WI-FI NETWORK USE Agreement

 This Non-Exclusive Wi-Fi Network Use Agreement (the “**Agreement**”) is made as of the latter signature date hereof (the “**Effective Date**”), by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[need legal name], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert state of formation and entity type], and its successors and assigns (“**Licensor**”) and T-Mobile USA, Inc., a Delaware corporation, and its successors and assigns (“**T-Mobile**” or “**Licensee**”).

 **WHEREAS**, Licensor, as tenant, is a party to the ground lease or ground leases identified in the attached **Exhibit 3** (whether one or more, the “**Prime** **Lease**”), pursuant to which Licensor leases the real property and improvements thereon as futher described in **Exhibit 3** (whether one or more, the “**Facility**”) (each ground lessor under a Prime Lease is referred to herein as the “**Prime Landlord**”);

 **WHEREAS**, Licensor has installed and currently owns and operates a Wireless Fidelity (Wi-Fi) network (the “**Wi-Fi Network**”) at the Facility;

 **WHEREAS**, the Prime Lease permits Licensor to enter into agreements such as this Agreement to allow parties such as Licensee to access the Wi-Fi Network to provide wireless internet access to their customers; and

 **WHEREAS**, the Parties are entering into this Agreement for the purpose of permitting the customers utilizing the service of Licensee to access the Wi-Fi Network within the Facility.

 **NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **Non-Exclusive Use of the Wi-Fi Network:** As more specifically set forth below, Licensor hereby grants to Licensee a non-exclusive right of access to and use of the existing Wi-Fi Network, as it may be upgraded or expanded from time to time, located at Facility during the Term of this Agreement.
2. **Term:** The initial term of this Agreement shall be one (1) year, commencing on the date that Licensee’s customers are able to access the Wi-Fi Network at the Facility (the “**Commencement** **Date**”). Thereafter the Agreement shall automatically renew for successive one-year terms unless either party notifies the other other in writing of its intention not to renew at least sixty (60) days before the expiration of the then current term. The initial term and any renewal terms are collectively referred to herein as the “**Term**”.
3. **Fees:** Except as otherwise expressly provided herein, there will be no fees of any type exchanged by the parties pursuant to this Agreement. Licensee’s ability to access the Wi-Fi Network for its customers’ use while in the Facility, and the ability of Licensor’s other users of the Facility to access T-Mobile services while in the Facility shall for all purposes be and be deemed to be a sufficient exchange of consideration.
4. **Wi-Fi Network Capacity:** As of the Effective Date of this Agreement, Licensor represents and warrants to Licensee as follows: (i) that there is adequate capacity on the Wi-Fi Network to meet the requirements and demands for capacity and usage of Licensee’s customers while in the Facility; and (ii) that the Wi-Fi Network, as currently configured, has excess capacity for the use by Licensee’s customers reasonably estimated to utilize the Wi-Fi Network at any given time during the Term of this Agreement. At all times during the Term, Licensor shall be solely responsible for monitoring the capacity of the W-Fi Network and, if necessary, augmenting such capacity (including backhaul capacity) to maintain the ability of all users to utilized the Wi-Fi Network.
5. **Service Level Agreements**: Licensor shall provide the additional obligations set forth on **Exhibit 1 “Obligations and Services**” and **Exhibit 2 “Support and Back-End Services**” which are incorporated into this Agreement and are binding upon the parties.
6. **Title:** Licensor shall at all time retain ownership and title to the Wi-Fi Network.
7. **Prime Lease Requirements:**

Upon request by Licensee, Licensor will provide Licensee with a copy of the Prime Lease for any Facility, with the financial terms redacted. Licensor warrants and represents to Licensee the following in regard to the Prime Lease:

