has already consented

thereto. The sublicensee shall be bound to the MBTA and the MBTA shall be bound to the sublicensee under all of the terms and conditions of the sublicense agreement for the balance of the term of the sublicense agreement then remaining and the sublicensee shall attorn to the MBTA as its sublandlord immediately upon the termination of this Agreement. Any such attornment shall be self-operative and shall not require the execution of any further instrument on the part of MBTA, Licensee or sublicensee. If such an attornment shall occur, the sublicensee shall immediately commence paying rent and any other related charges due under the sublicense agreement directly to the MBTA. Licensee and the MBTA shall have the obligation to provide written notice to any sublicensee upon the termination of this Agreement. In the event the MBTA enters into a license or agreement with a replacement Wi-Fi system operator, then that agreement shall be subject to sublicensee's rights and interests under the sublicense agreement and the MBTA shall have the right in its sole discretion to assign the sublicense to the new Wi-Fi system operator."

7. Indemnification. Section 9.1 of the Agreement is hereby deleted in its entirety and replaced with the following section:

"9.1 Indemnification.

Except if the Cause of Action, defined below, is solely the result of the MBTA's and/or the National Railroad Passenger Corporation's ("Amtrak") gross negligence and/or willful misconduct, Licensee shall indemnify, defend and save the MBTA and/or Amtrak harmless from and against any and all liabilities, losses, damages (including, but not limited to, property damages and personal injuries, including death), costs, expenses (including reasonable attorney's expenses and fees), cause of action, suits, claims, cross claims, demands or judgments of any nature whatsoever, including without limitation, those related to Hazardous Material (as hereinafter defined) that may be imposed upon, incurred by, or asserted against the MBTA and/or Amtrak (collectively "Cause of Action"), arising from this Agreement, including but not limited to any liability arising by reason of any of the following occurrences:

9.1.1 The activities of Licensee pursuant to this Agreement or the exercise by Licensee of any rights or privileges granted in this Agreement; and/or

9.1.2 The placement or accidental release of any Hazardous Materials onto the Premises or the Property or onto other nearby non-MBTA property by Licensee or the employees, agents, contractors or consultants of Licensee or a provider, or by the employees, agents, or consultant of Licensee's contractors or subcontractors

or by anyone else present on the Premises or Property (exclusive of employees of the MBTA and/or Amtrak) with Licensee's express or implied permission (collectively "Licensee Entities", individually a "Licensee Entity"); and/or

9.1.3 Any failure of Licensee to perform or comply with any of the terms of this Agreement, or any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof related to this Agreement; and/or

9.1.4 The discovery of any preexisting Hazardous Materials on the Premises or the Property, or onto other nearby non-MBTA property by a Licensee Entity that is the result of digging in the earth. It shall not be considered "digging in the earth" to drill holes within the tunnels of the Commuter Rail System and/or into the platforms; and/or

9.1.5 Libel, slander, defamation or other similar claim made with respect to Licensee's activities.

In clarification of the above language of indemnification, and not in limitation of it, Licensee shall indemnify, defend and save the MBTA and/or Amtrak harmless from and against any and all Causes of Action related to the injury, illness or death of any employee of Licensee.

As used in this Section 9, expenses shall include, but not be limited to, fines, costs associated with administrative and judicial proceedings, reasonable attorney's fees, costs from any lien on any portion of the Premises or the Property, costs of any remedial actions, and business interruption resulting from any remediation or any executive, administrative or judicial order. The indemnification provisions herein shall survive the termination or expiration of this Agreement for whatever reason and shall survive until the applicable statutes of limitation relating to the liabilities and the Indemnified Claims shall have run."

8. Claims. Section 9.4 of the Agreement is hereby deleted in its entirety and replaced with the following section:

"9.4 Claims.

Licensee shall be notified, in writing, by the MBTA and/or Amtrak within a reasonable time from the MBTA's and/or Amtrak's receipt of the assertion of any claim against the MBTA and/or Amtrak that Licensee has agreed to indemnify under this Agreement (the "Indemnified Claim"). Licensee shall bear the entire cost of defending the Indemnified Claim and/or the cost of conducting any response action, including, without limitation, those required by Chapter 21E of Massachusetts General Laws ("Chapter 21E") and the MCP (as defined in Section

14.1) and shall have control, in cooperation with the MBTA and/or Amtrak, of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA and/or Amtrak are fully indemnified by Licensee and provided further that the settlement or compromise shall not include the admission of guilt (or a comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by Licensee on behalf of the MBTA and/or Amtrak or any other action that would materially prejudice the rights of the MBTA and/or Amtrak without the MBTA's and/or Amtrak's express prior written approval. The MBTA and/or Amtrak shall cooperate fully with Licensee in the defense of any Indemnified Claim or the conduct of any other response action.

If any response action due to the presence of Hazardous Materials or the threat of release of Hazardous Materials onto the Premises or onto other property of the MBTA adjacent to the Premises, is performed by Licensee, the response action shall be performed in accordance with the requirements of Section 14.2 of this Agreement.”

9. Insurance. Section 10.2 of the Agreement is hereby deleted in its entirety and replaced with the following section:

“10.2 Liability Insurance.

Throughout the Term, Licensee shall maintain for the mutual benefit of the MBTA, general public liability insurance for damage to property and for damages arising from personal injury or death, with limits as shown below for events occurring upon, in or about or adjacent to the Premises or the Property or occurring as a result of Licensee's use of the Premises or the Property (including use by anyone on the Premises or the Property with the express or implied permission of Licensee). The MBTA, Designees and National Railroad Passenger Corporation (“Amtrak”) shall be named additional insureds on these public liability policies and these policies shall be written on an occurrence basis (rather than on a claims made basis) subject to the following:

(a) Commercial General Liability Insurance

Commercial General Liability Insurance insuring the Licensee, the MBTA, Designees, Amtrak, the Premises, the Property and all activities allowed hereunder as well as Licensee's indemnification obligations contained in Section 9 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per

occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. Umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA, Designees and Amtrak, as an additional insured.

(b) Worker's Compensation Insurance

Insuring all persons employed by Licensee in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA or Designees, the Premises or the Property with limits of liability of not less than those required by Massachusetts General Laws Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA and Designees. Each of Licensee's subcontractors and consultants shall have similar policies covering their employees.

(c) Railroad Protective Insurance

During periods of construction, maintenance, repair, replacement or removal, if required by the MBTA or by Designees, railroad protective insurance for some portions of the Premises and the Property with the MBTA, Amtrak and/or Designees as named insureds with limits of not less than Five Million Dollars (\$5,000,000.00) for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, and a total of \$10,000,000.00 for all damages arising out of bodily injury to or death of two or more persons in any one accident, and regular protective property damage liability insurance providing for a limit of not less than Ten Million Dollars (\$10,000,000.00) for all damages arising out of injury to or destruction of property during the policy period. Amtrak and Designees shall be provided with an original policy of any required Railroad Protective Liability Insurance and the MBTA shall be provided with a certificate of insurance.

(d) Automobile Liability Insurance

Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Licensee and its consultants and contractors that are used in the activities permitted hereunder.

All insurance required to be maintained hereunder shall be obtained through valid and enforceable policies which shall be primary and non-contributory to any coverage maintained by the MBTA, issued by insurers of recognized

responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of B+ or better, or if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the MBTA, or such lesser rating as the MBTA may approve, with such approval to not be unreasonably withheld or denied. All such required insurance shall, not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the Federal Terrorism Risk Insurance Act of 2002. Upon the License Commencement Date, and thereafter not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this Section, binders (and duplicate originals when available) of the policies shall be delivered by Licensee to the MBTA. Licensee shall also deliver to the MBTA evidence satisfactory to the MBTA of the payment of all premiums as they become due. Licensee shall be responsible for seeing that its contractors and consultants are properly covered by insurance.

In the event of the cancellation of any policy during the Term, or the failure to keep in effect the insurance required by this section, the MBTA may, without further notice and at its option, procure or renew such insurance on the account of Licensee. Licensee agrees to pay the MBTA for any such expense, with interest thereon at a rate equal to the "Prime Rate" of the largest bank then operating in Boston, MA plus eight percent (8%) annually (or the highest amount legally permissible, to the extent this rate is not permitted by law) (the "Default Rate") from the date of the expenditure by the MBTA as a License fee.

At any time, but not more than once every two years, the MBTA may require the insurance limits herein to be increased so long as such increases do not exceed the highest coverage required in the MBTA's then standard License for Entry."

10. Construction Completion Schedule. Licensee shall strictly comply with the Construction Completion Schedule attached hereto as Exhibit A and incorporated herein by reference. It shall constitute an Event of Default if Licensee does not strictly comply with the dates listed in Exhibit A hereto. Additionally, commencing on August 18, 2018, Licensee must provide a fully operational Wi-Fi Network and the Wi-Fi Network must provide continuous Wi-Fi service to the Rail Cars. Any failure by Licensee to provide continuous Wi-Fi service by August 18, 2018 to the Rail Cars shall constitute an Event of Default. The MBTA and Licensee shall communicate on a regular basis concerning the Construction Completion Schedule; however, should the MBTA be responsible for any delays associated with Licensee being able to strictly comply with the Construction

Completion Schedule (the MBTA shall determine whether there has been a delay caused by the MBTA in its sole and absolute discretion), then the MBTA and Licensee shall agree on an extension of the affected date or dates specified in the Construction Completion Schedule.”

10. Conforming Modifications. All references in the Agreement to the “Agreement” are hereby modified and amended to mean and refer to the Agreement as amended and modified by this Amendment.
11. Counterparts. This Amendment may be executed in any number of separate counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
12. Governing Law. This Amendment shall be governed by the laws of the Commonwealth of Massachusetts.
13. Captions. The captions of this Amendment are for convenience only and shall not be used in interpreting the terms of this Amendment.
14. Successors. This Amendment shall be binding upon and inure to the benefit of MBTA and Licensee and their respective successors and assigns, subject to the limitations and restrictions contained in the Agreement.
15. Ratification. Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its original terms.

MBTA:

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,

By: 
Name: Brian Shortleeve
Title: General Manager

LICENSEE:

INMOTION WIRELESS INC.,

By: 
Name: Dimitrios Lalos
Title: President & CEO

Approved as to form:

By: 
Lauren D. Armstrong, Esq.
Deputy General Counsel, MassDOT and MBTA

Exhibit A

Line Name	Total Poles	Design Submitted to MBTA	NEPA/SHPO Complete	Construction Start	Construction Complete	Line Go Live	North		South		South Go Live
							Wayside Complete	Wayside Complete	North Go Live	South Go Live	
Lowell Line	25	8/13/17	8/13/17	9/17/17	10/26/17	11/9/17					
Fitchburg	42	8/13/17	8/13/17	10/12/17	12/17/17	12/31/17					
Haverhill	26	8/20/17	8/20/17	10/27/17	12/8/17	12/22/17					
Newburyport	29	8/20/17	8/20/17	12/17/17	3/13/18	3/27/18					
Rockport	18	8/27/17	8/27/17	12/27/17	4/13/18	4/27/18	4/27/18				5/12/18
Worcester	45	9/13/17	9/13/17	3/13/18	5/24/18	6/7/18					
Needham	8	9/13/17	9/13/17	3/13/18	3/24/18	4/7/18					
Stoughton	5	9/13/17	9/13/17	3/27/18	4/2/18	4/16/18					
Forge Park	26	9/13/17	9/13/17	4/4/18	5/15/18	5/29/18					
Middleboro	30	9/19/17	9/19/17	5/9/18	6/26/18	7/10/18					
Kingston	21	9/19/17	9/19/17	5/16/18	6/18/18	7/2/18					
Greenbush	20	9/19/17	9/19/17	6/13/18	7/15/18	7/29/18					
Providence	33	11/11/17	11/11/17	6/13/18	8/4/18	8/18/18					
									8/6/18		8/18/18

LICENSE AND OPERATING AGREEMENT

for a

WI-FI SYSTEM

Between

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

and

INMOTION WIRELESS INC.

___, 2014

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EXHIBIT A – Premises

EXHIBIT B – Specifications of Wi-Fi Network

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EXHIBIT E – MBTA Logo Guidelines

EXHIBIT F – MBTA Advertising Guidelines

LICENSE AND OPERATING AGREEMENT

This License and Operating Agreement ("Agreement") is hereby made and entered into this _____ day of _____, 2014 by and between the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts having a usual place of business at Ten Park Plaza, Boston, Massachusetts 02116 (the "MBTA") and inMOTION Wireless Inc., a Delaware corporation having a usual place of business at 655 West Grand Avenue, Suite 300, Elmhurst, Illinois 60126 ("Licensee").

WHEREAS, the MBTA owns, and operates through a private operator, a commuter rail system in the Commonwealth of Massachusetts which includes 13 active routes, 134 stations, and approximately 394 miles of service (the "Commuter Rail System");

WHEREAS, the MBTA owns, and operates through private operators, a commuter boat system in the Commonwealth of Massachusetts which includes 3 active routes, 6 water service terminals and approximately 38 miles of service (the "Commuter Boat System");

WHEREAS, as part of the Commuter Rail System, the MBTA owns 410 passenger rail coaches (the "Rail Cars") and the Rail Cars are operated by a private operator;

WHEREAS, the Commuter Boat System utilizes 12 ferry boats (the "Ferries"), 2 of which are owned by the MBTA, 10 of which are owned by private operators and all of which are operated by private operators;

WHEREAS, the MBTA desires that the Licensee design, install, operate, and maintain a neutral private dedicated Wi-Fi network which is capable of providing live TV and broadband internet access to the MBTA ridership in the Rail Cars, Ferries, and those stations specifically listed in this Agreement (the "Wi-Fi Network");

WHEREAS, Licensee may develop, construct and maintain communication infrastructure including communication towers and transport (either microwave or fiber optics) (the "Infrastructure") on the MBTA Commuter Rail Rights of Way to support the Wi-Fi Network and for Licensee's use or the use of third party communication providers sublicensed by Licensee;

WHEREAS, the MBTA may choose to own the Wi-Fi Network and Infrastructure at the end of the term of the Agreement;

WHEREAS, Licensee desires to install, operate, and maintain the Wi-Fi Network and the Infrastructure;

WHEREAS, the MBTA has agreed to make available the Commuter Boat System and Commuter Rail System for Licensee to install the Wi-Fi Network and Infrastructure;

WHEREAS, Licensee has agreed to install the Wi-Fi Network;

WHEREAS, Licensee intends to derive revenue from the Wi-Fi Network and share a portion of such revenue with the MBTA;

NOW THEREFORE, the parties hereto each in consideration of the covenants and promises of the other and each for itself, its successors and assigns, do hereby agree as follows:

1. **Premises and Permitted Use**

1.1 Premises.

The portion of the Commuter Rail System and Commuter Boat System where the Wi-Fi Network and the Infrastructure is to be installed, including without limitation the Rail Cars, the Ferries, North Station, Back Bay Station, South Station and all other Commuter Rail stations and MBTA owned Commuter Rail station parking lots and a certain portion of the MBTA Commuter Rail Right of Way and access thereto as agreed upon by the MBTA and Licensee where Licensee shall install the Wi-Fi Network and Infrastructure (the "Premises"), as shown on Exhibit A, which is attached hereto, and incorporated herein. In the event that during the Term of this Agreement, the MBTA expands service on the Commuter Rail System and/or Commuter Boat System, either party may request that the Premises be expanded based on such expanded service in which case the parties will negotiate such expanded Premises. If the parties agree on terms for such expansion of Premises, then Exhibit A shall be amended to reflect the expanded Premises. The exact locations of the installed Wi-Fi Network on MBTA property and the Infrastructure will be determined by Licensee, subject to approval by the MBTA. Licensee accepts the Premises for its use on an "as is" basis. The MBTA makes no representations about the condition of the Premises and Licensee accepts all risks associated with its being on the Premises and any MBTA property on which the Premises is located, which is adjacent to the Premises or which is utilized to access the Premises (the "Property"), except for any harms to Licensee which are solely the result of the MBTA's gross negligence or willful misconduct. The Licensee acknowledges that it has taken reasonable commercial steps required to satisfy itself that the MBTA has title to the Premises prior to its having executed this Agreement.

The Licensee's use of the Premises and access to the Property is restricted solely to its installing, operating, repairing, replacing and removing, maintaining and upgrading the Wi-Fi Network and Infrastructure as reasonably required so that Licensee can provide the Initial Services (defined below) to the MBTA customers for the use of the Wi-Fi Network and any Additional Services (defined below) that are agreed upon by the MBTA and the Licensee, and to its sublicensing the Infrastructure to third parties.

1.2 Intentionally Omitted.

1.3 Permitted Use.

1.3(a) Use

During the Term (defined below) the MBTA hereby grants to Licensee a license (i) to construct, install, operate, maintain, use, repair and replace a Wi-Fi network to provide MBTA riders use of multimedia, live TV and broadband internet

access on their smartphones, tablets and laptop computers, and/or other devices as technology evolves, for transmission and reception of data and/or video information in a continuous, seamless and (subject to normal operational delays and interruption, customary and usual in the wireless industry) uninterrupted manner during periods when said riders are on the Commuter Rail and Commuter Boats (the "Initial Services") and (ii) to the extent that the Infrastructure is required to support the Wi-Fi Network, to construct, install, operate, maintain, use, repair, replace and sublicense the Infrastructure. Any services in addition to the Initial Services shall constitute "Additional Services."

The Premises shall be used and occupied by the Licensee solely for the Use of the Premises hereinabove defined. Such use shall be in conformance with the terms and condition of this License and with applicable federal, state and local laws, regulations and ordinances, including but not limited to those relating to safety. The Licensee is prohibited from any use of the Premises not specifically permitted under this License without prior written approval of the MBTA, which may be withheld in the MBTA's sole discretion.

1.3(b) Changes to Wi-Fi Network

Licensee may request a change in the type of equipment permitted at any particular approved location and/or may request a change in the permitted use of the Premises to offer Additional Services. All requests for changes to the Initial Services are subject to the prior written approval of the MBTA, which may be withheld in its sole discretion. Licensee is encouraged to suggest changes to update, modernize and promote the highest and best use for each approved location in order to maximize the benefits to the MBTA's customers and the MBTA's and Licensee's revenues from this License.

