

Memo



Date: June 18, 2010
File: 0505-50-8147
0610-53
To: City Manager
From: Dave Fuller, Deputy Director, Airport Operations
Subject: FREE ACCESS TO PUBLIC AND PRIVATE HIGH FIDELITY WIRELESS NETWORK -
KELOWNA INTERNATIONAL AIRPORT
Report Prepared by: T. McQueenie, Legal & Administrative Services Coordinator

Recommendation:

THAT Council approve the City entering into a new Second Supplemental Agreement with BOLDstreet Inc. for a 5-year term commencing on July 1, 2010, for the provision of free private and public wireless network communication services at Kelowna International Airport, in the form attached to the Report of the Deputy Director, Airport Operations, dated June 18, 2010.

AND THAT the Mayor and City Clerk be authorized to execute the Second Supplemental Agreement on behalf of the City of Kelowna.

Purpose:

To obtain council's approval to enter into a Second Supplemental Agreement with BOLDstreet Inc. for the provision of free private and public wireless network communication services at Kelowna International Airport.

Background:

On March 1, 2006 the City of Kelowna entered into a Licence Agreement with Rogers Wireless for the management of a public and private-access Wireless High Fidelity (Wi-Fi) network throughout the Kelowna International Airport. For a nominal charge end users were provided access to the Wi-Fi network and the City earned a percentage of the gross revenue.

In July, 2009 Rogers Wireless assigned its interest in the Licence Agreement to BOLDstreet Inc. after which BOLDstreet Inc. and the City of Kelowna entered into a Supplemental Agreement to the Licence Agreement.

In recent Customer Satisfaction Surveys a large number of passengers travelling through the airport requested free access to the Wi-Fi network.

The City's Purchasing Department published a Notice of Intent to contract with BOLDstreet Inc. for the provision of free access to the Wi-Fi network.

A handwritten signature in blue ink, located in the bottom right corner of the page.

BOLDstreet Inc., based in Ottawa, Ontario, is the leading provider of public Wi-Fi solutions in Canada, including several airports, and offers authentication services with all major Canadian carriers involved in public access Wi-Fi including Bell Mobility, Bell Internet, Rogers Wireless and Rogers Cable. This means that subscribers will be able to “roam” into the airport, use their carrier wireless or home internet credentials to authenticate and access public Wi-Fi at the airport.

In order to provide this complimentary service to customers at Kelowna International Airport, BOLDstreet Inc. will transfer ownership of the network equipment (including maintenance, repair, and upgrading) to the airport and BOLDstreet Inc. will continue to manage the gateway to the network. This gateway will be integrated with BOLDstreet Inc. hosted software to manage user authentication web pages, user authentication, internet sessions, advertising/roaming/other revenue generating initiatives, and date management for reporting on usage. BOLDstreet Inc. will also provide toll-free bilingual end-user support which will be available 24 hours a day seven days a week.

The Second Supplemental Agreement with BOLDstreet Inc. will also include a revenue sharing opportunity whereby BOLDstreet Inc. will develop business to generate revenue on the airport network. This could include advertising, sponsorship, roaming revenue from carriers and other revenue generating programs. This revenue will initially be used to cover BOLDstreet Inc.’s costs to power and manage the network, however, revenue earned beyond this will be shared with the airport.

Financial/Budgetary Considerations: As a result of access to the Wi-Fi network being free, there will be a loss of revenue of approximately \$6,000.00 per year, plus the cost of repair which is budgeted at \$2,000.00 per year.

Considerations not applicable to this report:

Internal Circulation:

Legal/Statutory Authority: N/A

Legal/Statutory Procedural Requirements: N/A

Existing Policy: N/A

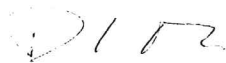
Personnel Implications: N/A

External Agency/Public Comments: N/A

Community & Media Relations Comments: N/A

Alternate Recommendation: N/A

Submitted by:



D. Fuller, Deputy Director, Airport Operations

Approved for inclusion:



Paul Macklem, General Manager, Corporate Sustainability

/tjm

KELOWNA INTERNATIONAL AIRPORT

2nd SUPPLEMENTAL AGREEMENT

TO

LICENCE AGREEMENT

BETWEEN THE

CITY OF KELOWNA

AND

BOLDSTREET INC.

FOR THE OPERATION OF

PRIVATE AND PUBLIC WI-FI (WLAN) NETWORK

AT THE

KELOWNA INTERNATIONAL AIRPORT

THIS AGREEMENT made this 1st day of July, 2010.

BETWEEN:

CITY OF KELOWNA
a municipal corporation having its offices at
1435 Water Street, Kelowna,
British Columbia, V1Y 1J4

(the "Licensor")

OF THE FIRST PART

AND:

BOLDSTREET INC.
290 Picton Avenue, Suite #103
Ottawa, Ontario K1Z 8P8

(the "Licensee")

OF THE SECOND PART

RECITALS

- A. The Licensor granted a license to the Rogers Wireless Partnership ("**Rogers**") for the provision of public and private WiFi services at the Kelowna Airport on the terms of a license agreement dated March 1, 2006 (the "**License Agreement**").
- B. With the Licensor's consent, Rogers assigned the License Agreement to the Licensee, effective July 1, 2009.
- C. The Licensor and Licensee revised the License Agreement on the terms of a supplemental agreement dated July 10, 2009 ("**1st Supplemental Agreement**") and a copy of the original License Agreement and the 1st Supplemental Agreement are attached hereto as Exhibit "A".
- D. The parties now wish to further modify the terms of the License Agreement to, amongst other things, change the paid public WiFi service into a free Wi-Fi service to the public at the Airport.



NOW THEREFORE in consideration of further benefits to each and notwithstanding any provisions to the contrary contained in the License Agreement or the 1st Supplemental Agreement, the parties hereby agree as follows:

1. CLAUSE 1 - CONSIDERATION -

Clause 1(b) is hereby deleted in its entirety and Clause 1(a) is replaced by the following modified terms:

- a) **“YIELDING AND PAYING** a percentage of any positive revenue derived from the operation of the Services in a License Year as set forth in Appendix A attached hereto.”

2. CLAUSE 2 – TERM

The first sentence of Clause 2 is changed to:

“This Agreement commences on the 1st day of July, 2010 for a term or period of five (5) years and then fully to be complete and ended and subject to termination as in Clause Numbers 9, 11, 28, and 29 and such term or period being subject to the renewal of the Head Lease by the City of Kelowna.”

3. CLAUSE 3 – GROSS REVENUE

Clause 3 is deleted in its entirety and replaced by the following:

“**Gross Revenue**”, “**End User**” and “**Taxes**” bear the meanings given them in Appendix F (Definitions).

4. CLAUSE 5 – FINANCIAL STANDARDS

Clause 5 is restated as follows to include quarterly and annual reporting:

“During the currency of this License, the Licensee shall cause to be kept records of Gross Revenue, such records to be kept according to generally accepted principles of accounting. And the Licensee shall supply to the Airport General Manager a report:

- i) within thirty (30) days of the end of each quarter (each a “**Due Date**”) detailing Gross Revenue, Net Revenue and Permitted Costs for the preceding quarter; and
- ii) within forty-five (45) days following the end of each calendar year of the Term, Licensee shall provide the Licensor with a report showing Gross



Revenue, Net Revenue and Permitted Costs for the preceding License Year together with payment of the Revenue Share, payable within ninety (90) days of the end of the applicable License Year.

5. CLAUSE 10 - NETWORK/EFFECT OF TERMINATION

Clause 10 is deleted in its entirety and replaced by the following:

“Licensee hereby transfers all right and title to Licensor in the hardware set out as the Wi-Fi Network in Appendix D (except for the gateway and any other components reserved to Licensee, set out as BSI Equipment in Appendix D). Licensor shall be responsible for managing, maintaining and upgrading the Wi-Fi Network. Licensor shall meet a service level commitment of 99.5% service availability per month during the Term for the Wi-Fi Network including the broadband connection. Failure to achieve this service availability for 2 or more consecutive months will entitle the Licensee to terminate this Agreement on provision of written notice to Licensor. Upon termination or expiry, as the case may be, the Licensee shall be under no obligation to remove the BSI Equipment or other components of the Network, except for removal of any personal property of the Licensee from the said Airport.”

6. CLAUSE 17 – ADVERTISING AND DISPLAYS

The title of Clause 17 is renamed ‘Advertising, Displays, User Interface, and User Information’.

A new 17(c) is added to Clause 17 to read as follows:

“Licensee shall be entitled to make changes to the user interface, authentication methods and methods for revenue generation as it sees fit, and as approved by the Airport General Manager where such approval will not be unreasonably withheld or delayed”

A new 17(d) is added to Clause 17 to read as follows:

“Protection of user information – End-user personal and statistical (e.g. usage) information will be protected and secure. Use of end-user information will be outlined by both terms and conditions statements and a separate privacy policy. Where information is used to provide additional value to the end user (e.g. customize their experience to make it more valuable) and/or to generate additional business revenue that both the Licensor and Licensee will benefit from, users will be made aware of intent and will opt-in in all cases. Licensee will retain ownership of user information; this is required to maximize the value of the network to end-users and to maximize the opportunities for revenue generation to both Licensor and Licensee.”