* 1. Licensor is not in default under the terms and conditions of the Prime Lease, has received no notice of any such default, and is not aware of any facts given the passage of time that may cause Licensor to be in default;
	2. The terms and conditions of this Agreement will in no way violate any term or condition of the Prime Lease;
	3. That no consent or other approvals are required from the Prime Landlord, or any other third party, including any lenders of Prime Landlord, for Licensor to enter into this Agreement with Licensee.
	4. Licensor has not received any notice from the Prime Landlord or any third party that would require Licensor to expand, upgrade, or otherwise enhance the service provided by the Wi-Fi Network.
	5. Licensor has received no notice from the Prime Landlord of its intention to terminate the Prime Lease early.
	6. That by entering into this Agreement, neither Licensee nor its customers shall be required to pay any additional amounts of compensation in any form to the Prime Landlord, Licensor or any third party, for the use of the Wi-Fi Network.
	7. Licensor has received no notice from the Prime Landlord that would require Licensor to relocate any portion of the Wi-Fi Network within the Facility.
	8. That title to any portion of the Wi-Fi Network has not vested in the Prime Landlord or any third party.
	9. Licensor agrees to not store or save any personally identifiable information of the customers of Licensee. Notwithstanding the above, Licensor may store, save and/or analyze aggregate usage patterns of customers as a group in its ongoing process of managing network resources.
	10. Licensee is required to comply with all rules and regulations set forth by the Prime Lease. In the event of expiration and/or termination of the Prime Lease, this Agreement shall automatically terminate with no further obligations, unless Licensor is able to continue operating at the Facility notwithstanding such expiration and/or termination and grants permission to Licensee to continue to operate.
1. **Other Warranties and Representations:**
	1. Licensor warrants and represents to Licensee that Licensor installed, operates and maintains the Wi-Fi Network in compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
	2. Licensee warrants and represents to Licensor that Licensee will access and use the Wi-Fi Network in compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
2. **Emergency Contacts:**

Licensee National Operations Center (NOC): 877-611-5868

Licensor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Licensee’s Frequencies**. Pursuant to one or more licenses acquired from the Federal Communications Commission (“**FCC**”), Licensee (directly, or through an affiliate) owns the sole and exclusive right to utilize its licensed frequencies that are broadcast outside the Facility. The parties agree that Licensor does not have, and will not acquire through this Agreement, any proprietary or ownership rights or interest in Licensee’s frequencies, network, cell sites and related components, or the public revenues associated with the services provided by Licensee. Licensee shall at all times have the unfettered right to control the operation of Licensee’s frequencies.
2. **Notices**. All notices hereunder must be in writing and shall be sent by overnight mail via nationally recognized overnight courier or by certified mail, return receipt requested to each party at the following addresses:

 If to Licensor:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attn:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 If to Licensee:

 T-Mobile USA, Inc.

 12920 SE 38th Street

 Bellevue, WA 98006

 Attn: Lease Compliance

1. **Entire Agreement; Modification**. The Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties.
2. **Governing Law, Venue**. This Agreement will be governed by and construed in accordance with the laws of the state where the Facility is located.
3. **Force Majeure**. Neither party shall be liable for any breach of this Agreement for any delay or failure of performance resulting from any cause beyond such party’s reasonable control, including without limitation, strikes, labor disputes, war, terrorist acts, riots, government regulations, or acts of God.
4. **No Third-Party Beneficiaries**. Licensor and Licensee are the only parties to the Agreement, and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party.
5. **No Waiver of Breach**. The failure of a party to insist on any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any right contained herein, shall not be constructed as a waiver of or relinquishment for the future performance of such covenant or right to exercise such right.
6. **Assignment**. This Agreement may be assigned by Licensee without Licensor’s consent to any parent, affiliate or subsidiary of Licensee, any party that merges or consolidates with Licensee or its parent, or any party that purchases or otherwise acquires a majority of Licensee’s ownership interest or assets in the FCC market in which the Facility is located. Any other assignment of this Agreement by Licensee will require Licensor’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Licensee shall be fully and forever released from all liabilities and obligations under this Agreement which arise after the effective date of any assignment by Licensee. This Agreement and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective assignees.
7. **Counterparts**. This Agreement may be executed by original, facsimile, or electronic signatures (complying with the U.S. Federal ESIGN Act of 2000, 15 U.S.C. 96) and in any number of counterparts which shall be considered one instrument. Counterparts, signed facsimile and electronic copies of this Agreement shall legally bind the parties to the same extent as original documents.
8. **Captions and Article Numbers**. The captions, article and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of the Agreement nor in any way otherwise affect the Agreement.
9. **Severability**. If any term, covenant, condition or provision of this Agreement shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
10. **Authority**. Licensee and Licensor each warrant and represent to the other that the person signing this Agreement on such party’s behalf has the authority to do so and to bind such party to the terms, covenants and conditions contained herein.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Agreement as of the signature date set forth below.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ T-MOBILE USA, INC.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit 1**

