

Caltrans Wireless
Communication Master
License Agreement
May 2018

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DEPARTMENT OF TRANSPORTATION
2018 WIRELESS COMMUNICATIONS MASTER LICENSE AGREEMENT

Licensee: _____

DEPARTMENT OF TRANSPORTATION
WIRELESS COMMUNICATIONS MASTER LICENSE AGREEMENT

This Master License Agreement is made and entered into by and between the State of California, acting by and through its Department of Transportation, hereinafter called Licensor, and the previous named Master Licensee, hereinafter called Licensee.

WITNESSETH:

WHEREAS Licensee seeks to construct, install, operate and maintain and manage wireless communications and data transmission facilities, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto, in the State of California; and

WHEREAS Licensor has properties well suited for the facilities needed for wireless communications systems and data transmission because they are extensive and located throughout the State, and because often they are adjacent to populated areas but not located in the heart of residential areas; and

WHEREAS Licensor desires to improve services available to the traveling public, to enhance communications systems within the State, and to add to its revenues by making state properties available for wireless communications infrastructure consistent with other public uses of its property; and

WHEREAS Licensee proposes that the use of State properties can be an important option for the placement of wireless communications and data transmission facilities if the cost is competitive and the process of establishing sites is expedited; and

WHEREAS Licensor has determined to make certain of its properties available to wireless communications and data transmission companies, on a fair and equitable basis, for use as wireless communications and data transmission facility sites; and

WHEREAS Licensor may seek to provide the traveling public with wireless communication and data access to traffic information lines and if Licensor does so, Licensee shall cooperate in developing a program to provide the traveling public with wireless communications and data transmission facility access to information lines, and to create an emergency access line subject to Licensee's operational capacity;

WHEREAS Licensor and Licensee agree that any previous Master License Agreement shall not be utilized for future sites and that only this agreement be utilized for future wireless communications and data transmission sites as provided for herein; and

WHEREAS Licensor and Licensee agree that the Site License Agreements governed by any previous Master License Agreement shall be governed only by those previous Master License Agreements under for which they were signed.

NOW THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited; Licensor and Licensee agree as follows:

ARTICLE 1. Master License Agreement

This Master License Agreement (hereinafter, "Agreement") sets forth the basic terms and conditions upon which each Site (defined in Article 2) is licensed by Licensor to Licensee. Upon agreement between the parties with respect to the particular terms of a Site, the parties shall execute a completed "Site License" in the form attached hereto as Exhibit A and incorporated herein by this reference (the Site License form may be modified in the future without amending this Agreement). The Site License may have special clauses specific to that individual Site. In the event of a discrepancy or inconsistency between the terms and conditions of a particular Site License and this Agreement, the terms and conditions of this Agreement shall govern and control.

ARTICLE 2. Site License

Section 2.1: Site License

Licensor owns highway and freeway right of way, including appurtenant airspace rights, fixtures and signs, buildings, yards, park and ride lots, excess land, and other real property acquired for, or to support, the State's transportation system. Licensor intends to license use of certain portions of such locations, together with access and utility permits (if applicable), to Licensee (each referred to as a "Site"), as will be further described in the particular Site License, all located within certain property owned and controlled by Licensor ("Licensor's Property"). Subject to the terms and conditions contained in this Agreement, and in the Site License relating to a particular Site, Licensor hereby licenses the Site to Licensee, and Licensee licenses the Site from Licensor, upon the terms, covenants and conditions set forth in the particular Site License. The Site License Agreement includes access to and from the Site, and to and from the closest public right-of-way and on and over the land of which the Site is a part (subject to terms and conditions of each Site License, with special limitations for access from access-controlled highways and freeways) and access to appropriate utilities as set forth in Article 7. Each Site License Agreement shall act as a separate and independent agreement for each Site, the express intent of the parties being to use this Agreement to facilitate each of the independent transactions. It is understood and agreed that Licensee's right and license to place unmanned wireless communications and data facilities on the Site is non-exclusive, but that the Site shall be exclusive for Licensee's equipment for a specific area or space at the Site, subject to the terms and conditions of this Agreement, including but not

limited to collocation requirements contained herein. Further, Licensee's license and rights granted under this Agreement and the particular Site License are irrevocable until the expiration or sooner termination of this Agreement and/or the Site License, by their respective terms. The "Commencement Date" for each Site License shall be either the date that Licensee receives all permits and approvals necessary to construct and operate its facility at the Site (at which time Licensor shall issue an Encroachment Permit allowing construction/installation at the Site), or six (6) months from the date the Site License Agreement is executed ("Execution Date"), whichever occurs first. The period between the Execution Date and the Commencement Date shall be referred to herein as the "Local Permitting Period".

Section 2.2: Cancellation before Commencement

Licensee may cancel a Site License at any time prior to the Commencement Date. Site Licensor is not obligated to refund any review fees if Licensee cancels its application. Under special circumstances where the delay in obtaining permits and/or commencing construction is beyond the reasonable control of Licensee, Licensor may grant extensions to the Local Permitting Period, upon payment of the Annual License Fee (defined in Article 5).

ARTICLE 3. Use

Section 3.1: Specified Use

A Site may be used by Licensee only for the construction, installation, operation, replacement, removal, maintenance and repair (collectively "Operations") of an unmanned wireless communications facility, and/or management of the same, including required antennas and antenna support structures (as the same may be modified, added to and/or substituted from time to time), in accordance with the terms herein. Each such antenna and/or antenna support structure shall be configured as required by Licensee from time to time provided that Licensee obtains all permits and approvals required by applicable jurisdictions relative to any such desired configuration. Licensee shall have the right to park its vehicles on the Site when Licensee is servicing its wireless communications facility, subject to any conditions in the Site License. All operations by Licensee on the Site shall be conducted in a lawful manner and in compliance with all applicable Federal Communications Commission ("FCC") requirements. Licensee shall, at its sole expense, comply with (and obtain and maintain such licenses, permits or other governmental approvals necessary to comply with) all laws, orders, ordinances, and regulations of federal, state, county, and municipal authorities applicable to its Operations or use of the Site. Licensee shall comply with any directive of any public officer or officers applicable to its Operations or its use of the Site (collectively "Laws"), which shall, with respect to Licensee's Operations, impose any violation, order or duty upon Licensor or Licensee arising solely from Licensee's use of the Site subject, however, to Licensee's right to contest, in good faith, any such violation, order or duty. Licensee's Operations shall not interfere with the operations of Licensor, the traveling public, or any other users existing on the Commencement Date on the Site. Licensor agrees to reasonably cooperate with Licensee, at Licensee's expense, in executing such documents or applications necessary or appropriate in order for Licensee to obtain and maintain, at Licensee's expense, such licenses, permits and other governmental approvals needed for Licensee's Operations. Licensor authorizes Licensee to make and prosecute applications for all such approvals. If Licensee is unable to obtain

