

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATION OF )  
AND REGULATIONS OF THE COLORADO OIL )  
AND GAS CONSERVATION COMMISSION BY )  
**WEST HAWK ENERGY (USA) LLC, RIO BLANCO )**  
COUNTY, COLORADO )

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**VERIFIED APPLICATION FOR RELIEF FROM ORDER REGARDING  
GONZALO TORRES MACCHIAVELLO**

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Gonzalo Torres Macchiavello, through his undersigned counsel, and pursuant to COGCC Rule 503.b(10), hereby applies to the Colorado Oil and Gas Conservation Commission (“Commission”) for an order vacating the sanctions imposed against him by Order No. 1V-385, and in support thereof states as follows:

**I. INTRODUCTION**

1. Gonzalo Torres Macchiavello challenges Order No. 1V-385, (Exhibit A, attached hereto), which imposed sanctions against him personally, and against unnamed entities with which he may be associated, in violation of statutory notice requirements and of Mr. Macchiavello’s right to due process. In fact, the hearing notice in this matter, which was not even served upon Mr. Macchiavello, failed to name Mr. Macchiavello as a party and lacked any assertion of violation by him. Because of these deficiencies in the notice, Mr. Macchiavello was deprived of a fair opportunity to challenge the unsupported request for sanctions against him.

2. In Order No. 1V-385, the Commission imposed sanctions on West Hawk Energy (USA) LLC (“West Hawk”) for an alleged pattern of violation, pursuant to COGCC Rule 525.b. However, the Commission inappropriately extended those sanctions to Mr. Macchiavello, ordering that, until fines imposed against West Hawk are paid and other actions are performed by West Hawk, the “Director shall not approve any application for permit-to-drill, any Certificate of Clearance and/or Change of Operator, Form 10, or other permit for conducting oil and gas operations for West Hawk *or any entity of which Gonzalo Torres Macchiavello is a principal, majority owner, operational or general manager, or in which Mr. Macchiavello otherwise exercises control.*” (Exhibit A at 1-2 (emphasis added).) Neither the hearing notice nor any substantive facts or law justified this sanction against Mr. Macchiavello and unnamed entities with which he might associate.

3. Order No. 1V-385 entered in violation of Mr. Macchiavello's right to due process of the law because the Notice of Order Finding Pattern of Violation Hearing ("Notice") (Exhibit B, attached hereto) failed to comply with statutory requirements and did not afford Mr. Macchiavello a fair opportunity to prepare for and appear at the hearing. The Notice also was not properly served on Mr. Macchiavello. Consequently, the sanctions imposed upon Mr. Macchiavello by Order No. 1V-385 did not afford due process and cannot stand.

4. In addition, Mr. Macchiavello did not appear at the hearing on this matter because he did not receive actual notice of the hearing. Further, even if the Notice had been received, because the Notice failed to state that Mr. Macchiavello was a respondent and failed to state any claims or any basis for claims against him, it would have been reasonable for him to forego a response. Consequently, if the Commission declines to vacate the Order due to the violation of Mr. Macchiavello's right to due process, the Commission should recognize that Mr. Macchiavello's failure to respond was due to mistake or excusable neglect, and should vacate the Order.

5. The exact intent of Order No. 1V-385, as it relates to Mr. Macchiavello, is not clear. Arguably, it only prevents entities associated with Mr. Macchiavello from obtaining permits because it does not expressly forbid issuance of permits directly to Mr. Macchiavello. Regardless, to the extent the Order applies directly to Mr. Macchiavello, it deprives him of property interests in potential permits. To the extent it applies to unnamed entities, the Order deprives them of property interests and interferes with Mr. Macchiavello's ability to obtain employment with such entities, depriving him of liberty and property interests. All of those interests are protected by the due process clause. Moreover, regardless of the intended scope of the sanction, the notice failed to meet statutory requirements with respect to Mr. Macchiavello and any entity with which he might associate. While the arguments herein generally reference only Mr. Macchiavello they apply equally to the unnamed entities with which he might associate.

## II. ARGUMENT

6. This Application seeks relief from Order No. 1V-385. COGCC Rule 503.b(10) contemplates applications for relief from orders of the Commission. In addition, COGCC Rule 519 adopts the rules of practice and procedure contained in the Colorado Rules of Civil Procedure ("C.R.C.P."). C.R.C.P. 60(b) allows for relief from an order in certain circumstances, including: "(1) Mistake, inadvertence, surprise or excusable neglect; . . . (3) the judgment is void; . . . or (5) any other reason justifying relief from the operation of the judgment." A motion under C.R.C.P. 60(b) must be filed within a reasonable time, but, with respect to reason (1) above, no later than six months after entry of the subject order. *Id.* Nonetheless, when an order enters without due process, it is void and can be challenged at any time. *Goodman Assoc., LLC v. WP Mountain Properties, LLC*, 222 P.3d 310, 315 (Colo. 2010); *Don J. Best Trust v. Cherry Creek Nat. Bank*, 792 P.2d 302, 304-05 (Colo. App. 1990).

7. Order No. 1V-385 entered on September 19, 2011. Because the order entered without affording Mr. Macchiavello due process, it must be vacated regardless of whether this Application was filed within a "reasonable time." In addition to due process arguments, Mr. Macchiavello argues in this Application that his failure to respond to the Notice resulted from mistake, inadvertence, surprise or excusable neglect. This Application is filed within four

months following issuance of the Notice, about three months following entry of Order No. 1V-385 and only about two months after Mr. Macchiavello discovered the Order upon a Google search of his own name. In the time since discovering Order No. 1V-385, Mr. Macchiavello has met with COGCC staff to discuss the Order and has retained counsel to advise him of his rights and pursue this Application. Therefore, under the circumstances, this Application has been filed within a reasonable time.

**A. The Notice Failed to Satisfy Basic Due Process and Statutory Requirements.**

8. Both the Colorado Constitution and the United States Constitution guarantee that neither life, liberty, nor property will be deprived without due process of the law. Colo. Const. art. 2, § 25; U.S. Const. amend. XIV, § 1. Due process requires fundamental fairness in administrative actions that could deprive a respondent of a significant property or liberty interest. *City and County of Denver v. Eggert*, 647 P.2d 216, 224 (Colo. 1982); *Colorado State Board of Dental Examiners v. Micheli*, 928 P.2d 839, 842 (Colo. App. 1996).

9. The sanctions imposed against Mr. Macchiavello prevent him from obtaining permits from the COGCC and from obtaining employment with oil and gas companies, but the Commission imposed those sanctions without proper notice and opportunity to be heard, in violation of Mr. Macchiavello's right to due process. Therefore, Order No. 1V-385 must be vacated to the extent it applies to Mr. Macchiavello.

10. The Order prospectively bars Mr. Macchiavello from obtaining any COGCC permit. The right to receive a permit is a property interest if the governing law "restricts the discretion of the decision maker" with respect to issuance of the permit. *Pfenninger v. Exempla, Inc.*, 116 F.Supp.2d 1184, 1195 (D. Colo. 2000); *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982); *JJR 1, LLC v. Mt. Crested Butte*, 160 P.3d 365, 370 (Colo. App. 2007). The permit rights here at issue involve minimal regulatory discretion and therefore represent protected property rights.

11. In particular, the COGCC Rules afford little to no discretion in issuing permits. So long as an applicant provides the required information, an application for permit-to-drill must be approved, with very limited exceptions. COGCC Rule 303.a.(1) and m. Moreover, a Certificate of Clearance and /or Change of Operator, Form 10, is a required notice of initial sale of oil or gas and of changes in the operator, oil transporter or gas gatherer, for which no approval discretion is granted. COGCC Rule 312. Rather, proper execution is the only review consideration. *Id.* at e. Because the right to obtain these permits and approvals does not rest within the discretion of an agency, they represent property interests subject to constitutional due process protections.

12. In addition, "the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of [constitutional due process]." *Greene v. McElroy*, 360 U.S. 474, 492 (1959) (referring to the Fifth Amendment to the U.S. Constitution); *see also Carlson v. Industrial Claim Appeals Office*, 950 P.2d 663, 665-66 (Colo. App. 1997). The sanctions imposed by the Commission effectively prevent Mr. Macchiavello from obtaining employment

as a principal or manager of, and from taking a majority ownership interest in, any oil or gas operator in Colorado. This interference with Mr. Macchiavello's right to pursue private employment in a chosen field required due process of the law.

13. "[P]rocedural due process requires notice and the opportunity for a meaningful hearing before an impartial tribunal." *Copely v. Robinson*, 224 P.3d 431, 435 (Colo. App. 2009). Generally, the Administrative Procedures Act defines the notice required for adjudicative proceedings before an agency, except to the extent more specific statutory requirements apply to a particular agency proceeding. C.R.S. § 24-4-107.

14. COGCC Rule 525.b. allows the Commission to issue orders prohibiting issuance of new permits to operators shown to have engaged in a knowing and willful pattern of violation. However, no order may enter until there has been notice to the operator and a hearing. *Id.*

15. COGCC Rule 507.b(6) requires service of notice on "the violator, responsible party, or operator as applicable." Such service must comply with C.R.S. § 34-60-108(4), which requires notice either by mail to the last known address of the person to be noticed or by service as provided by the Colorado Rules of Civil Procedure. Such notice must state the purpose of the proceeding. *Id.*

16. In addition, the Commission or the director must serve notice of any violation of "[Title 34, Article 60], any rule, regulation, or order of the commission, or any permit" upon the responsible operator. C.R.S. § 34-60-121(4). Such a notice of violation must "state the provision alleged to have been violated [and] the facts alleged to constitute the violation." *Id.* In other words, in order for there to be a pattern of violation justifying Rule 525.b. sanctions, there must first be notices of violation served pursuant to C.R.S. § 34-60-121(4).

17. Similarly, the Administrative Procedures Act requires that notice identify the "legal authority and jurisdiction under which [the hearing] is to be held, and the matters of fact and law asserted." C.R.S. § 24-4-105(2)(a).

18. Contrary to these express notice requirements, and the basic fairness compelled by the due process clauses of the U.S. and Colorado constitutions, the notice in this matter failed to identify Mr. Macchiavello as a party to the proceeding, failed to state any claimed violations committed by Mr. Macchiavello and failed to identify any facts or law on which those claims were made. In addition, the notice was not even served upon Mr. Macchiavello.

19. Mr. Macchiavello was not a party to this proceeding. The Notice of Order Finding Pattern of Violation Hearing in this matter was captioned:

IN THE MATTER OF ALLEGED VIOLATIONS OF THE RULES AND  
REGULATIONS OF THE COLORADO OIL AND GAS CONSERVATION  
COMMISSION BY **WEST HAWK ENERGY (USA) LLC**, RIO BLANCO  
COUNTY, COLORADO

(Exhibit B hereto (bold in original); *see also* Exhibit A.) This caption contained no reference to Mr. Macchiavello. Rather, it proclaimed that this was a proceeding against West Hawk, not Mr. Macchiavello.

20. Consistent with the caption, the Notice stated claims against only West Hawk. The first paragraph of the Notice stated that “Staff will apply to the Commission . . . for an Order Finding Pattern of Violation Hearing (sic) against West Hawk Energy (USA) LLC (“West Hawk”) (Operator #10189).” (Exhibit B.) The next part of the Notice referenced Order No. 1V-378, (Exhibit C hereto), in which the Commission made findings of violations by West Hawk. (Exhibit B.) The Notice even listed the specific violations determined, in Order No. 1V-378, to have been committed by West Hawk. (*Id.*) In contrast, the Notice contained no claim, fact or legal argument asserted with respect to Mr. Macchiavello. (*Id.*)

21. The fourth paragraph of the Notice contained a request that the Commission make a finding “that a knowing and willful pattern of violation exists because *West Hawk* has failed, for more than one year, to perform the abatement and corrective actions required by various Notices of Alleged Violation (“NOAVs”).” (*Id.* (*emphasis added*)). The Notice contained no request for a similar finding with respect to Mr. Macchiavello, much less any statement that a single NOAV ever had been directed to Mr. Macchiavello. (*Id.*)

22. In fact, the Notice contained no request for any findings with respect to Mr. Macchiavello. Rather, without any asserted claim or statement of any factual or legal basis, and without even naming him as a party, the Notice requested that the Commission impose the same sanctions on Mr. Macchiavello that it imposes upon West Hawk. (*Id.*) That notice was wholly insufficient to provide Mr. Macchiavello a fair opportunity to prepare for and defend himself at the hearing.

23. In *Colorado State Board of Dental Examiners v. Micheli*, 928 P.2d 839 (Colo. App. 1996), the Colorado Court of Appeals found due process lacking as to claims that inaccurately set forth the alleged violations. In that case, the respondent, a dentist, was found to have engaged in substandard care because an assistant for whom he was responsible treated a patient without wearing gloves. *Id.* at 842. The notice, however, asserted that the *respondent* was non-sterile during dental procedures, and made no mention of actions by the respondent’s staff in this regard. *Id.* Because the notice failed to apprise the respondent of the claim based on the assistant’s actions, the respondent was not afforded due process, and the claim was dismissed by the Court of Appeals. *See also Copley*, 224 P.3d at 432-36 (notice failed to apprise respondent of specific issues for hearing).

24. As to Mr. Macchiavello, the notice here provided even less information than the notice in *Micheli*. In *Micheli* the notice at least named the respondent as a party and alleged that he had committed a violation, although inaccurately. In this case, the Notice failed to allege any violation committed by Mr. Macchiavello.

25. With respect to Mr. Macchiavello, the Notice failed to state: (1) the purpose of the proceeding; (2) any fact on which the proceeding was based; or (3) any legal basis for the proceeding. Consequently, the Notice failed to meet the standards of C.R.S. §§ 34-60-108(4), 34-60-121(4) and 24-4-105(2). Moreover, it wholly deprived Mr. Macchiavello of fundamental fairness in the proceeding. Because the Notice failed to satisfy statutory requirements and did not afford due process protection, Order No. 1V-385 is void as to Mr. Macchiavello and must be vacated to the extent it applies to Mr. Macchiavello.

26. In addition to these defects in the substance of the Notice, Mr. Macchiavello was denied due process because the Notice was not served on him.

27. The mailed notice was addressed to Mr. Macchiavello *in his capacity as President and CEO of West Hawk Energy (USA) LLC*. (Notice Envelopes, Exhibit D.) The cover letter provided with the Notice also was addressed to Mr. Macchiavello in his capacity as President and CEO of West Hawk Energy (USA) LLC, but stated that it accompanied the Notice “as to *West Hawk Energy (USA) LLC’s* general operations and an allegation of pattern of violation under Rule 525.b.” (August 24, 2011 Letter, Exhibit E (emphasis added).) The letter further encouraged Mr. Macchiavello, “*or someone on West Hawk’s behalf*,” to arrange a prehearing conference. (*Id.* (emphasis added).) As with the Notice itself, nothing in that letter suggested that claims were asserted against Mr. Macchiavello personally or that he had committed any violation.

28. While notice may be mailed to the last known address of the respondent, there is no evidence that Mr. Macchiavello personally was mailed or otherwise served with the Notice. Service of notice directed to a business entity does not also constitute service of notice of claims personal to individuals associated with the business entity, even if the individual receives the notice directed to the entity. *Rainsberger v. Klein*, 5 P.3d 351, 353 (Colo. App. 1999). As in *Rainsberger*, the Notice here was served only upon the company, not the individual. Also, like the summons and complaint in *Rainsberger*, the Notice here failed to name Mr. Macchiavello as a respondent. Thus, service was not completed on Mr. Macchiavello and the Commission lacked jurisdiction over him.

29. Because the Notice was not served upon Mr. Macchiavello, the Order is void for failing to satisfy the service of notice requirements of C.R.S. §§ 34-60-108(4) and 24-4-105(2)(a) and for lacking due process protection, and must be vacated as it relates to Mr. Macchiavello.

#### **B. Mistake, Inadvertence, Surprise or Excusable Neglect.**

30. Alternatively, Mr. Macchiavello’s failure to respond to the Notice was the result of mistake, inadvertence, surprise or excusable neglect. C.R.C.P. 60(b)(1) allows an order to be set aside based upon excusable neglect. Similarly, C.R.C.P. 55(c) allows an entry of default to be set aside for good cause shown. While Order No. 1V-385 contains no entry of default, the order contains a finding that Mr. Macchiavello failed to attend the hearing and the Commission imposed the requested sanctions in his absence.

