

LIMITED COMMERCIAL TERMINAL BUILDING LEASE  
FOR A REMOTE TELECOMMUNICATIONS SITE

THIS LEASE, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by  
and between the following:

CITY OF BILLINGS, MONTANA, hereinafter  
designated "Lessor"

and

PASSUR AEROSPACE, INC.,  
hereinafter designated "Lessee"

W I T N E S S E T H

RECITALS

- 1) Lessor owns and operates BILLINGS LOGAN INTERNATIONAL AIRPORT (hereinafter called the Airport) situated in the City of Billings, Montana, and
- 2) Lessor deems it advantageous to itself and the operation of the Airport to lease to the Lessee Terminal Building space hereinafter described together with certain privileges, rights, uses and interests, and
- 3) Lessee wishes to engage in certain limited commercial activities, and proposes to lease on a net basis from Lessor said Terminal Building space and to avail itself of the same privileges, rights, uses, and interests contemplated herein, and
- 4) Lessee has indicated a willingness and ability to properly keep, maintain, and improve said Terminal Building space in accordance with standards established by Lessor.

NOW THEREFORE, the Parties hereto covenant and agree as follows:

## ARTICLE I

### PREMISES AND PRIVILEGES

A. Description of the Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain Terminal Building space, together with improvements (hereinafter called the premises), for its use and specifically described as:

20 square feet of space located in the northeast corner of the west end storage room on the second floor of the baggage claim addition of the Billings Logan International Airport Terminal Building as designated on Exhibit A, and by reference specifically made a part of this Lease.

B. General Privileges, Uses, and Rights. Lessor hereby grants to Lessee the following general privileges, uses, and rights, all of which shall be subject to the terms, conditions and covenants herein set forth. Said rights shall be subject to such Federal, State, or Local ordinances, rules or regulations as now or may hereafter have application at the Airport.

1) The general unrestricted use of all public Airport facilities and improvements, which are now or may hereafter be connected with or appurtenant to said Airport, except as hereinafter provided, to be used by Lessee for commercial activities as herein defined. For the purpose of this Lease, public Airport facilities shall include all roadways, parking areas, sidewalks, Terminal facilities, or other public facilities appurtenant to said Airport.

2) The right of ingress to and egress from the premises over and across public roadways serving the Airport for Lessee, Lessee's agents, employees, patrons and invitees, suppliers of service and furnishers of material.

C. Specific Privileges, Uses, and Rights. In addition to the general privileges, uses, and rights described above and without limiting the generality thereof, Lessor hereby grants to Lessee the right to engage in limited commercial activities on the premises as defined in subparagraphs 1–3 below, subject to the conditions and covenants hereafter set out:

- 1) The right to engage in the installation, operation, and maintenance of a remote telecommunications ground station with a rooftop antenna on the premises, necessary for the conduct of business.
- 2) Telecommunications equipment installed on said premises shall be contained in a totally enclosed and locked cabinet.
- 3) The equipment will be used exclusively by PASSUR Aerospace, Inc. in their mission to provide real time flight information.

## ARTICLE II

### TERM OF LEASE

A. Term. The term of this Lease shall be for a period of one (1) year, commencing on the 1st day of August 2010, and terminating on the 31st day of July 2011.

B. Renewal. This Lease shall renew automatically each year on the anniversary of the Lease provided that either party may cancel this Lease for any reason on thirty (30) days written notice. If the Lease is cancelled, rental due hereunder shall be payable only to the date of cancellation.

C. National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of such suspension.

### ARTICLE III

#### RENTAL AND FEES

A. Rental. For the premises described in Article I, Paragraph A, Lessee shall pay to Lessor an initial annual rental of \$3,277.51 for all space included in this Lease. Said rental shall be payable annually in advance, without billing, on the first day of each new Lease year, in an amount equal to the annual rental.

B. Interest Penalty. Without waiving any other right or action available to the Lessor, in the event of default in the payment of Lease rentals herein, or any other rentals, fees, or charges owed Lessor, the amount due shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date such rentals, fees, or charges were due and payable, until paid in full. Said interest shall not apply with respect to items being contested in good faith by Lessee and which are resolved in Lessee's favor.