and maintain such licenses, permits or approvals (notwithstanding reasonable efforts to do so), Licensee shall so notify Licensor and the particular Site License shall immediately terminate.

Section 3.2: Conditions of Use

Licensee agrees to install, maintain, and operate its wireless communications equipment, and/or manage the same, in accordance with the specific Site standards more particularly described in each Site License and any other applicable statutes pertaining to the use of wireless communications and/or electronic equipment. In the event Licensee's installation, or operation, in any way hinders, obstructs, or interferes with, the radio or electronic equipment of Licensor, or any tenant operating at the Site as of the Execution Date of the applicable Site License, Licensee shall, at its sole cost and expense, upon receipt of written notification, immediately cease the interfering operation, except for brief tests necessary for the elimination of the interference. Licensee shall conduct its Operations in compliance with all laws, orders, ordinances, and regulations of all federal, state, county, and municipal authorities. Licensor may execute any Site License upon the condition that Licensee's equipment shall be installed in such a manner to facilitate Licensor's wireless communication needs as set forth in Article 21.

If such hindrance, interference or obstruction cited above, is not eliminated or does not fully cease within thirty (30) days after written notice to Licensee by Licensor or any appropriate regulatory agency, Licensor shall have the right (at any time) to order cessation of Licensee's Operations at the Site as may be necessary to continuously eliminate said interference by giving ten (10) days prior written notice to Licensee. In the event of Licensee's inability or refusal to eliminate such interference within sixty (60) days after receipt of written notice from Licensor, Licensor may, at its sole option, terminate the affected Site License and evict Licensee. The sixty (60) day deadline may, at Licensor's sole discretion, be extended if both parties are diligently cooperating and working to eliminate the interference. Once Licensee has more than ten (10) Site Licenses in effect, if such un-eliminated interferences occur at over twenty percent (20%) of Licensee's Sites occupied under this Agreement for more than sixty (60) days following Licensee's receipt of written notice from Licensor, Licensor may terminate this Agreement and evict Licensee from all its Sites on thirty (30) days written notice.

Any interference and compatibility testing required hereunder for radio interference with other equipment located at the Site as of the Commencement Date, or Licensor's equipment installed at any time shall at the sole and reasonable cost of Licensee, be made by a qualified technical person representing Licensee and a representative designated by Licensor. If the test is satisfactory to both the technical person and the Licensor representative, a certification of such test signed by both the technical person and the Licensor representative shall be forwarded to Licensor at locations indicated in Article 16. Any reasonable costs incurred by Licensor to conduct compatibility testing shall be reimbursed to Licensor within thirty (30) days after receipt of billing and reasonable supporting documentation.

Any interference with Licensor's electronic equipment during an emergency incident shall require immediate cessation of operation, transmission or further use of Licensee's equipment provided Licensee is given notice of such incident and is afforded the opportunity to cure such interference.

Failure to do so promptly after notification of such interference shall be grounds for immediate termination of the particular Site License and eviction of Licensee.

Licensee is responsible for the acts and omissions of itself, and its employees, subcontractors, agents and invitees.

Section 3.3 Condition of Site

Licensee hereby accepts the Site in the condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state, and federal laws, ordinances and regulations governing and regulating the use of the Site, and terms, covenants and conditions of this Agreement. Licensee acknowledges that neither Licensor, nor any agent of Licensor, has made any representation or warranty with respect to the condition of the Site or the suitability thereof for the conduct of Licensee. Further Licensor has not agreed to undertake any modification, alteration or improvement to the Site except as provided in this Agreement.

As a condition of possession and use of the Site, the Licensee shall obtain and maintain a valid Encroachment Permit from the Traffic Operations Division of the Department of Transportation (Caltrans).

Except as may be otherwise expressly provided in this Agreement, the taking of possession of the Site by Licensee shall in itself constitute acknowledgement that the Site is in good condition and repair and in useable condition, and Licensee agrees to accept the Site in its presently existing “as is” “where is” condition, and that the Licensor shall not be obligated to make any improvements, modifications or repairs thereto except to the extent that may otherwise be expressly provided in this Agreement.

Licensee represents and warrants that it has made a sufficient investigation of the conditions of the Site existing immediately prior to the execution of this Agreement, including but not limited to investigation of the surface, subsurface, and groundwater for contamination and hazardous materials) and is satisfied that the Site will safely support the project type to be constructed by Licensee upon the Site, that the Site is otherwise fully fit (physically and lawfully) for the uses required and permitted by this Agreement and that Licensee accepts all risks, losses and expenses associated the foregoing provisions.