31. To set aside either the finding of default or the order upon default on the basis of excusable neglect, the Commission must determine whether: (1) the neglect that resulted in entry of the order by default was excusable; (2) the moving party has alleged a meritorious defense; and (3) relief from the order would be consistent with considerations of equity. *People v. Wiesbard*, 35 P.3d 498, 501 (Colo. 2000). These three factors must be balanced in determining whether to vacate an order. *Goodman*, 222 P.2d at 321. However, “[b]ecause resolution of disputes on their merits is favored, the criteria for vacating a default judgment should be liberally construed in favor of the movant, especially when the motion is promptly made.” *Id.* at 320 (quoting *Sumler v. Dist. Ct.*, 889 P.2d 50, 56 (Colo. 1995)). In this matter, the balance of these factors demands setting aside Order No. 1V-385.

32. Excusable neglect results from unforeseen circumstances that would justify a reasonably prudent person to fail to respond to allegations of a violation. *Wiesbard*, 35 P.3d at 501. Under the circumstances of the Notice as it related to Mr. Macchiavello, no reasonable person could have responded.

33. As discussed above, the Notice in this matter did not name Mr. Macchiavello as a respondent, asserted no claim against Mr. Macchiavello, made no assertion of any violation by Mr. Macchiavello, stated no pattern of violation by Mr. Macchiavello, identified no legal basis for any proceeding against Mr. Macchiavello, and contained no request for any findings against Mr. Macchiavello. Thus, on its face, the Notice was insufficient to apprise any reasonable person that claims were asserted against him, much less that a response was required. While these deficiencies on their own made neglect of the Notice excusable, they were not the only circumstances justifying neglect.

34. As discussed above, service of the Notice was not made upon Mr. Macchiavello. Absent legally sufficient service, no reasonable person could be expected to appear.

35. Mr. Macchiavello also never received actual notice of the hearing. As the envelopes mailed to West Hawk show, the mailed notices were returned to sender. That is because, as of the date the Notice was mailed, West Hawk no longer existed and no longer maintained a presence at either address to which the Notice was mailed. (Office Agreement Addenda, Exhibit F (terminating lease for 999 18<sup>th</sup> Street, Suite 2700, Denver, CO as of June 30, 2008 and terminating 8310 South Valley Highway, 3<sup>rd</sup> Floor, Englewood, CO lease as of June 30, 2009, but extended three months to September 30, 2009.) Thus, Mr. Macchiavello did not receive even the faulty Notice.

36. Because, through no fault of his own, Mr. Macchiavello did not know of the Notice prior to the hearing, any neglect by Mr. Macchiavello in failing to appear for the hearing is excusable.

37. Assuming he were named a party, and given the opportunity, Mr. Macchiavello would assert meritorious defenses to the Notice. While a meritorious defense requires factual allegations, not just legal conclusions, the truth of the allegations need not be proved upon a motion for relief from the order. *Goodman Assoc.*, 222 P.3d at 319.

38. Of course, the lack of any asserted claim against Mr. Macchiavello is itself a meritorious defense to this matter. Moreover, Mr. Macchiavello cannot fully identify any defenses he might assert because the Notice fails to allege any claims against him. However, Mr. Macchiavello would assert that COGCC Rule 525.b. allows for sanctions against only "an operator . . . responsible for a pattern of violation." Because Mr. Macchiavello is not alleged to be an operator, is not alleged to have committed any violation, has not been served with any NOAV, and has not been found to have committed any violation, he cannot be sanctioned pursuant to Rule 525.b.

39. Mr. Macchiavello also would assert that he was not in fact an operator with respect to any wells; that his job at West Hawk was to seek capital to end the company's financial troubles, not to directly manage well field operations; that he diligently worked toward

obtaining such capital; that decisions regarding well field operations were not made by him; and that West Hawk was under Chapter 11 bankruptcy protection, became insolvent, lost its contract rights to the wells in question, was denied access to the wells and ceased all operations during the relevant period of time. Also during this time, the lessee through which West Hawk derived its rights to the wells represented that it would undertake the necessary reclamation actions using the performance bond posted with it by West Hawk. Under these circumstances, no “knowing and willful” violation by Mr. Macchiavello could be demonstrated.

40. Mr. Macchiavello also would argue in his defense that there is no basis for treating him personally as West Hawk. While the Notice proposed imposing, and the Order did impose, the same sanctions on Mr. Macchiavello as were imposed on West Hawk, neither provided a legal or factual basis for doing so. However, if an alter ego argument were asserted, Mr. Macchiavello would be prepared to provide a defense that there is no legal or factual basis for treating each as the other. In particular, West Hawk was a subsidiary of a publicly traded company; West Hawk was managed by a board of directors and officers, not solely by Mr. Macchiavello; legal formalities were observed and Mr. Macchiavello’s personal accounts were wholly separate from those of West Hawk.

41. In considering the equities, the Commission must balance prejudice to the moving party and the opposing party as well as the timeliness of the motion and any detrimental reliance by the opposing party on the order. *Goodman Assoc.*, 222 P.3d at 319.

42. In this matter, the prejudice to the movant is substantial – Mr. Macchiavello cannot obtain any COGCC permits, nor can any entity with which he is associated, unless West Hawk, a defunct company, pays almost \$1,000,000 in fines and completes abatement and corrective mitigation measures. Effectively, the order strips Mr. Macchiavello of the ability to work in the oil and gas industry in Colorado – a substantial prejudice to Mr. Macchiavello and his ability to earn an income.

43. On the other hand, vacating the order would not prejudice the COGCC. To the extent it relates to Mr. Macchiavello, the Order simply forbids issuance of permits by the COGCC. Moreover, since entry of the Order, Mr. Macchiavello has not applied for any COGCC permits. Consequently, the COGCC cannot have relied on the judgment to its detriment and cannot demonstrate any prejudice to it that could be caused by vacating the Order.

44. In addition, about three months have past since entry of the Order, and fewer than four months have passed since commencement of the proceedings. (Exhibit D, (postage dated August 29, 2011.)) Reopening the matter now, less than four months after it commenced, would impose no prejudice on the COGCC’s ability to develop proof of its claim, whatever that claim might be, and prepare for a hearing.

45. Because Mr. Macchiavello, through no fault of his own, received no actual notice of any action by the COGCC relating to him, the notice document that did exist was insufficient to advise anyone of any claims against Mr. Macchiavello, Mr. Macchiavello has stated meritorious defenses to the action taken against him and the equities balance in favor of vacating the Order, the Commission should vacate its Order No. 1V-385 as it relates to Mr. Macchiavello.

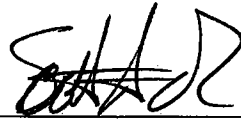


### III. CONCLUSION

46. For the foregoing reasons, Gonzalo Torres Macchiavello requests that the Commission grant this Application for Relief from Order and that the Commission vacate Order No. 1V-385 as it relates to Gonzalo Torres Macchiavello.

Respectfully submitted this 22<sup>nd</sup> day of December 2011.

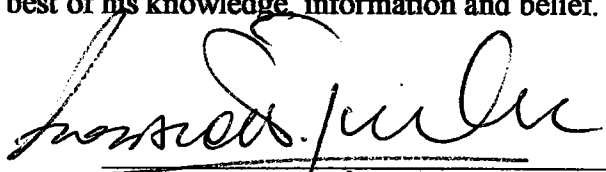
BURNS, FIGA & WILL, P.C.

By:   
\_\_\_\_\_  
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**VERIFICATION**

STATE OF COLORADO    )  
  ) ss.  
Arapahoe COUNTY    )

**Gonzalo Torres Macchiavello**, of lawful age, being duly sworn upon oath, deposes and says that he has read the foregoing Verified Application for Relief from Order Regarding Gonzalo Torres Macchiavello and knows the contents thereof, and that the facts stated therein are true to the best of his knowledge, information and belief.

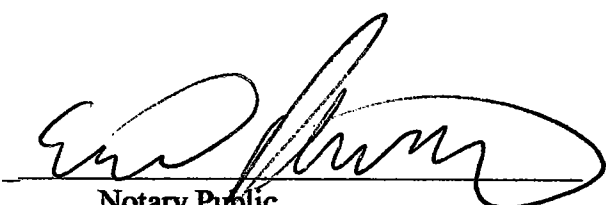
  
\_\_\_\_\_  
GONZALO TORRES MACCHIAVELLO

Subscribed and sworn to before me this 21<sup>st</sup> day of December, 2011, by Gonzalo Torres Macchiavello.

Witness my hand and official seal.

My commission expires: 12/21/2013



  
\_\_\_\_\_  
Notary Public

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATIONS OF THE RULES ) CAUSE NO. 1V  
AND REGULATIONS OF THE COLORADO OIL AND GAS )  
CONSERVATION COMMISSION BY WEST HAWK ENERGY ) ORDER NO. 1V-385  
(USA) LLC, RIO BLANCO COUNTY, COLORADO )

ORDER FINDING VIOLATION

The Commission heard this matter on September 19, 2011, in the Commission Room for the City & County of Broomfield, City & County Building, One DesCombes Drive, Broomfield, Colorado, for an order finding violation hearing against West Hawk Energy (USA) LLC requesting a finding of a pattern of violation against the operator and its principal, Gonzalo Torres Macchiavello.

FINDINGS

1. On August 8, 2011, the Commission issued Order No. 1V-378 finding that West Hawk Energy (USA) LLC ("West Hawk") (Operator #10189) had committed numerous rule violations at certain wells and imposed fines for those violations as compiled below:

Well Name/Number	Rule Violations	Fines Imposed
Figure Four Ranch #499-12-48	319.b.(1), 319.b.(2), 319.b.(3), 603.j., 706., 707., 1002.f.(2), 1003.b., and 1003.e.(2)	\$90,000
Figure Four Ranch #499-12-67	308A., 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 902.d., 1002.a.(3), 1003.a., 1003.b., 1003.d.(2), and 1203.a.(13)	\$110,000
Figure Four Ranch #499-12-74	308A, 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.b., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2)	\$140,000
Figure Four Ranch #499-13-22	308A., 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 706., 707., 1002.a.(3), 1002.f.(2), 1003.b., and 1003.e.(2).	\$120,000
Figure Four Ranch #499-14-22	308A., 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13)	\$130,000
Figure Four Ranch #499-14-27	319.b.(1), 319.b.(2), 706., 707., 902A., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13)	\$90,000
Figure Four Ranch #499-14-67	308A., 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2)	\$130,000
Figure Four Ranch #499-14-83	308A., 319.b.(1), 319.b.(2), 319.b.(3), 324A.a., 603.j., 706., 707., 907A., 1003.a., 1003.b., and 1003.e.(2)	\$130,000
	<b>Total Imposed Fines</b>	<b>\$940,000</b>

2. Rule 525.b. provides that whenever the Commission or the Director has evidence that an operator is responsible for a pattern of violation of any provision of the Oil and Gas Conservation Act (§34-60-101, *et seq.*) (the "Act"), or of any rule, permit or order of the Commission, the Director shall issue a notice to the operator to appear for a hearing before the Commission. If the Commission finds after such hearing, that a knowing and willful pattern of violation exists, it may issue an order which shall prohibit the issuance of any new permits to the operator.

3. A knowing and willful pattern of violation exists because West Hawk has failed, for more than one year, to perform the abatement and corrective actions required by various Notices of Alleged Violation ("NOAVs"). Until the fine assessed under Order No. 1V-378 is paid in full and all required abatement and corrective actions are performed by West Hawk, the Director should not approve any application for permit-to-drill, any Certificate of Clearance and/or Change of Operator, Form 10, or other permit for conducting oil and gas operations for West Hawk or any entity of which Gonzalo Torres Macchiavello is a principal, majority owner, operational or general manager, or in which Mr. Macchiavello otherwise exercises control.

4. West Hawk and Mr. Macchiavello have failed to attend today's hearing to defend against the allegations contained in the Notice for Order Finding Violation Hearing.

ORDER

NOW, THEREFORE, IT IS ORDERED, that a knowing and willful pattern of violation exists because West Hawk has failed, for more than one year, to perform the abatement and corrective actions

required by the NOAVs. Until any fine assessed under Order No. 1V-378 is paid in full and all required abatement and corrective actions are performed by West Hawk under said order, the Director shall not approve any application for permit-to-drill, any Certificate of Clearance and/or Change of Operator, Form 10, or other permit for conducting oil and gas operations for West Hawk or any entity of which Gonzalo Torres Macchiavello is a principal, majority owner, operational or general manager, or in which Mr. Macchiavello otherwise exercises control.

IT IS FURTHER ORDERED, that under the State Administrative Procedure Act the Commission considers this order to be final agency action for purposes of judicial review within 30 days after the date this order is mailed by the Commission.

IT IS FURTHER ORDERED, that an application for reconsideration by the Commission of this order is not required prior to the filing for judicial review.

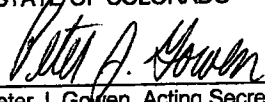
IT IS FURTHER ORDERED, that the provisions contained in the above order shall become effective forthwith.

IT IS FURTHER ORDERED, that the Commission expressly reserves its right after notice and hearing, to alter, amend, or repeal any and/or all of the above orders.

ENTERED this 23<sup>rd</sup> day of September, 2011, as of September 19, 2011.

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By

  
Peter J. Gowen, Acting Secretary

Dated at Suite 801  
1120 Lincoln St.  
Denver, Colorado 80203

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATIONS OF THE RULES ) CAUSE NO. 1V  
AND REGULATIONS OF THE COLORADO OIL AND GAS )  
CONSERVATION COMMISSION BY WEST HAWK ENERGY ) DOCKET NO. 1109-OV-30  
(USA) LLC, RIO BLANCO COUNTY, COLORADO )

NOTICE OF ORDER FINDING PATTERN OF VIOLATION HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

Pursuant to Rule 522.c., the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC") Staff will apply to the Commission at its September 19, 2011 hearing for an Order Finding Pattern of Violation Hearing against West Hawk Energy (USA) LLC ("West Hawk") (Operator #10189).

On August 8, 2011, the Commission issued Order No. 1V-378 finding that it had committed numerous rule violations at certain wells and imposed fines for those violations as compiled below:

Well Name/Number	Rule Violations	Fines Imposed
Figure Four Ranch #499-12-48	319.b.(1), 319.b.(2), 319.b.(3), 603.j., 706., 707., 1002.f.(2), 1003.b., and 1003.e.(2)	\$90,000
Figure Four Ranch #499-12-67	308A., 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 902.d., 1002.a.(3), 1003.a., 1003.b., 1003.d.(2), and 1203.a.(13)	\$110,000
Figure Four Ranch #499-12-74	308A., 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.b., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2)	\$140,000
Figure Four Ranch #499-13-22	308A., 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 706., 707., 1002.a.(3), 1002.f.(2), 1003.b., and 1003.e.(2).	\$120,000
Figure Four Ranch #499-14-22	308A., 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13)	\$130,000
Figure Four Ranch #499-14-27	319.b.(1), 319.b.(2), 706., 707., 902A., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13)	\$90,000
Figure Four Ranch #499-14-67	308A., 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2)	\$130,000
Figure Four Ranch #499-14-83	308A., 319.b.(1), 319.b.(2), 319.b.(3), 324A.a., 603.j., 706., 707., 907A., 1003.a., 1003.b., and 1003.e.(2)	\$130,000
<b>Total Imposed Fines</b>		<b>\$940,000</b>

Rule 525.b. provides that whenever the Commission or the Director has evidence that an operator is responsible for a pattern of violation of any provision of the Oil and Gas Conservation Act (§34-60-101, *et seq.*) (the "Act"), or of any rule, permit or order of the Commission, the Director shall issue a notice to the operator to appear for a hearing before the Commission. If the Commission finds after such hearing, that a knowing and willful pattern of violation exists, it may issue an order which shall prohibit the issuance of any new permits to the operator.

The COGCC staff requests that the Commission should find that a knowing and willful pattern of violation exists because West Hawk has failed, for more than one year, to perform the abatement and corrective actions required by various Notices of Alleged Violation ("NOAVs"). Until the fine assessed under Order No. 1V-378 is paid in full and all required abatement and corrective actions are performed by West Hawk, the Director should not approve any application for permit-to-drill, any Certificate of Clearance and/or Change of Operator, Form 10, or other permit for conducting oil and gas operations for West Hawk or any entity of which Gonzalo Torres Macchiavello is a principal, majority owner, operational or general manager, or in which Mr. Macchiavello otherwise exercises control.