Upon acceptance of any Additional Services by the MBTA, such services shall be considered a part of the Wi-Fi Network for all purposes under this Agreement.

1.3(c) Exclusivity of Wi-Fi Network

The MBTA agrees that it will not during the Term grant any other license, lease or easement to any other third party to build a Wi-Fi network in the Commuter Rail System and/or Commuter Boat System to provide live TV and/or broadband internet access services to the MBTA ridership while said riders are within the Commuter Rail System and/or Commuter Boat System unless permitted pursuant to Section 13.

1.4 Wi-Fi Network.

1.4(a) Wi-Fi Network Specifications

The Wi-Fi Network, which shall include the equipment necessary to operate the Wi-Fi Network shall be built in a manner consistent with the conceptual specifications and projected costs set forth in Exhibit B, which is attached hereto and incorporated herein and in a manner that will permit

the MBTA to own and operate the Wi-Fi Network (exclusive of any proprietary software, video compression/decompression systems, advertising servers, control systems, billing platforms and/or smartphone/tablet/laptop applications belonging to Licensee) at the end of the Term if it so elects pursuant to Section 8. The parties shall amend this Agreement to reflect a revised Exhibit B with the final design specifications of the Wi-Fi Network as approved by the MBTA in accordance with Section 5.

1.4(b) Wi-Fi Network Commuter Services Plan

MBTA commuters shall be permitted to use the Wi-Fi network free of charge for up to 300 MB per month. Licensee shall offer premier subscription plans for a fee for those commuters who wish to use more than 300 MB per month. Fees for such premier services and for any other premium features offered by Licensee to commuters, such as mobile applications, shall be subject to (i) escalation and (ii) MBTA approval, not to be unreasonably withheld. Upon the MBTA's reasonable request or with the MBTA's reasonable approval, Licensee shall change the amount of MB per month above which it shall offer premier subscription plans for a fee to reflect improvements in data compression technology.

1.5 Legal Uses.

The rights granted pursuant to this Agreement are subject to all the terms and conditions hereinafter provided. During the Term, Licensee may use the Wi-Fi Network and Infrastructure only for the usual legal purposes that an entity that is in the business of providing facilities for broadband internet access for the transmission and/or reception data and/or video information would use such Wi-Fi Network and Infrastructure and may enter the Premises and Property only in connection with work related to the Wi-Fi Network and Infrastructure and other uses specifically permitted pursuant to this Agreement. Licensee may sublicense excess space created by Licensee on the Infrastructure to third party communication providers without further consent of MBTA, provided that Licensee remains primarily liable for all of its obligations under this Agreement. The MBTA agrees that Licensee's sublicensees of the Infrastructure shall be allowed to enter the Property and Premises to develop, construct and maintain the third party attachments to the Infrastructure so long as each such sublicensee obtains a License of Entry from the MBTA for such access. The MBTA agrees to reasonably cooperate with Licensee in obtaining all necessary permits, environmental studies, engineering studies, land surveys and title search reports necessary for the installation of the Infrastructure or any third party collocation attachment to the Infrastructure. Licensee shall share any revenue it receives from such sublicensees with the MBTA pursuant to Section 3.1 of this Agreement.

1.6 Marketing and Ongoing Research.

1.6.1 Technological Improvements

Licensee shall stay current on technological improvements and market demand in

order to determine when, in its reasonable commercial judgment, new services of a type that would be included either in the Initial Services or in the Additional Services should be added. Licensee shall report to the MBTA on a regular basis (but not less frequently than annually) on the state of the marketplace, technology, marketing, and suggested new uses. The MBTA shall have the right to request this information from Licensee from time to time (but not more than once per year).

1.6.2 Required Technological Standards

Throughout the Term (defined below), Licensee shall be required to adhere to the following technological standards:

- a) On the date that Licensee launches the Wi-Fi Network and on each date thereafter, Licensee's smart-phone, tablet and laptop application compatibility shall support the three most popular platforms and applicable product upgrades launched within two (2) years of hardware and consumer product availability.
- b) On the date that Licensee launches the Wi-Fi Network and on each date thereafter, Licensee's Wi-Fi access points shall comply with all 802.11 Wi-Fi approved standards and shall offer services to comply within two (2) subsequent generations of launched hardware, both in Access Point (AP) and consumer product launches. Such product upgrades will be deployed within two (2) years of hardware and consumer product availability.
- c) Licensee's backhaul radio link (Base Station network to Rail Car or Ferry) will comply with FCC Rule 47, Part 27 and conform to ITU-R [M.1580-3] standards. Radio will also comply with all approved 4th Generation (4G), Third Generation Partnership Project 2 (3GPP2), Long Term Evolution (LTE), and WiMAX Time Division Duplex (TDD) standards applied over a 10 MHz bandwidth and protocol layers defined by the 802.16 standard. As technology and bit per Hertz efficiencies improve, Licensee's system shall comply with approved industry standards and shall maintain compatibility within two (2) subsequent generations of such standards implementations. Radio products shall be launched after two (2) years of such accepted industry standards have been fully deployed in the Greater Boston area and from the date that Licensee launches the Wi-Fi Network. The above standards for compatibility shall not apply for voice communications as the Initial Services do not include enabling voice communications.
- d) The performance of the in-Rail Car and in-Ferry Wi-Fi Network shall be competitive with that of Wi-Fi networks widely available in the Greater Boston area.

1.6.3 Termination of Exclusivity

If, in the MBTA's reasonable judgment, the Wi-Fi Network fails to meet any of the standards required by Section 1.6.2, the MBTA may terminate the exclusivity provisions of Section 1.3(c) by providing Licensee sixty (60) days prior written notice.

2. Term

The term ("Term") of this Agreement shall extend for a period of twenty-two (22) years commencing on the last execution of this Agreement (the "Commencement Date"). The first two (2) years of the Term (the "Installation Term") shall be used as an installation period for build-out and startup. Year three through Year twenty-two shall be known as the "Operating Term" whether or not Licensee has completed its installation during the Installation Term.

3. Consideration

3.1 Revenue Share.

After Licensee has recovered its development costs and expenses attributable to building out the Wi-Fi Network, Licensee shall share with the MBTA seven and one half percent (7.5%) of the net revenue proceeds from all revenue sources in connection with the Wi-Fi Network and Infrastructure, including without limitation, revenue generated from sublicenses of the Infrastructure and/or third party sponsorship of the Wi-Fi Network, if any. For the purposes of this Agreement, "net revenue proceeds" shall be defined as all revenue, less repayment of capital expenses and operating expenses. Licensee shall provide a report to the MBTA of its net revenue proceeds on a semi-annual basis.

3.2 Benefits.

Licensee shall receive the benefits listed on Exhibit C attached hereto.

3.3 Performance Bonds.

On or before the date on which the MBTA has approved the Construction Plan (as defined in Section 5.3.1), Licensee shall have provided to the MBTA a performance bond or irrevocable letter of credit from a source acceptable to the MBTA in the amount of One Million Dollars (\$1,000,000.00) as security for the complete installation of the Wi-Fi Network ("Installation Bond"). In the event that the installation of the Wi-Fi Network is not complete within two years of the date on which the MBTA has approved the Construction Plan, then the MBTA may collect on the Installation Bond (or draw down on the letter of credit as the case may be). At such time as the installation of the Wi-Fi Network is complete, the Installation Bond shall no longer be required. In addition to the Installation Bond, on or before the date which is twenty (20) months after the effective date of this Agreement, Licensee shall have provided to the MBTA a performance bond or irrevocable letter of credit from a source acceptable to the MBTA, as security for the full and faithful performance by Licensee of all terms, covenants and conditions of this Agreement, in the amount of One Million Dollars

(\$1,000,000.00) ("Performance Bond"). The Performance Bond shall be renewed or replaced as necessary so that a Performance Bond remains in effect without interruption throughout the remainder of the Term. The Performance Bond shall by its terms permit the MBTA to use the Performance Bond for removal costs at the end of the Term or in the event of early termination of this Agreement. The MBTA may decide in its sole discretion whether or not to use the Performance Bond in any circumstance.

The Installation Bond and the Performance Bond must be secured through insurance/bonding companies that are licensed by the Commonwealth of Massachusetts Division of Insurance and having a Best's rating of B+ or better, and must be in a form reasonably acceptable to the MBTA. The bonds shall be held by the MBTA.

3.4 No Set Off.

Licensee shall have no right to set-off against any payment due under this Agreement, except as hereinafter provided, for any sums which Licensee may believe are due to it from the MBTA for any reason whatsoever.

3.5 Payment Address.

Payments due from Licensee to the MBTA shall be payable to the MBTA and delivered to such address as the MBTA may from time to time specify in writing.

3.6 Interest.

If any amount to be paid by Licensee hereunder is not paid on or before the tenth (10th) business day after the due date thereof, then interest thereon shall accrue at a rate equal to the lower of (a) the "Prime Rate" of the largest bank then operating in Boston, MA plus eight percent (8%) annually, and (b) the highest amount legally permissible (the "Default Rate").

4. **Inspection of Wi-Fi Network.**

The MBTA shall have the right to employ its own personnel to conduct periodic inspections of the Wi-Fi Network to determine compliance with the provisions of this Agreement.

5. **Construction and Installation**

5.1 System Requirements.

Licensee shall be required to design, install and operate, at its sole cost, a Wi-Fi network system for operation on the Premises per attached Exhibit B with the system specifications described in Exhibit B. The Wi-Fi Network shall accommodate the following:

- a. Be compatible with and meet existing and future MBTA signal and communications systems with respect to applicable FCC interference definitions; and

- b. Subject to the terms and conditions of Section 8 below, be capable of being owned and operated by the MBTA (exclusive of any proprietary software, video compression/decompression systems, advertising servers, control systems, billing platforms and/or smartphone/tablet/laptop applications belonging to Licensee) if the MBTA so elects, at the MBTA's sole cost and expense, as a separate system at the end of the Term.

5.2 Pre-Construction.

5.2.1 *Pre-Survey Information Gathering*

Licensee shall work with the MBTA to finalize the specifications of the Wi-Fi Network, including without limitation the installation specifications. The MBTA shall use best efforts to furnish Licensee with electronic files of mechanical and electrical drawings, for the Rail Cars and Ferries. Once finalized, Licensee's design team will begin pre-designing the Wi-Fi network. Such initial design shall be completed by Licensee within ninety (90) days of the last execution of this Agreement and will form the basis of the on-site survey described below.

5.2.2 *Site Survey*

Licensee shall perform a complete on-site Radio Frequency site survey of the Premises and the Property. Prior to beginning the survey, Licensee shall submit a survey plan to the MBTA for approval. Licensee shall not enter the Premises or the Property for survey purposes until the survey plan has been approved in writing by the MBTA. The MBTA shall have thirty (30) days to approve such plan. Licensee shall complete the survey within fourteen (14) days of the MBTA's approval of the survey plan. Based on the survey, Licensee shall finalize the design of the Wi-Fi Network. Such final design shall be completed by Licensee within ninety (90) days of completion of the survey. Licensee shall compile all survey information and subsequent engineering design into a comprehensive survey report and deliver such report to the MBTA. The parties shall amend this Agreement to reflect a revised Exhibit B with the final design specifications of the Wi-Fi Network as approved by the MBTA.

5.2.3 *Site Acquisition*

During the site survey process, Licensee shall complete any third party site acquisition and/or lease/license services necessary to complete the Wi-Fi network. Licensee shall be responsible for completing such site acquisitions and/or leases/licenses at its sole cost and expense.

5.3 Construction and Installation Plan.

- 5.3.1 *Submission of Plan and Specifications.* Licensee shall submit a construction and installation plan and detailed specifications for the Wi-Fi Network and the Infrastructure (the "Plans and Specifications") to the MBTA within thirty (30) days of the MBTA's approval of the final design

specifications. The Plans and Specifications will include materials to be used and an access plan addressing proposed points of ingress and egress, proposed methods of construction and installation and a proposed schedule for completion of each segment or phase of construction (the "Access Plan"). The MBTA shall use reasonable efforts to approve the Plans and Specifications within forty-five (45) days. Once approved, the Plans and Specifications shall be referred to herein as the "Construction Plan" and shall automatically be incorporated into and considered a part of this Agreement. Licensee shall not enter the Premises or the Property for installation purposes until the Construction Plan has been approved in writing by the MBTA. For entries onto the Premises or the Property that have not been pre-approved in the Access Plan, see the notice requirements and other provisions in Section 6 below.

Upon its receipt of written approval by the MBTA, Licensee shall begin improvement activities in accordance with any restrictions or conditions that the MBTA may require within sixty (60) days of the MBTA's approval. All Plans and Specifications must be stamped by a licensed architect and/or engineer.

All contracts for the design and construction of the Wi-Fi Network and the Infrastructure (the "Construction Documents") shall be reviewed and approved by the MBTA and shall each provide that in the event of a Licensee default under such contract, a notice of such default shall be sent to the MBTA. No change shall be made in (i) the Construction Plan (ii) the terms and conditions of the Construction Documents or (iii) the identity of the designer and/or the contractor without the MBTA's prior written consent.

The MBTA shall have the right to require that Licensee pay the estimated cost of such design and construction review charges into a force account prior to the commencement of any such review.

5.3.2 *Adherence to Sound Engineering Practices.* Licensee shall ensure at all times that (i) the design and construction/installation, repair, and replacement of the Wi-Fi Network and the Infrastructure will comply with:

- a) sound electronic and engineering practices;
- b) the engineering and safety rules and regulations imposed by any and all governmental authorities having jurisdiction thereof or of railroad and/or ferry operations, including but not limited to the FCC;
- c) appropriate standards of recognized industry and professional associations, including but not limited to, as applicable, the Safety Rules for the Installation and Maintenance of Electric Supply and

Communications Lines, National Electrical Safety Code Handbook, Part 2; and

- d) the standards of the MBTA for engineering and safety, pipeline occupancy, and wire, conduit and cable occupations, which standards shall be made available to Licensee upon request.

The manner of, and the equipment and devices to be used for, any installation, relocation or removal of Licensee's equipment must be approved in advance and in writing by the MBTA.

- 5.3.3 *Compliance with MBTA Railroad Operations Directorate and MBTA Special Instructions.* All installation in the Commuter Rail System is subject to the MBTA Railroad Operations Directorate requirements including, but not limited to, those entitled: "I - Guidelines and Procedures for Construction on MBTA Railroad and Transit Properties" dated May 1994, "II - Maintenance and Protection of Railroad Traffic" dated May 1994, "III - Insurance Specifications" dated May 1994 and "MBTA Special Instructions" dated April, 2003, as it may be amended from time to time during the Term. All installation in the Commuter Boat System is subject to the applicable operating agreement(s) between the MBTA and the third party operator(s)/owner(s). All construction shall be compatible with existing MBTA signal and communications systems.
- 5.3.4 *Labor Requirements.* Licensee must furnish labor to perform its desired work on MBTA property of a type that can work in harmony with all other elements of permanent and/or temporary labor employed by or to be employed by the MBTA in the area of the Premises. Any costs Licensee incurs due to any labor action shall be at the sole expense of Licensee.
- 5.3.5 *Hours.* The hours when Licensee (including its employees, contractor or invitees) will be permitted to be on the Premises and the Property will be limited. In particular, construction is permitted only during non-operating hours at the MBTA, unless otherwise approved by the MBTA. The MBTA will notify Licensee of any changes in operating hours.
- 5.3.6 *Access to MBTA Staff.* In accordance with the Access Plan, the MBTA will make reasonable efforts to provide Licensee and Licensee's designated engineers, contractor(s) and subcontractor(s) with a full crew complement for each work period during the installation of the Wi-Fi Network and the Infrastructure. In any instances in which a full crew complement is not available, the MBTA shall endeavor to allow Licensee access to the Premises and the Property in accordance with its otherwise applicable requirements for such access. The MBTA will make reasonable efforts to provide Licensee and Licensee's designated engineers, contractor(s) and subcontractor(s) with access to the Railcars and Ferries in accordance with the Plans and Specifications and the Access Plan.

- 5.3.7 *As Built Drawings.* Licensee shall, immediately upon completion of each segment of the Wi-Fi Network and the Infrastructure (and before that segment is made operable) submit to the MBTA four (4) hard copies and one (1) digital set, in a format to be designated by the MBTA, of As-Built drawings of the installation containing detail sufficient to provide the MBTA with knowledge of the specific location of Licensee's equipment. Licensee shall also submit plans similar to those described above before it performs any work on the Wi-Fi Network and/or the Infrastructure that would result in a need for new As-Built drawings or in which equipment is being replaced or parts moved. For lesser repairs, Licensee shall contact the MBTA to arrange for access.
- 5.3.8 *Conditional Assignment of Plans and Specifications.* Licensee hereby conditionally assigns and shall be deemed to have conditionally assigned all of its rights to and under the Plans and Specifications, the Construction Documents and any permits or approvals necessary for the construction of the Wi-Fi Network and/or the Infrastructure to the MBTA. As long as there is no default by Licensee under this Agreement or the Construction Documents, Licensee may exercise all rights as the owner or holder of the Construction Documents. Immediately upon the occurrence of any default under this Agreement or the Construction Documents that is not cured pursuant to the terms of the relevant document, the rights described in the preceding sentence shall cease and terminate and the MBTA is hereby expressly and irrevocably authorized, but not required, to exercise every right, option or power or authority inuring to Licensee under any one or more of the Construction Documents as fully as Licensee could itself.
- 5.3.9 *Improvements.* "Improvements" shall include all cable, antennas, transceivers, communication towers, equipment and facilities and/or other improvements to the Premises made by Licensee and owned or leased by Licensee. All Improvements shall be considered to be subject to the terms and conditions of this Agreement.
- 5.3.10 *Permits.* Licensee shall be solely responsible for obtaining all required permits and licenses from Federal, state and local authorities. Installation of the Wi-Fi Network in the Commuter Rail System and Commuter Boat System and the Infrastructure on the Rights of Way is subject to the Commonwealth of Massachusetts State Building Code, 8th Edition. MBTA will cooperate with Licensee, if required, so that Licensee can obtain such applicable permits and licenses. The Building Inspector for the Commonwealth of Massachusetts provides inspectional services. Licensee must be licensed (or become licensed before beginning operation of the Wi-Fi Network) to do business within the Commonwealth of Massachusetts at all times during the Term and may also be required to obtain local building, electrical or other business permits.
- 5.3.11 *Additional Services.* During the Term, Licensee shall submit to the MBTA plans and specifications for any Additional Services to be provided to the MBTA's ridership (an "Additional Services Plan") by Licensee.