Licensee acknowledges that (1) Licensor has informed Licensee prior to the commencement of the term of this Agreement that the Licensor does not know of any release of any hazardous material that has come to be located on or beneath the Site; (2) prior to the commencement of the term of this Agreement, the Licensor has made available to Licensee, for review and inspection, records in the possession or control of the Licensor which might reflect the potential existence of hazardous materials on or beneath the Site; (3) Licensor has provided Licensee access to the Site for a reasonable time and upon reasonable terms and conditions for purposes of providing to Licensee the opportunity to investigate, sample, and analyze the soil and groundwater on the Site for the presence of hazardous materials; (4) by signing this Agreement, Licensee represents and warrants to Licensor that Licensee does not know nor has reasonable cause to believe that any release of hazardous material has come to be located on or beneath the Site; and (5) with respect to any

hazardous material which Licensee knows or has reasonable cause to believe has come or will come to be located on or beneath the Site, Licensee and agrees promptly to commence and complete the removal of or other appropriate remedial action regarding the hazardous material introduced to the Site during Licensee's period of use at no cost or expense to Licensor and in full compliance with all applicable laws, regulations, permits, approvals, and authorizations. The phrase "hazardous material," as used herein, has the same meaning as that phrase has in Section 5.6 of this Agreement.

In the event Licensee breaches any of the provisions of this Section 3.3, this Agreement may be terminated by Licensor subject to any applicable cure periods.

Licensee agrees that, except as otherwise expressly provided in this Agreement, Licensee is solely responsible, without any cost or expense to the Licensor, to take all actions necessary to continuously use the Site as provided by this Agreement and in compliance with all applicable laws and regulations.

Section 3.4 Compliance with Law

Licensee shall not use the Site or permit anything to be done in or about the Site which will in any way conflict with any law, statute, zoning restriction, ordinance, or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Site. Licensee shall not allow the Site to be used for any unlawful purpose, nor shall Licensee cause, maintain or permit any nuisance in, on or about the Site. Licensee shall not commit or suffer to be committed any waste in or upon the Site.

Section 3.5 Explosives and Flammable Materials

The Site shall not be used for the storage of flammable materials, explosives, or other materials or other purposes deemed by Licensor to be a potential fire or other hazard to the transportation facility, except those permitted in Section 3.6 below. The operation and maintenance of the Site shall be subject to regulation by Licensor so as to protect against fire or other hazard impairing the use, safety and/or appearance of the transportation facility. The occupancy and use of the Site by Licensee shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.

Section 3.6 Hazardous Materials

Licensee shall at all times and in all respects comply with all federal, state, and local laws, ordinances and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. section 1251, et seq.), Resource Conservation and Recovery Act (42 U.S.C. section 6901, et seq.), Safe Drinking Water Act (42 U.S.C. section 300f, et seq.), Toxic Substances Control Act (15 U.S.C. section 2601, et seq.), Clean Air Act (42 U.S.C. section 7401, et seq.) Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601, et seq.), Safe Drinking Water and Toxic Enforcement Act (California Health and Safety

Code section 25249.5, et seq.), other applicable provisions of the California Health and Safety Code (section 25100, et seq., and section 39000, et seq.), California Water Code (section 13000, et seq.), and other comparable state laws, regulations, and local ordinances relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal, or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials, or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances" under any such laws, ordinances or regulations (collectively "Hazardous Materials Laws"). As used in the provisions of this Agreement, "hazardous materials" include any "hazardous substance" as that term is defined in section 25316 of the California Health and Safety Code and any other material or substance listed or regulated by any Hazardous Materials Law or posing a hazard to health or the environment. Except as otherwise expressly permitted in this Agreement, Licensee shall not use, create, store or allow any hazardous materials on the Site, except fuel stored in a motor vehicle for the exclusive use in such vehicle. Back-up generators and the storage of fuel for such generators shall only be allowed if provided in a particular Site License under the conditions of that Site License or in a specific encroachment permit.

In no case shall Licensee cause or allow the deposit or disposal of any hazardous materials of any kind on the Site, in any manner prohibited by law. Licensor, or its agents or contractors, shall upon seventy-two hours' prior notice to Licensee and accompanied by an escort designated by Licensee, have the right to go upon and inspect the Site and the operations thereon to assure compliance with the requirements herein stated. In the event of emergency, where Licensor cannot reasonably comply with the foregoing notice requirement, Licensor shall have the right to access the Site and Licensor shall, within forty-eight (48) hours following actual notice of emergency access, inform Licensee of (i) the date and time of emergency access and (ii) the nature of the event requiring emergency access. This inspection may include taking samples of substances and materials present for testing, and/or the testing of surface soils and sub-surface soils. In the event Licensee breaches any of the provisions of this Section, this Agreement may be terminated by Licensor, subject to any applicable cure periods.

Licensee shall be responsible for and bear the entire cost of removal and disposal of any and all hazardous materials introduced to the Site during Licensee's period of use of the Site, regardless of whether such hazardous material is introduced by Licensee or by any other person acting under Licensee. Licensee shall also be responsible for any clean-up and decontamination on or off the Site necessitated by the introduction of such hazardous materials within the Site or any surface below the Site. Licensee shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the Site by any party other than Licensee during any period prior to commencement of Licensee's period of use of the Site.

Licensee shall further defend, indemnify, and hold harmless Licensor, and Licensor's directors, officers, and employees, from any and all responsibilities, liabilities, penalties, and claims for damages resulting from the presence or use of hazardous materials within the Site arising from Licensee's use of the Site, as required under Article 9.

Section 3.7 Encroachment Permit and License

Prior to each Site's Commencement Date (after the DARC approval and before the Licensee enters the Site and starts construction), Licensee shall apply for and be issued an Encroachment Permit from Licensor's District Permits Office in the Division of Traffic Operations specifically permitting Licensee to enter the Site upon satisfaction of the herein-required conditions. If the Site is on conventional highway, Licensee shall maintain a valid encroachment permit for the entire term of each separate Site License Agreement. If the Site is on access controlled freeway or highway the Licensee shall apply for a separate encroachment permit for each entry onto the State's right of way in order to maintain the wireless facility.

Any act by Licensee that causes the suspension, termination or revocation of the issued Encroachment Permit for any reason shall be a material breach of this Agreement as provided in Article 4 of this Agreement. The Agreement shall be terminated immediately upon revocation of Encroachment Permit by Licensor, subject to any applicable cure periods.

If the Encroachment Permit and this Agreement conflict, the requirements of the Encroachment Permit shall prevail.