C. Annual Readjustment of Rental. During the term of the Lease, the rental rate will be adjusted annually on the anniversary of the Lease using the Consumer Price Index for all Urban Consumers (CPI-U) for the previous twelve (12) month period. In no case shall the rate be less than the previous year.

### ARTICLE IV

#### OBLIGATIONS OF LESSOR

A. Lessor Warranties. Lessor warrants all things have happened and have been done to make its granting of said Lease effective and that Lessee shall have peaceful possession and

quiet enjoyment of the leased premises during the term hereof, upon performance of Lessee's covenants herein.

B. Operation as Public Airport. Lessor shall during the term hereof, operate and maintain the Airport and its public facilities, as defined hereinabove, as a public airport consistent with and pursuant to the sponsor's assurances given by Lessor to the United States Government under the Federal Airport Act.

C. Condition and Maintenance of Premises. Lessor shall assume no responsibility for the condition of the demised premises after delivery of premises to Lessee. Lessor shall maintain all existing roads on the Airport giving access to the leased premises. Lessor will not maintain Lessee's equipment, which shall be the sole responsibility of the Lessee.

D. Right to Inspect. Lessor shall have the right to enter premises to inspect for compliance with the terms and conditions of this Lease.

#### ARTICLE V

#### OBLIGATIONS OF LESSEE

A. Condition of Premises. It shall be the sole responsibility of the Lessee to develop, keep, maintain, and operate the entirety of the premises and all improvements and equipment placed thereon at Lessee's sole cost and expense. This Lease in every sense shall be without cost or expense to the Lessor. Lessee accepts the premises in its present condition and will repair and maintain any installations thereon except as provided in Article IV, Paragraphs B.-C., and will remove or cause to be removed any debris to the extent required for its continuing use thereof. The Lessee

will repair and pay for any City owned property damaged or destroyed through the use, negligence or wrongful conduct of the Lessee and Lessee's representatives, agents, and employees.

B. Improvements. Lessee shall have the right to and shall provide for the construction, alteration, expansion, and maintenance of its own improvements, in any lawful manner, upon or in the premises, for the purpose of carrying out any of the activities provided for herein, but shall first obtain written approval of Lessor for any such construction, alteration, or expansion activities, which approval shall not be unreasonably withheld.

C. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises, improvements and appurtenances thereto in a presentable condition free of refuse and debris consistent with good business practice.

D. Utilities. Lessor shall provide at its sole cost and expense for heating, air conditioning, and all utilities to point of outlet presently existing in the premises. Additional electrical outlets, telephone lines, cable, and other communication, data, or electrical service lines shall be the responsibility of the Lessee at its sole cost and expense.

E. Trash, Garbage, Etc. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage, and other refuse occurring as a result of Lessee's occupancy of the premises. Any cost associated with the handling and disposal of any trash, garbage and other refuse will be the responsibility of the Lessee. Lessee shall provide and use Lessor approved receptacles for all garbage, trash, and other refuse and shall place them on the premises in a location acceptable to the Lessor for their removal. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the premises is forbidden.

F. Federal, State, and Local Regulations. Lessee acknowledges that the right to use said Airport facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws of the United States of America, the State of Montana, and the City of Billings. All rules and regulations, and ordinances of Lessor now in force or hereafter prescribed or promulgated by authority or by law shall be closely observed during the full term of this Lease.

G. Hazardous Substances. Lessee assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used or consumed in the conduct of its business. Any connections to the sewer system shall not be used to dispose of any substance other than wastewater. The storm water system shall not be used to dispose of any substance. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State or Local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Lessee will hold Lessor harmless from and indemnify Lessor against and from any damage, loss, expenses, or liability resulting from any breach of this representations and warranty including all attorneys' fees and costs incurred as a result thereof. Lessee shall not be responsible for pre-existing environmental conditions.

H. FCC Authorization. Prior to activating any communications equipment, the Lessee must possess a valid Federal Communications Commission (FCC) authorization, and ensure that the operation of the equipment will be conducted in strict compliance with applicable Federal

Aviation Administration (FAA) requirements. A copy of each applicable license must be maintained by the Lessee for each transmitter being operated by Lessee. The Lessee must provide the Lessor, when requested, with a current copy of each license for equipment in or on facilities covered by this Lease. When requested by the Lessor, the Lessee shall provide technical information concerning the equipment operated by Lessee under the terms of this Lease.