Each Additional Services Plan shall include an Access Plan and otherwise comply with this Agreement. Licensee shall not enter the Premises for installation purposes (to the extent any additional installation is necessary) until the relevant Additional Services Plan has been approved in writing by the MBTA at which time such Additional Services Plan (if any) shall become a part of and subject to the terms of this Agreement.

5.3.12 *Approval of Affected Utilities and other Installations.* Licensee acknowledges that it may be installing the Wi-Fi Network equipment and/or the Infrastructure where there are other utilities and other kinds of installations belonging to other grantees of the MBTA. Prior to installing the above in each portion of the Premises, provided that the MBTA has released details on the existing utility providers or other grantees of the MBTA to Licensee, Licensee shall obtain all necessary approvals, consents and permissions from the owner of such other utilities and installations that may be affected by the Wi-Fi Network and/or the Infrastructure installation. During installations and repairs, Licensee will exercise extreme caution to assure that there is no damage caused by the Licensee to the other structures or the utilities in place at the time of the installations and repairs to the Wi-Fi Network and/or the Infrastructure. Any damages caused by Licensee's activities shall be the sole responsibility of Licensee.

5.3.13 *Safety Requirements Pertaining to Utilities.* Licensee acknowledges that there may be surface and subsurface utilities on and/or adjacent to the Premises and agrees to exercise extreme caution in performance of the work performed pursuant to this Agreement. Licensee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. To the extent the private operator of the Commuter Rail, or the MBTA, or parties acting on behalf of either are required, due to the work to be performed by Licensee, to locate and mark railroad utilities in the railroad rights of way and appurtenant thereto, Licensee shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad line(s) or used in connection with services or operations of the MBTA and/or any railroad companies operating adjacent to the Commuter Rail System. Any damage to any utilities caused by Licensee (including its employees, contractors or invitees) shall be the sole responsibility of Licensee. If Licensee does not immediately repair any utilities it has damaged, the MBTA, without being under any obligation to do so and without waiving the Licensee's obligation hereunder, may repair any utilities damaged by the Licensee immediately and without notice in case of emergency. In the event the MBTA exercises such right, the Licensee shall pay to the MBTA immediately upon demand all of the MBTA's cost of performing such repairs plus a fee equal to fifteen percent of the

MBTA's cost of performing such repairs to reimburse the MBTA for its administrative costs.

5.4 Responsibility for Damage.

Licensee shall be responsible for the repair of any damage done to the Premises, the Improvements, or the Property during construction of the Wi-Fi Network and/or the Infrastructure caused by the Licensee (including its employees, contractors or invitees). Licensee is also responsible for any damage done to the property of the MBTA's licensees and other grantees present on the Premises at the time of Licensee's construction caused by the Licensee (including its employees, contractors or invitees). If Licensee does not repair any such damage immediately, the MBTA may conduct the necessary repairs and charge Licensee for its costs, which shall include an administrative fee of 15% of such costs. Licensee must provide or have its construction contractor provide all insurance required for construction on MBTA property.

5.5 Changes to Access Plan.

The MBTA shall have the absolute right, in its sole discretion, to change any Access Plan from time to time and Licensee agrees to cooperate with the MBTA in amending each such Access Plan, taking into account the provisions of this Agreement and public safety considerations, among other things.

5.6 Markers.

At all points along the Premises, Licensee shall clearly mark the location of the Wi-Fi Network equipment and/or Infrastructure, if any, as installed with marker tape and cable markers. The technique to be used to place the markers required herein shall be approved in advance by the MBTA. In the event of any termination of this Agreement prior to the completion of the installation of the Wi-Fi Network and/or Infrastructure, Licensee shall provide the MBTA with accurate maps and drawings sufficient to identify clearly what installations the Licensee has completed prior to the date of termination.

5.7 Use of MBTA Personnel and Reimbursement of the MBTA.

5.7.1 *Oversight Charges.* If at any time during work on the installation, maintenance, repair, replacement or removal of the Wi-Fi Network and/or Infrastructure, the MBTA, or its designee conducting supervision over such work, should, in their sole and absolute discretion, deem flagmen, watchmen, communication/signaling personnel, electric traction personnel, inspectors assigned to construction crews, and/or other measures, including but not limited to train re-routing, desirable or necessary to protect its operations on or near the Premises or the Property, the MBTA, or such designee, shall upon notice to Licensee where such notice is feasible have the right to place such personnel, including personnel of the MBTA's agents, and/or take such measures, all at the sole cost of Licensee. The MBTA shall have the right to require that Licensee

pay the estimated cost of such charges into a force account prior to the commencement of any such work. Such cost and expense shall include the then current wages and fringe benefits due and owing to such personnel in and for the performance of such measures. Licensee hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA within thirty (30) days of receiving from the MBTA an itemized, written invoice for such reimbursement, provided such costs shall be incurred in a good faith commercial manner by the MBTA. The MBTA's failure to furnish such personnel or to take such measures (including during the installations) shall not relieve Licensee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to Licensee on the part of the MBTA. Upon being notified that the personnel and/or measures referred to in the first sentence of this Section 5.6.1 have been deemed desirable or necessary by the MBTA, Licensee shall not commence or continue construction or repair measures, as the case may be, unless and until such personnel or measures are in place.

Improvement oversight is only required when Licensee's construction, maintenance, repair, replacement or removal activities will occur near an active right of way ("ROW") and where said ROW is not separated by a fence from the above activities or when such activities might overhang or reach beyond a fence line and thus potentially "foul the track." The MBTA will use its best efforts to provide oversight personnel when needed; however, it shall not be responsible for delays or any direct or indirect or consequential damages whatsoever due to the unavailability of oversight personnel. The transportation purpose of the MBTA, especially in cases of emergency, shall take precedence over scheduling safety support for third parties (including Licensee).

5.7.2 *Disputes.* If Licensee shall deem any requirement for flagging or the like by the MBTA or its designee for supervision of the work hereunder as unreasonable, Licensee shall nevertheless pay for such flagging and the like (when required above), but may take exception in writing thereto as an unreasonable requirement in each instance. The parties agree to review such exceptions at the times of billings for such services and to attempt to adjust them as the MBTA may deem appropriate, taking into account the provisions of this Agreement and public safety considerations, among other things.

5.8 Safety Issues.

5.8.1 *Duty to Operate in a Safe Manner.* Licensee shall construct, install, operate, maintain, repair and replace, and remove, when required to do so, its equipment used in the Wi-Fi Network and/or the Infrastructure in a safe manner and Licensee shall immediately notify the MBTA if any problem occurs which may result in a safety hazard. If any unsafe situation should occur, Licensee will correct the situation by eliminating any safety hazard immediately and if the situation cannot be cured immediately, then only in

such longer time as is necessarily required in the exercise of full due diligence.

5.8.2 *Training Required for Access.* No individual, including representatives and employees of Licensee, may enter onto the Premises or the Property unless that individual has first attended the Commuter Rail Operator's Safety Orientation Class.

5.9 Costs.

All costs of installing the Wi-Fi Network equipment and the Infrastructure shall be borne by Licensee, including, without limitation, costs described in Section 5.6, survey and engineering fees, fees and expenses included in all construction contracts, and the cost of financing and/or purchasing all equipment used in the Wi-Fi Network equipment and the Infrastructure.

5.10 Subordination to the MBTA's Operating Requirements.

The work licensed pursuant to this Agreement shall in all events be subordinate to the requirements of the MBTA in maintaining and operating a transportation system and the Premises and the Property and in maintaining public safety. Accordingly, Licensee understands and agrees that said work may be stopped or delayed, at any time, in response to each transportation system or public safety requirement. The MBTA shall not be responsible for any damages incurred by Licensee as a result of any such work stoppage or delay.

While on the Premises or the Property pursuant to this Agreement, the Licensee shall minimize the disruption to and alteration of the Premises and the Property each day and as soon as possible after completion of the installation of each segment of the Wi-Fi Network and/or the Infrastructure shall return the affected portion of the Premises and the Property to the condition existing immediately prior to entry; except that all elements of the Wi-Fi Network and the Infrastructure shall remain in place.

The MBTA shall not be responsible for any losses of income or for any expenses due to interruptions in service or damage to the Wi-Fi Network and/or the Infrastructure due to actions taken by the MBTA to preserve the Commuter Rail System, the Commuter Boat System and/or the MBTA subway system or service on any of the above or otherwise to protect or save human lives.

If at any time the MBTA, in its sole discretion, shall determine in its good faith judgment that all or part of the Premises or the Improvements must be relocated for transportation purposes, the Licensee shall relocate the relevant portion of the Wi-Fi Network and/or the Infrastructure all at its sole cost.

5.11 MBTA Communications Projects.

The MBTA radio communications system shall be totally isolated from the Wi-Fi Network. Licensee, at its sole expense, shall be required to perform an intermodulation study to assure that the proposed Wi-Fi Network does not interfere with MBTA essential communications. Subject to applicable FCC rules and regulations, it shall be the responsibility of the Licensee to correct any interference.

5.12 Other Equipment Space.

During construction, the MBTA will make space available to Licensee to locate and store all electronic equipment needed on the Right of Way, in the Stations or in the harbors. The ultimate location of electronic equipment will be determined during the final design in coordination with MBTA staff. If an enclosure is required for such equipment, the MBTA may provide the enclosure, at its sole discretion, and shall charge Licensee with the MBTA's costs to provide the enclosure.

If in future phases of deployment, additional MBTA facilities are needed for equipment space, and the MBTA is able to accommodate the Licensee's request, additional space may be provided at no additional charge.

5.13 Electric Utilities.

Licensee acknowledges that in most cases electrical power used on the Premises will need to be pulled from electrical utility systems located in the Commuter Rail Station areas (the "Utility Systems"). T-1 connections, air conditioning, emergency backup, and the like will not be provided by the MBTA and installation of these items shall be at the sole cost and responsibility of the Licensee. Use of the electricity provided by the MBTA shall be charged to the Licensee at its then applicable commercial rates. The MBTA is a public utility. Engineering estimates of electricity use for equipment shall be used to determine a fixed monthly electrical charge for such equipment. These charges may increase over time to reflect increases in the costs of such utilities.

The MBTA shall read the installed meters to determine the cost of Licensee's usage. The usage rate system shall be no higher than the usage rate system that a third party utility would charge.

Licensee agrees that Licensee's use of the Premises shall not exceed its fair share of the capacity of the Utility Systems. If the MBTA Design and Construction Department determines in its good faith judgment that Licensee's use of a Utility System exceeds its fair share, then at its own cost Licensee shall install an additional utility system for Licensee's sole use. Licensee and the MBTA shall cooperate to be sure that a Licensee installed utility does not interfere with transportation operations. Failure of any of the Utility Systems or of Licensee's own utilities for any reason shall not constitute a constructive eviction, and the MBTA shall not be liable for any loss to Licensee or be in default hereunder, as the result of the failure of any Utility System or any of Licensee's own utilities except if the result of the MBTA's gross negligence or willful misconduct.

5.14 Energy Conservation.

The MBTA shall have the right to institute such policies, programs and measures as may be necessary or desirable, in the MBTA's sole discretion, for the conservation and/or preservation of energy or energy related service, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary. Licensee agrees to cooperate with the MBTA in such efforts.

5.15 Railcar/Ferry Power Interconnection

The MBTA shall make power interconnections in the Rail Cars and Ferries available to the Licensee free of charge. Power supplied by the MBTA in the Rail Cars and Ferries shall be DC power transient filter protected.

5.16 Removal of Existing Wi-Fi System

Removal of the existing Wi-Fi system equipment shall take place at the same time as the installation of the Wi-Fi Network. Licensee shall be responsible for the cost of removing the existing Wi-Fi system. Notwithstanding the foregoing, antennas and RF cabling shall be left in place and secured unless the MBTA wishes to remove such equipment at the MBTA's cost.

6. Access to Premises Following Installation.

Following installation, Licensee shall coordinate with the MBTA, at least seven (7) days prior to entry, except that this time period may be shortened in case of a critical system outage, for entry onto the Premises or the Property to the MBTA's Railroad Operations Department in order to maintain, inspect or repair the Wi-Fi Network and/or the Infrastructure. In the event of a critical system outage, Licensee shall provide as much notice as possible under the circumstances but shall not enter onto the Premises or the Property without such MBTA personnel as is required by the MBTA. Licensee shall be responsible for the cost of all MBTA personnel that the MBTA requires accompany Licensee while on the Premises and the Property assisting Licensee. Licensee shall be responsible for the repair of any damage done to the Premises or the Property during maintenance and repair caused by Licensee. Licensee is also responsible for any damage done to the property of MBTA's licensees and other grantees present on the MBTA's property at the time of Licensee's maintenance or repair activities caused by Licensee. If Licensee does not repair any damage immediately, the MBTA may conduct the necessary repairs and charge Licensee for its costs, which shall include an administrative fee equal to 15% of such costs.

7. Operations, Repairs, Alterations and Relocations

7.1 No Alterations Without Consent of MBTA.

Except as to necessary repairs and/or replacements or parts with identical or substantially similar parts, Licensee shall not alter the Wi-Fi Network and/or the Infrastructure (or any portion or segment thereof) without prior written consent of

the MBTA which may be provided in its sole discretion.

7.2 Required Alterations/Relocations.

The MBTA retains the right to require that Licensee make alterations to and/or relocations of any segment of the Wi-Fi Network and/or the Infrastructure on MBTA property if, in the judgment of the MBTA, such alterations or relocations are required for MBTA transportation purposes or for public safety purposes. All such alterations and/or relocations shall be at the sole cost of Licensee and the MBTA will not be responsible or liable for any direct, indirect or consequential costs incurred by Licensee as a result of any alteration or relocation pursuant to this Section. In the event of any such required alteration and/or relocation, the MBTA will work together with Licensee to ensure that after the alteration or relocation is complete the altered and/or relocated segment is capable of performance levels equal to or better than the original segment and/or location.

7.3 Prior Approval Required for Alteration Plans.

Licensee shall, except in the case of emergency, submit its plans for repairs and maintenance to the MBTA for its prior approval. The repair plan shall include an Access Plan. The MBTA may require emergency repair work to be corrected, at Licensee's sole cost, after an emergency has ended to the extent Licensee performed work without first obtaining MBTA approval. Labor for alterations shall be provided by the MBTA and its partners at Licensee's expense.

7.4 Application of Installation Standards to Alterations.

All repair, replacement, alteration and relocation work by Licensee pursuant to this Agreement shall be subject to the provisions of Section 5.

7.5 Maintenance of Local Office During Term.

Licensee shall at all times during the Term maintain an office in the Boston metropolitan area with employees and/or local contractors that reside locally where such employees and/or local contractors (i) have the necessary skills to maintain the Wi-Fi Network and the Infrastructure and (ii) are of sufficient number to repair any problem with the Wi-Fi Network and/or the Infrastructure within twelve (12) hours of the report of a problem. Licensee shall cause the operation, maintenance and repair of the Wi-Fi Network and the Infrastructure to be at a standard at least equal to both the generally accepted standards in the wireless network industry and the standard of the equipment and systems initially installed by Licensee.

8. **Title to Improvements to the Wi-Fi Network**

During the Term, title to all Improvements provided by Licensee to construct the Wi-Fi Network and the Infrastructure referred to in this Agreement shall be held by Licensee. At the end of the Term or upon earlier termination of this Agreement, title to all Improvements and Infrastructure, shall, automatically and without the necessity of any further action or the execution of any documentation, vest in the MBTA and shall be left in place intact and the MBTA shall have all rights and powers to operate, use, license, maintain, repair and replace the Improvements and/or Wi-Fi Network (exclusive of any proprietary software, video compression/decompression systems, advertising servers, control systems, billing platforms and/or smartphone/tablet/laptop applications belonging to Licensee) and/or Infrastructure after such termination at the MBTA's sole cost and/or expense; except that if the MBTA shall notify Licensee in writing prior to such termination, that the MBTA does not want title and wants all or part of the Improvements and/or Infrastructure removed, then Licensee shall have one hundred eighty (180) days from Licensee's receipt of such notice to remove at its sole cost those portions of the Improvements and/or Infrastructure from the Premises that the MBTA has asked it to remove in a notice from the MBTA, taking care to not damage any other entity's property and repairing any damage that occurs. It is understood that Licensee's indemnification and release under Section 9 shall be applicable during the removal process. If Licensee shall fail to remove the Improvements and/or Infrastructure within the allotted time after notification from the MBTA that the MBTA does not want title and wants all or part of the Improvements removed, the MBTA may remove such property at Licensee's cost.

It is agreed that at the end of the Term (for whatever reason) the MBTA shall be entitled to own (at its option) a working Wi-Fi Network as exists at the time of such termination. Because Licensee may place some critical components of the Wi-Fi Network in locations not on MBTA owned property, it is essential that at termination, the MBTA has rights of ownership and access to those critical components and that those components remain a part of the operational Wi-Fi Network. Any leases, licenses or subleases of such locations not on MBTA owned property shall provide for their being assignable to the MBTA or renewable by the MBTA at the end of the Term. In the event that any such locations have been acquired by Licensee, Licensee shall grant the MBTA a permanent easement(s) for such location(s). Any financing of any equipment not on MBTA owned property or on the Premises shall require that the Wi-Fi Network be left intact to be operated by the MBTA.

IF THE MBTA PERMITS OR REQUESTS LICENSEE TO TAKE ANY PART OF ITS EQUIPMENT THEN LICENSEE MUST LEAVE THE REMAINING EQUIPMENT IN SUCH A STATE THAT IT CAN BE RECONNECTED TO ANOTHER VENDOR'S EQUIPMENT.

This Section shall survive the termination of this Agreement.

Licensee shall not encumber, voluntarily cause or involuntarily allow a lien to be placed upon the MBTA's interest in the Premises or the Property, nor shall Licensee otherwise act or fail to act with regard to the Wi-Fi Network's facilities and equipment, to the extent such act or failure to act is inconsistent with, or in any way conflict with, the MBTA's rights under this Agreement.