 **Obligations and Services.**

* 1. Because T-Mobile needs to provide quality customer support to its users, Licensor will provide T-Mobile with access, including via a direct communication channel, to Licensor’s emergency contact point 24 hours per day, 7 days per week.
	2. Licensor shall use commercially reasonable efforts to provide a system uptime (the “**System Uptime**”) of 95% (the “**System Uptime Requirement**”) with respect to the Wi-Fi Network.System Uptime shall be calculated based on the evaluation of information compiled by Licensor from input based on Licensor’smonitoring systems and/or ticket activity. Licensor will not be responsible for, any degradation of System Uptime caused by scheduled maintenance or by any force majeure event and such downtime will not count against the System Uptime calculations for such month.
	3. To help integrate the parties’ networks, software and back-end systems that are necessary to fulfill any other purposes of this Agreement (such actions are collectively the “**Integration Efforts**”), the parties agree to comply with the specifications attached hereto as **Exhibit 1-A** (the “**Passpoint** **Specifications**”) and which may be updated from time to time. The Specifications will outline the technical steps and requirements needed for integration, and the parties agree to provide the necessary information described therein. Because the parties need each other’s assistance and information to perform the integration, the Parties agree to:
		1. provide each other with access during normal working hours to the parties’ technical and other personnel for questioning and discussion regarding the Integration Efforts. Such access will require at least 24 hours’ notice if a party sends personnel on-site to any of the other party’s access points to perform any integration or testing work, or at least 12 hours if a party performs the integration and testing work remotely; and
		2. work diligently and in good faith to complete all necessary integration and development work for which Licensor is responsible for, so that T-Mobile’s customers can access the entire Licensor Wi-Fi Network as soon as practicable.
	4. Marks; Domain Names; Publicity

(i) No Publicity**.** Licensor will not release information about the existence of this Agreement, including their value, or their terms, through any media including but not limited to, the issuance of any news release, announcement, denial, or confirmation. Licensor must obtain prior written authorization from the T-Mobile corporate communications department for any exceptions to this subsection. Nothing in this Agreement implies that T-Mobile will agree to any publicity.

(ii) Use of Marks. Licensor may imprint and supply services with trademarks, service marks, logos, brands, and trade names owned by or licensed by T-Mobile (the “**Marks**”) only as directed by T-Mobile and as authorized in this Agreement. Guidelines on how to apply the Marks will be provided to Licensor. Except as permitted under this Agreement, Licensor and Licensor personnel will not display or use the Marks, including for T-Mobile’s promotional purposes, nor permit the Marks to be displayed or used by any third party. The Marks are proprietary to T-Mobile and nothing in this Agreement constitutes the grant of a license for use of the Marks. Licensor is not permitted to use the Marks, the T-Mobile name or the names of any divisions, business units, or names of any product or service, in any other manner without the written consent of T-Mobile.

(iii) Domain Names. T-Mobile will own all domain name registrations made in connection with this Agreement that include the T-Mobile name or other trademarks owned by T-Mobile, its subsidiaries or affiliated companies.