NOTICE IS HEREBY GIVEN, that the Oil and Gas Conservation Commission of the State of Colorado, pursuant to the above, has scheduled the above-entitled matter for hearing on:

Date: Monday, September 19, 2011  
Tuesday, September 20, 2011

Time: 9:00 a.m.

Place: City & County of Broomfield  
City & County Building -- Council Chambers

EXHIBIT B

One DesCombes Drive  
Broomfield, Colorado 80020

In accordance with the Americans with Disabilities Act, if any party requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Pursuant to said hearing in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the Commission will enter such orders as it deems appropriate to protect the health, safety and welfare of the public and to prevent the waste of oil and gas, either or both, in the operations of said field, and to carry out the purposes of the statute.

**In accordance with Rule 509., any interested party desiring to protest the granting of the application or to intervene on the application should file with the Commission a written protest or intervention no later than September 2, 2011, briefly stating the basis of the protest or intervention. Such interested party shall, at the same time, serve a copy of the protest or intervention to the person filing the application. An original and 13 copies shall be filed with the Commission. Anyone who files a protest or intervention must be able to participate in a prehearing conference during the week of September 2, 2011.**

IN THE NAME OF THE STATE OF COLORADO

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By   
Robert A. Willis, Enforcement Officer

Dated at Suite 801  
1120 Lincoln Street  
Denver, Colorado 80203  
August 23, 2011

West Hawk Addresses of Record:  
Attn: Gonzalo Torres Macchiavello  
West Hawk Energy (USA) LLC  
999 18<sup>th</sup> Street Suite 3000  
Denver, CO 80202

West Hawk Energy (USA) LLC  
Attn: Gonzalo Torres Macchiavello  
8310 South Valley Highway  
3<sup>rd</sup> Floor  
Englewood, CO 80112

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF ALLEGED VIOLATIONS OF THE RULES ) CAUSE NO. 1V  
AND REGULATIONS OF THE COLORADO OIL AND GAS )  
CONSERVATION COMMISSION BY WEST HAWK ENERGY ) ORDER NO. 1V-378  
(USA) LLC, RIO BLANCO COUNTY, COLORADO )

ORDER FINDING VIOLATION

This cause came on for hearing before the Commission on August 8, 2011, in Suite 801, The Chancery Building, 1120 Lincoln Street, Denver, Colorado, for an order finding violation hearing against West Hawk Energy (USA) LLC at certain wells (the "Figure Four Ranch" wells) located in Rio Blanco County.

FINDINGS

**Figure Four Ranch #499-12-48 Well**

1. On December 18, 2006, West Hawk spud the Figure Four Ranch #499-12-48 Well (API No. 05-103-10930), which is located in the SE¼ SW¼ of Section 12, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

2. On September 9, 2009, COGCC Staff issued Notice of Alleged Violation ("NOAV") #200224751 to West Hawk for its operations at the Figure Four Ranch #499-12-48 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 1002.f.(2), 1003.b., and 1003.e.(2).

The NOAV required West Hawk to submit a compliance checklist, per Rule 206., and a weed management plan, to the Director by January 18, 2010, and remove all unused equipment by January 18, 2010. Further, the Figure Four Ranch #499-12-48 Well was to be produced, plugged and abandoned, or have an MIT by April 1, 2010, and the operator was to initiate interim reclamation by January 26, 2010.

3. On September 18, 2009, COGCC Staff issued NOAV #200220841 to West Hawk for its operations at Figure Four Ranch #499-12-48 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

4. The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

5. The COGCC Staff requests West Hawk be found in violation of Rules 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 706., 707., 1002.f.(2), 1003.b., and 1003.e.(2) for its operation of Figure Four Ranch #499-12-48 Well.

**Figure Four Ranch #499-12-67 Well**

6. On May 20, 2007, West Hawk spud the Figure Four Ranch #499-12-67 Well (API No. 05-103-10970), which is located at SW¼ SE¼ of Section 12, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

7. On February 13, 2009, COGCC Staff issued NOAV #200203784 to West Hawk for its operations at the Figure Four Ranch #499-12-67 Well. The NOAV cited violations for various rules, including Rules 308A. and 319.b.(3).

The NOAV required West Hawk to file a Form 5 with appropriate attachments reflecting current status of drilling and casing of the well. File a Form 5A as appropriate if an interval has been completed. File a Form 10 if the well is producing. These forms were required to be filed by March 31, 2009.

8. On September 18, 2009, COGCC Staff issued NOAV #200222993 to West Hawk for its operations at the Figure Four Ranch #499-12-67 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 603.j., 902.d., 1002.a.(3), 1003.a., 1003.b., 1003.d.(2), and 1203.a.(13).

The NOAV required West Hawk to remove unnecessary equipment and debris and install appropriate fencing to protect livestock and wildlife by December 16, 2009. Also, close pit per COGCC Rule 1003 by February 22, 2010. Further, the Figure Four Ranch #499-12-67 Well was to be produced, plugged and abandoned, or have an MIT by February 22, 2010, and the operator was to initiate interim reclamation by December 16, 2009.

9. On September 18, 2009, COGCC Staff issued NOAV #200220841 to West Hawk for its operations at the Figure Four Ranch #499-12-67 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

10. The COGCC Staff requests West Hawk be found in violation of Rules 308A., 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 706., 707., 902.d., 1002.a.(3), 1003.a., 1003.b., 1003.d.(2), and 1203.a.(13) for its operation of Figure Four Ranch #499-12-67 Well.

#### **Figure Four Ranch #499-12-74 Well**

11. On September 16, 2008, West Hawk spud the Figure Four Ranch #499-12-74 Well (API No. 05-103-11055), which is located at SE¼ NE¼ of Section 12, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

12. On February 13, 2009, COGCC Staff issued NOAV #200203780 to West Hawk for its operations at the Figure Four Ranch #499-12-74 Well. The NOAV cited violations for various rules, including Rules 308A. and 319.b.(3).

The NOAV required West Hawk to file a Form 5 with appropriate attachments reflecting current status of drilling and casing of the well. File a Form 5A as appropriate if an interval has been completed. File a Form 10 if the well is producing. These forms were required to be filed by March 31, 2009.

13. On September 18, 2009, COGCC Staff issued NOAV #200220662 to West Hawk for its operations at the Figure Four Ranch #499-12-74 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 319.b.(3), 902.a., 902.b., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2).

The NOAV required West Hawk to close pit by December 3, 2009. Further, the Figure Four Ranch #499-12-74 Well was to be produced, plugged and abandoned, or have an MIT by March 8, 2010, and the operator was to initiate interim reclamation by December 3, 2009 or final reclamation by December 16, 2009.

14. On September 18, 2009, COGCC Staff issued NOAV #200220841 West Hawk for its operations at the Figure Four Ranch #499-12-74 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

15. The COGCC Staff requests West Hawk be found in violation of Rules 308A, 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.b., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2) for its operation of Figure Four Ranch #499-12-74 Well.

#### **Figure Four Ranch #499-13-22 Well**

16. On April 6, 2007 West Hawk spud the Figure Four Ranch #499-13-22 Well (API No. 05-103-10969), which is located at NW¼ NW¼ of Section 13, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

17. On February 13, 2009, COGCC Staff issued NOAV #200203803 to West Hawk for its operations at the Figure Four Ranch #499-13-22 Well. The NOAV cited violations for various rules, including Rules 308A. and 319.b.(3).

The NOAV required West Hawk to file a Form 5 with appropriate attachments reflecting current status of drilling and casing of the well. File a Form 5A as appropriate if an interval has been completed. File a Form 10 if the well is producing. These forms were required to be filed by March 31, 2009.

18. On September 9, 2009, COGCC Staff issued NOAV #200224703 to West Hawk for its operations at the Figure Four Ranch #499-13-22 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 1002.a.(3), 1002.f.(2), 1003.b., and 1003.e.(2).

The NOAV required West Hawk to submit a compliance checklist, per Rule 206., to the Director by January 18, 2010; remove chemical storage containers by January 11, 2010; remediate



impacted soils in tank berm area by January 25, 2010; install appropriate fencing to protect livestock and wildlife by January 11, 2010; and to initiate interim reclamation by January 26, 2010.

19. On September 18, 2009, COGCC Staff issued NOAV #200220841 West Hawk for its operations at the Figure Four Ranch #499-13-22 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

20. The COGCC Staff requests West Hawk be found in violation of Rules 308A., 319.b.(1), 319.b.(2), 319.b.(3), 603.j., 706., 707., 1002.a.(3), 1002.f.(2), 1003.b., and 1003.e.(2). for its operation of Figure Four Ranch #499-13-22 Well.

#### **Figure Four Ranch #499-14-22 Well**

21. On September 26, 2008, West Hawk spud the Figure Four Ranch #499-14-22 Well (API No. 05-103-11386), which is located at NW¼ NW¼ of Section 14, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

22. On February 13, 2009 COGCC Staff issued NOAV #200203792 to West Hawk for its operations at the Figure Four Ranch #499-14-22 Well. The NOAV cited violations for various rules, including Rules 308A. and 319.b.(3).

The NOAV required West Hawk to file a Form 5 with appropriate attachments reflecting current status of drilling and casing of the well. File a Form 5A as appropriate if an interval has been completed. File a Form 10 if the well is producing. These forms were required to be filed by March 31, 2009.

23. On September 9, 2009, COGCC Staff issued NOAV #200223636 West Hawk for its operations at the Figure Four Ranch #499-14-22 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13).

The NOAV required West Hawk to remove unnecessary equipment and debris and install appropriate fencing to protect livestock and wildlife by January 11, 2010. Also, close pit per COGCC 905 series rules and submit a Form 27 for review and approval of pit closure by December 24, 2009. Further, the Figure Four Ranch #499-14-22 Well was to be produced, plugged and abandoned, or have an MIT by March 8, 2010, and the operator was to initiate interim reclamation by January 11, 2010.

24. On September 18, 2009, COGCC Staff issued NOAV #200220841 West Hawk for its operations at the Figure Four Ranch #499-14-22 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

25. The COGCC Staff requests West Hawk be found in violation of Rules 308A., 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13) for its operation of Figure Four Ranch #499-14-22 Well.

#### **Figure Four Ranch #499-14-27 Well**

26. On September 4, 2008, West Hawk spud the Figure Four Ranch #499-14-27 Well (API No. 05-103-11077), which is located at SW¼ SW¼ of Section 14, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

27. On September 9, 2009, COGCC Staff issued NOAV #200223648 West Hawk for its operations at the Figure Four Ranch #499-14-27 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 902A., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13).

The NOAV required West Hawk to remove debris, install appropriate fencing to protect livestock and wildlife, and close the pit by January 11, 2010. Further, the Figure Four Ranch #499-14-27 Well was to be produced, plugged and abandoned, or have an MIT by March 8, 2010, and the operator was to initiate interim reclamation by January 11, 2010.

28. On September 18, 2009, COGCC Staff issued NOAV #200220841 West Hawk for its operations at the Figure Four Ranch #499-14-27 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

29. The COGCC Staff requests West Hawk be found in violation of Rules 319.b.(1), 319.b.(2), 706., 707., 902A., 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13) for its operation of Figure Four Ranch #499-14-27 Well.

#### **Figure Four Ranch #499-14-67 Well**

30. On August 15, 2008, West Hawk spud the Figure Four Ranch #499-14-67 Well (API No. 05-103-10968), which is located at SW¼ SE¼ of Section 14, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

31. On February 13, 2009, COGCC Staff issued NOAV #200203810 to West Hawk for its operations at the Figure Four Ranch #499-14-67 Well. The NOAV cited violations for various rules, including Rules 308A. and 319.b.(3).

The NOAV required West Hawk to file a Form 5 with appropriate attachments reflecting current status of drilling and casing of the well. File a Form 5A as appropriate if an interval has been completed. File a Form 10 if the well is producing. These forms were required to be filed by March 31, 2009.

32. On September 18, 2009, COGCC Staff issued NOAV #200220867 West Hawk for its operations at the Figure Four Ranch #499-14-67 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 319.b.(3), 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2).

The NOAV required West Hawk to close pit by December 3, 2009. Further, the Figure Four Ranch #499-14-67 Well was to be produced, plugged and abandoned, or have an MIT by March 8, 2010, and the operator was to initiate interim reclamation by December 3, 2009 or final reclamation by December 16, 2009.

33. On September 18, 2009, COGCC Staff issued NOAV #200220841 West Hawk for its operations at the Figure Four Ranch #499-14-67 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

34. The COGCC Staff requests West Hawk be found in violation of Rules 308A., 319.b.(1), 319.b.(2), 319.b.(3), 706., 707., 902.a., 902.c., 902.d., 1002.a.(3), 1003.b., and 1003.d.(2) for its operation of Figure Four Ranch #499-14-67 Well.

#### **Figure Four Ranch #499-14-83 Well**

35. West Hawk spud the Figure Four Ranch #499-14-83 Well (API No. 05-103-10959), which is located at the SE¼ NE¼ of Section 14, Township 4 South, Range 99 West, 6<sup>th</sup> P.M.

36. On February 13, 2009, COGCC Staff issued NOAV #200203824 to West Hawk for its operations at the Figure Four Ranch #499-14-83 Well. The NOAV cited violations for various rules, including Rules 308A. and 319.b.(3).

The NOAV required West Hawk to file a Form 5 with appropriate attachments reflecting current status of drilling and casing of the well. File a Form 5A as appropriate if an interval has been completed. File a Form 10 if the well is producing. These forms were required to be filed by March 31, 2009.

37. On September 9, 2009, COGCC Staff issued NOAV #200223732 West Hawk for its operations at the Figure Four Ranch #499-14-83 Well. The NOAV cited violations for various rules, including Rules 319.b.(1), 319.b.(2), 319.b.(3), 324A.a., 603.j., 907A., 1003.a., 1003.b., and 1003.e.(2).

The NOAV required West Hawk to submit compliance checklist, per Rule 206., to the Director by December 28, 2009; remove chemical storage containers, unused materials and waste materials by December 30, 2009, and to remove debris, unused equipment, including vehicles by January

6,2009. Further, the Figure Four Ranch #499-14-83 Well was to be produced, plugged and abandoned, or have an MIT by March 22, 2010, and the operator was to initiate interim reclamation by January 11, 2010.

38. On September 18, 2009, COGCC Staff issued NOAV #200220841 West Hawk for its operations at the Figure Four Ranch #499-14-83 Well. The NOAV cited violations for various rules, including Rules 706. and 707.

The NOAV required West Hawk to provide financial assurance to the Director as provided in Rules 706. and 707. in the amount of \$20,000 for the Well by November 16, 2009. Financial assurance shall be in the form of cash bonds or insurance bonds. This was required to be completed by December 12, 2009.

39. The COGCC Staff requests West Hawk be found in violation of Rules 308A., 319.b.(1), 319.b.(2), 319.b.(3), 324A.a., 603.j., 706., 707., 907A., 1003.a., 1003.b., and 1003.e.(2) for its operation of Figure Four Ranch #499-14-83 Well.

40. Rule 523. specifies a base fine of Five Hundred dollars (\$500) for each day of violation of Rules 302., and a base fine of One Thousand dollars (\$1,000) for each day of violation of Rules 319.b. and 326.b. Rule 523.a.(3) specifies that "the maximum penalty for any single violation shall not exceed Ten Thousand dollars (\$10,000) regardless of the number of days of such violation," unless the violation results in significant waste of oil and gas resources, damage to correlative rights, or a significant adverse impact on public health, safety or welfare or the environment.