9. Indemnification and Release of the MBTA

9.1 Indemnification.

Except if the Cause of Action, defined below, is solely the result of the MBTA's gross negligence and/or willful misconduct, Licensee shall indemnify, defend and save the MBTA harmless from and against any and all liabilities, losses, damages (including, but not limited to, property damages and personal injuries, including death), costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, cross claims, demands or judgments of any nature whatsoever including, without limitation, those related to Hazardous Materials (as hereinafter defined) that may be imposed upon, incurred by, or asserted against the MBTA (collectively "Causes of Action"), arising from this Agreement or Licensee's negligent or willful misconduct under this Agreement, including but not limited to any liability arising by reason of any of the following occurrences:

- 9.1.1 The activities of Licensee pursuant to this Agreement or the exercise by Licensee of any rights or privileges granted in this Agreement; and/or
- 9.1.2 The placement or accidental release of any Hazardous Materials onto the Premises or the Property or onto other nearby non-MBTA property by Licensee or the employees, agents, contractors or consultants of Licensee or a provider, or by the employees, agents, or consultants of Licensee's contractors or subcontractors or by anyone else present on the Premises or Property (exclusive of employees of the MBTA) with Licensee's express or implied permission (collectively "Licensee Entities", individually a "Licensee Entity"); and/or
- 9.1.3 Any failure of Licensee to perform or comply with any of the terms of this Agreement, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof related to this Agreement; and/or
- 9.1.4 The discovery of any preexisting Hazardous Materials on the Premises or the Property, or onto other nearby non-MBTA property by a Licensee Entity that is the result of digging in the earth. It shall not be considered "digging in the earth" to drill holes within the tunnels of the Commuter Rail System and/or into the platforms; and/or
- 9.1.5 Libel, slander, defamation or other similar claim made with respect to Licensee's activities.

In clarification of the above language of indemnification, and not in limitation of it Licensee shall indemnify, defend and save the MBTA harmless from and against any and all Causes of Action related to the injury, illness or death of any employee of Licensee.

As used in this Section 9, expenses shall include, but not be limited to, fines, costs associated with administrative and judicial proceedings, reasonable attorneys'

fees, costs arising from any lien on any portion of the Premises or the Property, costs of any remedial actions, and business interruption resulting from any remediation or any executive, administrative or judicial order. The indemnification provisions herein shall survive the termination or expiration of this Agreement for whatever reason and shall survive until the applicable statutes of limitation relating to the liabilities and the Indemnified Claims shall have run.

9.2 Release.

Licensee has decided that the Premises and the Property are suitable for the uses permitted by Section 1.3 of this Agreement. The terms of Sections 9.1 and 9.3 notwithstanding, Licensee assumes all the risk of entry onto the Premises and the Property pursuant to this Agreement and Licensee hereby releases the MBTA from any responsibility for Licensee's losses or damages related to the condition of the Premises and the Property and Licensee covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit, or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or fourth-party claim) (hereinafter "Claims") against the MBTA including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by the Department of Environmental Protection ("DEP"), fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's illness or death relating to or arising from, the use, condition or occupancy of the Premises, the Property, the Wi-Fi Network or the Infrastructure. Licensee shall obtain a written release and indemnification, attached hereto as Exhibit D, of liability similar to the one in this Section 9.2 and in Section 9.3 in favor of the MBTA from each of Licensee's agents, consultants and contractors before they enter onto the Premises or the Property pursuant to this Agreement.

9.3 Indemnity Limitation.

It shall not be negligent to allow access to the Premises or the Property to the extent that they are in substantially the condition they were in when Licensee inspected the Premises and the Property before accepting this Agreement nor shall it be negligent during the Term hereof to allow access to the Premises or the Property to the extent that they are in substantially the condition they were in when Licensee last was on the Premises or the Property. Licensee acknowledges that all or portions of the Premises and the Property are not open to the public and Licensee shall be extremely cautious when on the Premises and the Property and shall provide liability insurance as required in Section 10 which will name the MBTA and any company the MBTA designates to operate one or more of its services ("Designees") as an additional insured. Licensee hereby acknowledges that portions of the Premises and the Property are inherently dangerous for many reasons, including, without limitation, because (a) active transit or railroad lines operate thereon with high voltage electric power lines, (b) portions are difficult to

reach and (c) lighting may not be optimal. Licensee shall take every reasonable precaution to assure the safety of all persons who are its employees, agents or invitees on the Premises and the Property pursuant to this Agreement and any others who are on the Premises or the Property at the same time as Licensee's employees, agents, or invitees and who might be affected by the activities undertaken by the Licensee, its employees, agents or invitees during such periods and shall notify the MBTA if any persons who are its employees, agents, or invitees on the Premises or the Property pursuant to this Agreement observe a hazardous condition that they have not caused and that they decide is too dangerous to allow them to proceed.

9.4 Claims.

Licensee shall be notified, in writing, by the MBTA within a reasonable time from the MBTA's receipt of the assertion of any claim against the MBTA that Licensee has agreed to indemnify under this Agreement (the "Indemnified Claim"). Licensee shall bear the entire cost of defending the Indemnified Claim and/or the cost of conducting any response action, including, without limitation, those required by Chapter 21E of Massachusetts General Laws ("Chapter 21E") and the MCP (as defined in Section 14.1) and shall have control, in cooperation with the MBTA, of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA is fully indemnified by the Licensee and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the Licensee on behalf of the MBTA or any other action that would materially prejudice the rights of the MBTA without the MBTA's express prior written approval. The MBTA shall cooperate fully with Licensee in the defense of any Indemnified Claim or the conduct of any other response action.

If any response action due to the presence of Hazardous Materials or the threat of release of Hazardous Materials onto the Premises or onto other property of MBTA adjacent to the Premises), is performed by Licensee, the response action shall be performed in accordance with the requirements of Section 14.2 of this Agreement.

9.5 Special Indemnification.

Without regard to negligence, fault or strict liability on the part of the MBTA, its agents, contractors, or employees, Licensee agrees to defend, indemnify and hold the MBTA harmless from and against any and all liabilities, for:

9.5.1 Libel, slander, infringement of copyright, unfair competition or unauthorized use of any trademark, trade name, or service mark or other intellectual property or property liability claim, arising out of the material, data, information or other content transmitted or received over the Wi-Fi Network and/or Infrastructure or any other similar claim; and/or

9.5.2 Claims and causes of action by customers of Licensee for interruption in Licensee's communications; and/or

9.5.3 Claims and causes of action by customers of Licensee's customers for interruption in Licensee's customers communications.

The matters described in Sections 9.5.1, 9.5.2 and 9.5.3 are included in the defined terms "Causes of Action", "Claims" and "Indemnified Claims".

9.6 Additional Indemnification

Licensee shall defend, indemnify and hold the MBTA harmless from and against any and all liabilities related to:

9.6.1 A claim that this Agreement does not comply with the applicable law, rules or regulations of the Federal Communications Commission, or the Telecommunications Act of 1996 or other law applicable to wireless or fiber optic operations.

For purposes of this Section 9, the MBTA shall include the MBTA's directors, officers, employees, agents, successors and assigns. The provisions of this Section 9 shall survive the termination or expiration of this Agreement for whatever reason and shall survive until the applicable statutes of limitation relating to the liabilities, Claims and Indemnified Claims shall have run. The MBTA shall not be liable to Licensee for any loss of business or any direct, indirect, incidental, special, consequential or exemplary damages or lost profits.

10. Insurance

10.1 Property Insurance.

Licensee shall, at its sole cost and expense, keep in full force and effect throughout the Term and for so long as the MBTA has not taken title to the Wi-Fi Network and/or the Infrastructure, insurance covering loss of any portion of the Wi-Fi Network and the Infrastructure, including without limitation those portions not on MBTA owned property, in an amount equal to at least the full replacement cost, without deduction for depreciation, which insurance shall be against all risks of direct physical loss or damage as may from time to time be included within the definition of an "All Risk Insurance Policy" and extended to include if commercially obtainable, coverage against earthquake, flood (including back-up of sewers and drains), breakdown of boilers, machinery and electrical equipment, demolition and such other risks as the MBTA may reasonably designate.

10.2 Liability Insurance.

Throughout the Term, Licensee shall maintain for the mutual benefit of the MBTA and Licensee, general public liability insurance for damage to property and for damages arising from personal injury or death, with limits as shown below for events occurring upon, in or about or adjacent to the Premises or the Property or occurring as a result of Licensee's use of the Premises or the Property

(including use by anyone on the Premises or the Property with the express or implied permission of Licensee). The MBTA and Designees, shall be named additional insureds on these public liability policies and these policies shall be written on an occurrence basis (rather than on a claims made basis) subject to the following:

- (a) Commercial General Liability Insurance
Commercial General Liability Insurance insuring the Licensee, the MBTA, Designees, the Premises, the Property and all activities allowed hereunder as well as Licensee's indemnification obligations contained in Section 9 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. Umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA and Designees, as an additional insured.
- (b) Worker's Compensation Insurance
Insuring all persons employed by Licensee in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA or Designees, the Premises or the Property with limits of liability of not less than those required by Massachusetts General Laws Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA and Designees. Each of Licensee's subcontractors and consultants shall have similar policies covering their employees.
- (c) Railroad Protective Insurance
During periods of construction, maintenance, repair, replacement or removal, if required by the MBTA or by Designees, railroad protective insurance for some portions of the Premises and the Property with the MBTA and/or Designees as named insureds with limits of not less than \$5,000,000.00 for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, and a total of \$10,000,000.00 for all damages arising out of bodily injury to or death of two or more persons in any one accident, and regular protective property damage liability insurance providing for a limit of not less than \$10,000,000.00 for all damages arising out of injury to or destruction of property during the policy period. Designees shall be provided with an original policy of any required Railroad Protective Liability Insurance and the MBTA shall be provided with a certificate of insurance.
- (d) Automobile Liability Insurance
Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Licensee and its consultants and contractors that are used in the activities permitted hereunder.

All insurance required to be maintained hereunder shall be obtained through valid and enforceable policies which shall be primary and non-contributory to any coverage maintained by the MBTA, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of B+ or better, or if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the MBTA, or such lesser rating as the MBTA may approve, with such approval to not be unreasonably withheld or denied. All such required insurance shall, not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the Federal Terrorism Risk Insurance Act of 2002.

Upon the License Commencement Date, and thereafter not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this Section, binders (and duplicate originals when available) of the policies shall be delivered by Licensee to the MBTA. Licensee shall also deliver to the MBTA evidence satisfactory to the MBTA of the payment of all premiums as they become due. Licensee shall be responsible for seeing that its contractors and consultants are properly covered by insurance.

In the event of the cancellation of any policy during the Term, or the failure to keep in effect the insurance required by this section, the MBTA may, without further notice and at its option, procure or renew such insurance on the account of Licensee. Licensee agrees to pay the MBTA for any such expense, with interest thereon at a rate equal to the "Prime Rate" of the largest bank then operating in Boston, MA plus eight percent (8%) annually (or the highest amount legally permissible, to the extent this rate is not permitted by law) (the "Default Rate") from the date of the expenditure by the MBTA as a License fee.

At any time, but not more than once every two years, the MBTA may require the insurance limits herein to be increased so long as such increases do not exceed the highest coverage required in the MBTA's then standard License for Entry.

11. Defaults and Remedies

11.1 Events of Default.

Any one or more of the following events shall constitute an "Event of Default" hereunder:

- 11.1.1 If Licensee fails to pay any sum herein specified to be paid, within thirty (30) business days of the due date after written notice of such default is given by MBTA to Licensee; and/or
- 11.1.2 If Licensee fails to perform, comply with, or observe any other agreement, covenant or obligation of Licensee under this Agreement, including without limitation the failure to comply with any one or

more of the MBTA technological requirements detailed in Section 1.6.2 of this Agreement, and the continuance of such failure for a period of more than sixty (60) days after the MBTA has delivered written notice thereof to Licensee; provided, however, if cure of such default requires more than thirty (30) days time to cure, the time period shall be extended a reasonable period mutually agreed upon by both parties to allow completion of such cure by the Licensee provided Licensee continues to diligently pursue and correct such default; and/or

- 11.1.3 If Licensee files a petition or a petition is filed against Licensee (i) in any bankruptcy or other insolvency proceeding, (ii) seeking any relief under any state or federal debtor relief law, (iii) for the appointment of a liquidator or receiver for all or substantially all of Licensee's property or for Licensee's interest in this Agreement, or (iv) for the reorganization or modification of Licensee's capital structure; however, if such a petition is filed against Licensee, then such filing shall not be a default unless Licensee fails to have the proceeding initiated by such petition dismissed within ninety (90) days after the filing thereof.
- 11.1.4 If Licensee fails to meet any of the time periods detailed in Section 5 of this Agreement, provided that such failure is not a result of the failure of the MBTA to meet its time periods detailed in Section 5.

11.2. Remedies.

Upon the occurrence of any Event of Default, the MBTA may upon written notice to Licensee, in addition to all other rights and remedies afforded the MBTA hereunder or by law or equity, terminate this Agreement and all other agreements executed and delivered in connection herewith, terminate Licensee's rights to use any and all of the Premises and Property, and/or remove Licensee's equipment and personal property without being deemed guilty of any manner of trespass, in which event Licensee shall pay to the MBTA the sum of:

- 11.2.1 the costs incurred by the MBTA (including court costs and reasonable attorneys' fees and expenses) in:
 - (i) obtaining possession of the Premises and the Property;
 - (ii) removing and storing Licensee's equipment and personal property;
 - (iii) repairing and restoring the Premises and the Property due to Licensee's use and/or occupancy;
 - (iv) removing any Improvements on the Premises and Property if the MBTA in its sole discretion decides to remove such Improvements;

- (v) performing any of Licensee's obligations which Licensee failed to perform; and
- (vi) enforcing or seeking advice with respect to its rights, remedies, and recourses regarding any default;

11.2.2 all costs, payments and other sums due and owing by Licensee hereunder, including interest thereon, up to and including the date of termination.

The required Performance Bond shall be structured to permit the MBTA to collect from the surety when Licensee is in default hereunder.

In the event of any termination of this Agreement, Licensee shall surrender the Premises and Property to the MBTA and surrender title to the Infrastructure to the MBTA and at the option of the MBTA shall either remove all of the Wi-Fi Network from the Premises or surrender title to the Wi-Fi Network to the MBTA as set forth in Section 8 above. At the discretion of the MBTA, the Improvements may also be removed by the MBTA at the sole cost of Licensee. Any and all remedies set forth in this Agreement: (a) shall be in addition to any and all other remedies the MBTA may have at law or in equity; (b) shall be cumulative; and (c) may be pursued successively or concurrently as the MBTA may elect. The exercise of any remedy by the MBTA shall not be deemed an election of remedies or preclude the MBTA from exercising any other remedies in the future. In addition to the other remedies provided in this Agreement, the MBTA shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Agreement or to a decree compelling specific performance of any such covenants, conditions or provisions.

Nothing herein contained shall, however, limit or prejudice the right of the MBTA to prove and obtain in proceedings for bankruptcy or insolvency or reorganization or arrangement with creditors as liquidated damages by reason of such determination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater than, equal to, or less than the amounts referred to above.

In exercising its rights hereunder, the MBTA shall act in a reasonable manner (within the context of the requirements of Chapter 161A of the Massachusetts General Laws, the MBTA's enabling Act) so as to mitigate any claim it may have for damages due to a default hereunder by the Licensee.

Acceptance by the MBTA of any payment received after Licensee receives said notice of termination shall not constitute a waiver of the MBTA's right to terminate this Agreement for any other Event of Default occurring prior or subsequent to the date of said notice of termination. Further, any acceptance by the MBTA of any partial payment of the amount stated in the notice of

termination as due shall not constitute a waiver of its right to continue with any of the allowed termination remedies.

11.3 Retention.

In the event that this Agreement terminates because of an Event of Default by Licensee or because the MBTA has invoked any termination provisions as otherwise provided herein, the MBTA shall have an unqualified right to retain (as payment pursuant to this Agreement, and not as liquidated damages) the full amount of the payment or payments previously made by Licensee pursuant to the terms of this Agreement.

12. Compliance with Laws

Licensee and its subcontractors and its sublicensees shall comply with, and shall cause all work performed hereunder to comply with, all applicable Federal, state, county, municipal and other applicable governmental statutes, laws, rules, orders, regulations and ordinances. Licensee shall ensure at all times that the installation, operation and maintenance of the Wi-Fi Network and Infrastructure complies with sound electronic and engineering practices; with the engineering and safety rules and regulations imposed by any governmental authority having jurisdiction over wireless network systems or over transit or railroad systems; with appropriate standards of recognized industry and professional associations, including but not limited to, as applicable, the Safety Rules for the Installation and Maintenance of Electric Supply and Communications Lines, National Electrical Safety Code Handbook, Part 2; and with the MBTA's standards for engineering and safety, pipeline occupancy, and wire, conduit and cable operations, which standards shall be made available to Licensee.

Licensee shall also during the Term be responsible for obtaining and renewing any and all Federal, state, public utility commission, local and/or other governmental authority permits and/or approvals necessary to carry out the activities permitted by Licensee hereunder.

13. Non-Exclusive Use

The MBTA shall have the right to license such other occupations of the Premises and the Property as it deems warranted subject to the rights and obligations set forth in this Agreement; and Licensee represents and acknowledges that such licensing of other occupations does not by itself breach any obligation under this Agreement. Licensee agrees to cooperate with the MBTA and other licensees in their coordination of the respective segment occupations of the Premises to ensure that no licensee is prejudiced in such occupation.

Lastly, the MBTA may install its own wireless system to communicate internally between and among MBTA employees or to serve any other MBTA purpose as it sees fit subject only to the rights and obligations specifically set forth in this Agreement.

14. Environmental Issues

14.1 Environmental Cooperation.

If, as a result of Licensee's activities hereunder, "oil" or "hazardous materials", as those terms are defined in Chapter 21E and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP") (collectively, "Hazardous Materials") are discovered on the Premises or Property, and for any reason Licensee does not have responsibility for remediation of such Hazardous Materials, then Licensee agrees to cooperate with the MBTA in the determination of the party liable for the remediation of the Premises and/or Property under applicable Environmental Laws. Such cooperation may include the temporary or permanent adjustment or termination of the rights granted to Licensee hereunder. The MBTA shall not be responsible for any direct, indirect or consequential damages incurred by Licensee as a result of such adjustment or termination pursuant to this paragraph.