(e) Confidential Information**.** Each party acknowledges that while performing its obligations under this Agreement it may have access to Confidential Information, including, but not limited to, customer proprietary network information and rate or payment information, of the other party. The party receiving such confidential information (the "**Receiving Party**") may use the Confidential Information only to perform its obligations under this Agreement. The Receiving Party must use at least the same care to avoid unauthorized use, including disclosure, loss or alteration of the disclosing party's Confidential Information as it provides to protect its own similar Confidential Information, but in no event will the Receiving Party fail to use reasonable care under the circumstances to avoid any unauthorized use of the disclosing party's Confidential Information. Upon the termination of this Agreement, or upon written request, the Receiving Party shall return or destroy, at the option of the disclosing party, all Confidential Information of the disclosing party. Notwithstanding anything else herein to the contrary, the following shall not be considered Confidential Information: information that is (i) rightfully known to the Receiving Party before negotiation leading up to the execution of this Agreement, (ii) independently developed by the Receiving Party without any reliance on the disclosing party's Confidential Information, (iii) part of the public domain or is lawfully obtained by the Receiving Party from a third party not under an obligation of confidentiality, or (iv) required to be disclosed by law or legal process, if the Receiving Party uses reasonable efforts to cooperate with the disclosing party in limiting disclosure. Each party agrees that the wrongful disclosure of Confidential Information may cause irreparable injury such that monetary damages are inadequate compensation. Accordingly, either party may seek injunctive relief in any court of competent jurisdiction for the breach or threatened breach of this section in addition to any other remedies at law or equity. The obligation to protect Confidential Information will survive the termination of this Agreement for a period of five (5) years, except for customer specific information or source code, which will survive until it otherwise becomes public information.

All of the terms of this Agreement, including the fees and other obligations, are confidential, and no party will disclose, either directly or indirectly, any of these terms to any third parties.

To the fullest extent applicable to its performance under this Agreement and the data and information transmitted on the Wi-Fi Network, Licensor will comply with the provisions of attached **Exhibit 1-B**.

**Exhibit 1-A**

**Passpoint Specifications**

**Architecture**. The following diagram illustrates a high level architecture of the overall Wi-Fi network

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**Passpoint configuration parameters**

**T-Mobile Network Connectivity / AAA**

* + 1. Customer Wi-Fi network shall support have a RADIUS over TLS connecitivty to T-Mobile AAA servers
		2. Radius Proxy and AAA shall resolve the T-Mobile AAA IP address using preconfigured FQDN
		3. Radius Proxy shall support support verification of certificate revocation status with OCSP
		4. Radius Proxy shall restrict non-TMO subscribers from authenticating into T-Mobile network
		5. The Wi-Fi network shall prioritize all T-Mobile traffic transferred over passpoint SSID as a highest priority
		6. router shall support up to 8 Hotspot 2.0 simultaneously connected clients
		7. The router shall not allow more than 5 radius authentication attempts per second
		8. The router shall allocate an average bandwidth of 20 Mbps per user min for passpoint SSID

**T-Mobile Network Connectivity Parameters**

* + 1. Username format shall be IMSI@wlan.mnc260.mcc310.3gppnetwork.org
		2. T-Mobile AAA FQDN aaa.geo.t-mobile.com
		3. T-Mobile AAA Port number 2083
		4. Shared secret “secret” (no quotations)
		5. SSL certs for raduiis TLS connectivity will be provided by T-Mobile

**T-Mobile Wi-Fi Passpoint ANQP Parameters**

* + 1. Authentication:  EAP-AKA
		2. Security :           WPA2-Enterprise
		3. NAI Realm :
1. wlan.mnc260.mcc310.3gppnetwork.org
	* 1. 3gpp Cellular info:
2. MCC 310   MNC 260  (production)
3. MCC 310   MNC 310  (Lab)
	* 1. Domain:

t-mobile.com

**Exhibit 1-B**

SECURITY SAFEGUARDS, T-Mobile Information and Cardholder Information

**1. Handling of T-Mobile Information and T-Mobile customer transmissions**.

**1.1.** Licensor: (a) may collect, store, access, use, process, maintain and disclose T-Mobile Information solely to the extent necessary to perform its obligations under the Agreement and for no other purpose (and not, for example and without limitation, to market to or contact persons identifiable from such T-Mobile Information, or to engage in data mining, analytics, marketing or any other activity involving such information outside the express direction of T-Mobile); (b) will, without limiting any other obligations applicable to T-Mobile Information, treat and protect all T-Mobile Information as Confidential Information owned (as between Licensor and T-Mobile) by T-Mobile.