Section 3.8 Signs

No advertising signs or banners of any size may be erected on the Site, except as required by law. Licensee shall not place, construct or maintain upon the Site, and shall not allow others to place, construct, or maintain upon the Site, any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted, or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer, or thing. Licensor may remove any sign, banner or flag existing on the Site, and Licensee shall be liable to and shall reimburse Licensor for the cost of such removal plus interest.

Section 3.9 Licensor's Rules and Regulations

Licensee shall faithfully observe and comply with the rules and regulations that Licensor shall from time to time promulgate for the protection of the transportation facility and the safety of the traveling public. Licensor reserves the right to make modifications to said rules and regulations at any time without prior notice to Licensee and without Licensee's consent. The additions and modifications to those rules and regulations shall be binding upon Licensee upon advance notification of such rules and regulations to Licensee (see Article 15).

Section 3.10 Water Pollution Control / Stormwater

Licensee shall comply with all applicable State and Federal water pollution control requirements regarding storm water and non-storm water discharges from the Licensee's area and shall be responsible for all applicable permits including but not limited to the National Pollutant Discharge Elimination System (NPDES) General Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Industrial Activities (Excluding Construction), the NPDES

General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, and the Caltrans Municipal Separate Storm Sewer System NPDES Permit, and permits and ordinances issued to and promulgated by municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water and non-storm water to sewer systems, storm drain systems, or any watercourses under the jurisdiction of the above agencies. Copies of the current storm water related NPDES permits are available on the State Water Resources Control Board's website at www.swrcb.ca.gov under Stormwater.

Licensee understands the discharge of non-storm water into the storm sewer system is prohibited unless specifically authorized by one of the permits or ordinances listed above. In order to prevent the discharge of non-storm water into the storm sewer system, vehicle or equipment washing, fueling, maintenance and repair on the Site is prohibited.

In order to prevent the discharge of pollutants to storm water resulting from contact with hazardous material, the storage or stockpile of hazardous material on Site is strictly prohibited. Licensee shall implement and maintain the Best Management Practices (BMPs) shown in the attached Stormwater Pollution Prevention Fact Sheet(s) for: General Land Use. Licensee shall identify any other potential sources of storm water and non-storm water pollution resulting from Licensee's activities on the Site, which are not addressed by the BMPs, contained in the attached Fact Sheet(s), and shall implement additional BMPs to prevent pollution from those sources. Additional BMPs may be obtained from 2 other manuals, (1) Right of Way Property Management and Airspace Storm Water Guidance Manual (RW Storm Water Manual) available for review at the Licensor's District Right of Way office or online at www.dot.ca.gov/hq/row/rwstormwater and (2) Construction Site Best Management Practices (BMPs) Manual, which is available online at www.dot.ca.gov/hq/construc/stormwater/manuals.htm. In the event of conflict between the attached Fact Sheet(s), the manuals and this Agreement, this Agreement shall control.

Licensee shall provide Licensor with the Standard Industrial Classification (SIC) code applicable to Licensee's facilities and activities on the licensed Site. A list of SIC codes regulated under the General Industrial Permit SIC codes may be found at the State Water Resources Control Board (SWRCB) website at http://www.waterboards.ca.gov/water_issues/programs/stormwater/gen_indus.shtml. Other SIC codes may be found at www.osha.gov/pls/imis/sicsearch.html.

Licensor, or its agents or contractors, shall at all times have the right to enter and inspect the Site and the operations thereon to assure compliance with the applicable permits, and ordinances listed above. Inspection may include taking samples of substances and materials present for testing Site.

ARTICLE 4. Term and Termination:

Section 4.1: Term

Upon approval by the California Transportation Commission (CTC), this Agreement shall govern and be incorporated into each Site License entered into on or after the Effective Date of this Agreement until June 30, 2029 or until such other time that the CTC approves a subsequent

Agreement which is signed and executed by both the Licensor and Licensee. In the event the CTC approves a subsequent agreement and the parties enter into said agreement, each Site License governed by this Agreement shall continue to be governed by this Agreement and this Agreement shall remain in effect until the expiration or earlier termination of each Site License it governs. Each new Site License entered into on or after the effective date of the new agreement shall be governed by the new agreement.

The initial term of each Site License governed by this Agreement shall be 10 (ten) years from the June 30 following the Commencement Date of the Site License Agreement (Initial Term). Licensee shall have the option to renew each Site License for three (3) consecutive five (5) year terms on the same terms and conditions as the Initial 10 year Term, except that the License Fee (defined in Article 5) shall be adjusted to the then-current Pricing Matrix (defined in Article 5). The Site License shall automatically be terminated at the expiration of a Renewal Term unless Licensee notifies Licensor of its intention to renew at least sixty (60) days prior to the expiration of the then current five-year term.

Licensee agrees to begin the process of gaining the approvals necessary to the initiation of Site construction immediately after the Site License Execution Date. If, however, Licensee does not, in good faith, actively pursue a building permit within the "Local Permitting Period" (including extension pursuant to Article 2), Licensor may terminate the individual Site License subject to any applicable cure periods.

Section 4.2: Termination

Licensee: If, at any time during the initial term or option period of an individual Site License, it becomes commercially inadvisable in Licensee's business judgment for Licensee to utilize that particular Site, or if any required certificate, permit, license or approval is denied, canceled or otherwise terminated so that Licensee is unable to use the Site for its intended purpose, Licensee may terminate the individual Site License after it provides the herein specified prior written notice (see Article 15). If Licensee elects to terminate a Site License pursuant to this Section, Licensee shall provide Licensor with a minimum of one hundred eighty (180) days written notice of its intention to terminate the individual Site License and shall, in the case of business judgment termination only, compensate Licensor an amount equivalent to the then annual License Fee as of the effective date of the Notice as liquidated damages for the early termination. In the event that less than one (1) year remains in the Initial Term or option period of the individual Site License terminated by Licensee, Licensee shall pay to Licensor such liquidated damages in the amount equal to only the License Fee due or to become due during the remainder of the then current initial term or option period of the individual Site License.