14.2 Remediation Obligation of the Licensee.

Whenever Licensee has indemnified the MBTA with respect to Hazardous Materials within this Agreement or whenever Licensee is a Responsible Party or a Potentially Responsible Party as defined in the MCP, Licensee, upon written demand of the MBTA, shall conduct, at Licensee's sole cost and expense (or, at the MBTA's election, reimburse the MBTA for the cost and expense incurred by the MBTA in connection with the MBTA's conduct of), all response actions required by Chapter 21E, the MCP and Environmental Laws with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional) that are accidentally or deliberately placed or released onto the Premises (or on other property of MBTA adjacent to the Premises) as a result of (1) the Licensee's activities hereunder, or (2) the migration of such Hazardous Materials from land now or previously owned, leased, occupied or operated by the Licensee or for which Licensee is a Responsible Party or a Potentially Responsible Party under the MCP. Any such response action, if performed by Licensee, shall be performed in accordance with the Environmental Laws, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by the MBTA, shall be completed in a timely manner to the reasonable satisfaction of the MBTA, and shall allow the MBTA to use the Premises, and/or its adjacent or contiguous property, for its present use and for any future transportation use. Licensee shall also be responsible for the reasonable costs incurred by the MBTA in hiring consultants to review, supervise and inspect any plans, specifications, proposed methods of work, installation, operation and results.

The provisions of this Section 14.2 shall survive the termination or expiration of this Agreement for whatever reason.

Whenever Licensee discovers pre-existing Hazardous Materials that Licensee is not responsible for pursuant to this Agreement, Licensee agrees to cooperate with the MBTA in the determination of the party liable for the remediation of the Premises under applicable Federal and/or state law. Such cooperation may include the temporary adjustment of the rights granted to Licensee. The MBTA shall not be responsible for any damages incurred by the Licensee as a result of such temporary adjustment.

15. Taxes

Licensee shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the Term, which may be assessed against Licensee or the MBTA which are directly attributable to Licensee's installations in, or use or occupancy of, the Premises, the Property, or any personal property or fixtures of Licensee located thereon (collectively referred to as "Taxes"). Licensee shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment.

Licensee may contest, in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided Licensee shall indemnify the MBTA against any resulting loss, cost and expense. Licensee shall not permit a lien or encumbrance on the Premises or the Property by reason of failure to pay any Taxes. MBTA shall promptly provide Licensee with notice of any such tax assessed against it claimed due from Licensee and shall cooperate with Licensee if Licensee chooses to contest the imposition of such tax.

16. Notices

All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms hereof (hereinafter "Notices"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described below or when delivered by messenger or overnight mail service and signed for by an employee or agent of the addressee or when delivery is not accepted.

Notices To:

MBTA:
Real Estate Department
Massachusetts Bay Transportation Authority
10 Park Plaza, Room 5720
Boston, Massachusetts 02116
Attn: Assistant General Manager Real Estate and Asset
Development

and

Design and Construction Department
Massachusetts Bay Transportation Authority
100 Summer Street
Boston, MA 02110
Attn: Assistant General Manager for Design and Construction

and

Railroad Operations Department

Massachusetts Bay Transportation Authority
45 High Street
Boston, Massachusetts 02110
Attn: Section Chief

and

Information Technology Department
Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, Massachusetts 02116
Attn: Chief Technology Officer

and

LICENSEE:

inMotion Wireless Inc.
655 West Grand Avenue
Suite 300
Elmhurst, Illinois 60126
Attn: President and CEO

Licensee and the MBTA shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this Agreement any other address or addresses giving fifteen (15) days written notice thereof to the other party.

17. Emergencies

In the event the MBTA declares a transportation system emergency that results (directly or indirectly in response to the emergency) in damage to the Wi-Fi Network and/or the Infrastructure, the MBTA shall not be liable to Licensee for damage to the Wi-Fi Network and/or the Infrastructure as a result thereof. Once the emergency is over, the MBTA will consult with Licensee about future impacts on the Wi-Fi Network and/or the Infrastructure. In no case shall the MBTA be responsible to Licensee for any direct or indirect damages or for any loss of profits, consequential or special damages to Licensee.

In the case of an emergency, Licensee shall contact the MBTA Maintenance Control Center (617) 222-5278 or such other number as the MBTA shall designate.

18. Liability for Damage or Destruction

The MBTA shall not be liable to Licensee for damages to the Wi-Fi Network and/or the Infrastructure, unless grossly negligent or willful misconduct attributable to the MBTA, its employees or agents, shall have been the sole causative factor for such damages; and in no event shall the MBTA be liable for any indirect damages or for any loss of profits, consequential, or special damages. The MBTA agrees that reasonable precautions shall be taken by its personnel and agents to avoid such damage and that, whenever

practicable, the MBTA will notify Licensee in advance of activities that might reasonably be foreseen to cause such damages.

19. Assignment, Transfer and Sublicense by Licensee

19.1 No Assignment without Consent.

Licensee shall not assign or transfer any rights hereunder without the written consent of the MBTA, which shall not unreasonably be withheld, conditioned or delayed. Notwithstanding the foregoing, Licensee may sublicense excess space created by Licensee on the Infrastructure to third party communication providers without further consent of MBTA in accordance with Section 1.5 of this Agreement.

19.2 Financing Collateral Assignment Permitted

Notwithstanding anything contained herein, Licensee shall have the right to enter into a collateral assignment, in whole or in part, (the "Collateral Assignment") of the rights granted Licensee hereunder to any third-party institutional lender providing funds to Licensee and demanding such assignment as security for Licensee's repayment of such funds (the "Lender"). Said Collateral Assignment shall provide that no action shall be taken by Lender that will prevent the MBTA from taking title to the entire Wi-Fi Network (in operating condition) at the termination of the Agreement as set forth in Section 8 above. Licensee shall provide the MBTA with notice of the name, address and telephone number of any such assignee. The MBTA shall upon written request from Licensee execute any reasonable documentation requested by Licensee evidencing the MBTA's acknowledgment of the collateral assignment of rights under this Agreement. Any such documentation shall contain terms providing that copies of any notices of default hereunder shall simultaneously be delivered to the holder of such Collateral Assignment provided that the Lender's security interest therein has been filed in accordance with Massachusetts law. Such Lender shall have the same concurrent periods as Licensee to cure any such default prior to the MBTA's termination of the rights of Licensee hereunder. The MBTA shall also agree to accept performance of any of Licensee's obligations hereunder by the holder of such collateral assignment of rights, provided that such holder or the proposed assignee of such holder otherwise complies with this Section 19. This paragraph shall not be interpreted to mean that Licensee has any right to permit any lien or encumbrance of any kind to be placed against the Premises.

19.3 Withholding Consent.

It shall not be unreasonable for the MBTA to withhold its consent under this Section 19 if, without limiting other reasons that the MBTA in good faith cites, after review of such materials provided to it by the Licensee and its proposed assignee, in withholding consent the MBTA reasonably concludes that the assignee (a) is not in a financial position to meet its obligations hereunder, (b) is not experienced, or will not have or utilize personnel under its control who are experienced, in operating a wireless network system of the size contemplated

herein or (c) would not have title to the Wi-Fi Network, including both the conduit, cable and equipment that are on the Premises.

19.4 Agreement Binding Upon Permitted Successors

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and respective legal representatives, successors and permitted assigns.

20. **Intentionally Omitted**

21. **Intentionally Omitted**

22. **Non-discrimination**

With respect to its exercise of all rights and privileges herein granted, Licensee shall undertake affirmative action as required by applicable Federal and state laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted there from. Licensee agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with applicable Federal law and applicable state laws, rules and regulations.

Licensee shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in its activities on the Premises or the Property, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors or tradespersons, and shall at all times comply with applicable law, including the Civil Rights Act of 1964, as amended and .U.S. Department of Transportation regulations at 49 CFR Part 23.

Licensee shall use reasonable efforts to contact, encourage, and utilize minority and female business enterprises in the procurement of materials and services under this Agreement.

23. **Representations and Warranties**

Each party hereby represents to the other and warrants that:

23.1 It is a duly organized and validly existing business organization or instrumentality of the Commonwealth of Massachusetts or the State of Delaware, as the case may be, it is in good standing under the laws of the jurisdiction where it is organized and it is duly qualified to do business in the Commonwealth of Massachusetts.

23.2 There is no litigation or governmental or administrative proceeding pending, or, to the best knowledge of the party, threatened against either the party or the real or personal property that the party is providing pursuant to this Agreement, the probable outcome of which could adversely affect the right or ability of the party to enter into or to perform its obligations under this Agreement.

- 23.3 The execution and delivery by either party to this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary action of such party's governing board or similarly delegated authority, and do not (and adherence by such party to this Agreement will not) violate any provision of law or of such party's bylaws or organizational agreement or any material agreement or instrument which is binding on such party or by which it or its property is bound or affected, or any statute, order, judgment, decree, rule or regulation of any court or governmental agency or body having jurisdiction over such party or the real or personal property being provided by such party pursuant to the terms of this Agreement, or any franchise, license, or permit with respect to said real or personal property.
- 23.4 This Agreement is a legal, valid, and binding obligation of the party, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy or similar laws relating generally to enforcement of creditors' rights.

24. General Provisions

24.1 Entire Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes all previous oral or written understandings, agreements, commitments, or representations concerning the subject matter of this Agreement. This Agreement may not be changed, amended, or modified in any way, and none of its provisions may be waived, except as may be agreed to in a writing executed by the MBTA and Licensee.

24.2 Conflict.

If there shall appear any irreconcilable conflict between the provisions or specifications relating to construction or installation in this Agreement and the provisions or specifications for such construction which have been incorporated herein by reference, the provisions or specifications incorporated herein by reference shall govern.

24.3 Interference.

Nothing in this Agreement shall be construed to permit or authorize in any way any interference by Licensee with any transit, railroad, or non-railroad operation authorized over any portion of the Premises or the Property.

Subject to applicable rules, regulations and policies of the FCC, Licensee will also take such steps as may be necessary to prevent material harmful interference caused by the Wi-Fi Network and/or the Infrastructure (or any portion or segment thereof) subject to this Agreement to any other telecommunications transmission systems located on or about the Premises or the Property provided such other telecommunication transmission systems are operating in accordance with applicable FCC rules, regulations and policies. Any such harmful interference caused by Licensee and not the result of such other party's failure to act in

accordance with applicable FCC rules, regulations and policies, shall be corrected promptly, and at the sole cost and expense of Licensee.

24.4 Jurisdiction and Venue.

All disputes arising out of or relating to this Agreement shall be resolved in a court of competent jurisdiction in Suffolk County, Commonwealth of Massachusetts. The parties hereto consent to the jurisdiction and venue of such tribunal.

24.5 Force Majeure.

In the event either the MBTA or Licensee shall be rendered unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking hereunder to be kept or performed by such party, other than to make payment of amounts due hereunder, such covenant, agreement, obligation or undertaking, insofar as the same shall be affected by such force majeure, shall be suspended during the continuance of such force majeure, and all defaults shall be remedied with all reasonable dispatch when the force majeure ceases. The term "force majeure" as employed in this Section shall be acts of God, governmental action (whether in its sovereign or contractual capacity), fire, flood, labor strikes, or other catastrophes, national emergencies, insurrections, riots, wars, or other similar causes, not within the control of the party claiming force majeure and which by the exercise of due diligence by such party are unable to be overcome.

24.6 Quiet Enjoyment.

So long as Licensee makes the payments required hereunder and performs the other covenants, agreements, obligations and undertakings required of Licensee hereunder, Licensee shall quietly and peacefully hold, occupy, use, and enjoy the Wi-Fi Network and the Infrastructure and the agreed-upon access thereto for maintenance and operation of the Wi-Fi Network and the Infrastructure, free of hindrance, molestation, or interference from the MBTA or anyone claiming by, through or under the MBTA, except to the extent that Licensee's right to hold, occupy, use and enjoy the Premises, the Wi-Fi Network and the Infrastructure may be limited or qualified by provisions elsewhere set forth herein.

24.7 No Waiver.

Neither the waiver by either of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights, or privileges hereunder.

24.8 Governing Law.

This Agreement shall be construed and interpreted under and pursuant to the laws of the Commonwealth of Massachusetts, and the Massachusetts and Federal

conflict of laws provisions shall not be applied if the result is that any law other than Massachusetts's law shall govern.

24.9 Limitation On Damages.

Neither party shall be liable to the other party for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits.

24.10 Condemnation.

If any of the Premises, and/or all reasonable access thereto, shall be taken by condemnation or right of eminent domain or conveyed under threat thereof, this Agreement shall terminate as to that portion of the Premises as of the date title to the Premises vests in the taking authority. Licensee shall have no claim against the MBTA for the value of the unexpired Term with respect to the Premises that have been taken.

The MBTA shall be entitled to the award of damages for the value of the Property (including the Premises) taken. Licensee shall be entitled to any award related to the cost of moving the relevant portions of the Wi-Fi Network and/or the Infrastructure to other property so that the remaining portions of the Wi-Fi Network and/or the Infrastructure on MBTA property can continue to be operational and/or for the loss of revenue and value caused to it by the condemnation. The MBTA and Licensee shall each pay for their own counsel. The Licensee shall have the right to participate in and seek its own award in the same proceeding with the MBTA or separately if so required.

24.11 Trademarks, Service Marks and Logos.

MBTA shall grant Licensee the non-exclusive and royalty-free license to use the MBTA trademarks, service marks, logos, and any secondary marks ("MBTA Marks") to identify Licensee as the provider of the Commuter Rail and Commuter Boat Wi-Fi service in connection with advertising and promotional activities of Licensee, as approved in writing by MBTA. Any and all materials produced by Licensee, or other planned promotional activity, using the MBTA Marks must be submitted to MBTA for review and prior approval, which approval shall not be unreasonably withheld. Any use of the MBTA logo by Licensee shall be subject to the MBTA Logo Guidelines attached hereto as Exhibit E.

Licensee shall grant to the MBTA the non-exclusive and royalty-free license to use Licensee's trademarks, service marks, logos, and any secondary marks ("Licensee Marks") to identify Wi-Fi on the Commuter Rail and Commuter Boats in connection with maps, signage, and informational, advertising and promotional materials. Such license shall extend to third parties to the extent necessary to produce and distribute materials referencing the Commuter Rail and/or Commuter Boats. Licensee acknowledges that the size of its logo and the

size, color, and font of its name to be used by MBTA on MBTA's maps, signage, and promotional and informational material, the license to which extends to third parties to the extent necessary to produce such maps, signage, and promotional and informational material, shall be at the absolute discretion of MBTA.

24.12 Advertising Restrictions.

All advertisements at any time shall be of a reputable character, and the appearance of all advertisements shall be acceptable to and in accordance with the MBTA's standards for character and appearance of advertisements, and shall be subject to the MBTA's Guidelines for Advertising, as they may be revised from time to time. The MBTA's current Guidelines for Advertising are attached hereto and incorporated herein as Exhibit F. Solely with respect to the Wi-Fi Network, Licensee shall be considered the "Advertising Contractor" as such term is used in the attached Guidelines for Advertising. Advertisements shall be submitted in advance to the MBTA for review, at the MBTA's request, or whenever the Licensee reasonably believes such advertisements may be objectionable within the meaning of this Section 23.12. The MBTA shall use reasonable efforts to notify Licensee within 72 hours whether the submitted advertisement is acceptable and, if not, the reason it is not acceptable. Any advertisements determined by the MBTA to be objectionable within the meaning of this section shall be removed by the Licensee within 24 hours of notification of such determination. If the Licensee shall fail to do so, the MBTA, at the Licensee's expense, may forthwith remove the same without liability for such removal.

24.13 Name or Logo Change.

Subject to MBTA approval, Licensee may request that MBTA use a new Licensee name and/or logo in connection with the Wi-Fi Network. If the proposed new Licensee name and/or logo is not approved by MBTA, MBTA shall continue to use the original name and/or logo for the duration of the Term. Licensee shall bear the full cost, including labor, materials and production, of implementing the new name and/or logo on printed materials and plaques.

24.14 Sign Approval.

No signs, plaques or decals may be erected, improved, repaired or altered until the Licensee has submitted detailed drawings and specifications to the MBTA for review and received the written approval of said plans and specifications from the MBTA.

24.15 Captions.

Section headings and tables of contents contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

24.16 Counterparts.

This Agreement may be executed in multiple original counterparts, each of which, when executed by the parties hereto, shall be deemed an original.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective representatives both thereunto duly authorized, on the days and years written below.

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

inMOTION WIRELESS INC.

By: B.A. Scott
Beverly A. Scott, Ph. D.
General Manager and Rail & Transit Administrator
Date: 6/23/14

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:

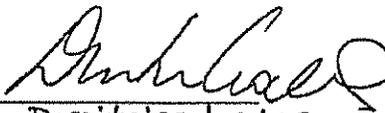
By: Paige Scott Reed
Paige Scott Reed
General Counsel MassDot and MBTA
Date: 7/23/14

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective representatives both thereunto duly authorized, on the days and years written below.

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

By: _____
Beverly A. Scott, Ph. D.
General Manager and Rail & Transit Administrator
Date: _____

inMOTION WIRELESS INC.