**T-Mobile Information”** means any information about T-Mobile’s (or a T-Mobile affiliate’s) prospective or existing customers, employees, other personnel, agents, officers, directors, contractors, and/or other persons with a connection to activities under this Agreement, including personally identifiable information, financial account information, Customer Proprietary Network Information, account information (including that which, when isolated from other data, is not personally identifiable information but is linkable in Licensor systems such that the resulting data set is personally identifiable information).

Licensor will comply with all applicable privacy and data security laws, and it will not cause T-Mobile to be in violation of any such applicable law.

**1.2.** If Licensor has access to or possesses (including as a result of de-identification of T-Mobile Information by Licensor) any De-Identified Data (as defined below), Licensor covenants that it will not, and will not attempt to, re-identify the data with any personally identifiable data or otherwise perform functions that would re-identify the data and that any third parties to whom any De-Identified Data is provided will comply with this provision. “**De-Identified Data**” means T-Mobile Information that has been scrubbed, hashed, encrypted or otherwise obscured to remove any personally identifiable information.

**2. Security Safeguards**.

**2.1.** Licensor is responsible for any authorized or unauthorized collection, storage, disclosure and use of, and access to, T-Mobile Information under its control or made available to it by T-Mobile under this Agreement. Licensor is further responsible for maintaining reasonable security safeguards to protect the confidentiality, security and integrity of T-Mobile customer transmissions over Licensor networks, and for compliance with any applicable data security laws and regulations.

**2.2.** Without limiting Licensor’s other obligations under this Agreement, Licensor will implement and maintain a comprehensive and effective written information security program appropriate to the nature of the T-Mobile Information and/or to the nature of the Services that: (a) contains administrative, technical and physical safeguards to identify, assess and protect against any reasonably foreseeable anticipated or actual threats or hazards (whether internal or external) to the security or integrity of T-Mobile Information and/or T-Mobile customer transmissions (including threats of loss, theft, unauthorized access, use, disclosure or other unauthorized processing of information or any failure of security controls protecting information), whether contained in tangible or intangible records (“**Safeguards**”), (b) meets relevant industry best practices for such Safeguards, and (c) complies with all applicable privacy and data security Laws.

**2.3.** Licensor will (i) proactively monitor and assess risks and the sufficiency of any Safeguards in place to control such risks, (ii) review the scope of security measures at least annually and when a material change in Licensor’s business practices occurs that may reasonably implicate the security or integrity of records containing T-Mobile Information, and (iii) implement and maintain information Safeguards to control the risks Licensor identifies through risk assessment, regular testing, and otherwise monitoring the effectiveness of the Safeguards’ key controls, systems and procedures to confirm the information security program is operating in a manner that is reasonably calculated to prevent and detect unauthorized access to or use or disclosure of T-Mobile Information, or any unauthorized interception of T-Mobile customer transmissions over Licensor networks.

**2.4.** Such controls, systems and procedures will include a) encryption of customer transmissions over Licensor networks, and updates to maintain security of such encryption systems; b) penetration testing and prompt correction of any vulnerabilities found in such testing; c) prompt installation of any relevant manufacturer software patches and updates; d) logged access to its systems and regular review of such logs; e) use of complex passwords and regularly updates of such passwords, encryption keys and other credentials, including de-provisioning of such credentials where no longer needed by staff. T-Mobile reserves the right to review, upon request, Licensor’s policies, procedures and practices used to maintain the privacy, security and confidentiality of T-Mobile Information, subject to reasonable limitations aimed to protect Licensor and the effectiveness of its information security program.