41. West Hawk should be found in violation of the following rules attributable to the following wells as compiled below:

Well Name/Number	ARI Number	NOAV Number	Rule Violations
Figure Four Ranch #499-12-48	05-103-10930	200224571	319.b.(1), 319.b.(2), 319.b.(3), 603.j., 1002.f.(2), 1003.b., and 1003.e.(2).
		200220841	706. and 707.
Figure Four Ranch #499-12-67	05-103-10970	200203784	308A. and 319.b.(3)
		200222993	319.b.(1), 319.b.(2), 603.j., 902.d, 1002.a.(3), 1003.a., 1003.b., 1003.d.(2), and 1203.a.(13)
Figure Four Ranch #499-12-74	05-103-11055	200203780	308A. and 319.b.(3)
		200220662	319.b.(1), 319.b.(2), 319.b.(3), 902.a, 902.b, 902.c, 902.d, 1002.a.(3), 1003.b., and 1003.d.(2)
		200220841	706. and 707.
Figure Four Ranch #499-13-22	05-103-10969	200203803	308A. and 319.b.(3)
		200224703	319.b.(1), 319.b.(2), 319.b.(3), 603.j., 1002.a(3), 1002.f.(2), 1003.b., and 1003.e.(2)
Figure Four Ranch #499-14-22	05-103-11386	200220841	706. and 707.
		200203792	308A. and 319.b.(3)
Figure Four Ranch #499-14-27	05-103-11077	200223648	319.b.(1), 319.b.(2), 902A, 1002.a.(3), 1003.b., 1003.d.(2), and 1203.a.(13)
		200220841	706. and 707.
Figure Four Ranch #499-14-67	05-103-10968	200203810	308A. and 319.b.(3)
		200220867	319.b.(1), 319.b.(2), 319.b.(3), 902.a, 902.c, 902.d, 1002.a.(3), 1003.b., and 1003.d.(2)
Figure Four Ranch #499-14-83	05-103-10959	200220841	706. and 707.
		200203824	308A. and 319.b.(3)
		200223732	319.b.(1), 319.b.(2), 319.b.(3), 324A.a, 603.j., 907A, 1003.a, 1003.b., and 1003.e.(2)
		200220841	706. and 707.

42. Base fines attributable to the Rule violations at the Figure Four Ranch wells are set forth below, based on the maximum penalty per rule violation:

Figure Four Ranch Well No.	Base Fine
#499-12-48	\$90,000
#499-12-67	\$110,000

#499-12-74	\$140,000
#499-13-22	\$120,000
#499-14-22	\$130,000
#499-14-27	\$90,000
#499-14-67	\$130,000
#499-14-83	\$130,000
<b>Total Base Fines</b>	<b>\$940,000</b>

43. Acting pursuant to the request of Staff and Puckett Land Company ("Puckett Land"), the Commission should authorize Puckett Land, a mineral interest owner for the lands in which the wells have been drilled and completed, to submit Change of Operator forms for each well, which will allow Puckett Land to plug and abandon the Figure Four Ranch wells and reclaim the well sites in accordance with the rules. The Commission specifically finds that the Figure Four Ranch wells should be plugged and the well sites reclaimed in accordance with the rules.

44. Payment of the fine pursuant to this Order should not relieve West Hawk from its obligations to complete corrective actions set forth in the NOAV, as may be amended or modified by COGCC Staff.

45. West Hawk, or its successors or assigns, should be required to remain responsible for complying with this Order, in the event of any subsequent sale of property.

#### ORDER

NOW, THEREFORE, IT IS ORDERED, that West Hawk be found in violation of those Rules, and for those wells, specified in Finding No. 41 above, for those acts alleged in this Order.

IT IS FURTHER ORDERED, that West Hawk shall be assessed a total fine of **Nine Hundred Forty Thousand dollars (\$940,000)** for the Rule violations set forth above, which shall be payable within thirty (30) days of the date the order is approved by the Commission.

IT IS FURTHER ORDERED, that Puckett Land, a mineral interest owner for the lands in which the wells have been drilled and completed, is hereby authorized to submit Change of Operator forms for each well, which will allow Puckett Land to plug and abandon the Figure Four Ranch wells and reclaim the well sites in accordance with the rules, and Puckett Land is hereby authorized to plug and abandon the Figure Four Ranch wells and reclaim the associated well sites.

IT IS FURTHER ORDERED, that this Order does not relieve West Hawk from undertaking and completing abatement or corrective actions that may be required by the Notice of Alleged Violation described above, or any amendments or modifications thereto specified by the COGCC Staff.

IT IS FURTHER ORDERED, that the operator shall execute this Administrative Order by Consent no later than fourteen (14) days after the date it is executed by the COGCC Staff for recommendation of expedited approval by the Commission.

IT IS FURTHER ORDERED, that under the State Administrative Procedure Act the Commission considers this order to be final agency action for purposes of judicial review within thirty (30) days after the date this order is mailed by the Commission.

IT IS FURTHER ORDERED, that an application for reconsideration by the Commission of this order is not required prior to the filing for judicial review.


IT IS FURTHER ORDERED, that the provisions contained in the above order shall become effective forthwith.

IT IS FURTHER ORDERED, that the Commission expressly reserves its right after notice and hearing, to alter, amend, or repeal any and/or all of the above orders.

SO ORDERED this -8<sup>th</sup>- day of August, 2011.

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By \_\_\_\_\_

  
Robert A. Willis, Acting Secretary

Dated at Suite 801  
1120 Lincoln St.  
Denver, Colorado 80203

EXHIBIT<sup>6</sup>C

(1V-378/1108-OV-24)

STATE OF COLORADO

DEPARTMENT OF NATURAL RESOURCES  
Oil & Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203-2136

341000526

GENERAL MAIL

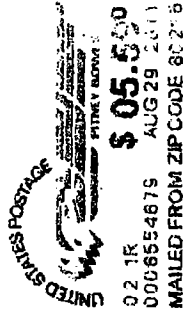


7008 0500 0000 5585 2995

Gonzalo Torres Macchiavello  
President & CEO  
West Hawk Energy (USA) LLC  
999 18<sup>th</sup> Street Suite 3000  
Denver, CO 80202

RECEIVED  
SEP 06 2011  
COGCC  
NIXIE

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233

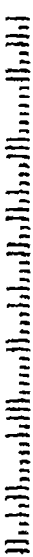


RETURN

802 DE 1 00 08/04/11  
RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD

BC: 80203213701 \*1888-01195-04-05

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STATE OF COLORADO

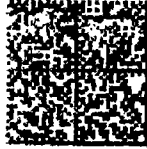
DEPARTMENT OF NATURAL RESOURCES  
Oil & Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203-2136

341000526

**CERTIFIED MAIL**



7008 0500 0000 5585 3008



UNITED STATES POSTAGE  
02 1R  
0008554678 AUG 28 2011  
\$ 05.590  
METRY MOVIES  
MAILED FROM ZIP CODE 80216

Gonzalo Torres Macchiavello  
President & CEO

West Hawk Energy (USA) LLC  
8310 South Valley Highway, 3rd Floor  
Englewood, CO 80112

*Director of Marketing*

RECEIVED  
SEP 06 2011  
COGCC

RETURN RECEIVED

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RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD

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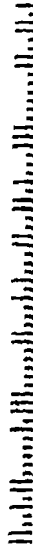


EXHIBIT D

so that we can return the card to you.  
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Gonzalo Torres Macchiavello  
 President & CEO  
 West Hawk Energy (USA) LLC  
 8310 South Valley Highway, 3<sup>rd</sup> Floor  
 Englewood, CO 80112**

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes  No

2. Article Number **7008 0500 0000 5585 3008**  
 (Transfer from service label)

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1540

B. Received by (Printed Name) **831011**

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 ■ Print your name and address on the reverse so that we can return the card to you.  
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Gonzalo Torres Macchiavello  
 President & CEO  
 West Hawk Energy (USA) LLC  
 999 18<sup>th</sup> Street Suite 3000  
 Denver, CO 80202**

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes  No

2. Article Number **7008 0500 0000 5585 2995**  
 (Transfer from service label)

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent  Addressee

X

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

EXHIBIT D



Work without boundaries

Office Agreement Addendum

This Office Agreement Addendum ("Addendum") is made and entered into on the 3rd day of March, 2008, by and between Regus Management Group, LLC ("Regus") and West Hawk Energy (USA) LLC ("Client").

Recitals

A. Client and Regus are parties to that certain Office Agreement ("Current Office Agreement") dated November 15, 2006 in which Regus provides certain services and facilities to you at the business center located at Denver Place, 999 18th Street, Suite 2700, Denver, CO 80202.

B. The parties desire to amend the terms of the Office Agreement under the following terms and conditions.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein and other good and valuable considerations, the parties agree as follows:

- 1. Amendment. The Office Agreement will be terminated on June 30, 2008, provided that the following conditions are met:
a. Proper Notice - Client is permitted to transfer the Agreement to another center owned and operated by Regus ("Transfer Center"), provided you have given notice to us to terminate the Current Office Agreement. All transfers are effective at the end of the month. The proper notice for purposes of transfer are as follows:
5 or fewer workstations under the Current Office Agreement - 90 days prior written notice
6 or more workstations under the Current Office Agreement - 120 days prior written notice
Other terms - Please see attached documentation
Number of workstations on Current Office Agreement: 11 WS's at Current Office
b. Contract Value - The amount remaining under the Current Office Agreement is \$ 33,129.20 ("Remaining Financial Obligation"). The contract value for the new agreement the Transfer Center must be equal to or greater than the Remaining Financial Obligation. Notwithstanding anything herein to the contrary, you will continue to be responsible for the Remaining Financial Obligation.
c. Contract Execution Date - A new agreement at the Transfer Center must be executed within the first 30 days of the notice period as stated in paragraph "a."
d. Contract Start Date - A new agreement at the Transfer Center must have a start date no later than 60 days after Contract Execution Date, as stated in paragraph "c" above.
e. If the foregoing conditions are not met, then the Current Office Agreement shall remain in full force and effect.
2. Control. Except as specifically modified or amended by the terms of this Addendum, the Agreement will remain in full force and effect. In the event of a conflict between this Addendum and the Agreement or any attachment thereto, this Addendum will control.
3. Capitalized Terms. All capitalized terms not otherwise defined in this Addendum will have their respective meanings as set forth in the Agreement.
4. General Terms. This Addendum may be executed in one or more counterparts and/or by facsimile, each of which will be deemed an original and all of which signed counterparts, taken together, will constitute one and the same instrument.

In Witness Whereof, the parties have executed this Addendum as of the date first above written.

West Hawk Energy (USA) LLC
By: [Signature]
Name: Roger A. Baer
Title: CFO

HQ Global Workplaces (HQ)
By: [Signature]
Name: Erin Belser
Title: General Manager



# REGUS Business Centre Service Agreement

**Service Agreement Type:**
 Office     Cubes     Hotdesk

Agreement Date:	March 3, 2008
Pivotal Ref No:	1953613

CO, Englewood - The Point at Inverness	▼
--	---

Street/Floor	8310 South Valley Highway - 3rd Floor - Englew
City:	Englewood
State & Zip Code:	Colorado, 80112

**Business Center Bank Details**

Name:	Bank of America
Sort code:	026-000-693
Account number:	478-228-8462

**Client details (not a Regus Center address)**

Company Name:	West Hawk Energy (USA) LLC	Corporate Account	<input type="checkbox"/> Yes    PCA <input type="checkbox"/> Yes
Address:	3935 Broadview Place	Federal ID No.:	
City / State:	Castle Rock, CO	Contact Name:	Roger A. Baer
Zip Code:	80109	Title:	Chief Financial Officer
Email Address:	rogerbaer@comcast.net	Telephone:	303-829-3951
Emergency Contact:		Fax:	
		Emergency Phone:	

**Invoicing details (if different)**

Company Name:		Contact Name:	
Address:		Title:	
City / State:		Telephone:	
Zip Code:		Fax:	

**The standard fee (excluding tax)**

Office Number	Market Office Price per Month \$	Monthly Office Price \$	Number of workstations	Total per Month \$	Number of occupants per office
3073	\$2,000.00	\$1,009.00	4	\$1,009.00	1
3078	\$1,800.00	\$790.00	2	\$790.00	1
3078	\$1,800.00	\$733.66	2	\$733.66	1
3078	\$1,800.00	\$733.67	2	\$733.67	1
3083	\$1,800.00	\$733.67	2	\$733.67	1
				\$0.00	
				\$0.00	
<b>Total per Month \$</b>				<b>\$4,000.00</b>	

**Initial Payment:**
 Check If Renewal

Monthly Office Payment	\$4,000.00
Service Retainer	2    \$8,000.00
<b>Total Initial Payment</b>	<b>\$12,000.00</b>

**Monthly Payment:**

Total Monthly Payment (excl. of services)	\$4,000.00
---	------------

**Direct Debit Option requested by client:**
 (check, if accepted fill out "Direct Debit Authorization Form")

**Length of Agreement**

Start date (MM/DD/YY):	March 8, 2008	End date (MM/DD/YY):	June 30, 2009
------------------------	---------------	----------------------	---------------

**Comments**

West Hawk may take occupancy of the offices listed above starting March 8, 2008, but is obligated to pay \$8,826.84 per month to Denver Place for monthly rent until this space is sold and the new client takes occupancy or until June 30, 2008 which ever occurs first. During this time West Hawk will not be obligated to pay the monthly office rent charges at The Point. The suite at Denver Place (2701, 2703, 2704, 2705, 2734, 2735) is sold and the new client takes occupancy before June 30, 2008 West Hawk will no longer be obligated to the monthly office fee of \$8,826.84 from this point on, and at this time will be obligated to paying the fees outlined above to The Point thru the end of this agreement. Once the account is cleared at Denver Place your Security Deposit will be Transferred to The Point in the amount of \$8000.00. A refund for any amount over this will be issued within 60 days from the last balance of the account

 Check here if you do not consent to Regus processing data in accordance with Clause 26 of this Agreement. 

We are Regus Management Group LLC at 16305 North Dallas Parkway, 14th Floor, Addison, TX 75001.

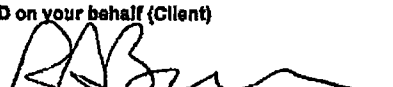
This Agreement incorporates our terms of business set out on attached Terms of Business which you confirm you have read and understood. We both agree to comply with those terms and our obligations as set out in them. Note that the Agreement does not come to an end automatically. See "Bringing your Agreement to an end"

Name (printed) ROGER A. BAER

Title (printed) CFO

Date (MM/DD/YY) 3/4/08

SIGNED on your behalf (Client)

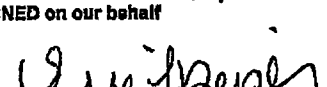


Name (printed) Erin Beiser

Title (printed) General Manager

Date (MM/DD/YY) 3/4/08

SIGNED on our behalf



Contact: 1.877.734.8787

www.regus.com



EXHIBIT E

**TERMS OF BUSINESS  
USING REGUS CENTERS**

1. **Who Are Regus Management Group LLC hereafter referred to as "we"** - These are our terms of business. They apply to the service Agreement which you the client have signed (which we refer to simply as "Agreement").

Your Agreement supersedes any previous Agreement you may have with us for the same services and contains all the terms we have agreed.

**STANDARD SERVICES INCLUDED IN YOUR STANDARD FEE**

2. **Furnished Office Accommodation** - We are to provide the number of serviced and fully furnished accommodations for which you have agreed to pay in the business center stated in your Agreement (also referred to in this Agreement as "Accommodation(s)"). Your Agreement lists the accommodations we have initially allocated for your use. Occasionally, we may need to allocate different accommodations, but these will be of equivalent size and we will attempt to obtain your approval with respect to such different accommodations in advance.

3. **Office Services** - We use to provide the services described on the front of this Agreement, the Regus Workstation or cube offer and any other mutually agreed upon services such as Internet and phone during normal operating hours Monday to Friday. (Internet is available 24/7)

We are happy to discuss special arrangements for use of these services outside our normal operating hours. All services are subject to the availability of our center team at the time of any service request. We will endeavor to deal with a service request at the earliest opportunity, but will not be held responsible for any delay.

If in our opinion, we decide that a request for any particular Business Service is excessive, we reserve the right to charge an additional fee at our usual published rates based on the time taken to complete the service.

**USING THE ACCOMMODATION**

4. **On Moving In** - You will be asked to sign an Inventory of all accommodation(s), furniture and equipment you are permitted to use, together with a note of its condition, and details of the keys or entry cards issued to you. You may at any time have as many employees working in your accommodation(s) as there are maximum allowable workstations. This number is noted on the front of this Agreement. Anytime the number of people sharing an accommodation exceeds the maximum number of workstations allowable in that accommodation a Hot Desk Supplement fee equal to the monthly standard VO fee, (prices available on request), will apply for each person over the number of maximum workstations for the given accommodation. If at any time the number of people physically present exceeds the maximum number of workstations allowable, those employees will pay an additional hourly or daily rate for the additional accommodations.

5. **The Nature Of Your Business** - You must only use the accommodation for office purposes, and only for the business stated in your Agreement or subsequently agreed with us. Office/Accommodation use of a "retail" nature, involving frequent visits by members of the public, is not permitted. You must not carry on a business which competes with our business of providing serviced office or cube accommodations. You must not use the name Regus or any of its associated companies in any way in connection with your business.