Licensor: If Licensor's use of a Site makes it necessary for Licensee to remove or relocate its equipment and facilities to another location on Licensor's property, or if there is interference to or involving Licensee's Operations which cannot be resolved as set forth in Article 6, Licensee may elect to terminate the Site License for that Site, without penalty.

Licensor may terminate an individual Site License if its own need for or use of a Site requires relocation of Licensee's facilities because of state transportation purposes, economic necessity or

the best interests of the traveling public. To the extent practicable, Licensor shall provide Licensee with as much notice as possible but no less than three hundred and sixty five (365) days prior written notice of the termination of an individual Site License due to Licensor's required need for or use of the Site. In the case of a transportation construction project where the Licensor's own need for or use of a Site due to state transportation purposes, economic necessity or the best interests of the traveling public requires it to terminate an individual Site within the first five (5) years of the Site License, Licensor shall pay to Licensee an amount equal to the construction costs and expenses actually incurred by Licensee in installing facilities on the Site, which amount shall be equal to the cost of the tower and ancillary improvements retained by Licensor, based on their initial installation cost, amortized over a ten (10) year period (straight-line amortization, e. g., 1/120th per month); provided however that the amount shall not exceed Sixty Thousand and 00/100 Dollars (\$60,000.00) for a Macrocell site, Forty Thousand and 00/100 (\$40,000.00) for a Minicell site or Thirty Thousand and 00/100 Dollars (\$30,000.00) for a Microcell site or Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for a DAS site (as those terms are defined in Article 5). These payments shall be paid to the Licensee from the Caltrans project that initiates the termination. Licensor shall use its best efforts to find another suitable location for Licensee's facilities in the event that Licensor's need for or use of a Site requires Site License termination. Licensee's obligation to pay a fee for the use of an individual Site shall cease, and a prorated (as described in Section 5.3) portion of any advanced payment made by Licensee shall be returned to Licensee by Licensor upon the date that Licensee removes its equipment and restores the Site, as set forth in this Section.

After five (5) years of the Site License Commencement Date, upon termination or other expiration of an individual Site License, Licensor shall have the option of keeping the tower(s) or monopole(s) and ancillary improvements, such as buildings, vaults, equipment sheds and pads, in place that are owned by Licensee (except for Licensee's equipment and antennas) by providing written notice to Licensee at least ninety (90) days prior to the expiration or earlier termination of a Site License. In the event Licensor does not notify Licensee of its election to obtain ownership of said Licensee property, or if Licensor provides written notice of not intending to retain said improvements, Licensee shall within sixty (60) days after the expiration of the Site license, remove the tower(s), hardware, building(s) and ancillary improvements (above and below ground) made by Licensee, and to return the Site to the condition existing on the Commencement Date, normal wear and tear and damage not caused by Licensee excepted, to the satisfaction of Licensor, at Licensee's sole cost and expense. If Licensor exercises its option to keep the tower and ancillary improvements in place on an individual Site, Licensor shall accept the tower and ancillary improvements in their then existing condition, "AS-IS," without any representation or warranty, and Licensee shall have no further obligation with respect to the Site or such equipment and or property. The parties shall work in good faith to execute a mutually acceptable agreement transferring ownership of Licensee's equipment and property to Licensor in accordance with the provisions of this Agreement. To the extent reasonably practicable, Licensor shall advise Licensee in writing prior to entering into a Site License of Licensor's desire to retain Licensee's Tower or ancillary improvements pursuant to this Section. The cost of the tower and ancillary improvements and Licensor's reimbursement obligation for the cost thereof may be modified in the individual Site Licenses.

If Licensor advises Licensee to remove its facilities, and Licensee refuses to do so, Licensor may, at its discretion, remove the facilities and charge the cost and expense of removal to Licensee or deduct the costs and expenses from monies due Licensee under this Agreement, individual Site Licenses or any other agreements. Licensor, in its sole discretion, may allow some or all of Licensee's equipment to remain on Licensor's property. If no such monies are owed, Licensor may invoke any remedies provided herein or at law or equity to recover all monies owed. Except as otherwise provided herein, the fee for use of a Site terminated before the end of the term for that Site License shall not terminate until the later of the effective date of the early termination or the date on which Licensee has removed its equipment and restored the Site in accordance with Section 12 or the date on which Licensor notifies Licensee of its election to exercise its option to accept transfer of Licensee's facilities.

ARTICLE 5. License Fee

Section 5.1: Annual Base License Fee

Licensee shall pay Licensor an annual fee ("Annual Base License Fee") for the use of each Site that is the subject of an individual Site License, which fee shall be calculated in accordance with this Section. The Annual License Fee of the individual Site License for each Site shall be calculated on the basis of the following two factors: (1) its geographic location and (2) the equipment and building space utilized.

Geographic Areas: Statewide geographic areas consist of three (3) types and are as follows:

- Category 1: "Prime Urban" - means the "Urbanized" (as defined below) portions of the Counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Santa Clara, San Diego, San Francisco and San Mateo.
- Category 2: "Urbanized" - means all areas defined as "Urbanized" as described in 23 U.S.C. 101 (i.e. "... an area with population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to the approval by the Secretary"). Areas that meet the definition of both "Prime Urban" and "Urbanized" shall be considered to be a "Prime Urban" area. For reference purposes, currently designated Urbanized areas are shown on the Bureau of the Census webpage (as may be amended from time to time by a future census):
<https://www.census.gov/geo/maps-data/maps/2010ua.html>
- Category 3: "Rural" – means any and all areas within the State of California not Prime Urban or Urbanized, as defined above.

Equipment types: The equipment and building space utilized shall be determined by the following definitions of Macrocell, Minicell, Microcell and DAS, which shall be used to determine the second factor necessary to the calculation of the Annual Base License Fee. (Note: Only transmitting/receiving antennas are included in the count)

- Macrocell: Facility of nine (9) or more antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower when

combined exceeds five hundred (500) square feet, not to exceed sixteen (16) antennas or a total area of two thousand five hundred (2,500) square feet. A standard communications facility with a vault or enclosed building is an example of a Macrocell site.