**3. Security Breaches**.

**3.1.** Licensor represents and warrants that: (a) its and its subcontractors’ networks, systems and premises, including any third-party data center(s) utilized by Licensor (collectively, the “**Licensor Systems**”), have not suffered any actual, probable or reasonably suspected failure of any Safeguards or any actual, probable or reasonably suspected unauthorized access to, or acquisition, use, loss, destruction, compromise or disclosure of, any information maintained on or transmitted through the Licensor Systems (each, a “**Security Breach**”); and (b) if the Licensor Systems have suffered one or more Security Breaches, that Licensor has disclosed each Security Breach to T-Mobile in writing. Licensor represents and warrants that Licensor is not, and has not been, a party to any current, pending, threatened or resolved enforcement action or claim of any person or entity, or any consent decree or settlement with any person or entity, regarding any Security Breach or otherwise regarding data or information security.

**3.2**. Licensor will immediately notify T-Mobile if Licensor learns or has reason to believe that there has been any actual, probable or reasonably suspected Security Breach that may impact T-Mobile Information, and provide T-Mobile with assurance satisfactory to T-Mobile that such Security Breach or potential Security Breach has been remediated and will not recur.

**3.3**. In particular, Licensor will provide T-Mobile with information concerning the nature of the Security Breach, which systems were impacted or potentially impacted, indicators of compromise, identified vulnerabilities and/or attack vectors, and planned remediation steps. Unless prohibited by Applicable Law or court order, Licensor will also promptly notify T-Mobile in writing of any third-party legal process relating to any Security Breach, including any legal process initiated by any governmental entity (foreign or domestic). Except as required by Applicable Law, Licensor will not send any notice of a Security Breach to any third party without T-Mobile’s prior written approval of the form, content, and delivery method of such notice, and T-Mobile will have discretion over who (as among T-Mobile, Licensor or a Licensor subcontractor) will send required notices to affected individuals and others.

**3.4**. Licensor will be responsible for all costs associated with the investigation and remediation of any Security Breach, including the costs associated with the investigation of the incident (e.g., costs of third party computer forensics services); giving of notice to affected individuals and of fielding feedback and questions from those notified (e.g., costs of print shop services, postage, obtaining contact information for affected individuals, call center services); credit and ID theft monitoring services; regulatory investigations (formal and informal), audits and fines; fines imposed by credit card associations, merchant banks or financial account institutions; and costs passed on by individual card companies, banks and other financial institutions, including the costs of issuing replacement cards, fraud liability, chargebacks, compromise fees and other remediation costs.

**4. Security of Cardholder Information**. If Licensor has access to individual numbers used to identify credit or debit card or other similar card accounts or other personally identifiable information relating to the use of credit or debit card accounts, including the full primary account number, cardholder name, expiration date, service code, track data (from the magnetic stripe or equivalent on a chip), PINs or PIN blocks (collectively, “**Cardholder Information**”), this Section 4 will apply.

**4.1. PCI Standards.** Licensor represents, warrants and covenants that Licensor is presently in compliance with, and will remain, at all times during and after the Term during which Licensor stores, processes or transmits Cardholder Information, in compliance with the most recent effective versions of all rules, regulations, standards and guidelines adopted or required (a) by any entity offering or supporting payment card brands (collectively, “**Card Brands**”) whose Cardholder Information is handled by Licensor, and (b) by the Payment Card Industry Security Standards Council (the “**Council**”), in either case relating to privacy, data security or the safeguarding, disclosure or handling of Cardholder Information, including the Payment Card Industry Data Security Standards, the Payment Card Industry’s Payment Application Data Security Standard, the Payment Card Industry’s PIN Transaction Security requirements, Visa’s Cardholder Information Security Program and Payment Application Best Practices, American Express’s Data Security Operating Policy, MasterCard’s Site Data Protection Program and POS Terminal Security program, and the analogous security programs implemented by other card brands, in each case referenced in this sentence as they may be amended, updated, replaced or augmented from time to time (the standards described in this clause (c) being collectively referred to as the “**PCI Standards**”). Licensor will, at its own cost and expense, perform all tasks, assessments, reviews, penetration tests, scans and other activities required under the PCI Standards (including any compliance guidance related to the PCI Standards issued by the Council, its subordinate bodies, or any successors thereto) and otherwise to validate Licensor’s compliance during the Term with the PCI Standards. To the extent that Licensor is hosting a system or application which is Internet facing, its PCI attestation of compliance must be performed by a Qualified Security Assessor. Licensor will deliver to T-Mobile copies of all documentation necessary to verify compliance with these requirements (“**Verification Documentation**”). In the event T-Mobile reasonably determines that additional Verification Documentation is required under the PCI Standards or likely to be so required to verify such compliance, including a “**Report on Compliance**,” and an associated unqualified “**Attestation of Compliance**,” then, upon T-Mobile's request and at no additional charge to T-Mobile, Licensor will provide such additional Verification Documentation to T-Mobile within 30 days from T-Mobile's request, or the timeframe required for T-Mobile to remain compliant, whichever is less. At least annually thereafter, Licensor will deliver to T-Mobile a copy of the Verification Documentation, applicable to the Cardholder Information environment at no additional charge to T-Mobile. On a quarterly basis, Licensor will deliver to T-Mobile at no additional charge to T-Mobile evidence of a passing vulnerability scan applicable to the Cardholder Information environment conducted within the preceding three months. Licensor will immediately notify T-Mobile in writing of any exception in a Report on Compliance, Attestation of Compliance or quarterly vulnerability scan or if it learns that it is no longer PCI Standards compliant, or reasonably anticipates that it is or will be non-compliant, and will promptly notify T-Mobile in writing of the steps being taken to remediate such exception or non-compliance.