By: 
Name: Dimitrios Lalos
Title: President
Date: July 22, 2014

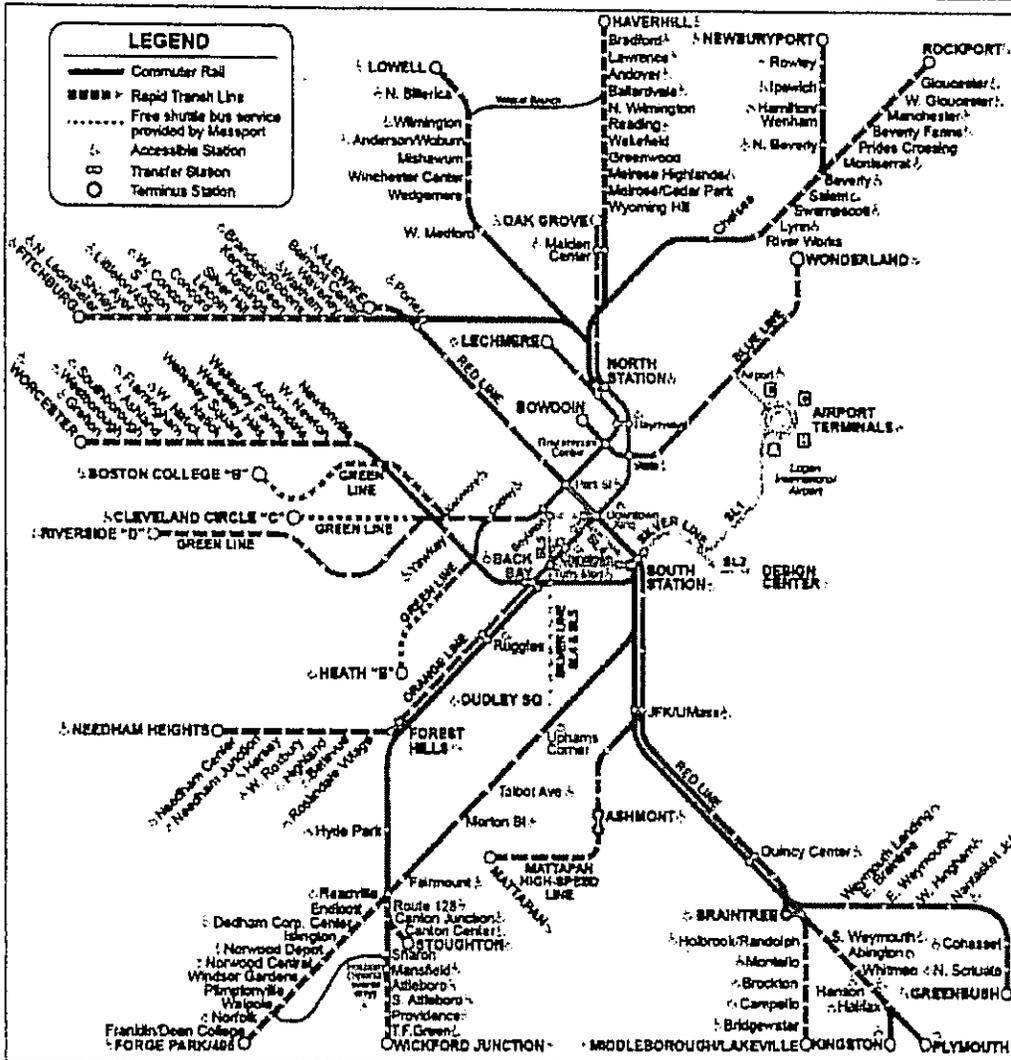
Approved as to form:

By: _____
Paige Scott Reed
General Counsel MassDot and MBTA
Date: _____

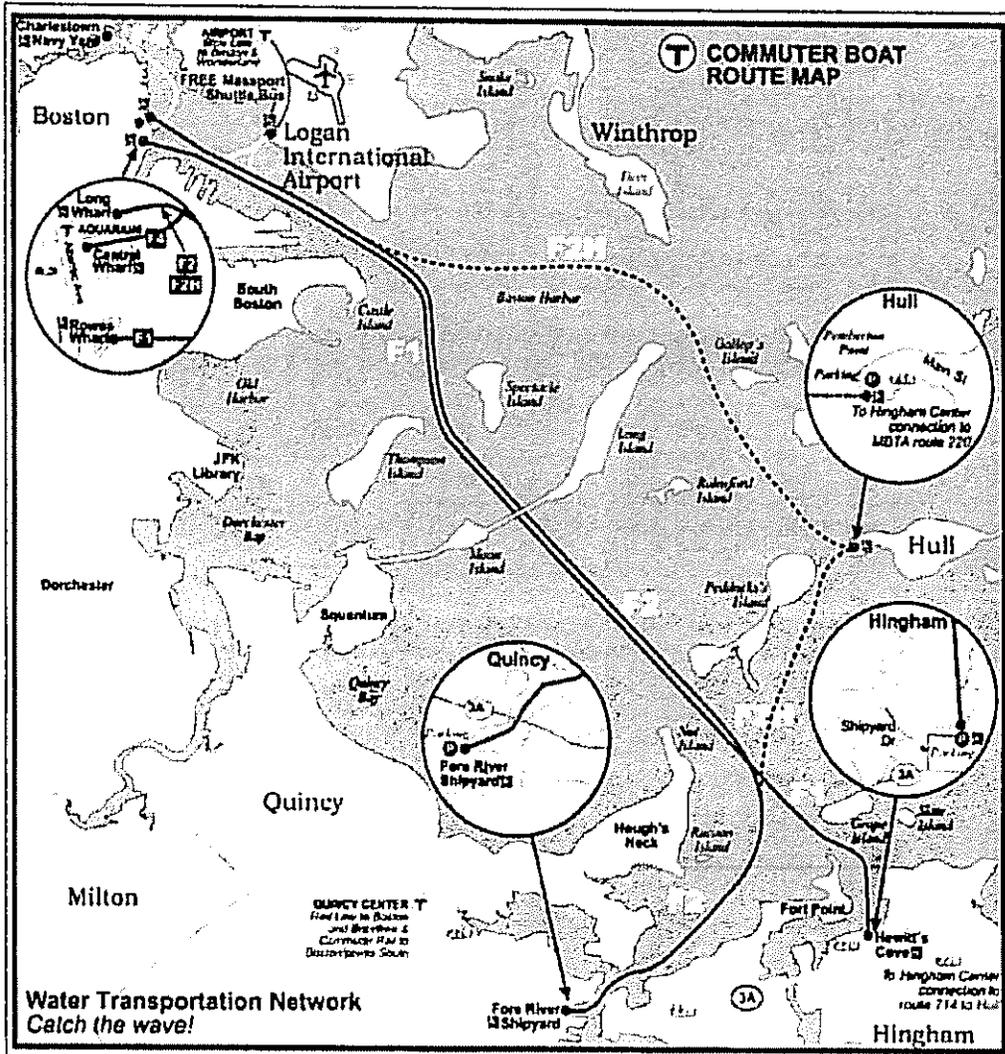
EXHIBIT A

PREMISES

MBTA COMMUTER RAIL SYSTEM

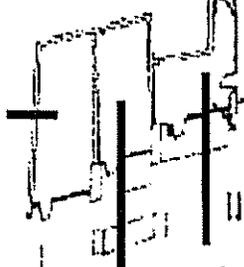


MBTA COMMUTER BOAT SYSTEM

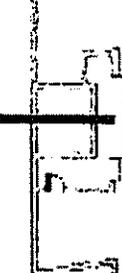


Back Bay Station Main Lobby

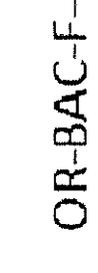
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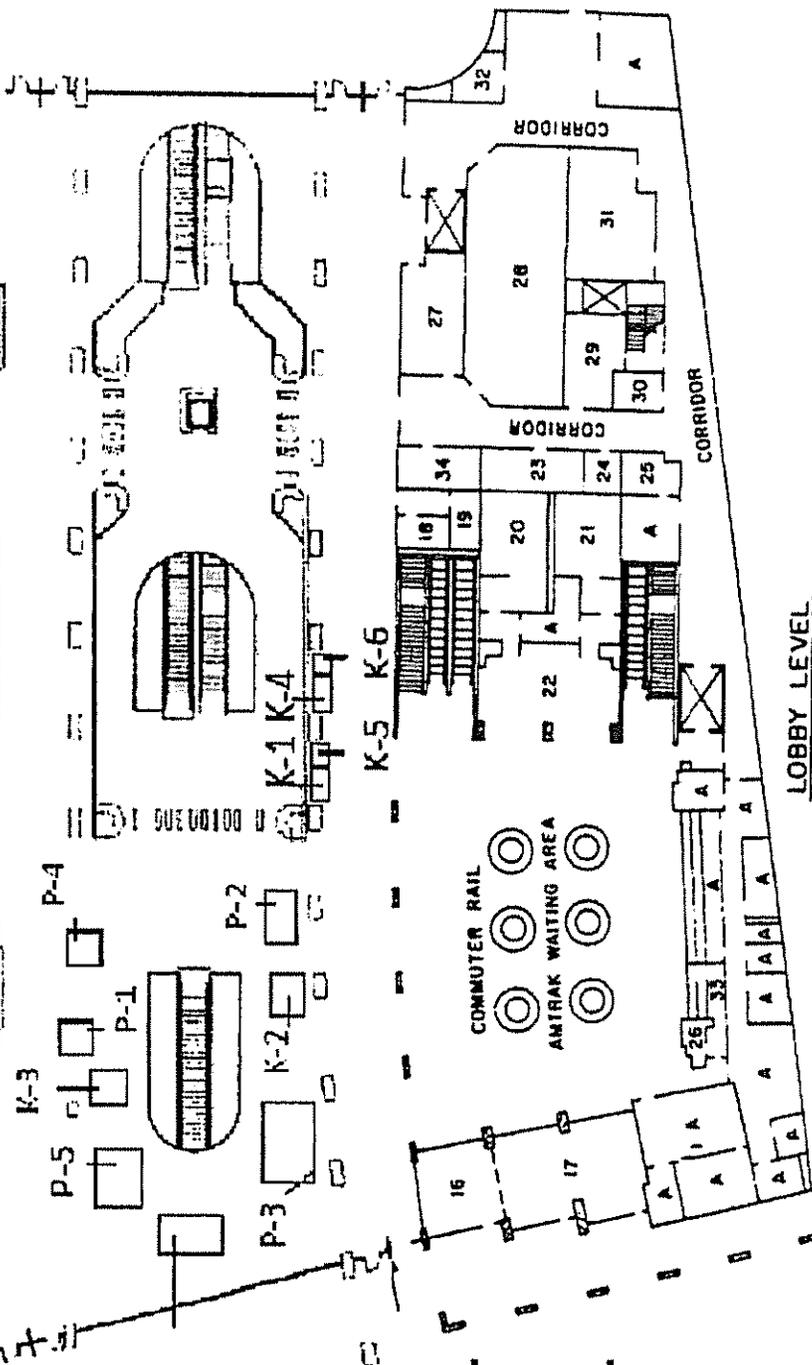
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OR-BAC-F-2



OR-BAC-F-3

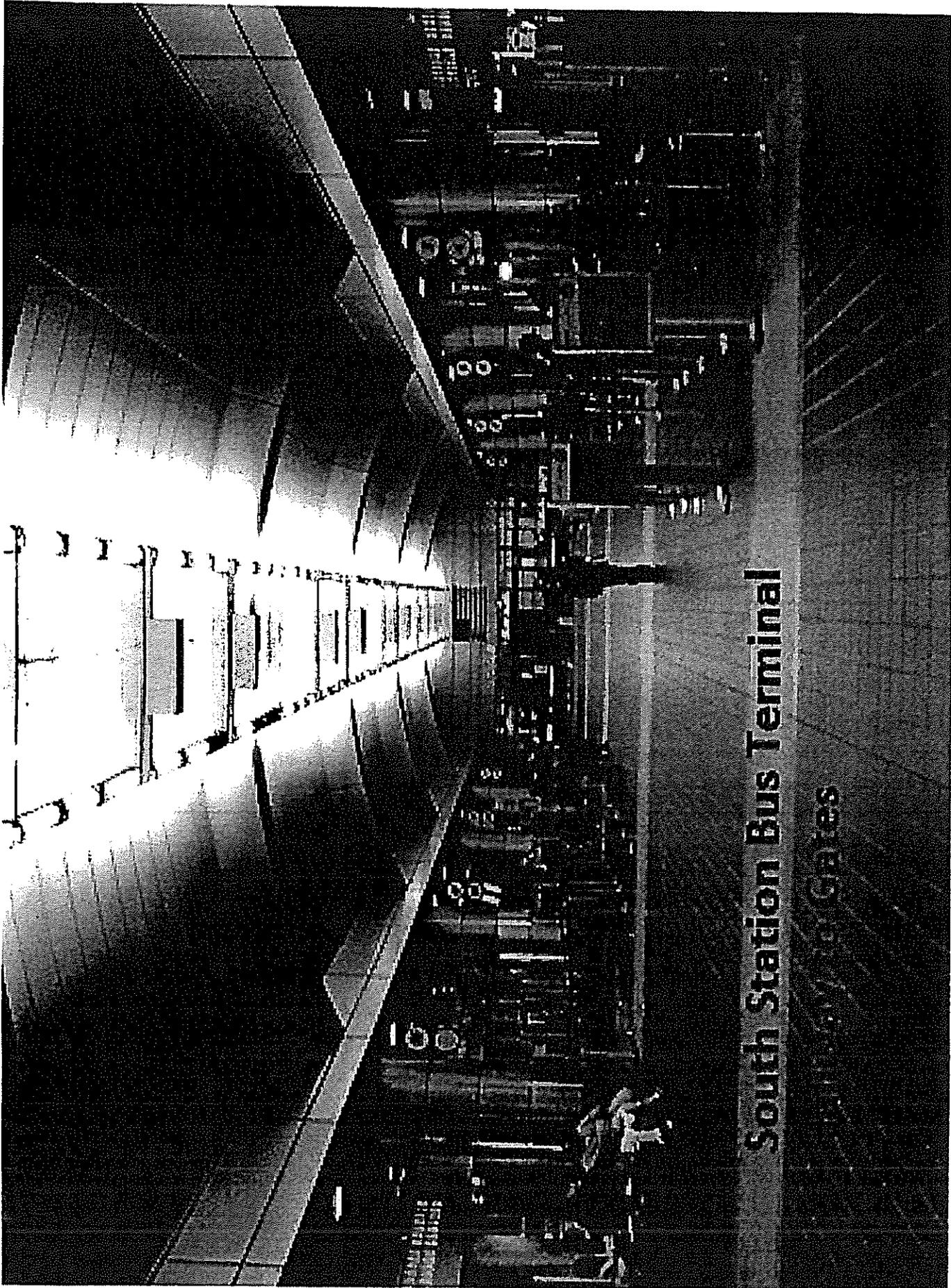


P-3
*Unopened
for summer

OR-BAC-F-4

OR-BAC-F-5

LOBBY LEVEL



South Station Bus Terminal

Gateway to Gates

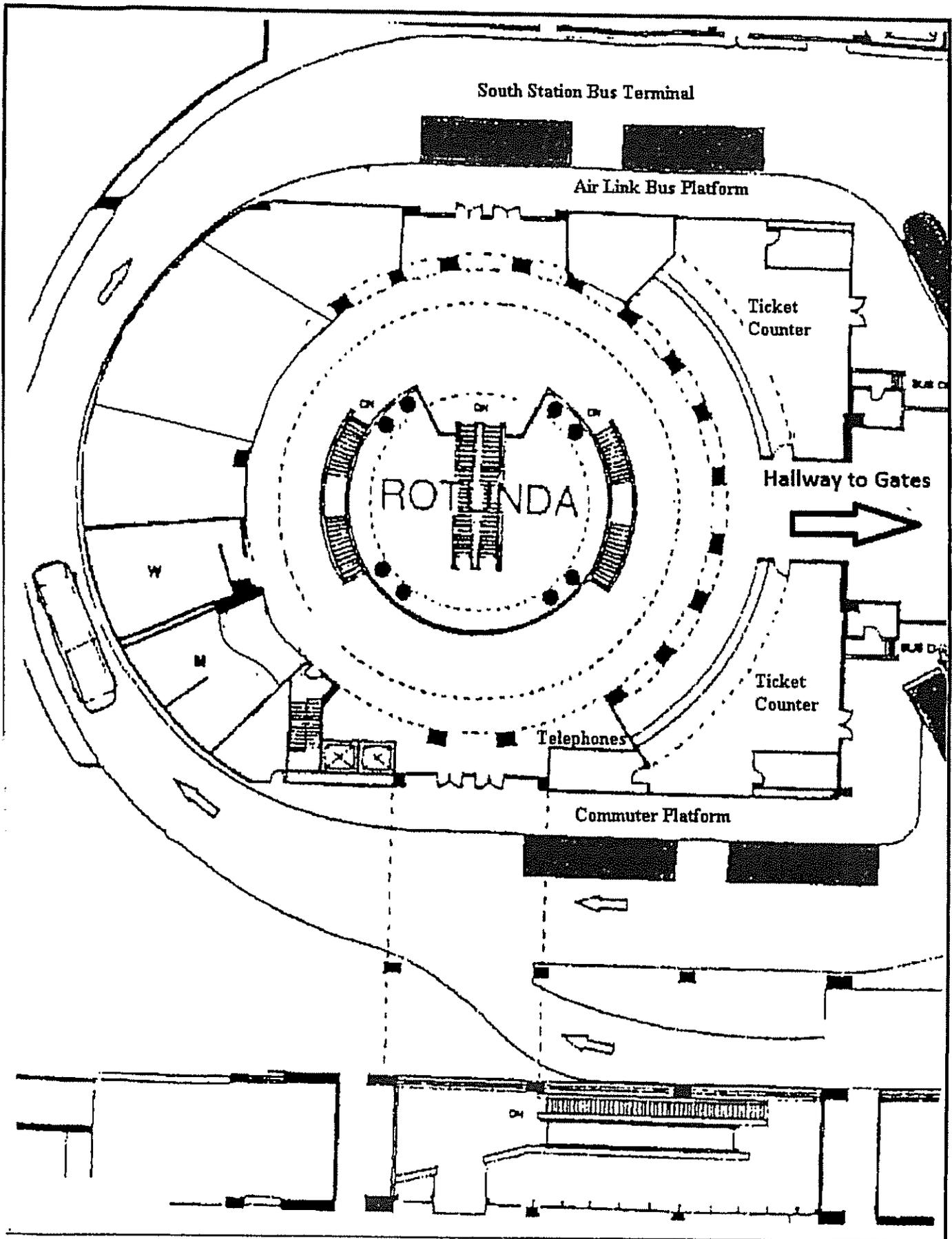
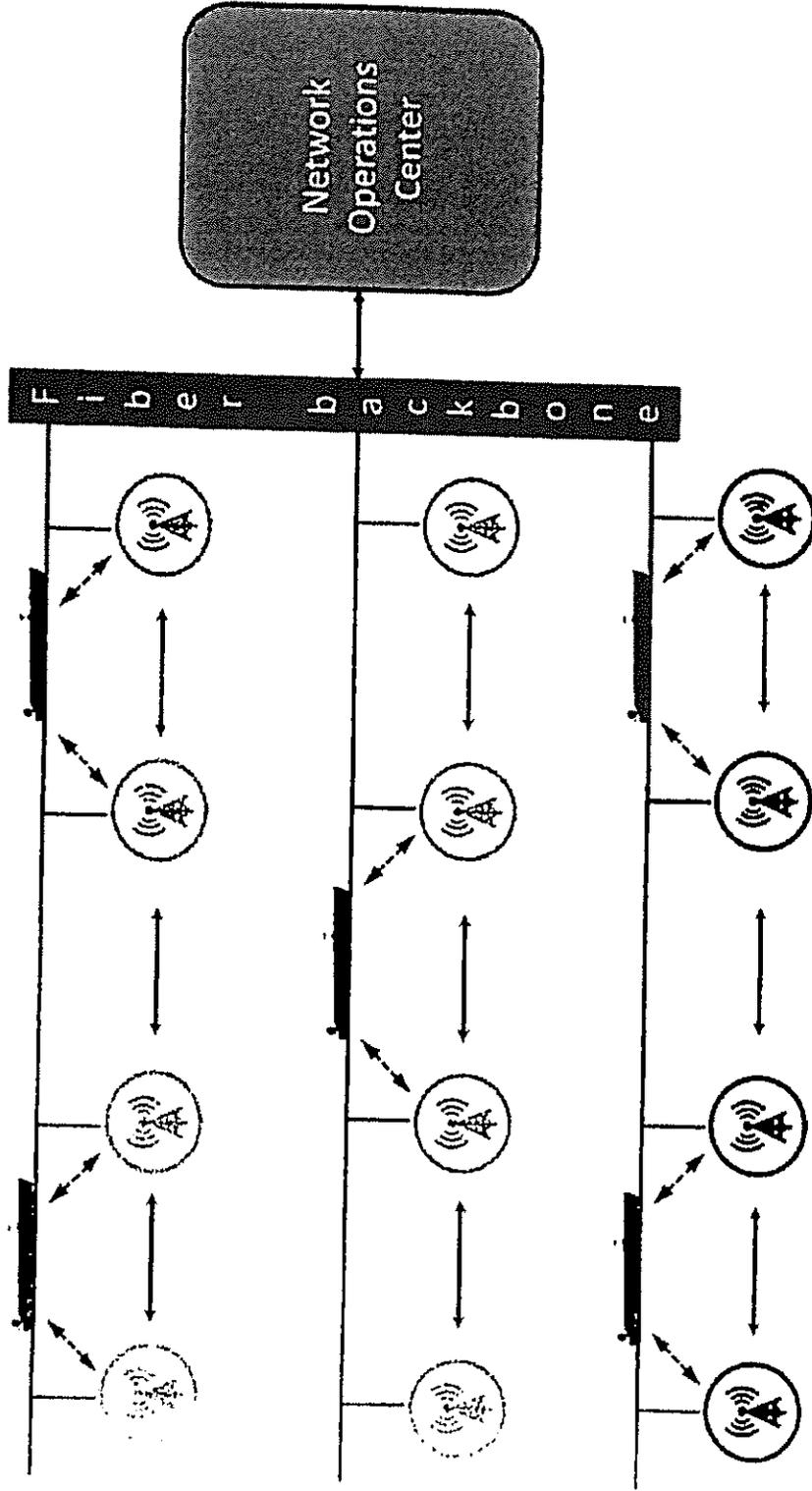