7. CLAUSE 29 – NOTICE OF TERMINATION

The right to terminate for convenience in Clause 29 is deleted and the provisions of that clause are replaced by the following language:

“On expiry or termination of this License, Licensee shall thereupon cease his/her activities at the



Kelowna Airport, but neither the Licensee nor the Licensor shall, by reason of any action taken or things performed or required under this clause, be entitled to any compensation.”

8. CLAUSE 32 – NOTICES

Licensee’s address for notices will be replaced by the following:

“To the Licensee: Boldstreet Inc
 290 Picton Avenue, Suite 103
 Ottawa, Ontario
 K1Z 8P8

Attention: VP, Operations
Fax: (613) 237-7097”

9. CLAUSE 35 – GENERAL

Appendix F – Definitions is added to the list of appendices in 35(a).

10. APPENDIX A – MONTHLY REVENUE PORTION

This appendix is renamed ‘Appendix A – Revenue Share’ and section (a) and (b) of Appendix A are hereby deleted and replaced by the following:

“The Revenue Share owed to Licensor shall be twenty-five (25%) percent of any positive Net Revenue generated, as calculated at the end of each year in the Term. If Net Revenue is a negative figure in any year of the Term, no payment will be due or payable to Licensor. For clarity, at no time will the Permitted Costs be the responsibility of the Licensor.”

11. APPENDIX D – NETWORK EQUIPMENT, INCLUDING DRAWING

Appendix D to the License Agreement shall be deleted in its entirety and replaced by the new Appendix D which sets out the relevant equipment, a copy of which is attached to this Agreement as Exhibit “B”.

12. APPENDIX E – ADDITIONAL TERMS AND CONDITIONS

- Section 1(a) of Appendix E is hereby modified and replaced by the following wording:

“End Users will not be charged fees for the use of the Public WiFi Services. Licensee shall be responsible for generating revenue through private managed hotspot services, advertising, sponsorship and roaming. Subject to the Revenue Share, Licensee shall be entitled to retain all amounts which it bills and collects with respect to the Services and shall not be required to share any such amounts with the Licensor. The Licensor agrees that it will not charge or attempt to

charge the End Users or the End Users' service providers any fees or other amounts relating to the use of the Services.”

- The first line of section 3(b) of Appendix E is replaced by the following wording. For avoidance of doubt, the rest of section 3(b) shall remain as originally stated:

“Licensee shall retain ownership of those portions of the BSI Equipment indicated in Appendix D and Licensor shall retain ownership of the Wi-Fi Network assigned in accordance with Clause 10 of the License and indicated in Appendix D.”

- Section 4(b) is replaced by the following:

“Licensor shall manage and maintain the Wi-Fi Network at its cost in the manner agreed with Licensee. Licensor shall from time to time provide upgrades or improvements to the Network in order to keep the Services current, save that any changes which might have a negative or material impact on the Services will not be implemented without the prior consent of Licensee.”

13. DEFINITIONS.

A new **APPENDIX F (Definitions)** as set out in Exhibit “C” to this Agreement and will be added to and form an integral part of the License. All defined terms in Appendix F shall replace and take precedence over any conflicting capitalized terms in the License Agreement.

Further, the parties agree that the following references in the License Agreement are modified as follows:

- a. Any and all references to ‘*rent*’ are deleted or, where appropriate in the context, replaced by “*Revenue Share*”;
- b. Any and all references to the “*Monthly Revenue Portion*” or “*Monthly Fees*” are hereby replaced by the term “**Revenue Share**”; and
- c. Any and all references to a ‘*paid*’ public WiFi service are replaced by the word ‘*free*’.

Except as expressly herein modified, all terms and conditions of the License Agreement, the 1st Supplemental Agreement (and any attachments and amendments relating thereto) remain in full force and effect. Any further changes or modifications to the License Agreement shall be subject to the terms of an additional amendment to the License Agreement.



IN WITNESS WHEREOF the parties hereto have executed these Presents the day and year first above written.

By the City in the presence of:

) **CITY OF KELOWNA**
) by its authorized signatory (ies)

Witness Signature

) _____
)

Witness Name

) _____
)

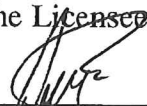
Occupation

Address

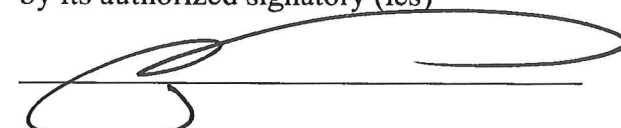
Address

By the Licensee in the presence of:

) **BOLDSTREET INC.**
) by its authorized signatory (ies)



Witness Signature

) 
) _____
)

Jeff Price

Witness Name

) Ron Camp

)

Accountant

Occupation

) Resident + CEO

)

Occupation

290 Pictou Ave

Address

Address

Ottawa, ON K1Z 8P8

Address

EXHIBIT "A" to the 2nd Supplemental Agreement

Original Documentation

A copy of: 1st Supplemental Agreement, Licence Agreement, and Rogers' Assignment Agreement

LICENCE AGREEMENT BETWEEN THE

CITY OF KELOWNA

AND

ROGERS WIRELESS PARTNERSHIP

FOR THE OPERATION OF

PRIVATE AND PUBLIC WI-FI (WLAN) NETWORK

AT THE

KELOWNA INTERNATIONAL AIRPORT

(YLW FILE NO. 2320-20-8147)

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THIS INDENTURE made as of this 1st day of March, Two thousand and six.

B E T W E E N:

CITY OF KELOWNA, a municipal corporation having its municipal offices at 1435 Water Street, in the City of Kelowna, Province of British Columbia, V1Y 1J4

hereinafter called "**the Licensor**"

OF THE FIRST PART

- AND -

ROGERS WIRELESS PARTNERSHIP, a partnership organized under the laws of the Province of Ontario having an office at 350 Bloor Street East, 4th Floor, Toronto, Ontario, M4Y 2Y5

hereinafter called "**the Licensee**"

OF THE SECOND PART

WHEREAS the City of Kelowna entered into a lease (hereinafter referred to as "**the Head Lease**") with Her Majesty the Queen (hereinafter referred to as "**the Licensor**") dated the 19th day of December, 1979 and currently expiring on December 31, 2034, and registered with the Department of Transport, as No. 109806 wherein granted to the City of Kelowna all and singular those certain parcels of land situate, lying and being in the Province of British Columbia, Osoyoos Division, Yale District, consisting of Lot 3 - Registered Plan 11796; District Lot 120 - Plan 1929; Lot 7 - Registered Plan 1502, comprising all of the Kelowna Airport;

WHEREAS the City of Kelowna is the operator of the Kelowna Airport ("**the said Airport**") located in the City of Kelowna, Province of British Columbia;

AND WHEREAS the City of Kelowna wishes to grant a Licence to the Licensee herein the right and privilege to operate a private and public Wi-Fi (WLAN) Network as herein provided.

WITNESSETH that the Licensor, in consideration of the rents, covenants, provisos and conditions hereinafter reserved and contained, hath demised and licensed, and, by these Presents, doth demise and license unto the Licensee:

The Licensee shall install, operate and maintain a private and public Wi-Fi (WLAN) Network as contained in Appendix D (hereinafter referred to as "**the said Network**") at the said Airport to provide the Services contained in Appendix C (hereinafter referred to as "**the Services**") and the City of Kelowna hereby grants:

A right and privilege (hereinafter referred to as "**the said right and privilege**") to the Licensee to operate the said Network in such numbers and at such locations on the said Airport as may be designated from time to time by the Airport General Manager as hereinafter reserved and contained.

IT IS AGREED that the word "**Licensor**" when used herein shall mean the City of Kelowna; the word "**Licensee**" or other words relative thereto, or of like import shall mean and include, irrespective of gender or number, the party or parties of the second part as above designated or described, and their or any of their executors, administrators, successors, or assigns; the words "**Airport General Manager**" shall mean the person holding that position, or acting in the capacity, of the Airport General Manager of the Kelowna Airport for the time being.

AND IT IS FURTHER AGREED by and between the said parties hereto that these Presents are made and executed upon and subject to the covenants, provisos, conditions and reservations hereinafter set forth and contained, and that the same and everyone of them representing and expressing the exact intention of the parties, are to be strictly observed, performed and complied with, namely:

1. CONSIDERATION

- (a) **YIELDING AND PAYING** a monthly fee (the "**Monthly Fee**") equal to the aggregate of:
 - (i) a monthly fixed fee equal to Forty-One Dollars and Sixty-Seven Cents (\$41.67) for each Access Point installed as part of the Network (the initial number of access points shall be eight (8)); and
 - (ii) a percentage of certain revenue derived from the operation of the Network as set forth in Appendix A attached hereto (the "**Monthly Revenue Portion**").

- (b) After the commercial launch date of the Network, within thirty-five (35) days of the end of each calendar month (each a "Due Date"), the Licensee shall provide the Licensor with a report detailing the Monthly Fee for such calendar month, in a mutually agreed to format, together payment of the Monthly Fee for such calendar month.