6. **Your Name And Address** - You may only carry on your business in your name or some other name that we previously agreed. At your request and cost we will include that name in the house directory at the business center, where this is available. You must not put up any signs on the doors to your accommodation or anywhere else which is visible from outside the accommodation you are using. You may use the business center address as your business address. If you use the center address at your registered business address, you must have a third-party registered as your agent for service of process.

7. **Taking Care Of Our Property** - You must take good care of all parts of the business center, its equipment, fittings and furnishings which you use. You must not alter any part of it. You are liable for any damage caused by you or those in the business center with your permission or at your invitation.

8. **Office Furniture And Equipment** - You must not install any furniture or office equipment, cabling, IT or telecom connections without our consent, which we may refuse at our absolute discretion.

9. **Keys And Security** - Any keys or entry cards which we let you use remain our property at all times. You must not make any copies of them or allow anyone else to use them without our consent. Any loss must be reported to us immediately and you must pay the cost of replacement keys or cards and of changing the code, if required. If you are permitted to use the business center outside normal working hours it is your responsibility to lock the doors to your accommodation and to the business center when you leave.

10. **Comply With The Law** - You must comply with all relevant laws and regulations in the conduct of your business. You must do nothing illegal. You must not do anything that may interfere with the use of the business center by us or by others, cause any nuisance or annoyance, increase the insurance premiums we have to pay or cause loss or damage to us or to the owner of any interest in the building which contains the business center. You acknowledge that (a) the terms of the foregoing sentence are a material inducement to us for the execution of your Agreement and (b) any violation by you of the foregoing sentence shall constitute a material default by you hereunder, entitling us to terminate your Agreement.

11. **Comply With House Rules** - You must comply with any house rules which we impose generally on users of the business center whether for reasons of health and safety, fire precautions or otherwise.

12. **Insurance** - It is your responsibility to arrange insurance for your own property which you bring into the business center and for your own liability to your employees and to third parties.

**PROVIDING THE SERVICES**

13. **Access To Your Accommodation** - We can enter your accommodation at any time. However, unless there is an emergency we will as a matter of courtesy try to inform you in advance when we need access to carry out testing, repair or works other than routine inspection, cleaning and maintenance. We will also respect security procedures to protect the confidentiality of your business.

14. **At The Start Of Your Agreement** - If for any reason we cannot provide the Accommodation(s) stated in your Agreement by the date when your Agreement is due to start we have no liability to you for any loss or damages but you may cancel the Agreement without penalty. We will not charge you the standard fee for accommodations you cannot use until they become available.

15. **Suspension Of Services** - We may by notice suspend the provision of services (including access to the business center) for reasons of political unrest, strikes, or other events beyond our reasonable control, in which event payment of the standard fee will also be suspended for the same period.

16. **Our Liability** - We are not liable for any loss as a result of our failure to provide a service as a result of mechanical breakdown, strike, delay, failure of team, termination of our interest in the building containing the center or otherwise unless we do so deliberately or are grossly negligent. We are also not liable for any failure until you have informed us about it in writing and given us a reasonable time to put it right.

You agree (a) that we will not have any liability for any loss, damage or claim which arises as a result of, or in connection with, your Agreement and/or your use of the services except to the extent that such loss, damage, expense or claim is directly attributable to our deliberate act or our gross negligence (our liability); and (b) that our liability will be subject to the limits set out in the next paragraph.

We will not be liable in any circumstances where we have any liability for loss of profits, loss of anticipated savings, loss of or damage to data, third party claims or any consequential loss. We strongly advise you to insure against all such potential loss, damage expense or liability. In addition, client releases Regus from any liability arising out of or incurred in connection with any Client Mail and/or Packages received. We will be liable

- up to a maximum of \$1,000,000 (for any one event or series of connected events) for damage to your personal property;
- up to a maximum equal to 125% of the total fees paid under your Agreement up to the date on which the claim in question arises or \$50,000 (whichever is the higher), in respect of all other losses, damages expense or claims.

17. **REGISTRATION** - You must comply with any copyright notices, license terms or other notices appearing on screen or as part of a material on the Internet or our network. You must not copy, use or exploit such software or other material in any way, unless we have explicitly given you permission to do so. You must strictly comply with the terms of any permission that we give.

We do not make any representations as to the security of our network (or the Internet) or of any information that you place on it. You should adopt whatever security measures (such as encryption) you believe are appropriate to your circumstances. We cannot guarantee that a particular degree of availability will be attained in connection with your use of the services.

You hereby warrant to us that, in the course of our provision of the Regus/IT services to you, you will not or will you cause us to, infringe the rights of any third party (such as, but not limited to, using their logo without consent or your website).

You agree to comply with the Regus/IT Technology Policy as set out on the reverse of the Regus/IT Broadband Registration Form.

We warrant that the services shall be provided and performed in a professional and workmanlike manner and shall conform to the description of the services set out in Broadband Registration form. If we fail to provide the services as warranted, your sole and exclusive remedy shall be the remedy of such failure by us within a reasonable time after written notice.

The above warranty is in lieu of all other terms, conditions and warranties, whether express or implied by usage, custom, statute or otherwise, pertaining to the services and manner in which we perform our obligations and exercise our rights including, but without prejudice to the generality of the foregoing, such as relate to the description, performance, quality, suitability or fitness for any particular purposes, of the services. We do not warrant that the services will be uninterrupted or error free.

**YOUR AGREEMENT**

18. **The Nature Of Your Agreement** - Your Agreement is the commercial equivalent of an Agreement for accommodation in a hotel. The business center remains our property and lesshold estate or other real property interest in year favor with respect to the accommodation. We are giving you just the right to share with us the use of the business center so that we can provide the services to you. The Agreement is personal to you and cannot be transferred to anyone else. We may transfer the benefit of your Agreement and our obligations under it at any time.

19. **Duration** - Your Agreement lasts for the period stated in it and will then automatically be extended for successive periods equal to the current term but not less than 3 months until brought to an end by you or by us. All periods shall run to the last day of the month in which they would otherwise expire. The fees on any renewal will be the current market price. In all other respects your Agreement will remain on the same terms and conditions.

20. **Ending Your Agreement To An End** - Either of us can terminate your Agreement at the end date stated in it, or at the end of any extension or renewal period, by giving at least three months written notice to the other. However, if your Agreement, extension or renewal is for three months or less and one of us wishes to terminate it, the notice period is two months or if shorter one week less than the period stated in your Agreement, extension or renewal.

21. **Ending Your Agreement Immediately** - We may put an end to your Agreement immediately by giving you notice if:

- you become insolvent, go into liquidation or become unable to pay your debts as they fall due,
- you are in breach of one of your obligations which cannot be put right or which we have given you notice to put right and which you have failed to put right within fourteen days of that notice, or
- your conduct, or that of someone at the business center with your permission or at our invitation, is incompatible with ordinary office use.

If we put an end to the Agreement for any of these reasons it does not put an end to any then outstanding obligations you may have and you must:

- pay for additional services you have used
- pay the standard fee for the remainder of the period for which your Agreement would have lasted had we not ended it, or (if longer) for a further period of three months, and
- indemnify us against all costs and losses we incur as a result of the termination.

22. **If The Business Center Is Not Available** - In the unlikely event that we are no longer able to provide the services and accommodation at the business center stated in your Agreement then your Agreement will end and you will only have to pay standard fees up to the date it ends and for the additional services you have used. We will try to find suitable alternative accommodation for you at another Regus/HC business center.

23. **When Your Agreement Ends** - Upon your departure or if you, at your option, choose to relocate to a different accommodation within the business center, a fee fee (\$125.00 per workstation/cube) will be assessed to cover the routine cost of reparing and redecorating the accommodation to return it to its original condition in addition to general maintenance to the common areas of the business center in which you have had access. We reserve the right to charge additional reasonable fees for any repairs needed above and beyond normal wear and tear. If you leave any of your own property in the business center we may dispose of it in any way we choose without owing you any responsibility for it or any proceeds of sale. In order to transition your mail and telephone calls from the business center, you will be automatically entered into a Continuation Agreement with us on our standard terms at the time for 3 months. Current contract terms and pricing can be obtained through your Regus/HC General Manager. The agreement will also aid in the process of getting your service retainer agreement renewed after you have moved out. Any retainer fee of over 120 days will be charged a monthly \$25 account maintenance fee.

If you continue to use the accommodation when your Agreement has ended:

- you are responsible for any loss, claim or liability we incur as a result of your failure to vacate on time.
- we may, at our discretion, permit you an extension subject to a surcharge on the standard fee.

24. **Employees** - While your Agreement is in force and for a period of six months after it ends, you must not solicit or offer employment to any of our current employees or anyone who has left our employment in the last 3 months. If you do, we estimate our loss at the equivalent of one year's salary for each of the employees concerned and you must pay us damages equal to that amount.

25. **Notices** - All formal notices must be in writing. Clerk is responsible to keep updated address of record at the center.

26. **Confidentiality** - The terms of your Agreement are confidential. Neither of us may disclose them without the other's consent unless required to do so by law or an official authority. This obligation continues after your Agreement ends.

27. **Enforcing your Agreement** - You must pay any reasonable and proper costs including legal fees which we incur in enforcing your Agreement.

28. **Data Protection** - We will not process, disclose or transfer (including outside the EEA to other countries which are part of our international network from time to time) any personal data which we hold on or in relation to you unless we consider it to be reasonable and to ensure that it is used only to fulfil your obligations under this agreement or for work assessment and fraud prevention or to make available information about new or beneficial products or services. Please be aware that countries outside the EEA - European Economic Area - may not have laws in force to protect your personal data.

29. **Applicable Law** - Your Agreement is interpreted and enforced in accordance with the laws of the state in which the business center in question is located. We both accept the exclusive jurisdiction of the courts of such jurisdiction where the center is located.

**FEES**

In the following clauses any references to "fees" alone means all of the standard service fees, pay-as-you-use fees and the fees on the Service Price Grid.

30. **Office Set Up** - A \$25 per workstation fee will be charged to all clients upon office move in.

31. **Standard Services** - All fees plus appropriate taxes are invoiced in respect of the services to be provided during the following month in advance in full on the 1<sup>st</sup> day (or such other day as we designate) of each month. No refund will be given for months of less than 30 days nor will any additional charge be levied for months of more than 30 days. For a period of less than a month, the applicable fee will be applied on a daily basis. You agree to pay promptly all (i) sales, use, excise and any other taxes, surcharges or license fees which you are required to pay to any governmental authority (and, at our request, will provide to us evidence of such payments); and (ii) any taxes paid by us attributable to your accommodation, including, without limitation, any gross receipts, rent and occupancy taxes, surcharges fees or tangible personal property taxes. Where client use agreed to participate in our Direct Payment program, payment of fixed and variable charges will be made automatically through this mechanism. Internet, Phone and Business Line services are mandatory for the Cube and Hotdesk offering. The Hotdesk product also has a mandatory Supplemental Services fee.

32. **Additional Services** - Fees for additional services, plus applicable taxes, in accordance with our published rates which may change from time to time, are invoiced in arrears and payable on the 1<sup>st</sup> day (or such other day as we designate) of the month following the calendar month in which the additional services were provided.

33. **Service Retainer** - You will be required to pay a Service Retainer equivalent to 2 months standard service fee on entering into your Agreement. This will be held by us as security for performance of all your obligations under your Agreement. The Service Retainer, or any balance after deducting outstanding fees, three months VO fee for your VO Agreement, and other costs due to us, will be returned to you within 30 days of the date you have settled your account with us in full. We may require you to pay an increased retainer if outstanding fees exceed the Service Retainer held or you frequently fail to pay us when due.

34. **Late Payment** - If you do not pay fees when due, a service fee of \$25.00 plus 5% penalty will be charged on all overdue balances under \$1,000.00 or a fee of \$50.00 plus 5% penalty on all overdue balances will be charged on all overdue balances of \$1,000.00 or greater. If you dispute a part of any invoice you must pay the amount not in dispute by the due date or be subject to late fees. The amount of penalties and fees we charge will be the lesser of the amounts stated, or the State's legality of penalties and fees which ever is the lesser of the amounts stated or those set by the Secretary of the Treasury and implemented by the Prompt Payment Act. We also reserve the right to withhold services, including denying you access to your accommodation, while there are any outstanding fees and interest or you are in breach of your agreement.

35. **Cross Default** - You agree that, if you are in default under a service agreement with us at a different business center ("Different Location Agreement") to the use specified in this Agreement, that we may recover any unpaid sums due under a Different Location Agreement from you under this Agreement and set off such sums from the deposit held under this Agreement in respect of such unpaid sums.

36. **Insufficient Funds Fees** - You will pay a fee of \$25.00 or the maximum amount permitted by law for the return of any payment for insufficient funds.

37. **Subordination** - Your Agreement is subordinate to our lease with our landlord and to any other Agreements to which our lease with our landlord is subordinate.

38. **Annual Increase** - We will increase your current standard service fee on each and any annual anniversary of the start date of your Agreement by 4% or the CPI, whichever is greater, or such other broadly equivalent index which we substitute, over the previous year. This will only apply to Agreements that have an original start and end date constituting more than a 12 month term. Renewals do not fall under this category and will be reviewed as per clause 19 above.

# REGUS Business Centre Service Agreement

## Service Agreement Type:

Office     Campus     Hotdesk

Agreement Date: May 15, 2008

CO, Englewood - The Point at Inverness

Pivotal Ref No: 2016792-4550610

Street/Floor: 8370 South Valley Highway - 3rd Floor - Englew  
 City: Englewood  
 State & Zip Code: Colorado, 80112

### Business Center Bank Details

Name: Bank of America  
 Sort code: 026-009-593  
 Account number: 478-228-6462

### Client details (not a Regus Center address)

Company Name: West Hawk Energy (USA) LLC  
 Address: 3936 Broadview Place  
 City / State: Castle Rock, CO  
 Zip Code: 80109  
 Email Address: rogerbaer@comcast.net  
 Emergency Contact:

Corporate Account  Yes    PCA  Yes

Federal ID No.:  
 Contact Name: Roger A. Baer  
 Title: CFO  
 Telephone: 303.629.3951  
 Fax:  
 Emergency Phone:

### Invoicing details (if different)

Company Name:    Contact Name:  
 Address:    Title:  
 City / State:    Telephone:  
 Zip Code:    Fax:

### The standard fee (excluding tax)

Office Number	Market Office Price per Month \$	Monthly Office Price \$	Number of workstations	Total per Month \$	Number of occupants per office
3084	\$1,600.00	\$734.00	2	\$734.00	1
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
Total per Month \$				\$734.00	

### Initial Payment:

Check if Renewal

Monthly Office Payment	\$734.00
Service Retainer	\$1,488.00
Total Initial Payment	\$2,202.00
Total Monthly Payment (excl. of services)	\$734.00

### Monthly Payment:

Direct Debit Option requested by client:  (check, if accepted fill out "Direct Debit Authorization Form")

Length of Agreement: Start date (MM/DD/YY): June 1, 2008 | End date (MM/DD/YY): June 30, 2009

### Comments

Client may begin occupying office prior to agreement start date with 3 days notice. Rent will begin on June 1, 2008. Services for this office will be billed upon activation.

Check here if you do not consent to Regus processing data in accordance with Clause 26 of this Agreement.

We are Regus Management Group LLC at 15306 North Dallas Parkway, 14th Floor, Addison, TX 75001.

This Agreement incorporates our terms of business set out on attached Terms of Business which you confirm you have read and understood. We both agree to comply with those terms and our obligations as set out in them. Note that the Agreement does not come to an end automatically. See "Bringing your Agreement to an end"

Name (printed): Roger A. Baer  
 Title (printed): CFO  
 Date (MM/DD/YY): May 15, 2008  
 SIGNED on your behalf (Client):

Name (printed): Michele Pruitt  
 Title (printed): General Manager  
 Date (MM/DD/YY): May 15, 2008  
 SIGNED on our behalf:

Contact: 1.877.734.8787

www.regus.com



**TERMS OF BUSINESS**

**USING REGUS CENTERS**

1. We are Regus Management Group LLC hereafter referred to as "Regus". These are our terms of business. They apply to the service Agreement which you the Client signed (which we refer to simply as your Agreement). Your Agreement supersedes any previous Agreement you may have with us for the same services and contains all the terms we have agreed.

**STANDARD SERVICES INCLUDED IN YOUR STANDARD FEE**

2. **Furnished Office Accommodation** - We are to provide the number of serviced and fully furnished accommodations for which you have agreed to pay in the business center stated in your Agreement (also referred to in this Agreement as "Accommodation(s)"). Your Agreement lists the accommodations we have allotted for your use. Occasionally, we may need to allocate different accommodations, but these will be of equivalent size and we will attempt to obtain your approval with respect to such different accommodations in advance.