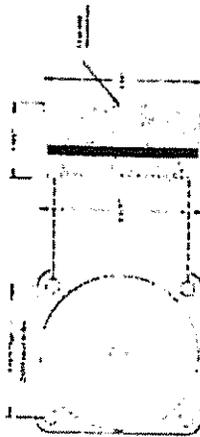
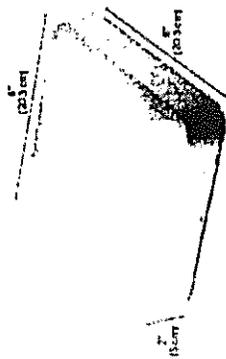
EXHIBIT B
SPECIFICATIONS OF WI-FI NETWORK

Network diagram

- ↔ Wireless 3.5 GHz
- ↔ Licensed Wireless PtP
- Fiber Optics connection
- ⊙ Tower



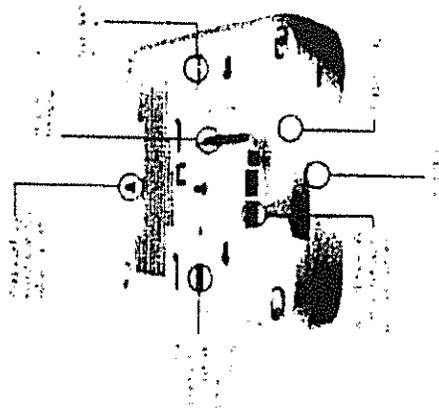
Wi-Fi Access Point



Wi-Fi

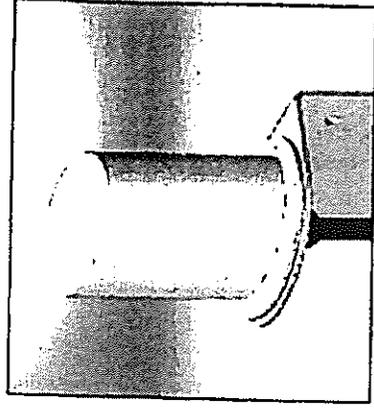
PHYSICAL CHARACTERISTICS

- DC Input: 12 VDC 1.5A
- Power over Ethernet (PoE) 3af
- 203 cm (L), 203 cm (W), 5 cm (H)
- 1kg (2.25 lbs)
- Adaptive antenna array that provides 3,000 unique antenna patterns
- Minimum EIRP
 - 2.4 GHz: 34 dBm
 - 5 GHz: 32 dBm
- Flywheel antenna gain
 - 6dBi @ 2.4 and 5.2 GHz
- Beamflex SRR Tx gain: up to 9 dB
- Beamflex SRR Rx gain: up to 4 dB
- Interference mitigation: up to 15 dB
- Minimum fix antenna Rx: -101 dBm
- 2 ports, auto MDI, auto-sensing
- 10/100/1000 Mbps, RJ-45
- Power over Ethernet (PoE) 3af with Category 5e/6 cable
- Operating Temperature
 - 32°F (0°C) - 122°F (50°C)
- Operating Humidity: up to 95% non-condensing
- 5W in 1 hour
- 3W typical
- 13W peak



- IEEE 802.11n/6n/4n
- 2.4GHz and 5GHz concurrent operation
- 802.11n 6.5 Mbps - 216.7 Mbps (MIMO) 13.5 Mbps - 450 Mbps (MIMO)
- 802.11g: 54, 48, 36, 24, 18, 12, 9 and 6 Mbps
- 802.11b: 11, 5.5, 2 and 1 Mbps
- 802.11g: 54, 48, 36, 24, 18, 12, 9 and 6 Mbps
- 3 x 3
- 3
- Max. Transmit Power (TPO) 23 dBm or 2.4 GHz: 21 dBm on 5 GHz
- 20 MHz and/or 40 MHz
- IEEE 802.11n: 2.4 - 2.484 GHz and 5.15 - 5.85 GHz
- IEEE 802.11g: 5.15 - 5.85 GHz
- IEEE 802.11b: 2.4 - 2.484 GHz
- US/Canada/UK, Europe (ETSI XR07-1-12, Japan/AT-1-12)
- 5 GHz channels, Country dependent
- Up to eight per radio (8 total)
- Supported
 - WEP, WPA, PSK, WPA-TKIP, WPA2 AES, 802.11i
 - Authentication via 802.1X, local authentication database, support for RADIUS, LDAP, and Active Directory
 - U.S., Europe, Canada
 - WEEE/RoHS compliance
 - EN60950-1-2
 - Wi-Fi Alliance certified
 - UL 2333 platinum rated

Railcar and Ferry Boat Antenna



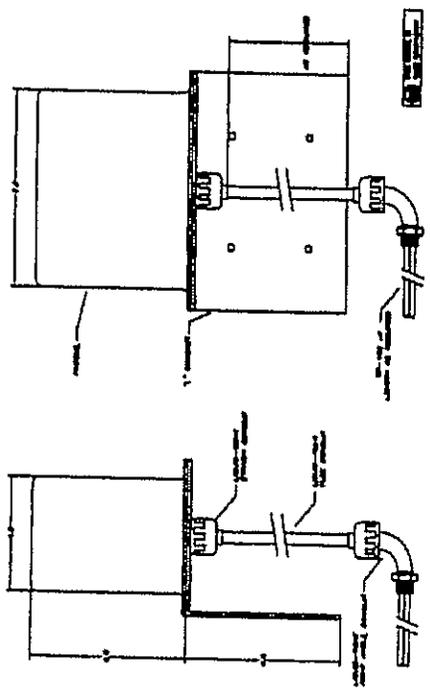
Antenna Specifications:

ELECTRICAL

Frequency:	3.60-3.70 MHz
Gain:	1.5dB B-Directional
Polarization:	Vertical & Horizontal
Aperture Area:	50 Sq. Deg.
Lowest SWR:	2.0 Deg.
SWR:	2.1 max
Vertical Impedance:	50 Ohms
Horizontal Phase:	10 Mhz
Port to Antenna:	3.20dB

MECHANICAL

Mast:	Supply 1" Mast
Cable:	RG-183 4
Connector:	As Required
Temperature:	-40C to +85C
ROD: Material:	4130
Sheet and Hardware:	402 1/2" Dia 8137L 42-070C IN 3073-C



Projected costs

	Co-Location	ROW
Equipment	\$1,707,300	\$5,907,300
Railcar	\$552,300	\$552,300
Base Stations	\$1,155,000	\$5,355,000

Installation	\$3,202,304	\$4,602,304
Railcar	\$857,304	\$857,304
Base Stations	\$2,345,000	\$3,745,000

Proposed Installation Schedule

To be Determined

	Pullman	MBB	Bombardier	Kawasaki	Ferry
Q1					
Q2					
Q3					
Q4					
Q5					
Q6					
Q7					
Q8					
Fleet	57	67	146	139	12

EXHIBIT C
VISIBILITY BENEFITS

Exclusivity and Designation

- Wi-Fi exclusivity for MBTA Commuter Rail and Commuter Boats.
- TBD Designation (such as “Official MBTA Commuter Rail and Commuter Boats Wi-Fi Provider”).

Licensee Identification Decals/Signs

Licensee will be allowed to have Licensee and/or a third party sponsor’s identifying decals at MBTA facilities. Licensee will be responsible for all implementation costs associated with design, fabrication, installation and maintenance. A sample for reference is attached. Locations for the decals/signs:

- Six identification decals/signs at each commuter rail station
- Four identification decals/signs on each commuter rail coach (2 inside and 2 outside)
- Commuter rail seat signs (2 per row)
- Two identification decals/signs at each ferry terminal

Wi-Fi Landing Page

- Control of a “Landing Page” for Commuter Rail and Commuter Boat Wi-Fi service and for Wi-Fi service at the MBTA’s three most important stations: South Station, North Station and Back Bay Station. Advertising on the “Landing Page” will be subject to MBTA Advertising Policy.

MBTA Website

Licensee’s logo link will be added to the MBTA website.

Collateral Print Material

Licensee’s logo will appear on MBTA controlled print materials on:

- Commuter Rail Schedules (4,200,000)
- Commuter Rail Wallet Maps (300,000)
- Commuter Ferry Maps and Schedules (35,000)

General Benefits

- Press release announcing the program
- Right to use MBTA’s mark, logo and image for marketing and promotional purposes related to the program, subject to MBTA approval.

Other

- WIFI information at ticket booths

IDENTIFICATION DECAL SAMPLE



EXHIBIT D

MODEL RELEASE FORM FOR LICENSEE'S CONSULTANTS AND CONTRACTORS

RELEASE AND INDEMNIFICATION

OF

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

WHEREAS, _____, a
_____ corporation, with a usual place of business at _____
(hereinafter the "Contractor") has been engaged by _____ to assist
in the installation, repair, replacement and/or removal of its Wi-Fi Network located on property
belonging to the Massachusetts Bay Transportation Authority (the "MBTA"); and

WHEREAS, the MBTA will not allow Contractor to enter upon its property (the
"Property") unless Contractor signs a release and indemnification agreement (hereinafter the
"Agreement"); and

WHEREAS, Contractor wishes to enter onto the Property pursuant to a license (the
"License") granted to inMotion Wireless Inc. ("Licensee") by the MBTA in order to perform the
work it has contracted with _____ to do:

THEREFORE, Contractor agrees as follows:

1. Contractor has inspected the Property and has decided that it is suitable for the uses Contractor contemplates. Contractor assumes all the risk of entry on to the Property and Contractor hereby releases the MBTA from any responsibility for Contractor's losses or damages related to the condition of the Property and Contractor covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or fourth-party claim) (hereinafter "Claims") against the MBTA including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by the Department of Environmental Protection, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages (including illness or death) arising out of or in any way connected with the use, condition or occupancy of the Property or the Wi-Fi Network.
2. In addition, Contractor shall indemnify, defend (at the option of the MBTA) and save the MBTA harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorney's expenses and fees), causes of action, suits, claims, cross claims, demands or judgments related to the injury, illness or death of any employee or agent of Contractor or of any employee or

agent of Contractor's subcontractors or consultants arising out of or in any way connected with the condition of the Property or the Wi-Fi Network.

3. Contractor acknowledges that it will be entering onto and/or into Property that is inherently dangerous (for example, this may be an active railroad line and some of the Property may be part of an active transit system where portions of the system consist of dark tunnel). The MBTA does not always know the condition of the Property and it must be Contractor that will be present on the Property that must assume the risks of entering the Property. Contractor shall take every reasonable precaution to assure the safety of all persons on the Property pursuant to the License and shall notify the MBTA if persons on the Property pursuant to the License observe a hazardous condition that they have not caused and that they decide is too dangerous to allow them to proceed.
4. Contractor shall obtain a written release and indemnification similar to this one, in favor of the MBTA, from each of Contractor's consultants and contractors before their personnel enter onto the Property.
5. Capitalized terms used but not defined herein shall have the same meanings as in the License.

IN WITNESS WHEREOF, the Contractor has hereunto set its hand and seal this _____ day of _____, 20__.

CONTRACTOR:

_____ Print Name of Contractor

By: _____

_____ Print Name

_____ Print Title

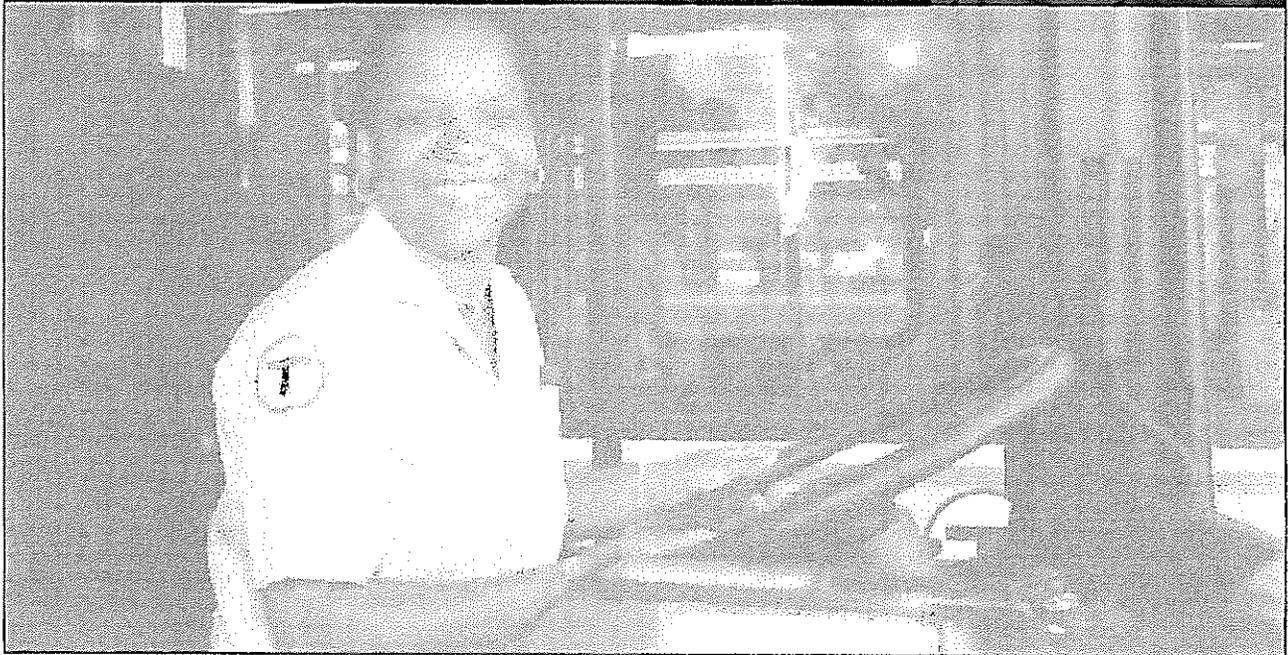
Duly Authorized

EXHIBIT E
MBTA LOGO GUIDELINES

MBTA BRANDING



Massachusetts Bay Transportation Authority



**Who we are:**

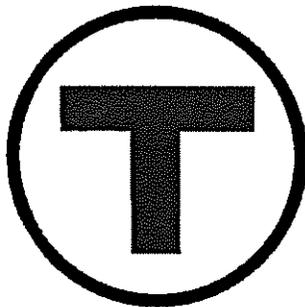
The MBTA is the nation's 4th largest transportation system. We are also America's first subway system and an established brand. And yet the T is a constantly evolving entity, always modernizing and improving, always moving forward.

Our marketing has also changed over the years. We've shifted our focus from the magnificent engines that power our vehicles to the diverse faces of our internal and external target audiences. After all, we are a "people" business.