WITHOUT WAIVING any other right of action of the Licensor in the event of default of payments of rentals hereunder, in the event that the Licensee is delinquent in a payment after the applicable Due Date, the Licensee shall pay late payment fees thereon at the rate of 26.82% per annum (2% per month, compounded) or any part thereof, retroactive from the date any such amount is due and payable until paid.

2. **TERM**

The Licensee shall maintain and operate the Network from the 1st day of March, 2006 for a term or period of **five (5) years** and then fully to be complete and ended and subject to termination as in Clause Numbers 9, 11, 28, and 29 and such term or period being subject to the renewal of the Head Lease by the City of Kelowna.

3. **GROSS REVENUE**

With respect to particular a fee charged, "**Gross Revenue**" means the applicable fee billed to an end user for the Services (each an "**End User**") excluding all applicable Taxes thereon. For the purposes of this Clause, "**Taxes**" means all federal, provincial, municipal, local, foreign and other taxes, fees, charges or dues lawfully levied, assessed or imposed on Licensee and/or required to be collected and remitted by Licensee to any government tax authority (other than taxes on income) and reasonably attributable to Licensee's distribution of the Services;

4. **PAYMENT**

The Licensee shall pay all sums herein reserved at the time and in the manner in these Presents set forth, without any abatement or deduction whatever.

5. **FINANCIAL STANDARDS**

During the currency of this Licence, the Licensee shall cause to be kept records of Gross Revenue, such records to be kept according to generally accepted principles

of accounting and the Licensee shall supply to the Airport General Manager a report of Gross Revenue for each month as set forth in Clause Number 1 above.

6. DISCLOSURES OF GROSS REVENUE INFORMATION

It is understood and agreed that in the final year of this Licence and at any time up to five (5) years following its termination or expiry, the Airport General Manager may publish the annual total of Gross Revenue derived by the Licensee and the terms of the Licensee's financial agreement reported by the Licensee in each year of this Licence for the purpose of public tender information.

7. PAYMENT OF TAXES

The Licensee shall pay or cause to be paid all rates, taxes and assessments, of whatsoever description, that may at any time during the existence of these Presents be lawfully imposed or become due and payable, upon, or in respect of the operations conducted by the Licensee hereunder, and in respect of the said right and privilege, but excluding any taxes on the income of the Licensor. To each of the party's knowledge, currently there are no property and capital taxes payable by Licensee with respect to the operations conducted by the Licensee hereunder.

8. LICENCES, PERMITS, ETC.

That the Licensee shall procure and maintain, at the cost and expense of the Licensee, such licences, permits or approvals from Federal, Provincial, Municipal or other Government Authorities, and such private permits as may be necessary to enable the Licensee to furnish the Services and conduct the operations provided for in this Licence.

9. NON-PERFORMANCE

- (a) Notwithstanding anything in this Licence contained, in the event of non-performance by the Licensee of any obligation herein contained which has not been cured within thirty (30) days (or such longer period as may be reasonable necessary to cure such default considering the nature thereof), or five (5) business days in the case of overdue Monthly Fees, of Licensee's receipt of written notice thereof from Licensor, then forthwith following such cure period, the Licensor may terminate this Licence at any time by notice in writing signed by or on behalf of the Licensor, and

without prejudice to the City of Kelowna's right to claim damages, and any outstanding monies due or to become due under the present Licence, if any.

- (b) The Licensee shall not be liable for any failure to perform its obligations hereunder if and so long as such non-performance is due to fire, flood, lightning, tempest, explosion, earthquake, Acts of God or the Queen's enemies, or any cause beyond the Licensee's control.

10. NETWORK/EFFECT OF TERMINATION

The Network shall remain the personal property of the Licensee. Upon termination or expiry, as the case may be, the Licensee shall, at its own expense, remove the Network and its other personal property from the said Airport and make good the existing finishes to the satisfaction of the Licensor, acting reasonably, reasonable wear and tear excepted. Licensee shall not be required to remove conduits at the end of the Term.

11. DEFAULT

- (a) It is expressly agreed that:
 - (i) If the Licensee shall be in default in the payment of amounts collectable hereunder as rent, which has not been cured within five (5) business days of Licensee's receipt of written notice thereof from Licensor, then forthwith following such cure period; or
 - (ii) If the Licensee shall be in default of any of its covenants or agreements hereunder (other than its covenant to pay amounts collectable hereunder as rent) and such default shall continue for a period of thirty (30) days (or such longer period as may be reasonable necessary to cure such default considering the nature thereof) after written notice by the Licensor to the Licensee specifying with reasonable particularity the nature of such default and requiring the same to be remedied; or
 - (iii) If the default set out in the notice given to the Licensee by the Licensor pursuant to paragraph (b) reasonably requires more time to cure than the thirty (30) day period referred to in that paragraph and the Licensee has not commenced remedying or curing the same

within the thirty (30) day period or, in the opinion of the Licensor fails to diligently complete the same within a reasonable time; or

- (iv) If the Licensee shall make an assignment for the benefit of creditors, or shall make an assignment or have a receiving order made against it under the Bankruptcy Act, or becoming bankrupt or insolvent shall make application for relief under the provisions of any statute now or hereafter in force concerning bankrupt or insolvent debtors, or any action whatsoever, legislative or otherwise shall be taken with a view to the winding-up, dissolution or liquidation of the Licensee;

then the current month's amount collectable hereunder shall immediately become due and payable, and at the option of the Licensor the term hereby granted shall become forfeited and void.

- (b) Forfeiture of this Licence by the Licensee shall be wholly without prejudice to the right of the Licensor to recover arrears to the amounts collectable hereunder or damages for any antecedent breach of covenant on the part of the Licensee.

12. CONTROL

The operations of the Licensee hereunder shall be carried on, under and in accordance with the control and direction of the Airport General Manager, acting reasonably, and in all respects to his/her entire satisfaction and at the sole cost and expense of the Licensee.

13. REASONABLE USE

The Licensee shall not during the currency of this Licence, do, suffer or permit to be done or suffered any act or thing which may impair, damage or injure the said Airport or any part thereof, beyond the damage occasioned by a reasonable user, and shall, at the Licensee's own cost and expense, repair and renew in a good, sufficient and workmanlike manner all portions of the said Airport or any part thereof which may at any time by the Licensee be damaged (ordinary wear and tear and damage by any cause not attributable to the fault or negligence of the Licensee, only excepted) and in the event of the failure on the part of the Licensee to do so repair and renew, subject to the limitations of liability set forth in Appendix E, the Licensee shall indemnify and save harmless the City of Kelowna

from all damages, costs and expenses suffered or incurred by the City of Kelowna by reason of such impairment, damage or injury to the extent the Licensee is liable for the same in law, such payment to be made forthwith upon receipt of appropriate accounts therefor.

14. PERSONNEL

- (a) For the installation of the Network and maintenance of same, the Licensee shall engage suitable, qualified and licensed personnel, duly informed of the Licensee's procedures, to efficiently provide and maintain the required standard of service; that such personnel shall be properly groomed and attired; all as determined by and to the satisfaction of the Airport General Manager, acting reasonably. All personnel will be required to wear name plates which clearly identifies them as employees of the Licensee or its applicable subcontractor.
- (b) If the Airport General Manager determines that national security is involved, she/he may instruct the Licensee to provide information concerning any person or persons employed by the Licensee or its subcontractor who perform services at the said Airport and may require the removal of any person from the said Airport. The Licensee shall comply with instructions from the Airport General Manager regarding removal of any person pursuant to this clause.
- (c) If paid employee parking is introduced at the said Airport during the life of this Licence, the Licensee shall pay for parking at the said Airport for the automobiles or other motorized vehicles of the Licensee or the Licensee's employees, at rates in effect from time to time.

15. INSURANCE

- (a) The Licensee shall place and at all times maintain during the currency of this Licence public liability and property damage insurance in the amount of not less than Two Million Dollars (\$2,000,000.00) against any claims for personal injury, death or loss or damage to property arising out of any of the operations of the Licensee under this Licence, or of the acts or omissions of the Licensee or any of his/her agents, employees or servants, such insurance shall be with a company or companies acceptable to the Licensor and all policies for such insurance shall be in a form satisfactory to the Licensor.

- (b) The Licensor shall be an additional named insured on the Licensee's policy. The policy shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following "Cross Liability" clause:

"The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against any of the named insured by or on behalf of any other named insured."

- (c) The Licensee shall submit such policy or policies or certified copies thereof and any renewals thereof to the Airport General Manager for review and approval together with proof of payment of the premiums therefor.
- (d) The Licensee shall not do or omit to do or suffer anything to be done or omitted to be done on the said leased premises which will in any way impair or invalidate such policy or policies.
- (e) Every policy shall contain a provision that thirty (30) days written notice of cancellation shall be given to the Airport General Manager.
- (f) The Licensee shall not do or permit anything to be done which would render any other policy of insurance on the said Airport or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event that the Licensee does anything that would cause an increase in the insurance premiums on the said Airport, the Licensee shall pay the Licensor that amount which represents the increase in the insurance premium by virtue of the Licensee's use or occupation of the said Airport.
- (g) The Certificate of Insurance is attached hereto as Appendix B.