**4.2**. Licensor will not commit any act or omission that causes T-Mobile to violate the PCI Standards or to be fined, sanctioned or penalized by Card Brands, the Council, merchant banks, payment card issuers or any third party for the failure to properly protect, secure, maintain, use or store Cardholder Information.

Licensor is solely responsible for the security of Cardholder Information that Licensor or its personnel or subcontractors stores, possesses, transmits or controls.

Licensor will access, use and disclose Cardholder Information only if and to the extent necessary to: (a) process and otherwise facilitate credit and debit transactions on T-Mobile's behalf; (b) comply with Applicable Laws, PCI Standards, Card Brand regulations and written T-Mobile policies; and (c) as otherwise instructed in writing by an authorized T-Mobile officer.

**4.3**. If there is a suspected or known Security Breach of Cardholder Information, Licensor will first immediately notify T-Mobile, and then, within 12 hours of the breach, provide to T-Mobile for T-Mobile to provide to the applicable payment card company(ies), a list of the compromised account numbers as well as any other information requested by Card Brands. Licensor will provide the Card Brands, merchant banks, and any of their respective agents and designees with full access to any and all Licensor Systems, and any other Licensor books, records, premises and systems in the event of any Security Breach in which Cardholder Information may have been compromised, and Licensor will cooperate fully with any investigation, verification, testing and review of Licensor’s compliance with the PCI Standards.

**Exhibit 2**

**Support and Back-End Services**

Licensor will provide T-Mobile with the services set forth in this **Exhibit 2** relating to the Licensor Wi-Fi Network.

**1. ADDITIONAL DEFINITIONS**

* 1. “**Network Issue**” means any verifiable and reproducible failure of the Wi-Fi Network that materially affects the operation and use of one or more access points on the Wi-Fi Network. Licensor will classify Network Issues as follows:

**Critical.** A Critical Network Issue is an impairment of a Licensor-operated component that significantly impacts the usability of the Wi-Fi Network, such as the Licensor authentication systems. Also includes any event that impacts 20% or more of the access points in the Wi-Fi Network.

**Severe.** A Severe Network Issue is the loss of 5% or more of the access points in the Wi-Fi Network, or the impairment of a Licensor-operated component that results in significant inconvenience to T-Mobile’s customers.

**Medium Priority.** A Medium Priority Network Issue is the loss of service at an individual access point or the impairment of a Licensor-operated component that results in a malfunction of a non-essential feature of the Wi-Fi Network.

**Low Priority.** A Low Priority Network Issue is a partial loss of service or impaired service at an individual access point.

* 1. “**Response Times**” mean the targeted response times within which Licensor will use commercially reasonable efforts to contact T-Mobile upon Licensor’s receipt of T-Mobile’s notice of an Network Issue.
	2. “**Targeted Resolution Time**” mean the targeted times within which Licensor will use commercially reasonable efforts to provide a workaround or error correction.