When people and visitors in Massachusetts make transportation choices, we are considered the "tried and true" – the *one* system that works when all else fails. We are the heartbeat of Boston. And we are dedicated to this responsibility, playing an irreplaceable role in people's lives. Our marketing has to reflect that we love our role and our place in Massachusetts' history.



About our logo:



The T logo was designed in 1964 by Cambridge Seven Associates, and is an enduring classic. For T customers and employees, this icon visually communicates what the T is all about: simple, efficient transit. Direct transportation. This is serious, *professional-grade* transport on a metropolitan and regional scale.

The words, "Massachusetts Bay Transportation Authority" are secondary to the T icon. It is an economical decision – dispensing of extraneous words and focusing on the central premise: T.

Transit.

Transport.

Transportation.

For Graphic Standards, turn to Page 9

**About our logo:**
(continued)

Color is literally pivotal to the identification of our system lines. Color is equally important to our marketing communications. Vibrant color reverberates against the stainless steel, concrete and engines of our profession. The T "spider" map is also a timeless design, articulating each T subway line:

- PMS 347  The Green Line: This color was chosen because the Green Line travels along the trees and suburban lawns of Brookline and Newton. The subway runs from Lechmere area, heading west to Boston College and Chestnut Hill.
- PMS 144  The Orange Line: Orange was chosen because this line previously ran along Washington Street, once known as the Orange Way. This subway runs from the Malden/Medford area, heading southwest to Forest Hills.
- PMS 185  The Red Line: The color choice was based on the Harvard Crimson, because this subway leaves from Cambridge, heading southeast to Braintree and Quincy.
- PMS 285  The Blue Line: Because this line runs along the coast, it was named for the blue of the Atlantic. This subway extends from Government Center area, transporting from the airport and back.

Other Modes of Transportation:

- PMS 122  Yellow: Buses
- PMS 430  Gray: Silver Line
- PMS 312  Aqua: Commuter boats and ferries
- PMS 247  Purple: Commuter rail trains



About our internal customers:

In our hearts and in our communications, MBTA colleagues come first. T employees work 24 hours a day, 365 days a year, often on the front lines. They are experts at guiding and transporting people in all kinds of challenging conditions, from blizzards to floods.

Our 6,500 associates range from bus drivers, train operators, collection inspectors, police and customer service reps to "behind the scenes" track repair people, sign makers, construction workers, information technology experts, marketing professionals, account service reps and many more.

About our external customers:

The T carries 1.3 million people a day. Some are tourists and weekend customers. Others are daily T customers, commuting between work and home. Our external customers include high school and university students, working people, seniors and disabled customers – all from diverse backgrounds. Simply put, our customers comprise one of the widest demographics imaginable.

**Tone:****EXTERNAL AUDIENCES: Marketing Communications**

Because we are here to make people's lives easier, our communications must always be easy to read, easy to understand (without condescension), and appeal to all ages, from all walks of life.

The voice of the T is never elitist or comedic. Our tone is warm, welcoming, informative and solid. Because there's a trust factor involved, and because we are funded by the taxpayer, our tone is helpful, direct and respectful.

We don't tell people what to do. We *ask* that they do something, and explain the necessity for our request. When it's appropriate, we can be fun, but not "ha-ha" funny. We are not gimmicky. Above all, we are sensitive to the diversity of our customer base and the multitude of languages they speak. Our messaging must translate accurately, particularly in Spanish and Chinese.

What we look for in our communications is simplicity. We like to be sure that no one ever has to go back and re-read a T communication a second time to understand it. We believe in the basic advertising precept of "compel/persuade," first capturing the target audience's attention then conveying the key message.

**Tone:****INTERNAL AUDIENCES: Corporate Communications**

The voice of our corporate communications is official. Here, we put on our authoritative hat and communicate in a corporate tone. Because we are a unique entity – a branch of the Massachusetts Executive Office of Transportation (EOT) reporting to the Governor of Massachusetts – our corporate communications must be appropriate in tone for a wide range of federal, state, civic, and regional agencies.

Our key internal audience is our fellow employees. T associates are dedicated, hardworking people supporting the T's infrastructure, policies and security. Apart from our fellow state and federal offices, our top goal is to reassure and motivate T associates. We want to show how much we value their work, as evidenced in our "TeamWorks" internal newsletter and "Perspectives," the internal communications venue of our General Manager.



Building customer dialogue:

We encourage and respond to comments. We individually reply by phone or email to over 100,000 customers a year. We've also launched programs that address customer concerns:

- Customer Bill of Rights: Reimburses customers who experience delays.
- Write to the Top: A forum where customers may write directly to T decision makers.
- Weekly website customer opinion polls.



When selecting imagery for the T:

We use photography because it is real. We want our visuals to be crisp, clear accounts of a world of progress within the T. Imagery should always project a positive experience for the potential T customer.

On brochures or car cards, customers might recognize a face of a T employee they see every day on their way to work. That's because:

- We use real T people doing their real jobs.
- We show a wide range of job functions and system locations.

The T in it's best light. Employees should be neatly dressed in their complete and proper uniforms, wearing big smiles. Our vehicles should be gleaming and our station shots should be free of debris or graffiti.

- We draw from our existing photo library and shoot photography, according to need, with our house staff photographer.
- Illustration and artists' renderings are usually used to depict future projects.

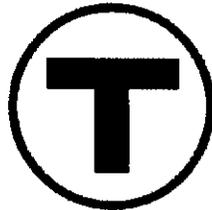


**MBTA logo:****Graphic Standards**

The MBTA logo is a trademarked symbol and must be handled as such. Versions other than those shown below should be disposed from your library. All acceptable logos are found in the MASTER FILES directory on the server.

Usage:**T Logo**

It is important for the logo to maintain its original proportions. Do not alter or re-proportion the logo elements and their relationships. The white version of the logo may be used on dark backgrounds. The white fill logo should be used on backgrounds that are tinted less than 50%.



T Logo/Black.eps

T Signature

The MBTA "signature" shown below must appear as the last printed element on all printed material.

- Two lines for tall, vertical documents
- One line for wide, horizontal documents



**Massachusetts Bay
Transportation Authority**

T_MBTA_Logo.eps



Massachusetts Bay Transportation Authority

T_MBTA_Horiz_Logo.eps

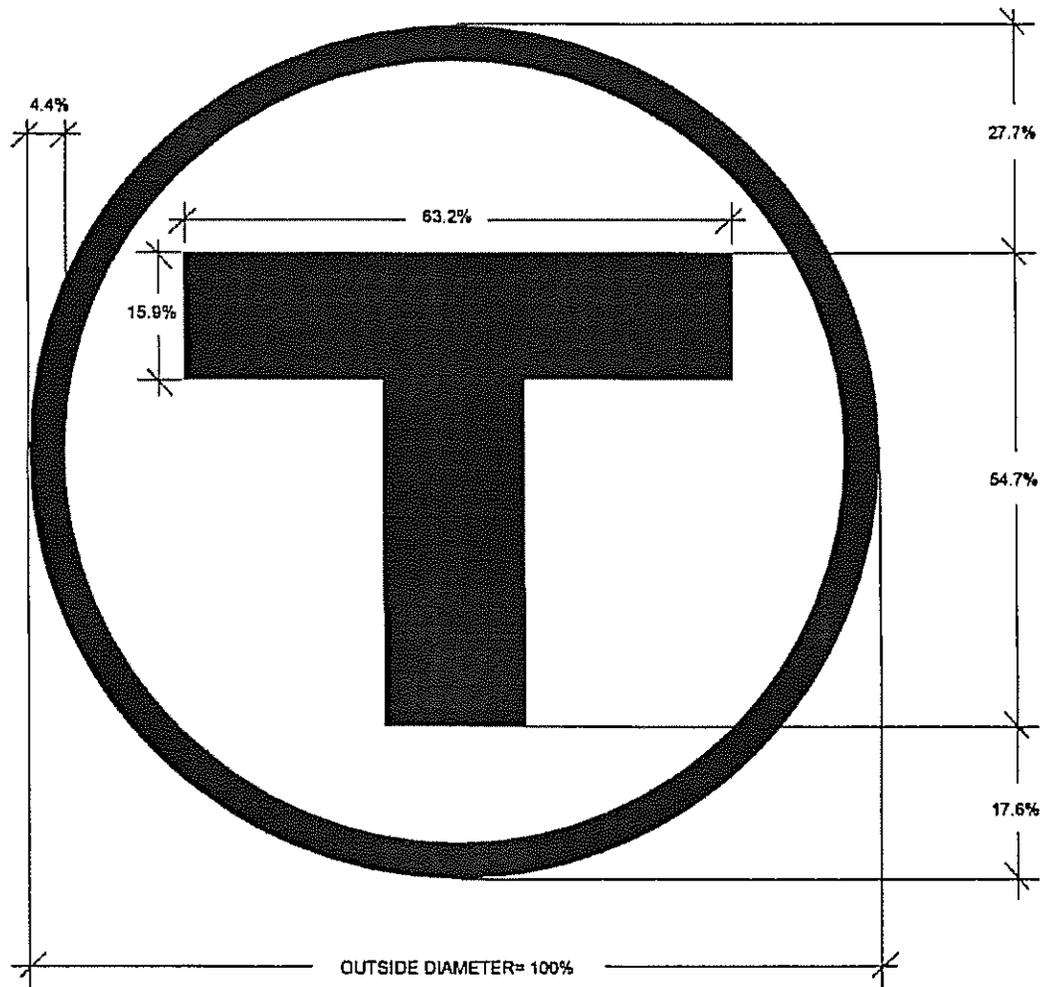


EXHIBIT F

MBTA ADVERTISING GUIDELINES

Guidelines Regulating MBTA Advertising

Adopted April 11, 2012/ EFFECTIVE JULY 1, 2012

Purpose

Through these Guidelines the MBTA intends to establish uniform, viewpoint-neutral standards for the display of advertising. In setting its advertising standards, the MBTA seeks to fulfill the following goals and objectives:

- (a) maximization of revenue generated by advertising;
- (b) maximization of revenue generated by attracting, maintaining, and increasing ridership;
- (c) maintaining the safe and orderly operation of the MBTA;
- (d) maintaining a safe and welcoming environment for all MBTA passengers, including minors who travel on or come in contact with the MBTA system; and
- (e) avoiding the identification of the MBTA or the Commonwealth of Massachusetts with advertisements or the viewpoints of the advertisers.

The MBTA reserves the right, from time to time, to suspend, modify or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, to accommodate its primary transportation function and to fulfill the goals and objectives referred to herein. All the provisions of these Guidelines shall be deemed severable.

Advertising Program and Administration

- (a) These guidelines shall apply to advertising on or in all MBTA equipment and facilities (including but not limited to land, terminals, stations, garages, yards, shops, structures, rolling stock, vehicles, fences, equipment, electronic and hard copy media, websites and other personal property) unless otherwise expressly provided by contract regarding a premise covered by an alcoholic beverages license.
- (b) The MBTA shall, from time to time, select an "Advertising Contractor" who shall be responsible for the daily administration of the MBTA's advertising program in a manner consistent with these Guidelines and the terms of its agreement with the MBTA. The advertising program shall include, but not be limited to, promotion, solicitation, sales, accounting, billing, collections and posting of advertising displays on or in all MBTA equipment and facilities.
- (c) The Advertising Contractor shall provide, or shall subcontract for, all employees and equipment necessary to perform the work and provide the services required by the MBTA.
- (d) The MBTA shall designate an employee (typically, the Director of Marketing Communications) as its "Contract Administrator" to be the primary contact for the

Advertising Contractor. Questions regarding the terms, provisions and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

MBTA Operations and Promotions

The MBTA has the unqualified right to display, on or in its equipment and facilities, advertisements and notices that pertain to MBTA operations and promotions, consistent with the provisions of its agreement with the Advertising Contractor.

Disclaimer

The MBTA reserves the right, in all circumstances, to require that an advertisement on or in its equipment and facilities include a disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of, the MBTA.

Advertising Standards

- (a) The MBTA intends that its equipment and facilities constitute nonpublic forums that are subject to the viewpoint-neutral restrictions set forth below. Certain forms of paid and unpaid advertising will not be permitted for placement or display on or in MBTA equipment and facilities.
- (b) The MBTA shall not display or maintain any advertisement that falls within one or more of the following categories:
 - (i) Demeaning or disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the MBTA will determine whether a reasonably prudent person, knowledgeable of the MBTA's ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
 - (ii) Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, including but not limited to depicting such products.
 - (iii) Alcohol. The advertisement advertises an alcohol product or a brand of alcohol products.
 - (iv) Profanity. The advertisement contains profane language.
 - (v) Firearms. The advertisement either (a) advertises a firearm or a brand of firearms, (b) contains an image of a firearm in the foreground of the main visual or (c) contains image(s) of firearm(s) that occupy 15% or

more of the overall advertisement.

- (vi) Violence. The advertisement contains an image or description of graphic violence, including but not limited to (1) the depiction of human or animal bodies, body parts or fetuses, in states of mutilation, dismemberment, decomposition or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.
 - (vii) Unlawful goods or services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
 - (viii) Unlawful conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
 - (ix) Obscenity or nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the terms “obscene” and “nudity” shall have the meanings contained in Massachusetts General Laws ch. 272, §31.1
 - (x) Prurient sexual suggestiveness. The advertisement contains material that describes, depicts or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these Guidelines, the term “minor” shall have the meaning contained in Massachusetts General Laws ch. 272, §31.2
 - (xi) Political campaign speech. The advertisement contains political campaign speech. For purposes of these Guidelines, the term “political campaign speech” is speech that (1) refers to a specific ballot question, initiative petition, or referendum, (2) promotes or opposes a political party for local, state, or federal election, or (3) promotes or opposes a candidate or group of candidates. For purposes of these Guidelines, the term “candidate” shall include any person actively campaigning for office, any person who has filed their candidacy or declared their intent to run for office, or any person who has been reported in the mainstream media as likely to run for a particular public office.
 - (xii) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by the MBTA or the Commonwealth of any service, product or point of view, without prior written authorization of the MBTA (through its General Manager) or the Commonwealth (through the Secretary of the Executive Office of Transportation and
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Construction).

(xiii) False, misleading, or deceptive commercial speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is false, misleading or deceptive.

¹ Mass. Gen. Laws ch. 272, §31, defines "obscene" as follows: "matter is obscene if taken as a whole it (1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value" Mass. Gen. Laws. ch. 272, §31, defines "nudity" as follows: "uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered."³

² Mass. Gen. Laws ch. 272, §31, defines "minor" as "a person under eighteen years of age.

- (xiv) Libelous speech, copyright infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject the MBTA to litigation.
 - (xv) "Adult"-oriented goods or services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated "X" or "NC-17," **video games rated M or AO**, adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites and escort services.
- (c) Review of advertisements. The Advertising Contractor shall review each advertisement submitted for display on or in MBTA equipment and facilities to determine whether the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above. If the Advertising Contractor determines that an advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then:
- (i) Referral to Contract Administrator. The Advertising Contractor shall promptly send the advertisement - along with the name of the advertiser, the size and number of the advertisements and the dates and locations of display - to the Contract Administrator for review of the advertisement by the MBTA.
 - (ii) Initial Review by MBTA. Upon the Contractor Administrator's receipt of the advertisement and supporting information, the Contract Administrator shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the Contract Administrator may consider any materials submitted by the advertiser and may consult with the Advertising Contractor. In the event that the Contract Administrator determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with the MBTA's Advertising Guidelines.
 - (iii) Subsequent Review by MBTA. In the event that the Contract Administrator determines that the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the Contract Administrator shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the General Counsel. Likewise, the General Counsel shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the General Counsel may consider any materials submitted by the advertiser and may consult with the Contract Administrator. In the event that the General Counsel determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with the MBTA's Advertising Guidelines.
 - (iv) Final Review by MBTA. In the event that the General Counsel determines that the

advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the General Counsel shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the General Manager. Likewise, the General Manager shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the General Manager may consider any materials submitted by the advertiser and may consult with the Contract Administrator and the General Counsel. In the event that the General Manager determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with the MBTA's Advertising Guidelines. In the event that the General Manager determines that the advertisement falls within one or more of the categories set forth in (b) above, then the General Manager shall, in writing, specify which of the categories the advertisement falls within and the Contract Administrator shall advise the Advertising Contractor that the MBTA has determined that the advertisement is not in conformity with its Advertising Guidelines.

- (v) Opportunity for Revision by Advertiser. In the event that the MBTA determines that the advertisement falls within one or more of the categories set forth in (b) above, the Advertising Contractor may, in consultation with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the MBTA's Advertising Guidelines. The advertiser shall then have the option of submitting a revised advertisement for review by the MBTA.
- (vi) Formal Determination by MBTA. In the event that the MBTA and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that the MBTA memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. The MBTA's formal determination shall be final.
- (vii) Removal of Non-Complying Advertisements. Notwithstanding the foregoing, if the Contract Administrator, the General Counsel, and the General Manager determine at any time that an advertisement already accepted for display by the Advertising Contractor falls within one or more of the categories set forth in (b) above, they shall (1) in writing, specify which of the categories the advertisement falls within, (2) notify the advertiser that the MBTA has determined that the advertisement is not in conformity with its Advertising Guidelines and that the advertisement shall be promptly removed and (3) instruct the Advertising Contractor to remove the advertisement. Upon such instruction, the Advertising Contractor shall promptly remove the advertisement, shall provide the advertiser with a copy of these Guidelines, and may, with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the MBTA's Advertising Guidelines. The advertiser shall then have the option of submitting a revised advertisement for review by the MBTA. In the event that the MBTA and the advertiser do not

reach agreement with regard to a revision of the advertisement, the advertiser may request that the MBTA memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. The MBTA's formal determination shall be final.

Public Service Announcements

The MBTA will, from time to time, make unsold advertising space available for public service announcements proposed by non-profit corporations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or by federal, state or local government agencies or subdivisions thereof. Each such non-profit corporation shall provide the Advertising Contractor or the MBTA with documentation demonstrating that it currently qualifies under the above-referenced provision of the Internal Revenue Code. A public service announcement cannot contain a message that is retail or commercial in nature and shall comply with the Advertising Standards set forth in these Guidelines. A public service announcement may be required to bear the following legend if the sponsor is not readily or easily identifiable from the content or copy of the proposed advertisement: "This message is sponsored by_____".