16. COMPLIANCE WITH REGULATIONS

- (a) The Licensee shall in all respects abide by and comply with all applicable lawful rules, regulations and bylaws of the Federal, Provincial or Municipal Government or any other governing body whatsoever and with all local policy, health or fire regulations or bylaws, in any manner

affecting the operations conducted by the Licensee hereunder or in respect of the said right and privilege.

- (b) The Licensee shall abide by and comply with all regulations regarding traffic control, airport security, sanitation and all other regulations relative to the management and operations of the said Airport, provided that the Licensor provides the Licensee with written notice of such regulations.

17. ADVERTISING AND DISPLAYS

- (a) No advertising or displays, electrical or otherwise, shall be erected on the said Airport without prior written approval of the Airport General Manager.
- (b) The Licensee covenants and agrees that it will use the name "Kelowna International Airport" in all advertising of the said Airport in all promotional material and on all letterheads and stationery.

18. PRINTED MATTER

The Licensee shall ensure all printed and written material displayed or made available to the public including but not limited to signs, notices, instructions, directions, sales slips, receipts, tickets, brochures, pamphlets shall be displayed or made available in both official languages as requested by the Airport General Manager.

19. HEADINGS

Any note appearing as a heading in this Licence has been so inserted for convenience and reference only and, of itself cannot define, limit or expand the scope or meaning of the present Licence or any of its provisions.

20. EFFECT OF LICENCE

That this Licence and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns, as the case may be, or each of the parties hereto, subject to granting of consent by the Licensor as provided in Clause Numbered 22 to assignments, transfers and sub-licenses of these Presents by the Licensee.

Where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context and all covenants and obligations shall be deemed joint and several and the invalidity of any clause for any reason whatsoever shall not invalidate any other clause of these Presents.

21. ENTIRE AGREEMENT

That this Licence shall be deemed to constitute the entire agreement between the Licensor and the Licensee hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations, and documents in relation hereto made by any party to this Licence. Except as otherwise specifically set forth in this Agreement, neither party makes any representation, warranty or condition express or implied, collateral, or otherwise to the other.

22. ASSIGNMENT

That the Licensee shall not make any assignment of these Presents, nor any transfer or sub-license of the whole or any portion of the said licensed premises demised or licensed hereunder without obtaining the prior consent in writing of the City of Kelowna to such assignment, transfer or sub-License, which consent shall not be unreasonably withheld or delayed.

23. REPAIR OR DAMAGE

That if at any time or times hereafter, any damage or injury (ordinary wear and tear and damage by any cause not attributable to the fault or negligence of the Licensee, only excepted) should be occasioned to the licensed premises, the said building, or any part thereof, or to any works of the Licensor on the said Airport by reason of or on account of the operations of the Licensee hereunder or any action taken or things done or maintained by virtue thereof, then, and in every such case, the Licensee shall, forthwith upon notice thereof from the Airport General Manager given in writing, repair, rebuild and restore the same in good, sufficient and workmanlike manner, or the Airport General Manager may, at his/her option, repair such damage or injury in which case the Licensee shall repay and reimburse the Licensor for all reasonable costs and expenses connected therewith or incidental thereto to the extent the Licensee is liable for the same in law forthwith upon receipt by the Licensee of appropriate accounts therefor from the Licensor; provided, however, that in the event of failure on the part of the Licensee to repair such damage or injury and in the event of non-repair by the

Licensor, the Licensee shall remain liable to the Licensor for the amount of such damage or injury to the Airport to the extent the Licensee is liable therefor in law and payment of such account shall be made by the Licensee to the Licensor forthwith, upon receipt by the Licensee of appropriate accounts therefor from the Licensor.

24. AGENT

The parties hereto specifically agree that nothing in these Presents shall be construed to establish any relationship of agent and principal and/or employer and employee and/or master and servant, as between the City of Kelowna and the Licensee herein. Neither party shall have the power to bind the other party or to contract in the name of or create a liability against the other party in any way for any purpose. Neither party shall be responsible for the acts or defaults of the other party or any of the other party's employees or agents.

25. BRIBES

The Licensee hereby confirms that, to its knowledge, it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the City of Kelowna for or with a view to obtaining of the contract by the Licensor any bribe, gift or other inducement; and that, to its knowledge, it has not, nor has any person on its behalf, employed any person to solicit or secure the Licence upon any agreement for a commission, percentage, brokerage or contingent fee.

26. INDEMNIFICATION BY LICENSEE

Subject to the limitations of liability set forth in Appendix E, the Licensee shall save and hold harmless the City, its officers, agents, servants and employees from any claims, damages, losses or expenses (including without limitation legal fees and costs) incurred by Licensor in connection with all claims, suits, judgments, and causes of action for bodily injury, death or property damage resulting, directly or indirectly, from Licensee's acts or omissions, or negligence of any officer or servant of the Licensee while acting within the scope of his/her duties or employment/ The Licensee shall defend any and all such actions and pay all the legal charges, costs, and other expenses arising therefrom.

27. INDEMNIFICATION BY LICENSOR

Subject to the limitations of liability set forth in Appendix E, Licensor shall defend and indemnify Licensee, its parents, successors, affiliates and agents from any claims, damages, losses or expenses (including without limitation legal fees and costs) incurred by Licensee in connection with all claims, suits, judgments, and causes of action for bodily injury, death or property damage resulting, directly or indirectly, from Licensor's acts or omissions, or negligence of any officer or servant of the City of Kelowna while acting within the scope of his/her duties or employment. The Licensor shall defend any and all such actions and pay all the legal charges, costs, and other expenses arising therefrom.

28. ACTS OF GOD

That notwithstanding anything in this Licence contained, in the event the said licensed premises at any time or from time to time, become untenable, by reason or in consequence of fire, flood, lightning, tempest, explosion, earthquake, Acts of God, the Queen's enemies, or any cause beyond the Licensor's or Licensee's control, this Licence may thereupon, by written notice from the Licensor signed by or on behalf of the Airport General Manager be declared at an end.

29. NOTICE OF TERMINATION

That this Licence may be terminated at any time:

- (a) By the Licensor by giving to the Licensee ninety (90) days notice in writing signed by or on behalf of the Licensor;
- (b) By the Licensee by giving to the Licensor ninety (90) days notice in writing;

and thereupon, after the expiration of such period of notification, this Licence shall be determined and ended, and the Licensee shall thereupon cease his/her activities at the Kelowna Airport, but neither the Licensee nor the Licensor shall, by reason of any action taken or things performed or required under this clause, be entitled to any compensation.

30. DIFFERENCES

All disputes arising out of or in connection with this License must, unless the parties otherwise agree, be referred to and finally resolved by arbitration pursuant to the *Commercial Arbitration Act*, British Columbia.

31. MEMBERS OF HOUSE OF COMMONS

That no member of the House of Commons of Canada shall be admitted to any share or part of this Licence, or to any direct benefit to arise therefrom.

32. NOTICES

- (a) That whenever in this Licence it is required or permitted that notice or demand be given or served by either party of this Licence to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by registered mail, telephone or facsimile as follows:

To the Licensor: Airport General Manager
 City of Kelowna Airport
 #1 - 5533 Kelowna Airport
 Kelowna, B.C.
 V1V 1S1
 Fax: (250) 765-0213

To the Licensee: Rogers Wireless Partnership
 350 Bloor Street East, 4th Floor
 Toronto, Ontario
 M4Y 2Y5

 Attention: VP, Business Implementation
 for the Office of the CTO, RCI
 Fax: (416) 935-8989

With a copy to:

Rogers Communications Inc.
333 Bloor Street East, Toronto, M4W 1G9
Attn: Vice President, Associate General Counsel
Fax: (416) 935-7627

- (b) Such addresses may be changed from time to time by either party giving notice as above provided.
- (c) If any question arises as to whether any notice was or was not communicated by one part to the other, it shall be deemed to have been effectively communicated or given on the day received or on the fifth day after it was mailed or sent, whichever is the earlier.

33. SECURITY DEPOSIT AND DEFAULT

- (a) The Licensee agrees that the Licensor shall retain a security deposit equivalent to one half (1/2) of the first License year's estimated fees, Three Thousand Three Hundred and Thirty Dollars (\$3,330.00). The security deposit shall accrue interest annually.
- (b) The security deposit plus interest retained by the Licensor for the term of this Licence or until this Licence comes to an end, whichever comes first, shall be returned to the Licensee or credited to the account, provided that if the Licensee fails to pay all sums herein described and/or impairs, damages and injuries the said Airport or any part thereof during the Licence, the Licensor may apply the security deposit and accrued interest or any part thereof to the arrears of sums and/or damages. The application of the security deposit and interest by the Licensor shall not constitute a waiver nor in any way defeat or affect the rights of the Licensor as stipulated herein or any and all other rights and remedies which the Licensor has by law.

34. ADDITIONAL TERMS AND CONDITIONS

The additional terms and conditions set forth in Appendix E and incorporated in this Agreement by reference and shall, for all purposes of this Agreement, form an integral part of it.