- Minicell: A facility with four (4) to eight (8) antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined is in excess of three hundred (300) square feet but less than five hundred (500) square feet. A standard communications facility with free-standing cabinets on a pad is an example of a Minicell site.
- Microcell: Facility with one (1) to three (3) antennas and/or with equipment building or concrete equipment pad space and space required for the foundation of the monopole or tower, when combined is between thirty-seven (37) square feet to three hundred (300) square feet.
- DAS: Distributed Antenna System (DAS): A wireless facility (network nodes) of low wattage, with a single antenna operating in geographic confines such as a building, a tunnel or a bridge. DAS are attached to a single stand-alone pole or a building structure and operate in limited distances. DAS are often multi-frequency and more than one carrier can collocate. The fee matrix for DAS is based on an annual per antenna fee.

Section 5.2: Annual Base License Fee Matrix Calculation

Based on the geographic location and equipment and building space factors detailed above, the Annual Base License Fee Matrix shall be determined by using the Annual Base License Fee Matrix attached as Exhibit C. Exhibit C is also known as the “Fee Matrix”. The Fee Matrix shall be determined by the Licensor, and it shall reflect the fair market value of the License Fee under this Agreement and the fair market license value for each Site Agreement.

The license fee for any facility which includes equipment or building space dimensions different from those set forth in the definitions in this Section, shall be negotiated by the parties in good faith. The amount of space licensed shall include the total area fenced by Licensee or used by a specific pole. The building space dimensions shall not include (a) space required by Licensor or any third party for collocation or co-use of the Site and (b) provided such party is separately paying a fee to Licensor for this space. If Licensor requires, or if there are other circumstances caused by geographic, security or other concerns, which requires that Licensee utilize space on the Site in excess of its customary needs or the size limitations specified in this Agreement, the individual Site License may provide for an alteration of the Site designation as a Macrocell, Minicell Microcell, DAS.

Section 5.3: License Fee Payment Schedule:

The first annual payment for each Site shall be paid to Licensor within ten (10) days after the issuance of the Encroachment Permit to Construct. The prorated annual payment for the period shall be calculated from the Commencement Date (or six (6) months after Site License Agreement is signed, whichever occurs first) through the next occurring June 30 and shall be calculated by

dividing a full annual fee payment as indicated in the Annual Base Fee Matrix by 12, calculated to the nearest dollar and multiplying that number by the number of remaining full months in the year with the days of the month rounded to the closest first day of the month. If the Commencement Date (tenancy date) is the 15th of a 30 or 31 day month, the prorated annual rate is rounded to the 1st of the current month. Alternately, if the Commencement Date is the 16th or after of a 30 or 31 day month, the prorated annual rate is rounded to the beginning of the next month. If the month is February, the 14th and the 15th will be deciding days. Thereafter, Licensee shall make annual fee payments on July 1 of each year under the applicable Site License. Payments with the Department's Site's tenancy number shall be mailed to: Department of Transportation, Attention: Cashier, P.O. Box 168019, Sacramento, CA 95816-8019.

Section 5.4: Annual Base License Fee Adjustments

Beginning on the first July 1 after the Site License Agreement Commencement Date and on each July 1 thereafter during the initial term of each Site License and any exercised options, the Annual License Fee shall automatically increase by three and one-half percent (3.5%). Licensee shall automatically pay the Annual License Fee, payable under the applicable Site License in accordance with the Pricing Matrix attached hereto as Exhibit C.

In the event Licensee fails to pay the annual License Fee within ten (10) days of when due, the past-due License Fees shall bear interest from (but excluding) the date due until paid at the lesser of eighteen percent (18%) per annum (1.5% per month), or the maximum rate permitted under California or federal law, if the aforesaid rate exceeds such maximum.

At the end of the initial term and each option period exercise, the Annual License Fee shall be readjusted to the Annual License Fee for the geographic area and/or equipment type then applicable to the Site approved by the CTC at the time of renewal (Section 5). At such times, the Site shall be reevaluated for geographic area and/or equipment type by Caltrans. If there is a change as to the geographic area and/or equipment types as of the first day of the new period, the Annual Base License Fee shall increase by the greater of (A) the new Annual Base License Fee based upon the new geographic area or equipment type or (B) three and one-half percent (3.5%).

On July 1 of each year thereafter, the Annual License Fee shall automatically increase by three and one-half percent (3.5%) during the next five (5) year option period.

Adjustments in the rate will occur whenever equipment area or the number of antennas changes and will be based on the Annual Base License Fee Matrix in place at the time of the change. The date of increase/decrease shall be based on Encroachment Permit Approval Date and shall be prorated (see Section 5.3).

ARTICLE 6. Improvements and Construction

Prior to commencing any installation, construction, alteration or improvement at any Site, Licensee shall obtain Licensor's prior written approval of Licensee's plans for the installation or alteration work which plans shall be attached to the Site License upon execution. Licensor shall use commercially reasonable efforts to provide a response (approval, denial, request for modification

or additional information), including Federal Highway Administration (FHWA) and environmental clearances, shall be made within forty-five (45) days of submittal of such plans ("Licensor Plan Response Period"); and, if a response is not forwarded within forty-five (45) days, Licensee shall be entitled to an extension of the Local Permitting Period. Licensee's plans shall include information on the length, width, weight, and cable routing, of and between equipment cabinets and/or shelters, antennas and equipment technical specifications, so as to permit Licensor to reasonably verify their placement on the Site, potential interference and proper structural loading and Licensee shall provide Licensor with any other information as Licensor may reasonably request with respect to such plans. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement or any Site License, Licensee may replace, exchange, substitute or modify its equipment or antennas installed at any Site with equipment or antennas substantially similar to the equipment and antennas previously approved by Licensor (per 47 C.F.R. 1.40001) provided such replacement (I) operates at the same or substantially similar frequencies, power levels, emissions, gain, bandwidth and beamwidth, (II), have a tower and tower attachments that are substantially similar in physical dimensions (not larger than 10%) (III) not heavier in weight, (IV) does not enlarge the physical size of the Site area, subject to Licensor's having at least thirty (30) days' notice to ensure there will be no interference with Licensor's operations.