**2. BACK-END SERVICES.**

* 1. **24 x 7.** Each party will provide 24 by 7 network operations support with direct communication with the other party's engineers via telephone and email.
	2. **Network Issue Resolution Process.**
	3. T-Mobile may report Wi-Fi Network Issues via telephone or email. Calls to Licensor for Licensor Wi-Fi Network support are normally answered within 60 seconds during Licensor’s business hours (4 a.m. – 10 p.m. Pacific Standard Time in the United States). However, during off hours or periods of unusually high activity, callers may be required to leave a voicemail for a return call. Licensor will attempt to return calls within 30 minutes. All emails to Licensor for Licensor Wi-Fi Network support will receive an initial reply within 12 hours.
	4. T-Mobile must supply detailed information to Licensor, including, if applicable, details of network location, the user’s operating system, Wi-Fi card and other configuration and a detailed description of the problem and any error messages.
	5. Priority support requests for Network Issues are handled first by Licensor’s second-level technical support, where the problem is documented and initial triage is conducted. If determined to be a Network Issue the contact and documented issue will be passed to Licensor’s appropriate point of contact for troubleshooting and resolution. This is a warm transfer if the initial contact is via telephone. Licensor will work to resolve any Network Issue, and will remain the primary point of contact for T-Mobile. Depending on the nature and location of the problem, Licensor will use tools to directly resolve the issue or will work through the appropriate access point T-Mobile’s NOC to resolve the issue and will contact T-Mobile with a status update or advise of issue resolution within the response guidelines defined in this Agreement.
	6. Licensor will provide T-Mobile with an issue tracking number. All follow-up communications should include the issue tracking number.
	7. **Responses and Resolutions.** Licensor will use commercially reasonable efforts to respond to Wi-Fi Network Issues as follows:

|  |  |  |
| --- | --- | --- |
| **Issue Classification** | **Response Time** | **Targeted Resolution Time** |
| Critical | 30 minutes | 6 hours |
| Severe | 60 minutes | 12 hours |
| Medium | 2 hours | 3 business day |
| Low | 4 hours | 5 business days |

A response will include acknowledgment of the trouble report, a trouble ticket number for tracking the issue, the definition of the issue as it is understood at the time, the initial severity classification based on the definitions above, and an estimated time to repair if available.

* 1. **Escalation Points.** The Licensor issue tracking system notifies internal escalation points if an issue has not been resolved within the targeted resolution time period.
	2. **Operational Performance Reporting.** Licensor will provide T-Mobile a web-based tool and credentials to view operational reports of all locations where customers of T-Mobile can access the Licensor Wi-Fi Network (the “**Operations Report**”). The parties will mutually agree on the parameters of the Operations Report, which may be updated from time to time by mutual agreement of the parties.

**3. T-Mobile’s Obligations.**

**3.1 Notification.** T-Mobile agrees to provide prompt written notification to Licensor following the discovery of any error or Network Issue. If requested by Licensor, T-Mobile further agrees to promptly provide Licensor with a listing of output and any other data that Licensor may reasonably require in order to reproduce the Network Issue and/or the operating conditions under which such Network Issue occurred or was discovered. Licensor cannot resolve a Network Issue without such information, and its obligation to provide a Network Issue resolution will therefore be waived if T-Mobile does not provide such information. Any information exchanged during the course of identifying and correcting a Network Issue will be deemed Confidential Information.

**3.2 First Level Support.** T-Mobile, not Licensor, will be responsible for providing direct, first-level support to its customers. First-level or direct support means fielding support requests from T-Mobile customers, general resolution of user errors, network errors, Internet delays or malfunctions, and service errors. T-Mobile will not represent to any customer or other third party that Licensor is available to provide any first-level support.

**Exhibit 3**

**Property Details**

|  |  |  |  |
| --- | --- | --- | --- |
| **Site Name** | **Site Address** | **Site IT Contact** | **Phone Number**  |
|  |   |   |   |
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