35. GENERAL

- (a) **Appendices.** The following are the Appendices attached to and incorporated in this Agreement by reference and shall, for all purposes of this Agreement, form an integral part of it:

APPENDIX A – Monthly Revenue Portion

APPENDIX B – Certifications of Insurance

APPENDIX C – Description of Services

APPENDIX D - Network Equipment, including Drawing

APPENDIX E – Additional Terms and Conditions

- (b) **No Third Party Beneficiaries.** Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the parties hereto and not for any other person.
- (c) **Waiver.** No provision of this Agreement shall be deemed waived by a course of conduct unless such waiver is in writing signed by all parties and stating specifically that it was intended to modify this Agreement.
- (d) **Severability.** If any term or provision of this Agreement shall to any extent be found to be invalid, void or unenforceable, the remaining terms and provisions shall nevertheless continue in full force and effect.
- (e) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the Province of British Columbia and the parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of such Province. This Agreement and the parties' obligations hereunder, are also subject to any orders, rules and regulations issued by any regulatory authority having jurisdiction over the Services. Each party hereby: (i) submits and attorns to the exclusive jurisdiction of the courts of the province of British Columbia; and (ii) waives trial by jury.
- (f) **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which so executed shall constitute an original and all of which together shall constitute one and the same agreement. Upon a counterpart of this Agreement being executed by each of the parties and delivered to all of the other parties by facsimile, courier or mail, the Agreement shall be a binding agreement on all parties.

IN WITNESS WHEREOF the parties hereto have executed these Presents as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)

by the Licensor:)

)

Mayor SHARON SHEPHERD, MAYOR)

)

City Clerk STEPHEN FLEMING, DEPUTY CITY CLERK)

) Corporate Seal

SIGNED, SEALED AND DELIVERED)

by the Licensee:)

)

Name Jill Starbuck)

Title VP Francisco)

April 10/06)

)

Name DAVID A. ROBINSON)

Title VP, Business Implementation)

Office of the CTO)

) Corporate Seal

ADDITIONAL SIGNATURES


Appendix A

Monthly Revenue Portion

The Monthly Revenue Portion shall be the aggregate of the following:

(a) Revenue Portion related to Public Hotspot Services (i.e. voucher and credit card transactions only)

Fifty (50%) percent of the Gross Revenue for End Users of the Services who are billed or pay for the Services, as the case may be, via a voucher purchased at the Airport or directly via their credit card pursuant to a distinct transaction for a session of Services to be provided at the Airport.

(b) Revenue Portion related to Private Managed Wi-Fi Services

Thirty (30%) percent of the Gross Revenue for End Users who use the Services at the Airport as part of a private managed hotspot services agreement between the Licensee and the applicable tenant of the Airport.



APPENDIX A: INSURANCE CERTIFICATE

B [Handwritten initials]

CERTIFICATE OF INSURANCE

This Certificate is issued to:

The City of Kelowna ,1435 Water Street Kelowna, BC V1Y 1J4

Insured	Name:	Rogers Wireless Partnership
	Address:	1 Mt. Pleasant Rd., Toronto, ON M4Y 2Y5
Broker	Name:	Thomas I Hull Insurance Limited
	Address:	BCE Place, 181 Bay Street, Suite 4200, Toronto, ON M5J 2T3

Location and nature of operation or contract to which this Certificate applies: All operations of the Named Insured

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause.	American Home RMGL3314704	May 1/05	May 1/06	Bodily Injury and Property Damage \$ 2,000,000 Inclusive \$ Aggregate \$ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ N/A Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Named Insured, but only with respect to the liability arising solely out of the operations/negligence of the First Named Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Name	Title	Company (Insurer or Broker)
Peter McCabe	Vice President	Thomas I. Hull Insurance Limited

Signature of Authorized Signatory
 THOMAS I. HULL INSURANCE LIMITED

Date: March 22, 2006

Appendix C Description of Services

The Services shall consist of the following:

- (a) **Public Hotspot Services:** The Licensee shall provide 802.11-based Wi-Fi services available as a paid service, either prepaid (credit card or voucher) or postpaid (subscription), to the general public.

The Licensee will configure a public "Hotspot" environment with the Wi-Fi network unencrypted in order to allow for the general public to connect without requiring them to install client software or to modify their existing network settings. In order to protect the End Users' data during the login process, encryption of sensitive data (such as credit card information or user cellular credentials) occurs on the End User's computer using native SSL encryption technology that is built into all web browsers.

The Licensee will also disable ad-hoc connections. The access points and the wireless switch that the Licensee will install are designed to actively block any traffic from being passed from one computer to the next by effectively creating a separate VLAN for each End User.

The Licensee will also provide three (3) Internet Kiosks, to be located at mutually agreed to locations within the Airport that will provide hotspot access for those End Users who are not equipped with their own Wi-Fi enabled devices.

- (b) **Private Managed Wi-Fi Services:** The Licensee shall provide 802.11-based Wi-Fi services available as a paid service, either prepaid or postpaid (subscription), to airport tenants and staff of such tenant. Such services are subject to each applicable tenant entering into a private managed hotspot services agreement with the Licensee.

The Licensee will configure the private Wi-Fi services environment with the Wi-Fi network encrypted in order to provide extra security. The Licensee will employ standard security protocols as required including WEP, WPA, WPA2 and 802.1x to IPsec and PPTP VPNs.

Appendix D

Network Equipment, including Drawing

Part Number	Description	Units
OAW-4308T	OmniAccess 4308T with adaptive RF management. Provides 8 auto-sensing 10/100 interfaces with Power over Ethernet (PoE) and one 1000BaseT uplink. Supports up to 16 OmniAccess APxx Access Points. Operates directly connected to the Access Points or remotely connected through a Layer 2 or Layer 3 network. Supports one auto-sensing 110V/240V AC power supply and includes one accessory kit (installation guide, 19" equipment rack mount hardware, console cable with adapter and full product documentation CD) (the "Gateway Controller")	1
OAW-4308-PEF	Policy Enforcement Firewall Module for the OAW-4308 Provides full stateful Firewall, dynamic user policy management and captive portal capability.	1
OAW-AP70	OmniAccess AP70 access point with Integral Tri-Band Antenna (Supports Diversity). Supports 802.11a or 802.11b/g (SW selectable). Supports one 10/100 Base-T (RJ-45) Ethernet Interface (Power and Serial over Ethernet capable) and Installation Guide.	8
OAW-AP70-MNT	OmniAccess AP70 wall / ceiling mounting kit. Includes mounting cradle hardware, ceiling tile clips and security screws to mount the access point securely on wall or ceiling.	8
RTI	Rogers Telecom E10 Fibre installation	1
Misc	Misc cables, connectors, racks, etc	Various
Kiosks	King digital display and interactive terminal kiosks	3

APPENDIX E
ADDITIONAL TERMS AND CONDITIONS

1. FEES PAYABLE BY END USERS

- (a) Licensee will be responsible for charging fees to the End Users or the End Users' service providers for the use of the Services in amounts determined by Licensee from time to time, provided that at its option Licensee may from time to time and at any time provide the Services to one or more End Users at no charge. Subject to the Monthly Revenue Portion, Licensee shall be entitled to retain all amounts which it bills and collects with respect to the Services and shall not be required to share any such amounts with the Licensor. The Licensor agrees that it will not charge or attempt to charge the End Users or the End Users' service providers any fees or other amounts relating to the use of the Services.
- (b) Licensor acknowledges and agrees that the Services being provided shall be subject to such modifications, additions and deletions as may be determined by Licensee from time to time, at its sole discretion.
- (c) Licensee makes no representations or warranties of any kind or nature whatsoever regarding the amount of Monthly Revenue Share which shall be generated by the Services.
- (d) Licensee shall have the exclusive right to operate a telecommunications facility which provides services equivalent or similar to the Services at the Airport during the Term. The Licensor shall not knowingly cause or permit others to interfere with or impair the quality of the telecommunications services being rendered by Licensee at the Airport.
- (e) Licensee agrees that the branding of the "Home Page" for the Public Hotspot Services and on any advertising, promotional or other materials to be distributed at the Airport are subject the Licensor's prior content and approval, not to be unreasonably withheld or delayed.

2. LIMITATION ON SERVICES

- (a) The Licensor acknowledges and agrees that:
 - (i) the Services shall be provided by Licensee on an "AS IS, WHERE IS" basis;

- (ii) the Services shall be made available to an End User only when such End User's authorized enabled wireless device (the "**End User Equipment**") is in the operating range of the Network;
- (iii) the Services may be temporarily refused, interrupted, or limited because of, among other things: (i) limitations of the Network and/or the interconnection services or the failure or degradation of the interconnection services; (ii) transmission limitations caused by the physical configuration of the Airport (including, without limitation, any walls, doors or other barriers); (iii) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of the Services; (iv) signal interference or disruption from other wireless equipment or radio waves or microwaves (including, without limitation, cordless phones and their base stations and microwave ovens); and (v) equipment failures beyond the reasonable control of Licensee. Individual data transmissions may be involuntarily delayed for a variety of reasons, including without limitation, weak batteries in the End User Equipment, system over-capacity, movement outside the service area and gaps in coverage within the service area;
- (iv) it is possible for third parties to monitor data traffic transmitted as part of the Services and privacy cannot be guaranteed;
- (v) Licensee shall have the right to suspend all or part of the Services or access to the Services immediately if Licensee reasonably suspects or determines that there is a malfunction, abuse, incorrect configuration or use of the End User Equipment, the Network, the interconnection services or the Services, provided that Licensee will use commercially reasonable efforts to provide notice thereto to the Licensor. Licensor agrees that, to maintain or improve service, or for other business reasons, Licensee may at its sole discretion modify or temporarily restrict or suspend all or part of the Services, provided that Licensee will use commercially reasonable efforts to provide notice thereto to the Licensor;
- (vi) the Network and the Services may cause interference with other equipment using similar frequencies (including, without limitation, cordless phones and their base stations); and

- (vii) in the event that there is any interference with the Services at the Airport, the Licensor will work with Licensee to mitigate or eliminate such interference.