If construction is proposed, Licensee shall, prior to any construction or reconstruction, apply for an encroachment permit and submit seven (7) complete sets of plans, specifications, and structural calculations, stamped by a California NIA registered Engineer, to Licensor, and construction is not to proceed prior to approval of said plans by Licensor, which approval shall not be unreasonably withheld, conditioned or delayed. A minimum of one set of plans must be standard size. Licensor shall respond (approval, denial, request for modification, or additional information) within forty-five (45) days of Licensor's receipt of Licensee's plans. If Licensor does not provide such approval or request for changes within the Licensor Plan Response Period, then Licensor and Licensee shall meet and confer to determine a mutually acceptable additional extension to the Local Permitting Period. Licensor shall not be entitled to receive any additional consideration in exchange for giving its approval of Licensee's plans. If the appropriate local entity declines to inspect Licensee's construction, Licensee shall provide written confirmation by a qualified individual, such as a current or former building inspector or registered engineer, that the construction conforms to plans and all appropriate building standards, prior to issuance of a Department of Transportation Notice of Completion by Licensor.

All of Licensee's installation and alteration work shall be performed in accordance with applicable building codes and shall not adversely affect the structural integrity or maintenance of Licensor's property or improvements. Any structural work or reinforcement on an improvement shall be approved by a licensed structural engineer at Licensee's sole cost and expense. During construction, Licensee shall perform work in such a manner as will not hamper Licensor's operations or the needs of the traveling public.

Licensee shall keep the Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Licensee. If any lien is filed against the Site as a result of the acts or omissions of Licensee, or Licensee's employees, agents, or contractors, Licensee shall discharge, bond or otherwise secure same to Licensor's reasonable satisfaction

within thirty (30) days after Licensee has notice that the lien has been filed. If Licensee fails to commence steps to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of Licensor, Licensor may, at its election, upon five (5) days prior written notice to Licensee, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. Licensee shall pay on demand any amount so paid by Licensor for the discharge or satisfaction of any lien, and all reasonable attorney's fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.

Except as otherwise expressly set forth in this Agreement, Licensee agrees that each Site and every part and appurtenance thereof is offered in its "AS IS" and "WHERE IS" condition. Based upon information supplied by Licensor on each Site License, Licensee will evaluate the possibility based on Licensee's contemplated operations of interference from, or to, existing wireless communication or other uses on the Site. Licensee will then determine if interference will occur assuming the other user's equipment and Licensee's equipment is properly and lawfully installed and operated. If Licensee determines that any such existing user would interfere with Licensee's operations but that such interference can be reasonably eliminated, Licensee shall so notify Licensor and both parties shall diligently cooperate and work together and shall use reasonable efforts to remedy the condition deemed to be the Licensee's responsibility for such potential interference; provided, however, Licensor's failure to remedy such condition shall in no event result in any liability of Licensor hereunder or under any Site License. Any physical change to Licensor's existing equipment requested by Licensee shall be at Licensee's sole cost. At such time as Licensee determines that interference shall occur, such determination by Licensee shall be binding on Licensee, and subject to Licensee's rights under Article 4, no subsequent determination with respect thereto shall excuse Licensee from liability hereunder or with respect to any Site License; provided, however, that if Licensee's Operations are adversely affected in any material way as a result of the improper or unlawful operation of any equipment located on the Site at the time of Licensee's evaluation or as a result of modifications to equipment and/or additional equipment being installed and operated on the Site by either Licensor or any other user of the Site under the control of Licensor, Licensor shall use its best efforts (with the cooperation of Licensee) to promptly resolve such interference. In no event shall Licensor's inability to resolve such interference entitle Licensee to terminate any Site License unless after thirty (30) days following the commencement of such efforts at resolution, such interference has not been resolved to the reasonable satisfaction of Licensee. Nothing in this Agreement shall be deemed to waive any rights Licensee may have pursuant to applicable FCC regulations to enjoin such interference or pursue any other remedies available to Licensee at law or in equity after expiration of the thirty (30) day period referred to in the preceding sentence.

Notwithstanding anything in this Section to the contrary, Licensee acknowledges that Licensor may not have control over equipment located on or adjoining the Site which would interfere with Licensee's use of the Site and shall not be liable for such lack of control. In the event of such interference, Licensor and Licensee shall use all reasonable efforts within their control to obtain the cooperation of the equipment owner to resolve such interference; provided, however, that if the parties shall not succeed in obtaining the cooperation of the equipment owner to resolve such interference within thirty (30) days following such interference, Licensee may immediately

terminate any Site License so affected (and/or this Agreement if no Site Licenses remain subject hereto), and neither party shall have any further liability with respect to such Site License. Any prepaid Annual License Fee shall be credited or returned to Licensee on a pro-rated basis.

All portions of the communications facilities or other property or improvements attached to or otherwise brought onto the Site by Licensee shall, at all times and for all purposes, be the personal property of Licensee and at Licensee's option, may be removed by Licensee at any time during the term, subject to the provisions of Article 4, and shall be removed no later than within sixty (60) days after expiration of the term or termination of the applicable Site License.

Upon execution of a Site License Agreement, Licensor shall not thereafter grant to any third party any license, or other permission to use (in this Section collectively, a "Grant") the Licensor's property, Site or area surrounding the Site under Licensor's reasonable control, if the use permitted under such Grant would cause interference with Licensee's Operations. Any such Grant shall expressly prohibit the user thereunder from interfering with Licensee's Operations. Licensee shall reasonably cooperate with Licensor and/or any subsequent third party user to eliminate any interference and to allow collocation, if possible.