3. **Office Services** - We are to provide the services described on the front of this Agreement, the Regus workstation or cube offer and any other mutually agreed upon services such as internet and phone during normal operating hours Monday to Friday. (Internet is available 24/7)

We are happy to discuss special arrangements for use of these services outside our normal operating hours. All services are subject to the availability of our center team at the time of any service request. We will endeavour to deal with a service request at the earliest opportunity, but will not be held responsible for any delay.

If in our opinion, we decide that a request for any particular Business Service is excessive, we reserve the right to charge an additional fee at our usual published rates based on the time taken to complete the service.

**USING THE ACCOMMODATION**

4. **On Moving In** - You will be asked to sign an inventory of all accommodation(s), furniture and equipment you are permitted to use, together with a note of its condition, and details of the keys or entry cards issued to you. You may at any time have as many employees working in your accommodation(s) as there are maximum allowable workstations. This number is noted on the front of this Agreement. Anytime the number of people sharing an accommodation exceeds the maximum number of workstations allowable in that accommodation a Hot Desk Supplement fee equal to the monthly standard VO fee (prices available on request), will apply for each person over the number of maximum workstations for the given accommodation. If at any time this number of people physically present exceeds the maximum number of workstations allowable, those employees will pay an additional hourly or daily rate for the additional accommodations.

5. **The Nature Of Your Business** - You must only use the accommodation for office purposes, and only for the business stated in your Agreement or subsequently agreed with us. Office/Accommodation use of a "retail" nature, involving frequent visits by members of the public, is not permitted. You must not carry on a business which competes with our business of providing serviced office or cube accommodations. You must not use the name Regus or any of its associated companies in any way in connection with your business.

6. **Your Name And Address** - You may only carry on that business in your name or some other name that we previously agree. At your request and cost we will include that name in the house directory at the business center, where this is available. You must not put up any signs on the doors to your accommodation or anywhere else which is visible from outside the accommodation you are using. You may use the business center address as your business address. If you use the center address as your registered business address, you must have a third-party registered as your agent for service of process.

7. **Taking Care Of Our Property** - You must take good care of all parts of the business center, its equipment, fittings and furnishings which you use. You must not alter any part of it. You are liable for any damage caused by you or those in the business center with your permission or at your invitation.

8. **Office Furniture And Equipment** - You must not install any furniture or office equipment, cabling, IT or telecom connections without our consent, which we may refuse at our absolute discretion.

9. **Keys And Security** - Any keys or entry cards which we let you use remain our property at all times. You must not make any copies of them or allow anyone else to use them without our consent. Any loss must be reported to us immediately and you must pay the cost of replacement keys or cards and / or changing locks, if required. If you are permitted to use the business center outside normal working hours it is your responsibility to lock the doors to your accommodation and to the business center when you leave.

10. **Comply With The Law** - You must comply with all relevant laws and regulations in the conduct of your business. You must do nothing illegal. You must not do anything that may interfere with the use of the business center by us or by others, cause any nuisance or annoyance, increase the insurance premiums we have to pay or cause loss or damage to us or to the owner of any interest in the building which contains the business center. You acknowledge that (a) the terms of the foregoing sentence are a material inducement to us for the execution of your Agreement and (b) any violation by you of the foregoing sentence shall constitute a material default by you hereunder, entitling us to terminate your Agreement.

11. **Comply With House Rules** - You must comply with any house rules which we impose generally on users of the business center whether for reasons of health and safety, fire precautions or otherwise.

12. **Insurance** - It is your responsibility to arrange insurance for your own property which you bring into the business center for your own liability to your employees and to third parties.

**PROVIDING THE SERVICES**

13. **Access To Your Accommodation** - We can enter your accommodation at any time. However, unless there is an emergency we will as a matter of courtesy try to inform you in advance when we need access to carry out testing, repair or works other than routine inspection, cleaning and maintenance. We will also respect security procedures to protect the confidentiality of your business.

14. **At The Start Of Your Agreement** - If for any reason we cannot provide the Accommodation(s) stated in your Agreement by the date when your Agreement is due to start we have no liability to you for any loss or damages but you may cancel the Agreement without penalty. We will not charge you the standard fee for accommodations you cannot use until they become available.

15. **Suspension Of Services** - We may by notice suspend the provision of services (including access to the business center) for reasons of political unrest, strikes, or other events beyond our reasonable control, in which event payment of the standard fee will also be suspended for the same period.

16. **Our Liability** - We are not liable for any loss as a result of our failure to provide a service as a result of mechanical breakdown, strike, delay, failure of team, termination of our interest in the building containing the business center or otherwise unless we do so deliberately or are grossly negligent. We are also not liable for any failure until you have informed us about it in writing and given us a reasonable time to put right.

You agree (a) that we will not have any liability for any loss, damage or claim which arises as a result of, or in connection with, your Agreement and/or your use of the services except to the extent that such loss, damage, expense or claim is directly attributable to our deliberate act or our gross negligence (our liability); and (b) that our liability will be subject to the limits set out in the next paragraph. We will not in any circumstances have any liability for loss of business, loss of profits, loss of anticipated savings, loss of or damage to data, third party claims or any consequential loss. We strongly advise you to insure against all such potential loss, damage expense or liability. In addition, client releases Regus from any liability arising out of or incurred in connection with any Client Mail and/or Packages received. We will be liable:

- up to a maximum of \$1,000,000 (for any one event or series of connected events) for damage to your personal property;
- up to a maximum equal to 125% of the total fees paid under your Agreement up to the date on which the claim in question arises or \$50,000 (whichever is the higher), in respect of all other losses, damages or expenses.

17. **RegusNET** - You must comply with any copyright notices, license terms or other notices appearing on screen or as part of any material on the Internet or our network. You must not copy, use or exploit such software or other material in any way, unless we have explicitly given you permission to do so. You must strictly comply with the terms of any permission that we give.

We do not make any representations as to the security of our network (or the Internet) or of any information that you place on it. You should adopt whatever security measures (such as encryption) you believe are appropriate to your circumstances. We cannot guarantee that a particular degree of availability will be attained in connection with your use of the services.

You hereby warrant to us that, in the course of our provision of the RegusNET services to you, you will not now or in the future cause us to, infringe the rights of any third party (such as, but not limited to, using their logo without consent on your website).

You agree to comply with the RegusNET Technology Policy as set out on the reverse of the RegusNET IT Broadband Registration Form. We warrant that the services shall be provided and performed in a professional and workmanlike manner and shall conform to the description of the services set out in Broadband Registration form. If we fail to provide the services as warranted, your sole and exclusive remedy shall be the remedy of such failure by us within a reasonable time after written notice.

The above warranty is in lieu of all other terms, conditions and warranties, whether express or implied by usage, custom, statute or otherwise, pertaining to the services and manner in which we perform our obligations and exercise our rights including, but without prejudice to the generality of the foregoing, such as relate to the description, performance, quality, suitability or fitness for any particular purposes, of the services. We do not warrant that the services will be uninterrupted or error free.

**YOUR AGREEMENT**

18. **The Nature Of Your Agreement** - Your Agreement is the commercial equivalent of an Agreement for accommodation in a hotel. The whole of the business center remains our property and is in our possession and control. You acknowledge that your Agreement creates no tenancy interest, leasehold estate or other real property interest in your favor with respect to the accommodation. We are giving you just the right to share with us the use of the business center so that we can provide the services to you. The Agreement is personal to you and cannot be transferred to anyone else. We may transfer the benefit of your Agreement and our obligations under it at any time.

19. **Duration** - Your Agreement lasts for the period stated in it and will then automatically be extended for successive periods equal to the current term but no less than 3 months until brought to an end by you or by us. All periods shall run to the last day of the month in which they would otherwise expire. The fee for any renewal will be the current market price. In all other respects your Agreement will renew on the same terms and conditions.

20. **Bringing Your Agreement To An End** - Either of us can terminate your Agreement at the end date stated in it, or at the end of any extension or renewal period, by giving at least three months written notice to the other. However, if your Agreement, extension or renewal is for three months or less and one of us wishes to terminate it, the notice period is two months or if shorter one week less than the period stated in your Agreement, extension or renewal.

21. **Ending Your Agreement Immediately** - We may put an end to your Agreement immediately by giving you notice if:

- you become insolvent, go into liquidation or become unable to pay your debts as they fall due;
- you are in breach of one of your obligations which cannot be put right or which we have given you notice to put right and which you have failed to put right within fourteen days of that notice; or
- your conduct, or that of someone at the business center with your permission or at your invitation, is incompatible with ordinary office use.

If we put an end to the Agreement for any of these reasons it does not put an end to any then outstanding obligations you may have and you must:

- pay for additional services you have used
- pay the standard fee for the remainder of the period for which your Agreement would have lasted had we not ended it, or (if longer) for a further period of three months; and
- indemnify us against all costs and losses we incur as a result of the termination.

22. **The Business Center Is Not Available** - In the unlikely event that we are no longer able to provide the services and accommodation at the business center stated in your Agreement then your Agreement will end and you will only have to pay standard fees up to the date it ends and for the additional services you have used. We will try to find suitable alternative accommodation for you at another RegusHQ business center.

23. **When Your Agreement Ends** - Upon your departure or if you, at your option, choose to relocate to a different accommodation within the business center a flat fee (\$125.00 per workstation/cube) will be assessed to cover the routine cost of repainting and restoring the accommodation to return it to its original condition in addition to general maintenance of the common areas of the business center in which you have had access. We reserve the right to charge additional reasonable fees for any repairs needed above and beyond normal wear and tear. If you leave any of your own property in the business center we may dispose of it in any way we chose without owing you any responsibility for it or any proceeds of sale. In order to transition your mail and telephone calls from the business center, you will be automatically entered into a Continuation Agreement with us on our standard terms at the time for 3 months. Current contract terms and pricing can be obtained through your RegusHQ General Manager. This agreement will also aid in the process of locating you when returning your service retainer after you have moved out. Any retainers not claimed after 120 days will be charged a monthly \$25 account maintenance fee.

If you continue to use the accommodation when your Agreement has expired:

- you are responsible for any loss, claim or liability we incur as a result of your failure to vacate on time.
- we may, at our discretion, permit you an extension subject to a surcharge on the standard fee.

24. **Employees** - While your Agreement is in force and for a period of six months after it ends, you must not solicit or offer employment to any of our current employees or anyone who has left our employment in the last 3 months. If you do, we estimate our loss at the equivalent of one year's salary for each of the employees concerned and you must pay us damages equal to that amount.

25. **Notices** - All formal notices must be in writing. Client is responsible to keep updated address of record at the center.

26. **Confidentiality** - The terms of your Agreement are confidential. Neither of us may disclose them without the other's consent unless required to do so by law or an official authority. This obligation continues after your Agreement ends.

27. **Enforcement of Your Agreement** - You must pay any reasonable and proper costs including legal fees which we incur in enforcing your Agreement.

28. **Data Protection** - We will not process, disclose or transfer (including outside the EEA to other countries which are part of our international network from time to time) any personal data which we hold on or in relation to you unless we consider it to be reasonable and to ensure that it is used only to fulfil your obligations under this agreement or for work assessment and fraud prevention or to make available information about new or beneficial products or services. Please be aware that countries outside the EEA - European Economic Area - may not have laws in force to protect your personal data.

29. **Applicable Law** - Your Agreement is interpreted and enforced in accordance with the laws of the state in which the business center in question is located. We both accept the exclusive jurisdiction of the courts of such jurisdiction where the center is located.

**FEES**

In the following clauses any references to "fees" alone means all of the standard service fees, pay-as-you-use fees and the fees on the Service Price Guide.

30. **Office Set Up** - A \$75 per workstation fee will be charged to all clients upon office move in.

31. **Standard Services** - All fees plus appropriate taxes are invoiced in respect of the services to be provided during the following month in advance in full on the 1<sup>st</sup> day (or such other day as we designate) of each month. No refund will be given for months of less than 30 days nor will any additional charge be levied for months of more than 30 days. For a period of less than a month, the applicable fee will be applied on a daily basis. You agree to pay promptly all (i) sales, use, excise and any other taxes, surcharges or license fees which you are required to pay to any governmental authority

(ii) at our request, will provide to use evidence of such payment; and (iii) any taxes paid by us attributable to your accommodation, including, without limitation, any gross receipts, rent and occupancy taxes, surcharge fees or tangible personal property taxes. Where client has agreed to participate in our Direct Debit Program, payment of fixed and variable charges will be made automatically through this mechanism. Internet, Phone and Business Line services are mandatory for the Cube and Hotdesk offering. The Hotdesk product also has a mandatory Supplemental Services fee.

32. **Additional Services** - Fees for additional services, plus applicable taxes, in accordance with our published rates which may change from time to time, are invoiced in arrears and payable on the 1<sup>st</sup> day (or such other day as we designate) of the month following the calendar month in which the additional services were provided.

33. **Service Retainer** - You will be required to pay a Service Retainer equivalent to 2 months standard service fee on entering into your Agreement. This will be held by us as security for performance of all your obligations under your Agreement. The Service Retainer, or any balance after deducting outstanding fees, three months VO fee for your VO Agreement, and other costs due to us, will be returned to you within 30 days of the date you have settled your account with us in full. We may require you to pay an increased retainer if outstanding fees exceed the Service Retainer held or you frequently fail to pay us when due.

34. **Late Payment** - If you do not pay fees when due, a service fee of \$25.00 plus 5% penalty will be charged on all overdue balances under \$1,000.00 or a fee of \$50.00 plus 5% penalty on all overdue balances will be charged on all overdue balances of \$1,000.00 or greater. If you dispute a part of any invoice you must pay the amount not in dispute by the due date or be subject to late fees. This amount of penalties and fees we charge will be the lesser of the amounts stated, or the State's legally enforceable maximum, whichever is the lesser. In the case of U.S. Government Contracts, the amount of penalties and fees we charge will be lesser of the amounts stated or those set by the Secretary of the Treasury and implemented by the Prompt Payment Act. We also reserve the right to withhold services, including denying you access to your accommodation, while there are any outstanding fees and interest or you are in breach of your agreement.

35. **Cross Default** - You agree that, if you are in default under a service agreement with us at a different business center ("Different Location Agreement") to the one specified in this Agreement, that we may recover any unpaid sums due under a Different Location Agreement from you under this Agreement and that we may, in particular (but not limited to), withhold services under this Agreement or deduct sums from the deposit held under this Agreement in respect of such unpaid sums.

36. **Insufficient Funds Fee** - You will pay a fee of \$25.00 or the maximum amount permitted by law for the return of any payment for insufficient funds.

37. **Subordination** - Your Agreement is subordinate to our lease with our landlord and to any other Agreements to which our lease with our landlord is subordinate.

38. **Annual Increase** - We will increase your current standard service fee on each and any annual anniversary of the start date of your Agreement by 4% or the CPI, whichever is greater, or such other broadly equivalent index which we substitute over the previous year. This will only apply to Agreements that have an original start and end date constituting more than a 12 month term. Renewals do not fall under this category and will be reviewed as per clause 19 above.



**Addendum to Service Agreement**

This Addendum to the Service Agreement ("Addendum") is made and entered into on the 8<sup>th</sup> day of January, 2009, by and between Regus management Group LLC ("Regus") and WEST HAWK ("Client").

**Recitals**

- A. Client and Regus are parties to that certain Service Agreement ("Agreement") dated March 3, 2008 in which Regus provides certain services and facilities to you.
- B. The parties desire to amend the terms of the Office Agreement under the following terms and conditions.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein and other good and valuable considerations, the parties agree as follows:

1. **Amendment.** The Office Agreement will be amended as follows:
  - A. We have offered a thirty day notice to drop the following offices 3076, 3078, 3083, and 3084 due to the current circumstances of West Hawk filing Chapter 11. The new end date for office 3076, 3078, 3083, and 3084 will be January 31, 2009.
  - B. Office 3073 and 3075 will remain on the original contract (Plv# 1953613) until June 30, 2009, all terms and conditions apply.
2. **Control.** Except as specifically modified or amended by the terms of this Addendum, the Agreement will remain in full force and effect. In the event of a conflict between this Addendum and the Agreement or any attachment thereto, this Addendum will control.
3. **Capitalized Terms.** All capitalized terms not otherwise defined in this Addendum will have their respective meanings as set forth in the Agreement.
4. **General Terms.** This Addendum may be executed in one or more counterparts and/or by facsimile, each of which will be deemed an original and all of which signed counterparts, taken together, will constitute one and the same instrument.