3. THE NETWORK

- (a) The installation of the Network shall be performed at a mutually agreed upon time.
- (b) Licensee shall at all times retain ownership of the Network and all equipment constituting the Network. The Licensor may not mortgage, sell, transfer, lease, encumber or assign all or any part of the Network to any third party. The Licensor agrees to take all steps reasonably required in order to protect the Network from trespass or damage

4. MONITORING AND INSPECTION/MAINTENANCE/CONTACTS

- (a) The Licensor agrees that Licensee and its employees, agents, contractors and subcontractors shall have the right to have access to the Network at the Airport in order to, among other things, monitor, inspect, maintain, upgrade and disconnect the Network. Subject to Clause Numbered 14, in order to conduct its monitoring, inspecting, maintaining, upgrading, disconnecting and other functions, Licensee and its employees, agents, contractors and subcontractors shall have the right to enter the Airport and inspect the Network.
- (b) Licensee shall maintain the Network at its cost in the manner Licensee determines, at its sole discretion,

5. LICENSOR'S OBLIGATIONS

The Licensor agrees:

- (a) that the Licensor will not and will not allow its employees, agents, contractors, subcontractors, representatives or customers to tamper with, move, adjust or modify the Network without Licensee' prior approval;
- (b) to abide by and provide the location conditions and meet the following standards (the "**Location Standards**");

- (i) **Indoor and Access.** Indoor only, private and secure location (back-room, computer room or private office) that has a limited and restricted access and is not accessible by the public.
- (ii) **Mounting.** Whenever possible, the Network hardware should be mounted inside an existing server/computers rack for a better protection.
- (iii) **Temperature.** The temperature of the Airport must be maintained at between 15°C - 30°C (59°F - 86°F).
- (iv) **Humidity.** The location of the Network must be a dry environment with relatively low humidity. Locations that have access to water (kitchen, lavatories, etc.) should be avoided.
- (v) **Interference.** All equipment which radiates radio waves and/or microwaves (such as cordless phones and their base stations and microwave ovens) should be kept away from the Network and the antennas of the Network.
- (vi) **Power.** The Licensor shall, at its cost, provide sufficient continuous electrical power to the Network to permit the Network to continue operating in accordance with the following requirements:
 - (A) Departure Lounge Ceiling: 110V 3AMPS;
 - (B) Land Lines Room: 110V 4AMPS;
 - (C) COB Electrical Room: 110V 3AMPS;
 - (D) Arrivals Ceiling: 110V 3AMPS; and
 - (E) Each Kiosk: 110V 5AMPS.

(c) that the Licensor shall inform Licensee immediately in the event that (i) the Licensor becomes aware of any loss or damage to the Network, or (ii) the Licensor becomes aware of any problems or outages relating to the Services.

(d) that the Licensor shall inform Licensee at least thirty (30) days in advance prior to commencing any remodeling, construction, renovations or other changes to the Airport which may affect the Network or the Services; and

- (e) that Licensee may, at its discretion, publish or supply the name and address of the Airport on and through its various marketing and promotional materials including, without limitation, on its or the CHRA Internet websites.

6. REPRESENTATION, WARRANTIES AND COVENANTS

Licensor represents warrants and covenants to Licensee as follows and acknowledges that Licensee has relied upon the completeness and accuracy of such representations, warranties and covenants in entering into this Agreement:

- (a) that it has the full right and power and is authorized to enter into and perform according to the terms of this Agreement, and has the right to grant to Licensee the rights herein granted; and
- (b) the carrying out of this Agreement will not breach any other agreement which it has entered into.

7. LICENSEE TRADE NAME AND TRADEMARKS

The Licensor recognizes the right, title and interest of Licensee through ownership or licence in and to all service marks, trademarks and trade names used in connection with the Services (the “Marks”). The Licensor agrees not to engage in any activities or commit any acts, directly or indirectly, which may contest, dispute, or otherwise impair such right, title and interest of Licensee. Licensor has no rights to the Marks, shall not use the Mark and shall not refer to “Rogers”, “Rogers Wireless” or “Fido” in connection with the Services, without the express prior written consent of Licensee. Licensor shall not acquire or claim any right, title or interest in or to the Marks. The Licensor is specifically prohibited from incorporating any of the Marks into its own service marks, trademarks and trade names or from using any service mark, trademark or trade name that is confusingly similar to any of the Marks.

8. CONFIDENTIALITY

For the purposes of this Agreement:

“**Confidential Information**” means, but is not limited to, any information, know-how, data, patent, copyright, trade secret, process, technique, program, design, formula, marketing, advertising, financial, commercial, sales or programming matter, written materials, compositions, drawings, diagrams,

computer programs, studies, work in progress, visual demonstrations, ideas, concepts, and other data, in oral, written, graphic, electronic, or any other form or medium whatsoever, which may be exchanged between the parties. The term "Confidential Information" shall not include the following:

- (i) information which is now or which hereafter becomes publicly known or available through no act or failure on the part of Recipient (as defined below), whether through breach of this Agreement or otherwise;
- (ii) information which is actually known to Recipient prior to the time of receipt of such Confidential Information, which such actual knowledge can be established by evidence that, would be acceptable to a Court of competent jurisdiction;
- (iii) information which is furnished to Recipient by a third party who has rightfully obtained the Confidential Information without restriction on disclosure;
- (iv) information which is independently developed by Recipient without use of or reference to the Confidential Information of Owner (as defined below) that does not otherwise contravene the terms and provisions of this Agreement, and which such independent development can be established by evidence that would be acceptable to a Court of competent jurisdiction;
or
- (v) information which Recipient is by law, order of a Court of competent jurisdiction, or other legal compulsion required to disclose.

"Owner" means the party hereto which possesses the intellectual property rights in and to an item of Confidential Information, as the context requires, and includes, without limitation, an owner, possessor, developer and licensee of such Confidential Information.

"Recipient" means the party hereto who receives or is otherwise privy to, or comes into possession of, an item of Confidential Information of which it is not the Owner.

"Licensee Affiliate" means any corporation, company or entity that directly or indirectly controls, is controlled by or is under common control with, Licensee.

- (a) All Confidential Information constitutes the sole and exclusive property and the Confidential Information of the Owner, which the Owner is entitled to protect. Subject to the *Freedom of Information and Protection of Privacy Act*, British Columbia, Recipient shall only use the Confidential Information strictly as necessary to perform its obligations under this Agreement. Recipient shall hold and maintain all Confidential Information in confidence for the Owner and shall have an obligation to protect the Confidential Information from any harm, tampering, unauthorized access, sabotage, access, exploitation, manipulation, modification, interference, misuse, misappropriation, copying or disclosure whatsoever, except as specifically authorized by the Owner in writing. The standard of care for protecting Confidential Information imposed on the Recipient will be at least that degree of care the Recipient uses to prevent disclosure, publication or dissemination of its own Confidential Information, but in no event less than reasonable care.
- (b) Subject to the *Freedom of Information and Protection of Privacy Act*, British Columbia, without the prior written consent of the Owner, Recipient shall not disclose any Confidential Information to any person other than to such of its employees, officers, directors, contractors, agents and professional advisors who need to know and in such event only to the extent necessary to perform its obligations under this Agreement . Notwithstanding the foregoing, Licensee may also disclose any Confidential Information to such of the employees, officers, directors, contractors, agents and professional advisors of any Licensee Affiliate to the extent necessary for Licensee to fulfill its obligations hereunder without the prior written consent of Company. Recipient shall destroy all Confidential Information, including all records, summaries, analyses, notes or other documents and all copies thereof, immediately upon request by the Owner and, if requested by Owner, will certify in writing to the Owner that such destruction has occurred. The destruction of such documents shall in no event relieve Recipient of its obligations of confidentiality set out in this Agreement with respect to such destroyed information.
- (c) Neither this Agreement nor the disclosure of any information to Recipient shall be construed as granting to Recipient any rights in, to or in respect of the Confidential Information.

9. NO OBLIGATION FOR CONTINUING SERVICE TO END USERS

Upon the termination or expiry of this Agreement, Licensee shall have no further obligation to provide the Services at the Airport to the End Users.