I. Interference with Existing Signals. The Lessee must ensure that all equipment is operated in a manner that will not cause interference with the operation of existing communication equipment at the Billings Logan International Airport. If the Lessor determines that the Lessee's equipment is interfering with existing equipment located at the Billings Logan International Airport, the Lessee will have fifteen (15) days to eliminate the interference to the satisfaction of the Lessor. If the interference is not corrected in fifteen (15) days, the Lessee's equipment shall be shut down until the problem can be corrected. NOTE: If the Lessor determines that Lessee's equipment is interfering with critical FAA or City of Billings Public Safety communications or navigation equipment, Lessee shall immediately shut down all communications systems until the interference is corrected.

## ARTICLE VI

### INSURANCE AND INDEMNIFICATION

A. Indemnification. Lessor shall stand indemnified by Lessee as herein provided. It is expressly understood and agreed that Lessee is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that Lessor shall in no way be responsible therefore. It is further agreed that in the use of the Airport, in the construction, alteration, or maintenance of any improvements thereon, and in the exercise or

enjoyment of the privileges herein granted, Lessee shall indemnify and save harmless the Lessor from any and all losses that may result to the Lessor because of any negligence, act or omission on the part of the Lessee, and shall indemnify Lessor against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the premises.

Lessee expressly agrees that Lessor shall not be liable to Lessee, for personal injury, bodily injury, or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil disobedience or commotion, aircraft, smoke, vandalism, malicious mischief, or acts of civil authority, unless caused by the fault or negligence of Lessor, its officers, agents or employees.

B. Insurance. Lessee shall provide and keep in force for the term of the Lease a commercial general liability policy (occurrence form only), providing coverage for personal injury, bodily injury, death, and property damage, in amounts not less than \$750,000 per claim, and \$1,500,000 per occurrence.

The commercial general liability policy shall name the CITY OF BILLINGS as a **PRIMARY ADDITIONAL INSURED**. The City of Billings' general liability policy will be excess and noncontributory. At the time of execution of this Lease, Lessee shall furnish a Certificate of Insurance on a form acceptable to the City and showing that required insurance is in full force. The issuer(s) of the policy or policies shall provide thirty (30) day advance written notification to Lessor of any reductions in the policy coverage, cancellations, or other adverse amendments to the policy or policies impacting the risks covered. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the Lessor.

If, in the Lessor's opinion, the minimum limits of the insurance coverage herein required become inadequate during the term of this Lease, Lessee agrees that it will increase such minimum limits by reasonable amounts on request of the Lessor.

## ARTICLE VII

### TERMINATION, SUSPENSION, AND TRANSFER

A. Termination. Upon the termination of this Lease, as set forth in Article II, Paragraph B, Lessee shall have the right to remove all moveable fixtures, machinery and equipment, and all other personal property installed by it on the premises, and all expenses connected with such removal shall be borne by the Lessee. Said property shall be removed within thirty (30) days after termination of Lease. In the event the Lessee elects not to remove said property upon termination of the Lease, the disposition of the property will be left to the sole discretion of the Lessor. Removal of property by Lessor because of failure of Lessee to do so, shall be at Lessee's expense.

B. Suspension of Lease. During the time of war or declared national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States Government for military use. If any such lease is executed, any provisions of this instrument which are inconsistent with the provisions of the lease to the Government shall be suspended, provided that the term of the Lease shall be automatically extended by the amount of the period of suspension.

C. Subleasing, Transferring or Assigning. The rights conferred by this Lease or any part thereof, cannot be assigned, transferred, or subleased by the Lessee.

## ARTICLE VIII

### GENERAL PROVISIONS

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Lease, the nonprevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Taxes. Lessee shall pay any taxes or assessments which may be lawfully levied against Lessee's occupancy or use of the premises or any improvements placed thereon as a result of Lessee's occupancy, but Lessee as independent contractor reserves the right to contest the levy of any tax or assessment which it feels is unjust.