In Witness Whereof, the parties have executed this Addendum as of the date first above written.

Client:

West Hawk

By:

Name: CONZALO TORRES - MACCHIAVELLO

Title: PRESIDENT & CEO

Regus:

Regus Business Centre Corp.

By:

Name: GALETTI MURPHY

Title: GALETTI MURPHY



# Renewal Agreement

### Client Details

Company Name:	West Hawk	Centre:	The Point at Inverness
Contact Name:	Gonzalo Torres-Macchiavello	Reference No.:	2298059

### Office Details (excluding VAT/Tax)

Office Number	Market Office Fee	6 Months	12 Months	3 Months
		Option A	Option B	Option C
3073	2080	1009.00	1009.00	1009.00
3075	1630	790.00	790.00	790.00
Total per Month		1799.00	1799.00	1799.00

Start Date of Renewal: 1-Jul-09

### Comments:

*One-time renewal at 0% increase.*

Please place an "X" in the shaded box next to your preferred Option.

- Option A: I agree
- Option B: I agree
- Option C: I agree
- I do not wish to renew

*[Handwritten Signature]*  
 \_\_\_\_\_  
 SIGNED on your behalf (Client)

03-19-09  
 \_\_\_\_\_  
 Date

## TERMS AND CONDITIONS

Regus is committed to the service it offers its Clients and has created terms and conditions governing the use of its Business Centres ("Centres"). These terms and conditions have been formulated for the collective benefit of Regus' Clients. The terms are designed to ensure the enjoyment of the accommodation(s) by all of Regus' Clients in the Centre and govern the relationship between the Client and Regus.

### 1. This Agreement

1.1 Nature of this agreement: This agreement is the commercial equivalent of an agreement for accommodation(s) in a hotel. The whole of the Centre remains in Regus' possession and control. THE CLIENT ACCEPTS THAT THIS AGREEMENT CREATES NO TENANCY INTEREST, LEASEHOLD ESTATE OR OTHER REAL PROPERTY INTEREST IN THE CLIENT'S FAVOUR WITH RESPECT TO THE ACCOMMODATION(S). Regus is giving the Client the right to share with Regus the use of the Centre on these terms and conditions, as supplemented by the House Rules, so that Regus can provide the services to the Client. This agreement is personal to the Client and cannot be transferred to anyone else. This agreement is composed of the front page describing the accommodation(s), the present terms and conditions and the House Rules.

1.2 Comply with House Rules: The Client must comply with any House Rules which Regus imposes generally on users of the Centre. The House Rules vary from country to country and from Centre to Centre and these can be requested locally and are an integral part of the Welcome book which the Client will receive upon move in.

1.3 Duration: This agreement lasts for the period stated in it and then will be extended automatically for successive periods equal to the initial term but no less than 3 months (or such other renewal term that has been agreed between Regus and the Client) until brought to an end by the Client or by Regus. All periods shall run to the last day of the month in which they would otherwise expire. The fees on any renewal will be at the prevailing market rate.

1.4 Bringing this agreement to an end: Either Regus or the Client can terminate this agreement at the end date stated in it, or at the end of any extension or renewal period, by giving at least three months written notice to the other. However, if this agreement, extension or renewal is for three months or less and either Regus or the Client wishes to terminate it, the notice period is two months or (if shorter) one week less than the period stated in this agreement.

1.5 Ending this agreement immediately: To the maximum extent permitted by applicable law, Regus may put an end to this agreement immediately by giving the Client notice and without need to follow any additional procedure if the Client becomes insolvent, bankrupt, goes into liquidation or becomes unable to pay its debts as they fall due, or the Client is in breach of one of its obligations which cannot be put right or which Regus have given the Client notice to put right and which the Client has failed to put right within fourteen (14) days of that notice, or its conduct, or that of someone at the Centre with its permission or invitation, is incompatible with ordinary office use.

If Regus puts an end to this agreement for any of these reasons it does not put an end to any outstanding obligations, including additional services used and the monthly office fee for the remainder of the period for which this agreement would have lasted.

1.6 If the Centre is not available: In the event that Regus is permanently unable to provide the services and accommodation(s) at the Centre stated in this agreement then this agreement will end and the Client will only have to pay monthly office fees up to the date it ends and for the additional services the Client has used. Regus will try to find suitable alternative accommodation(s) for the Client at another Regus Centre.

1.7 When this agreement ends the Client is to vacate the accommodation(s) immediately, leaving the accommodation(s) in the same condition as it was when the Client took it. An exit fee will be charged upon the Client's departure or if the Client, at its option, chooses to relocate to different rooms within the Centre. This rate will differ by country and is listed in the House Rules. Regus reserves the right to charge additional reasonable fees for any repairs needed above and beyond normal wear and tear. If the Client leaves any property in the Centre Regus may dispose of it at the Client's cost in any way Regus chooses without owing the Client any responsibility for it or any proceeds of sale. The Client will be automatically entered into a Virtual Office agreement ("VO") with Regus on Regus' standard terms at the time for 3 months. This VO endeavours to provide business continuity for the Client as it ensures that Regus can effectively manage its transition period.

If the Client continues to use the accommodation(s) when this agreement has ended the Client is responsible for any loss, claim or liability Regus incurs as a result of the Client's failure to vacate on time. Regus may, at its discretion, permit the Client an extension subject to a surcharge on the monthly office fee.

1.8 Employees: While this agreement is in force and for a period of six months after it ends, neither Regus nor the Client may knowingly solicit or offer employment to any of the other's staff employed in the Centre. This obligation applies to any employee employed at the Centre up to that employee's termination of employment, and for three months thereafter. It is stipulated that the breaching party shall pay the non-breaching party the equivalent of one year's salary for any employee concerned. Nothing in this clause shall prevent either party from employing an individual who responds in good faith and independently to an advertisement which is made to the public at large.

1.9 Client Representation of Regus Employees: Throughout the duration of this agreement, Client agrees that neither Client, nor any of Client's partners, members, officers or employees will represent, or otherwise provide legal counsel to, any of Regus' current or former employees in any dispute with, or legal proceeding against, Regus, or any of Regus' affiliates, members, officers or employees.

1.10 Notices: All formal notices must be in writing to the address first written above.

1.11 Confidentiality: The terms of this agreement are confidential. Neither Regus nor the Client must disclose them without the other's consent unless required to do so by law or an official authority. This obligation continues after this agreement ends.

1.12 Applicable law: This agreement is interpreted and enforced in accordance with the law of the place where the relevant Centre is located. Regus and the Client both accept the exclusive jurisdiction of the courts of such jurisdiction. If any provision of these terms and conditions is held void or unenforceable under the applicable law, the other provisions shall remain in force.

1.13 Enforcing this agreement: The Client must pay any reasonable and proper costs including legal fees that Regus incurs in enforcing this agreement.

### 2. Services and Obligations

2.1 Furnished office accommodation(s): Regus is to provide the number of serviced and furnished office accommodation(s) for which the Client has agreed to pay in the Centre stated in this agreement. This agreement lists the accommodation(s) Regus has initially allocated for the Client's use. Occasionally Regus may need to allocate different accommodation(s), but these accommodation(s) will be of reasonably equivalent size and Regus will notify the Client with respect to such different accommodation(s) in advance.

2.2 Office Services: Regus is to provide the services, if requested, described in the Service Price Guide (which is available on request).

2.3 RegusNET: Regus does not make any representations as to the security of Regus' network (or the Internet) or of any information that the Client places on it. The Client should adopt whatever security measures (such as encryption) it believes are appropriate to its circumstances. Regus cannot guarantee that a particular degree of availability will be attained in connection with the Client's use of Regus' network (or the Internet).

### 3. Providing the Services

3.1 Access to the accommodation(s): Regus may need to enter the Client's accommodation(s) and may do so at any time. However, unless there is an emergency or the Client has given notice to terminate, Regus will attempt to notify the Client verbally or electronically in advance when Regus needs access to carry out testing, repair or works other than routine inspection, cleaning and maintenance. Regus will also endeavour to respect reasonable security procedures to protect the confidentiality of the Client's business.

3.2 Availability at the start of this agreement: If for any reason Regus cannot provide the accommodation(s) stated in this agreement by the date when this agreement is due to start it has no liability to the Client for any loss or damages but the Client may cancel this agreement without penalty. Regus will not charge the Client the monthly office fee for accommodation(s) the Client cannot use until it becomes available.

### 4. Accommodation(s)

4.1 The Client is liable for any damage caused by it or those in the Centre with the Client's permission or at the Client's invitation whether express or implied, including but not limited to all

4.2 Office furniture and equipment: The Client must not install any cabling, IT or telecom connections without Regus' consent, which Regus may refuse at its absolute discretion. As a condition to Regus' consent, the Client must permit Regus to oversee any installations (for example IT or electrical systems) and to verify that such installations do not interfere with the use of the accommodation(s) by other Clients or Regus or any landlord of the building.

4.3 Insurance: It is the Client's responsibility to arrange insurance for its own property which it brings in to the Centre and for its own liability to its employees and to third parties. Regus strongly recommends that the Client put such insurance in place.

### 5. Use

5.1 The Client must only use the accommodation(s) for office purposes. Office use of a "retail" or "medical" nature, involving frequent visits by members of the public, is not permitted.

5.2 The Client must not carry on a business that competes with Regus' business of providing serviced office accommodation(s).

5.3 The Client's name and address: The Client may only carry on that business in its name or some other name that Regus previously agrees.

5.4 Use of the Centre Address: The Client may use the Centre address as its business address. Any other uses are prohibited without Regus' prior written consent.

### 6. Compliance

6.1 Comply with the law: The Client must comply with all relevant laws and regulations in the conduct of its business. The Client must do nothing illegal in connection with its use of the Business Centre. The Client must not do anything that may interfere with the use of the Centre by Regus or by others, cause any nuisance or annoyance, increase the insurance premiums Regus has to pay, or cause loss or damage to Regus or to the owner of any interest in the building which contains the Centre the Client is using. The Client acknowledges that (a) the terms of the foregoing sentence are a material inducement in Regus' execution of this agreement and (b) any violation by the Client of the foregoing sentence shall constitute a material default by the Client hereunder, enabling Regus to terminate this agreement, without further notice or procedure.

6.2 The Client's personal data may be transferred outside the European Union where Regus has a Centre for the purposes of providing the services herein. Regus has adopted internal rules to ensure data protection in accordance with European regulations.

### 7. Regus' Liability

7.1 The extent of Regus' liability: To the maximum extent permitted by applicable law, Regus is not liable to the Client in respect of any loss or damage the Client suffers in connection with this agreement, with the services or with the Client's accommodation(s) unless Regus has acted deliberately or negligently in causing that loss or damage. Regus is not liable for any loss as a result of Regus' failure to provide a service as a result of mechanical breakdown, strike, delay, failure of staff, termination of Regus' interest in the building containing the Centre or otherwise unless Regus does so deliberately or is negligent. In no event shall Regus be liable for any loss or damage until the Client provides Regus written notice and gives Regus a reasonable time to put it right. If Regus is liable for failing to provide the Client with any services under this agreement then subject to the exclusions and limits set out immediately below Regus will pay any actual and reasonable expenses the Client has incurred in obtaining that service from an alternative source. If the Client believes Regus has failed to deliver a service consistent with these terms and conditions the Client shall provide Regus written notice of such failure and give Regus a reasonable period to put it right.

7.2 Exclusion of consequential losses etc.: Regus will not in any circumstances have any liability for loss of business, loss of profits, loss of anticipated savings, loss of or damage to data, third party claims or any consequential loss unless Regus otherwise agrees in writing. Regus strongly advises the Client to insure against all such potential loss, damage expense or liability.

7.3 Financial limits to Regus' liability: In all cases, Regus' liability to the Client is subject to the following limits:

- Without limit for personal injury or death;
- up to a maximum of £1 million / USD\$2 million / €1.3 million (or local equivalent) for any one event or series of connected events for damage to the Client's personal property;
- up to a maximum equal to 125% of the total fees paid between the date the Client moved into its accommodation(s) and the date on which the claim in question arises or £50,000 / USD\$100,000 / €66,000 (or local equivalent) whichever is the higher, in respect of any other loss or damage.

### 8. Fees

8.1 Taxes and duty charges: The Client agrees to pay promptly (i) all sales, use, excise and any other taxes and fees which it is required to pay to any governmental authority (and, at Regus' request, will provide to Regus evidence of such payment) and (ii) any taxes paid by Regus to any governmental authority that are attributable to the accommodation(s), including, without limitation, any gross receipts, rent and occupancy taxes, tangible personal property taxes, stamp tax or other documentary taxes and fees.

8.2 Service Retainer/Deposit: The Client will be required to pay a service retainer/deposit equivalent to two months of the monthly office fee (plus VAT/tax where applicable) upon entering into this agreement unless a greater amount is specified on the front of this agreement. This will be held by Regus without generating interest as security for performance of all the Client's obligations under this agreement. The service retainer/deposit, or any balance after deducting outstanding fees, three months VO fee for the Client's VO agreement, and other costs due to Regus, will be returned to the Client after the Client has settled its account with Regus and funds have cleared.

8.3 Regus may require the Client to pay an increased retainer if outstanding fees exceed the service retainer/deposit held and/or the Client frequently fails to pay Regus when due.

8.4 This Client will be charged an office set up fee per occupant. Fee amounts are located in the House Rules which can be requested at any time.

8.5 Late payment: If the Client does not pay fees when due, a fee will be charged on all overdue balances. This fee will differ by country and is listed in the House Rules. If the Client disputes any part of an invoice the Client must pay the amount not in dispute by the due date or be subject to late fees. Regus also reserves the right to withhold services (including for the avoidance of doubt, denying the Client access to its accommodation(s)) while there are any outstanding fees and/or interest or the Client is in breach of this agreement.

8.6 Insufficient Funds: The Client will pay a fee for any returned cheque or any other declined payments due to insufficient funds. This fee will differ by country and is listed in the House Rules.

8.7 Regus will increase the monthly office fee each and every anniversary of the start date of this agreement by a percentage amount equal to the increase in the All Items Retail Prices Index, or such other broadly equivalent index which Regus substitutes provided that if the foregoing increase is not permitted by applicable law, then the monthly office fee shall be increased as specified in the House Rules. This will only apply to agreements that have an original start and end date constituting more than a 12 month term. Renewals do not fall within this category and will be reviewed as per clause 1.3 above ("Duration").

8.8 Standard services: The monthly office fee and any recurring services requested by the Client are payable monthly in advance. Unless otherwise agreed in writing, these recurring services will be provided by Regus at the specified rates for the duration of this Agreement (including any renewal). Specific due dates will differ by country and are listed in the House Rules. Where a daily rate applies, the charge for any such month will be 30 times the daily fee. For a period of less than a month the fee will be applied on a daily basis.

8.9 Pay-as-you-use and Additional Variable Services: Fees for pay-as-you-use services, plus applicable taxes, in accordance with Regus' published rates which may change from time to time, are invoiced in arrears and payable the month following the calendar month in which the additional services are provided. Specific due dates will differ by country and are listed in the House Rules.

## **HOUSE RULES**

*These are our House Rules which may change from time to time and apply to all Regus Management group facilities operating under different names (Regus, HQ, Stratis, etc.).*

### **Accommodation**

1. Upon move In: We may ask you to sign an inventory of all accommodation, furniture and equipment you are permitted to use, together with a note of its condition, and details of the keys or entry cards issued to you.
2. You may not put up any signs on the doors of your accommodation or anywhere else that is visible from outside the rooms you are using without written approval from the local Center team (acting reasonably).
3. Taking care of our property: You must take good care of all parts of the Business Center, its equipment, fittings and furnishings that you use. You must not alter any part of it.
4. Keys and security: Any keys or entry cards which we let you use remain our property at all times. You must not make any copies of the keys and/or entry cards or allow anyone else to use them without our consent. Any loss must be reported to us immediately and you must pay a reasonable fee for replacement keys or cards and of changing locks, if required. This rule improves security levels of the Business Center. If you are permitted to use the Business Center outside normal working hours it is your responsibility to lock the doors to your accommodation and to the Business Center when you leave. This is to ensure the safety of individuals and property at the Business Center.