10. IDENTIFIERS

The Licensor does not own and shall have no property right in any Internet Protocol (IP) addresses assigned in connection with the Services and Licensee may change such IP addresses at such time or times as Licensee, in its sole discretion, considers necessary without any liability.

11. LIMITATION OF LIABILITY

(a) Except with respect to a breach of Section 8 of this Appendix E, each party's total liability with respect to any and all claims, regardless of the form of action, whether in contract, tort (including negligence and product liability), strict liability or otherwise, arising out of or in connection with this Agreement shall not exceed the actual direct damages attributable to such claim.

(b) Notwithstanding any other provision herein, except with respect to a breach of Section 8 of this Appendix E, in no event shall either party be liable for, and each party hereby waives its right to claim, any indirect, incidental or consequential damages (including loss of business, profits, revenue, data, goods, facilities or services) directly or indirectly relating to or arising out of or in connection with this Agreement, including any products and/or services provided pursuant to this Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, or for any or all loss or damage directly or indirectly relating to our arising out of a third party's unauthorized access to information or data transmitted over Licensee's facilities, whether or not such damages were foreseeable.

12. NO WARRANTY

Licensor acknowledges and agrees that the Services, the Network and other equipment are provided by Licensee "as is" and "as available" and, to the extent permitted by law, without warranty by Licensee of any kind whatsoever, express or implied, including, but not limited to, warranties of merchantable quality,

fitness for a particular purpose, infringement, or those arising from a course of dealing or usage of trade.

Further, to the extent permitted by law, Licensee does not warrant the performance, availability, uninterrupted use of or operation of the Network, the internet, the Services or the connection to the internet. Licensee does not warrant that any data or files sent by or to End Users (whether by e-mail or otherwise) will be transmitted, transmitted in uncorrupted form, or transmitted within a reasonable period of time.

ORIGINAL

KELOWNA INTERNATIONAL AIRPORT

SUPPLEMENTAL AGREEMENT

TO

LICENCE AGREEMENT

BETWEEN THE

CITY OF KELOWNA

AND

BOLDSTREET INC.

FOR THE OPERATION OF

PRIVATE AND PUBLIC WI-FI (WLAN) NETWORK

AT THE

KELOWNA INTERNATIONAL AIRPORT

(YLW FILE NO. ²³²⁰2380-20-8183)

THIS AGREEMENT made this 1 day of SEPTEMBER, 2009.

BETWEEN:

CITY OF KELOWNA
a municipal corporation having its offices at
1435 Water Street, Kelowna,
British Columbia, V1Y 1J4

(the "Licensor")

OF THE FIRST PART

AND:

BOLDSTREET INC.
290 Picton Avenue, Suite #103
Ottawa, Ontario K1Z 8P8

(the "Licensee")

OF THE SECOND PART

RECITALS

WHEREAS:

A. The City granted a Licence Agreement to Rogers Wireless Partnership (the "Company") dated March 1, 2006 and made between the Licensor and the Company (the "Licence Agreement").

B. The Company has agreed to assign the Licence Agreement to the Licensee, effective July 1, 2009, and the Licensor supports the assignment of the agreement to the Licensee, subject to the following changes to the terms and conditions of the Licence Agreement. A copy of the Assignment executed by all parties is attached as Appendix "A".

Now therefore the parties agree as follows:

1. CLAUSE 1 - CONSIDERATION -

(a) Sub-section (a) (i) shall be deleted in its entirety

2. CLAUSE 11 – DEFAULT

(a) All references to the words “rent” in sub-sections (i) and (ii) shall be deleted.

3. APPENDIX A – MONTHLY REVENUE PORTION

(a) Sub-section (a) shall be revised to read as follows:

“(a) Revenue Portion related to Public Wireless Services to include fifty per cent (50%) of the net revenue collected from public WLAN services including pre-paid, credit card, roaming, and advertising revenue.

The Licensee will introduce an advertising model to user interface authentication screens and share incremental revenue as part of the revenue share.

The Licensee will charge \$10.00 per end-user support call received at its WiFi call centre, to cover the costs for end-user support. Net revenue is gross revenue less third-party commerce processing fees and end-user support call charges.”

4. APPENDIX C – DESCRIPTION OF SERVICES

(a) The following words shall be deleted from Sub-section (a):

The Licensee will also provide three (3) Internet Kiosks, to be located at mutually agreed to locations within the Airport that will provide hotspot access for those End Users who are not equipped with their own Wi-Fi- enabled devices.

5. The Licensor will be responsible for the cost of the wireless broadband connection (currently in place with Shaw Cable).
6. The Licensor will be responsible for obtaining City of Kelowna Council approval regarding the assignment of the Licence Agreement.
7. This Agreement shall be in full force and effect effective July 1, 2009 until February 28, 2011. All terms and conditions of the Licence Agreement continue to be in full force and effect as amended by this Agreement.

IN WITNESS WHEREOF the parties hereto have executed these Presents the day and year first above written.

By the City in the presence of:

Car Marguard
Witness Signature

CAROL MARGUARDT
Witness Name

#1-5533 Airport Way
Occupation

Kelowna BC VIVIS
Address

Operations Clerk
Address

CITY OF KELOWNA
by its authorized signatory (ies)

[Signature]

AIRPORT DIRECTOR

By the Licensee in the presence of:

[Signature]
Witness Signature

JEFF PRICE
Witness Name

ACCOUNTANT
Occupation

290 PICTON AVE
Address

OTTAWA, ON K1Z 8P8
Address

BOLDSTREET INC.
by its authorized signatory (ies)

[Signature]

PRESIDENT + CEO

ASSIGNMENT AGREEMENT

This agreement made as of this 1st day of July, 2009 (the “**Effective Date**”)

BETWEEN: Rogers Wireless Partnership
(hereinafter called the “**Assignor**”)

AND: BOLDstreet, Inc.
(hereinafter called the “**Assignee**”)

AND: City of Kelowna
(hereinafter called the “**City of Kelowna**”)

WHEREAS by Assignor and the City of Kelowna entered into a Licence Agreement dated as of March 1, 2006 (the “**Agreement**”);

AND WHEREAS the Assignor has agreed to assign its right, title and interest in and to the Agreement unto the Assignee and the Assignee has agreed to assume all of the liabilities and obligations of the Assignor under the Agreement, all as of the Effective Date;

AND WHEREAS the City of Kelowna has agreed to consent to the assignment of the Agreement subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the sum of \$1.00 now paid by each party hereto to each other party and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Assignment:** The Assignor hereby assigns, as of and from the Effective Date, to the Assignee all of the Assignor’s right, title and interest in and to the Agreement.
2. **Assumption:** The Assignee hereby confirms and agrees that (i) it has reviewed and understands the terms of the Agreement, and (ii) as and from the Effective Date, it shall assume and be bound by, observe and perform all the terms, obligations and provisions to be observed and performed by the Licensee under the Agreement as if it were an original party thereto.
3. **City of Kelowna’s Consent:** The City of Kelowna hereby consents to the assignment of the right, title and interest of the Assignor in and to the Agreement to the Assignee.


The City of Kelowna irrevocably and unconditionally releases, relieves and forever discharges the Assignor, its affiliates and their respective shareholders, directors, and officers (collectively, the “**Released Persons**”) of and from all actions, suits, duties, debts, accounts, covenants, obligations, contracts, liabilities, claims and demands whatsoever which the City of Kelowna ever had, now has or hereafter can, shall or may have against any of the Released Persons for or by reason of or in any way relating to or arising from or in connection with the Agreement.


City of Kelowna also agrees to not make any claim or take any proceedings with respect to any matter released or discharged in the foregoing paragraph in which any claim could arise against any of the Released Persons for contribution, indemnity or other relief.

- 4. **Further Assurances:** The parties shall execute such further documents and do all such acts and things as may be reasonably required to give this Agreement full force and effect.
- 5. **General Provisions:** This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.
- 6. **Governing Laws:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without reference to the conflict of laws rules.
- 7. **Counterparts:** This Agreement may be executed in a number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this day and year first above written.

ROGERS WIRELESS PARTNERSHIP


By: 
 Name: Mansell Nelson
 Title: VP, Business Product Management

By: 
 Name: Jill Shustard
 Title: VP, Financial Operations


APPROVED
 AS TO FORM

 RCI LAW

BOLDSTREET, INC.

By: 
 Name: Tom Camps
 Title: President + CEO

CITY OF KELOWNA

By: 
 Name: Sam Samadpour
 Title: Airport Director

By: _____
 Name :
 Title :



Airport General Manager's Office
Kelowna International Airport
#1-5533 Airport Way
Kelowna, B.C. V1V 1S1
Tel: (250) 765-5125 Fax: (250) 765-0213
www.ylw.aero

June 18, 2009

DUPLICATE ORIGINAL

File: 2320-20

Mr. Ron Spencer
Vice President, Operations
BOLDstreet Wireless
290 Picton Ave, Suite #103
Ottawa, Ontario
K1Z 8P8

Dear Ron:

RE: BOLDSTREET CONTRACT TO PROVIDE WIRELESS SERVICE – KELOWNA INTERNATIONAL AIRPORT

This will constitute a letter agreement between BOLDstreet Inc. and the City of Kelowna concerning the transition of wireless services at Kelowna International Airport from Rogers Wireless to BOLDstreet Inc.