C. Subordination of Lease.

1) This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the administration, operation, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

2) Any mortgagee or beneficiary shall have the right to cure any default on the part of Lessee in the payment of rent hereunder and, in the event of default, to assume the Lessee's position under this Lease. Lessor in no event shall be liable for

the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no monetary judgment against Lessor. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to Lessor by certified mail a copy of each notice of breach of covenant, default or foreclosure given by the holder or the trustee under such mortgage or deed of trust.

D. Nondiscrimination. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree:

1) That no person, on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities, or the exercise of its rights and privileges under this Lease.

2) That, in the construction, alteration, or maintenance of any improvements on behalf of Lessee and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability.

3) That Lessee shall use the Airport facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21,

Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

E. Modification and Amendments. Changes or modifications to this Lease will be done in the form of a lease amendment to be agreed upon and signed by both Lessee and Lessor.

F. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease or the particular paragraphs.

G. Notices. Notices to Lessor provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation and Transit  
Billings Logan International Airport  
1901 Terminal Circle, Room 216  
Billings, Montana 59105

and notices to Lessee, if sent by certified mail, postage prepaid, addressed to:

PASSUR Aerospace, Inc.  
Attn: Jeff Devaney  
35-1 Orville Drive  
Bohemia, NY 11716

or to such other addresses as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_ day of

\_\_\_\_\_ 20\_\_.

ATTEST:

CITY OF BILLINGS

BY \_\_\_\_\_  
CITY CLERK

BY \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM

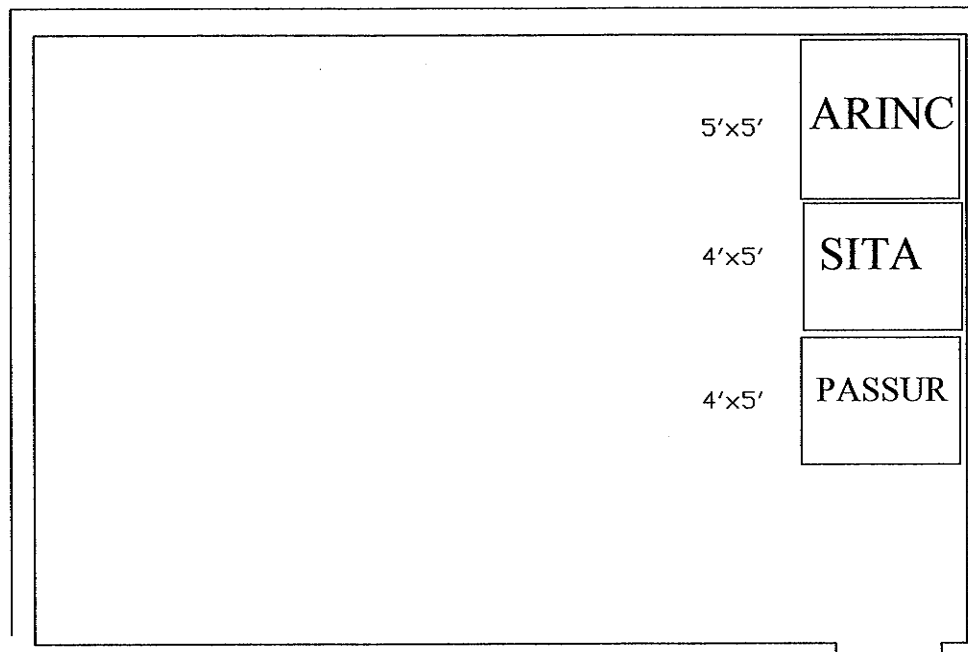
PASSUR AEROSPACE, INC.

BY \_\_\_\_\_  
CITY ATTORNEY

BY \_\_\_\_\_

DRAFT

LEASE AREA  
LOCATED ON THE SECOND FLOOR  
OF THE BAGGAGE CLAIM ADDITION  
ON THE WEST END OF THE  
BILLINGS LOGAN INTERNATIONAL AIRPORT



WEST END STORAGE ROOM  
SECOND FLOOR

PASSUR AEROSPACE, INC.  
TERMINAL LEASE

CITY OF BILLINGS LOGAN INTERNATIONAL AIRPORT  
AVIATION AND TRANSIT DEPARTMENT

EXHIBIT A Page 1



JULY 2010