### **Use**

5. You shall not leave open any corridor doors, exit doors or door connecting corridors during or after business hours. All corridors, halls, elevators and stairways shall not be obstructed by you or used for any purpose other than egress and ingress. You can only use public areas with the consent of REGUS and those areas must be kept neat and attractive at all times.
6. Your name and address: At your request and cost we are happy to include that name in the house directory at the Business Center, where this facility is available. You must not use the name Regus or HQ Global Workplaces or Stratis or the specific brand name of the center you are using in any way in connection with your business. You may not use the Business Center as your registered address for service-of-process.
7. Your employees and guests shall conduct themselves in a businesslike manner; proper business attire shall be worn at all times; the noise level will be kept to a level so as not to interfere with or annoy other clients and you will abide by REGUS directives regarding security, keys, parking and other such matters common to all occupants.
8. You shall not, without REGUS prior written consent, store or operate in the workstation(s) or the REGUS Business Center any computer (excepting a personal computer) or any other large business machine, reproduction equipment, heating equipment, stove, radio, stereo equipment or other mechanical amplification equipment, vending or coin operated machine, refrigerator or coffee equipment. Additionally, you must not conduct a mechanical business therein, do any cooking therein, or use or allow to be used in the Building, oil burning fluids, gasoline, kerosene for heating, warming or lighting. No article deemed hazardous on account of fire or any explosives shall be brought into the REGUS business center. No offensive gases, odors or liquids shall be permitted. No firearms shall be permitted. The Business Center is intended to be used solely for office use.
9. The electrical current shall be used for ordinary lighting, powering personal computers and small appliances only unless written permission to do otherwise shall first have been obtained from REGUS at an agreed cost to you. If you require any special installation or wiring for electrical use, telephone equipment or otherwise, such wiring shall be done at your expense by the personnel designated by REGUS.
10. You may not conduct business in the hallways, reception area or any other area except in its designated office without the prior written consent of REGUS.
11. You shall bring no animals into the Building other than certified assistance animals which are being used solely for the purposes of such certification.
12. Kitchen Amenities / Beverage Fee allows clients and visitors access to self-service coffee and tea. This fee is mandatory and will be charged per office occupant.
13. You shall not use the REGUS Business Center for manufacturing or storage of merchandise except as such storage may be incidental to general office purposes. Client shall not occupy or permit any portion of the REGUS business center to be occupied or used for the manufacture, sale, gift or use of liquor, narcotics or tobacco in any form.
14. No additional locks or bolts of any kind shall be placed upon any of the doors or windows of the REGUS Business Center by you nor shall any changes be made to existing locks or the mechanisms thereof.



15. Canvassing, soliciting and peddling in the Building are prohibited and You shall not solicit other clients for any business or other purpose without the prior written approval of REGUS.
16. All property belonging to You or any employee, agent or invitee shall be at the risk of such person only and REGUS shall not be liable for damages thereto or for theft or misappropriation thereof.
17. Smoking shall be prohibited in all public areas, including conference and training rooms. No smoking shall be permitted at any time in any area of the REGUS Business Center (including open offices).
18. You or Your officers, directors, employees, shareholders, partners, agents, representatives, contractors, customers, or invitees shall be prohibited from participating in any type of harassing or abusive behavior to REGUS team members, other clients or invitees, verbal or physical in the REGUS Business Center for any reason.

#### **Services and Obligations**

19. **Furnished office accommodation:** You shall not affix anything to the windows, walls or any other part of the office or the REGUS business center or make alterations or additions to the office or the REGUS business center without the prior written consent of REGUS.
20. **Office Services:** We are happy to discuss special arrangements for the use of the facilities outside our normal opening hours or if in a non-U.S. Center, the normal working days where the Center is located. There may be an additional charge for such special arrangements. This can be discussed at the time of arrangement.
21. All of the pay-as-you-use services are subject to the availability of our Center staff at the time of any service request. We will endeavor to deal with a service request at the earliest opportunity and provide the additional service you require, but will not be held responsible for any delay.
22. If in our opinion, we decide that a request for any pay-as-you-use service is excessive, we reserve the right to charge an additional fee at our usual published rates based on the time taken to complete the service. This will be discussed and agreed between us at the time you make such request.

#### **Your Agreement**

23. **Nature of your agreement:** We may transfer the benefit of your agreement and our obligations under it at any time. This clause reflects the fact that you are taking a serviced office agreement and not a lease and that we retain overall control of the Business Center. You have no real-property interest of any kind in the Building. If your company does merge with another or you need to allow an affiliate to use the services provided under your agreement, please come to us and explain the need for any change to us and we will give careful consideration in each case. Of course we do need to make sure we know and are happy with the identity of each occupant of our Business Center.
24. **Data Protection:** You agree that we may process, disclose or transfer (including outside the EEA – European Economic Area – to other countries which are part of our international network from time to time) any personal data which we hold on or in relation to you provided that in doing so we take such steps as we consider reasonable to ensure that it is used only
  - to fulfill our obligations under your agreement;
  - for work assessment and fraud prevention; or
  - to make available information about new or beneficial products and services offered by us and other organizations which we consider may be of interest to you.

Please be aware that countries outside the EEA – European Economic Area – may not have laws in force to protect your personal data.

25. For all agreements with a term greater than 12 months the indexation applied of the All Items Retail Prices Index + 2% will be substituted by CPI or 4% whichever is the greater.

#### **Fees**

26. **Standard services:** The standard fee and any fixed, recurring services requested by you are payable in advance, by the 1<sup>st</sup> day (or such other day as we designate) of each month following the date You receive your bill. Where a daily rate applies, the charge for any such month will be 30 times the standard fee. For a period of less than a month the standard fee will be applied on a daily basis. If you wish to discontinue a fixed, recurring service you must give 90 day prior written notice commencing on the first of the month.
27. **Pay-as-you-use and Additional Variable Services:** Fees for pay-as-you-use services, plus applicable taxes, in accordance with our published rates which may change from time to time, are invoiced in arrears and payable on the 1st day (or such other day as we designate) of the month following the calendar month in which the additional services were provided.
28. **Office Set up Fee:** An office set up fee of \$75 will be charged per occupant.
29. **Exit Fee:** A fee per occupant plus fees to cover re-wiring and re-identifying the accommodation will be charged at a rate of \$2.00 per square foot of each occupied office upon your departure or if you, at your option, choose to relocate to different rooms within the Center. We reserve the right to charge additional reasonable fees for any repairs needed above and beyond normal wear and tear.
30. **Late Payment Fee:** If you do not pay fees when due, a service fee of \$25 plus 5% penalty will be charged on all overdue balances under \$1,000. For balances equal to or greater than \$1,000 a fee of \$50 plus 5% penalty will apply. If you dispute any part of an invoice you must pay the amount not in dispute by the due date or be subject to late fees. We also reserve the right to withhold services (including for the avoidance of doubt, denying you access to your accommodation) while there are any outstanding fees and interest or you are in breach of your agreement.

31. **Insufficient Funds Fee:** You will pay a fee of \$100 or the maximum amount permitted by law for checks returned due to insufficient funds. Any other declined payment due to insufficient funds will be charged a fee of \$50.
32. **Retainer Maintenance Fee:** Any retainers not claimed after 120 days will be charged a monthly \$25 account maintenance fee.

### **Liability**

33. **Mail:** You release us from any liability arising out of or incurred in connection with any mail or packages received on your behalf.

### **IT and Technology Policy**

#### **34. INTRODUCTION**

*This Policy forms part of the RegusNet IT Connectivity Order and complements the Services Agreement referenced therein whereby Client has contracted for serviced office space and wishes to use Regus Telecommunication and Internet connectivity services and equipment;*

**Regus is considered a DSP (downstream service provider), which means Regus provides a personalized managed connection to the Internet. The Internet access service is branded RegusNet.**

#### **Description for RegusNet Service**

##### **RegusNet**

The RegusNet service provides clients with a Business Class Internet connection designed for email, web browsing, and the occasional upload/download of data.

The RegusNet service is a Shared Bandwidth service with other individual Regus clients within the same Regus office building.

The service does not provide clients with the following capability:

- The ability to run "site to site" VPN connections.
- The ability to run VoIP based telephony services.
- The ability to run any Bandwidth intensive applications or Web accessible server based solutions (e.g. an FTP, Mail, or Web server).

Should a client require any of the above types of access, or has a requirement for a fixed amount of Bandwidth available to them, then RegusNet Dedicated provides all of this functionality and capability.

##### **RegusNet Dedicated**

Regus can provide clients with dedicated Internet Access connectivity in increments of 1mg. This provides an uncontended, symmetrical connection of the selected client bandwidth. The service includes 2 public IP addresses with the ability to purchase and deploy additional IP addresses.

The service provides clients with the following capability:

- The service allows clients to run Bandwidth intensive applications and/or Web accessible server based solutions (e.g. an FTP, Mail, or Web server).
- The service allows clients to run "site to site" VPN connections.
- The ability to run VoIP based telephony services.
- Clients are also able to deploy their own "firewall" to manage their own LAN and VPN connections should they wish to do so.

All commercial terms and conditions for the above services are covered in the Regus services price guide.

No representation or warranty of any kind is made by Regus as to specific standards or compliance with security or data-protection levels. Likewise, any warranty relative to performance of spam filters is expressly disclaimed.

#### **34.1 - Regus Internet and Telecommunications Policy**

**34.1.1. Content.** Clients acknowledge that Regus does not monitor the content of information transmitted through Regus' telecommunications lines or equipment, which includes, but is not limited to, Internet access, telephone, fax lines and data lines ("Telecommunications Lines"). Client further acknowledges that Regus is merely providing a conduit for Client's Internet transmissions, similar to a telephone company, and that Regus accepts no liability for the content of transmissions by its clients.

**34.1.2. Restrictions.** The Regus Internet access (RegusNet) may be used only for lawful purposes and shall not be used in connection with any criminal or civil violations of state, federal, or international laws, regulations, or other government requirements. Such violations include without limitation theft or infringement of copyrights, trademarks, trade secrets, or other types of intellectual property; fraud; forgery; theft or misappropriation of funds, credit cards, or personal information; violation of export control laws or regulations; libel or defamation; threats of physical harm or harassment; or any conduct that constitutes a criminal offence or gives rise to civil liability. Clients are responsible for maintaining the basic security and virus protection of their systems to prevent their use by others in a

manner that violates this Agreement. Customers are responsible for taking corrective actions on vulnerable or exploited systems to prevent continued abuse

34.1.3. RegusNet Access - Per User Basis. Regus grants client access to the RegusNet on a per user access basis. In the event of a client increasing the number of users by utilizing a proxy server or by other means, Client agrees to pay the Regus fee for each user which accesses RegusNet, either directly or through a proxy server.

34.1.4. Unauthorized Access. In no event may a client increase its authorized access points to the Telecommunications/Data lines and equipment by means of wire splitting or any other method including unsecured wireless devices. In the event of a client breaching paragraph 1.3 (Access User Basis), above, or this paragraph, Regus may disconnect all of a client's access to the Telecommunications/Data lines upon three (3) business days prior written notice to the client. The client shall pay all Regus fees for any unauthorized Telecommunications/Data Lines use upon invoice from Regus. Regus shall have no obligation to reconnect the client to the Telecommunications/Data Lines until such fees have been paid in full and the client has ceased to make unauthorized access.

34.1.5. Client Installed Telecommunications Lines. It is part of the Regus business model to provide Telecommunications Lines and equipment to its clients. Clients may not bypass the use of the Regus Telecommunications Lines and equipment by installing its own direct Telecommunications Lines. On a case by case basis and at Regus' sole discretion, Regus may grant client authorization to install direct Telecommunications Lines upon written request by the client. This permission will only be granted upon execution of a Regus By-Pass Agreement by Client, which may, without limitation, require Client to make a monthly payment of a direct access fee as set by Regus which will be equal to the monthly RegusNet fee, the Telecoms package fee or both.

34.1.6. Security Violations. Clients are prohibited from engaging in any violations of system or network security. The RegusNet Internet access may not be used in connection with attempts - whether or not successful - to violate the security of a network, service, or other system. Examples of prohibited activities include, without limitation hacking, cracking into, monitoring, or using systems without authorization; scanning ports; conducting denial of service attacks; and distributing viruses or other harmful software. Regus reserves the right to suspend RegusNet Internet access upon notification from a recognized Internet authority or ISP regarding such abuse. We may disconnect your equipment and withhold services if we consider that your hardware or software is, or has become, inappropriate for connection to our network or otherwise violates these Rules.

34.1.7. Clients are responsible for their own virus protection on their systems and hardware and are expected to keep the AV software current with the latest virus definition files.

34.1.8. RegusNet services are only available at Regus business centers and connection to our network is only permitted at those centers or via Regus provided services. Clients must not create any links between our network and any other network or any telecommunications service without our consent.

34.1.9. Regus requests that all clients will provide, as and when requested by us, documentation and personnel information as we may reasonably require to assist in the provision of the services.

34.1.10. Revisions to this Policy. Regus may modify this Policy at any time, with or without notice.

34.1.11. Special Requirements - Clients using their own wireless access points require written approval from Regus, prior to implementation and is only an option in locations where Regus does not currently offer Wireless Service. When Regus deploys Wireless services, the Client Wireless solution will need to be removed fully as to not interfere with Regus WIFI solution. Wireless accounts on the Regus WIFI solution will be made available to users of the Client who subscribe to either RegusNet or RegusNet Dedicated. The use of a client's own wireless router will result in a service charge based upon the total number of contracted work stations in a client's designated office space.

34.1.12. VOIP phones or softphones (PC based VoIP applications) are not allowed on the RegusNet Service. They are only allowed on RegusNet Dedicated, with Regus IT approval.

34.1.13. Video conferencing services are not allowed on the RegusNet Service. This is only allowed on RegusNet Dedicated, with Regus IT approval.

34.1.14. **DISCLAIMER OF LIABILITY FOR THIRD PARTY PRODUCTS** - As part of its services to Client, Regus may provide third party Internet access and computer hardware and software ("Third Party Services"). REGUS DISCLAIMS ANY AND ALL LIABILITY, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES, WHETHER ORAL OR WRITTEN, FOR SUCH THIRD PARTY SERVICES. CLIENT ACKNOWLEDGES THAT NO REPRESENTATION HAS BEEN MADE BY REGUS AS TO THE FITNESS OF THE THIRD PARTY SERVICES FOR CLIENT'S INTENDED PURPOSE.

34.1.15. **DISCLAIMER OF LIABILITY FOR CLIENT EQUIPMENT** - ALL CLIENT EQUIPMENT STORED IN THE REGUS TELECOMMUNICATIONS ROOM IS STORED AT CLIENT'S OWN RISK. REGUS DISCLAIMS ANY AND ALL LIABILITY FOR SUCH EQUIPMENT AND SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGE TO SUCH EQUIPMENT.

34.1.16. **DISCLAIMER OF CONSEQUENTIAL DAMAGES FROM LOSS OF SERVICE** - Regus does not provide any service level agreement to our clients in regard to provision or loss of service for its RegusNet services. Regus shall not be liable for any indirect, special, incidental, punitive, or consequential damages, including lost profits, arising out or resulting from any loss of service or degradation of connectivity / access to the Internet with this Agreement, even if the other party has been advised of the possibility of such damages. The foregoing shall apply, to the fullest extent permitted by law, regardless of the negligence or other fault of either party.

34.1.17. **DISCLAIMER OF CONSEQUENTIAL DAMAGES** - Regus shall not be liable for any indirect, special, incidental, punitive, or consequential damages, including lost profits, arising out or resulting from this Agreement even if the other party has been advised of

the possibility of such damages. The foregoing shall apply, to the fullest extent permitted by law, regardless of the negligence or other fault of either party.

**USPS Regulations**

35. You acknowledge that REGUS will comply with the USPS regulations regarding your mail. You must also comply with all USPS regulations. Failure to comply will result in immediate termination of this Agreement. If this Agreement is for a Mailbox Plus program, you must complete a separate U.S. Postal Service Form 1583 ("Form 1583") to receive mail and/or packages at the Center. You acknowledge that this Agreement and Form 1583 may be disclosed upon request of any law enforcement or other governmental agency, or when legally mandated. You must use the exact mailing address, inclusive of the Private Mailbox designation, without modification as set forth in Section Three (3) of Form 1583. Your mail must bear a delivery address that contains at least the following elements, in this order, (i) Intended addressee's name or other identification, (ii) Street number and name, (iii) secondary address, (iv) "PMB" or # and your designated PMB number, and (v) City, State and ZIP Code (5-digit or ZIP+4). USPS may return mail to the sender without a proper address.