1. Rogers Wireless will assign the existing contract to BOLDstreet Inc. effective July 1, 2009. BOLDstreet accepts the assignment and the City of Kelowna supports assignment of the agreement to BOLDstreet.
2. Effective the date of assignment (July 1, 2009) BOLDstreet Inc. (the Licensee) and the City of Kelowna (the Licensor) agree to amend the contract via Supplemental Agreement. The changes are as follows:
 - a. **Section 1 Consideration** – DELETE (a)(i) the requirement for the Licensee to pay a monthly fixed fee equal to Forty-One Dollars and Sixty-Seven Cents (\$41.67) for each Access Point installed as part of the Network. There is no change to (a)(ii) indicating that the Licensee will share a percentage of revenue derived from the operation of the network with the Licensor as set forth in Appendix A.
 - b. **Section 11 Default** – DELETE all references to “rent” in (i) and (ii). The Licensee is not responsible for any rent payments.

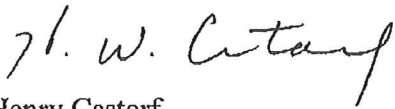
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Mr. Ron Spencer
June 18, 2009
Page 2

- c. **Appendix A Monthly Revenue Portion** – REVISE (a) Revenue Portion related to Public Wireless Services to include fifty (50%) percent of the net revenue collected from public WLAN services including pre-paid, credit card, roaming, and advertising revenue. ADD that the Licensee will introduce an advertising model to user interface authentication screens and share incremental revenue as part of the revenue share. Also, ADD that the licensee will charge \$10 per end-user support call received at its WiFi call centre, to cover the costs for end-user support. Net revenue is gross revenue less third-party commerce processing fees and end-user support call charges.
 - d. **Appendix C Description of Services** – DELETE requirement in (a) for the Licensee to provide three (3) Internet Kiosks, to be located at mutually agreed to locations within the Airport that will provide hotspot access for those End Users who are not equipped with their own Wi-Fi enabled devices.
3. The Licensor will be responsible for the cost of the wireless broadband connection (currently in place with Shaw Cable).
 4. The term of the Supplemental Agreement will be from July 1, 2009 to February 28, 2011, at which point the original 5 year contract expires.
 5. The Licensor will be responsible for obtaining City of Kelowna Council approval for the above.

To signify your concurrence with these arrangements, please sign the duplicate copy of this letter and return it to the undersigned.

Yours truly,

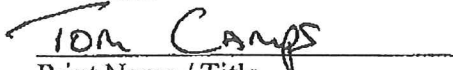


Henry Castorf
Airport Development Manager

HC/nk
Attachment

APPROVED AND ACCEPTED:


Signature:


Print Name / Title
PRESIDENT + CEO

24 JUNE / 2009
Date:

EXHIBIT "B" to the 2nd Supplemental Agreement

APPENDIX D - NETWORK EQUIPMENT, INCLUDING DRAWING

BSI Equipment:

1. Colubris MSC-5100 wireless controller/gateway
2. Linksys 24-port 10/100 PoE switch
3. Generic 10/100 5-port switch
4. APC remote-addressable power distribution unit (PDU)
5. IBM slim desktop remote monitoring server

Wi-Fi Network:

1. 8 x Colubris MSC-3300 wireless AP/controllers
2. 2 x Linksys 24-port PoE switches
3. 2 x rack-mount uninterruptible power supplies (UPS)
4. 2 x fiber-Ethernet media converters

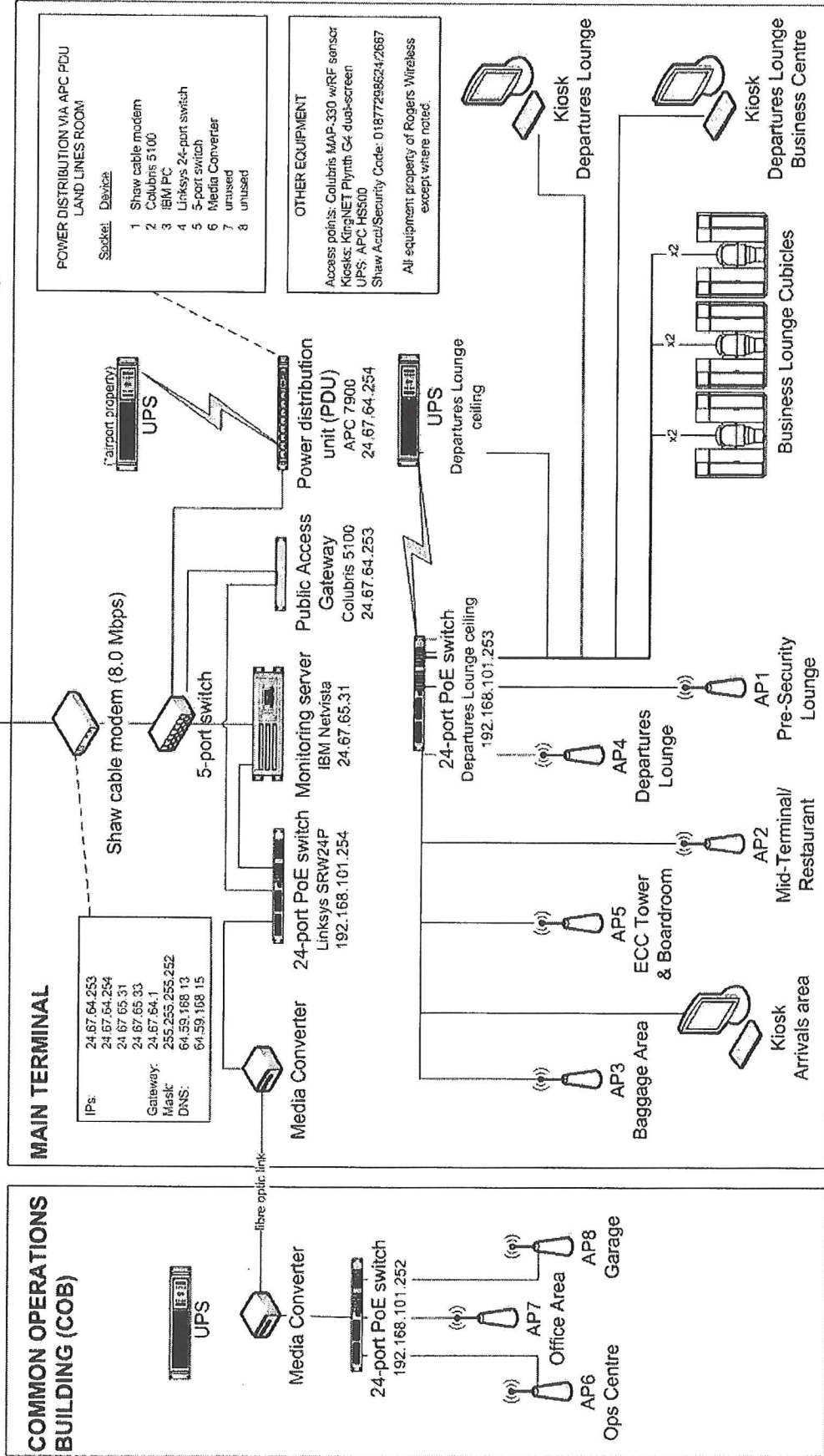


Kelowna International Airport (YLW)

Wi-Fi Access Network



BOLDstreet NOC, Ottawa



(airport property)



APPENDIX F - DEFINITIONS

Capitalized terms used in this License shall have the following meanings unless the context expressly or by necessary implication requires otherwise:

"BSI Equipment" means the BSI Equipment which is owned and/or provided by the Licensee for use in association with the WiFi Network in provision of the Public WiFi Service;

"End User" means persons who are the intended recipient of the Services provided by the Licensor and Licensee at the Airport;

"Gross Revenue" means the aggregate of total revenue generated pursuant to the Services, including without limitation, the revenue derived by the Licensee from private managed hotspot services, advertising, sponsorship and roaming sources in association with the Network;

"Net Revenue" means Gross Revenue less Permitted Costs;

"Permitted Costs" means costs incurred by the Licensee in provision of the Services, namely: i) the cost of managing the Colubris/HP gateway at \$415.00 per month; (ii) the cost of managing user authentication on the Network at \$0.05 per unique user per day; and (iii) the cost of providing end-user toll-free support at \$10.00 per end user support call;

"Public WiFi Service" means those services relating to the provision of WiFi services, without charge, to the public at the Airport pursuant to this License;

"Revenue Share" means the percentage of positive revenue set out in Appendix A, due and payable to the Licensor in respect of each year during the term of this Agreement;

"Taxes" means all federal, provincial, municipal, local, foreign and other taxes, fees, charges or dues lawfully levied, assessed or imposed on Licensee and/or required to be collected and remitted by Licensee to any government tax authority (other than taxes on income) and reasonably attributable to Licensee's distribution of the Services; and

"WiFi Network" means the wireless data network equipment installed, operated and maintained by the Licensor in or around the said Airport for the provision of the Services.