ARTICLE 7. Utilities and Access

Licensee shall have the right at its sole cost and expense to obtain and connect to telephone and electrical service from any utility company that provides or is willing to provide such service to the Site, subject to Licensor's right to approve proposed utility routes and the manner of installation, which approval shall not be unreasonably withheld, conditioned or delayed. Licensee shall timely pay all of Licensee's utility costs. Licensee shall either obtain electric power directly from the local utility or under special circumstances from Licensor's power source and shall pay for installation of a sub meter and any reasonable additional costs of service to the Licensor due to the added utility requirements. Licensee shall pay all local utility company charges directly to the provider. Licensor is under no obligation to provide power or allow Licensee to use its power source but shall cooperate with Licensee in its efforts to bring electrical power to the Site.

The following provisions shall govern access to the Site by Licensee, unless otherwise modified on a particular Site License. Access for construction, routine maintenance and repair, conducting feasibility studies and other non-emergency visits shall be stated in each Site License and require a minimum of one (1) business days prior written notice to Licensor at Licensor's address stated in the Site License (no Site License shall have more than one address of record in each Region or District of Licensor). Some Site Licenses may allow non-written notice for non-emergency visits and/or routine maintenance and repair visits. In the event of an unscheduled repair or other emergency, Licensee shall be entitled to access to the Site twenty-four (24) hours per day, seven (7) days a week subject to any special conditions in the Site License. If Sites are allowed that could affect traffic flow, named maintenance and contractors may be restricted to non-peak flow hours. Licensee shall endeavor to provide written (but in any event shall attempt to provide oral) notice of an emergency repair prior to accessing the Site. Any such access by Licensee shall be subject to any other or superseding access requirements as may be specified in a Site License.

ARTICLE 8. Improvement Fees/Taxes

Licensee shall pay all real estate taxes, possessory interest taxes and other taxes and fees caused by Licensee's use and/or equipment placed on the Site or other improvements constructed by Licensee on the Site.

ARTICLE 9. Indemnity and Insurance

Section 9.1 Indemnification

Neither Licensor nor any of Licensor's officers or employees shall be responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by Licensee under or in connection with any work, authority, or jurisdiction conferred upon Licensee or arising under this Agreement excluding those arising by reason of the negligence of Licensor, its officers, employees, and agents.

It is understood and agreed Licensee shall fully defend, indemnify, and save harmless Licensor and all of its officers and employees from all claims, suits, or actions of every kind brought forth under any theory of liability occurring by reason of anything done or omitted to be done by Licensee under this Agreement. Licensee's obligations to defend, indemnify, and save harmless Licensor extends to any and all claims, suits, or actions of every kind brought forth under any theory of liability occurring due to the use of the Site and Licensee's operations under this Agreement, any accompanying agreement with Licensor, and any encroachment permit issued by Licensor.

If the Site License is terminated for any reason, Licensee also agrees to indemnify, defend, and save harmless Licensor from any third party claims for damages arising out of the termination of the License due to Licensee's failure to comply with the requirements of this Agreement that occur prior to termination of this agreement. Such third party claims include any claims from any contractors retained by Licensee or its successors in interest.

Furthermore, Licensee agrees it controls the Site. As such, Licensee agrees to defend, indemnify and hold harmless Licensor, its officers, agents, and employees for any and all claims arising out of any allegedly dangerous condition of public property based upon the condition of the Site.

Licensee agrees to defend, indemnify and save harmless Licensor, its officers, employees, and agents from any and all claims, suits or actions of every kind brought forth under any theory of liability with respect to the Site or the activities of Licensee or its officers, employees, and agents at the Site, excluding those arising by reason of the negligence of Licensor, its officers, employees, and agents.

Licensee's obligations to defend and indemnify Licensor is not excused because of Licensee's inability to evaluate liability or because Licensee evaluates liability and determines Licensee is not liable. Licensee must respond within thirty (30) days to the tender of any defense and indemnity by Licensor, unless this time has been extended by Licensor.

Section 9.2 Liability Insurance

Nothing in this Agreement is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

A. Workers' Compensation and Employer's Liability Insurance

Licensee shall provide workers' compensation and employer's liability insurance as required under the Labor Code. The Licensee shall also provide Licensor certified proof of insurance within thirty (30) days of signing the Site License Agreement and before performing any work (Labor Code § 1861) in connection with this Agreement. Insurance certification shall provide that Licensee is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and shall comply with such provisions before commencing the performance of the work of this contract.

Licensee shall provide Employer's Liability Insurance in amounts not less than:

1. \$1,000,000 for each accident for bodily injury by accident
2. \$1,000,000 policy limit for bodily injury by disease
3. \$1,000,000 for each employee for bodily injury by disease

B. Commercial General Liability Insurance

Licensee shall procure Commercial General Liability Insurance, which limits may be met by a combination of primary and excess or umbrella insurance, with \$5 million per occurrence and aggregate limits covering all operations by or on behalf of Licensee, providing insurance for bodily injury liability and property damage liability, and including coverage for:

1. Site operations
2. Products and completed operations
3. Broad form property damage (including completed operations)
4. Explosion, collapse, and underground hazards
5. Personal injury
6. Contractual liability meeting the indemnification obligations herein

The Commercial General Liability insurance procured by Licensee shall also comply with the following:

1. Shall extend to all of Licensee's operations and remain in full force and effect during the term of this Agreement.
2. Must be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
3. Shall be on Commercial General Liability policy form no. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form no. CG0001.

4. Shall contain completed operations coverage with a carrier reasonably acceptable to LICENSOR through the expiration of the latent and patent deficiency in construction statutes of repose set forth in Code of Civil Procedure section 337.15.
5. Shall name Licensor, including its officers, directors, agents (excluding agents who are design professionals), and employees, as additional insureds under the required General Liability and/or Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed in connection with this Agreement. Coverage for such additional insureds does not extend to liability to the extent prohibited by Insurance Code section 11580.04.
6. Shall provide additional insured coverage by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO), or other form designated by Licensor.
7. Shall state the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by Licensor is excess only and must not be called upon to contribute with this insurance.

Licensee shall carry automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles. The primary limits of liability must be not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage. The umbrella or excess liability coverage required under this Article shall also apply to automobile liability.

Licensor allows reasonable deductible clauses not overly broad, exceeding \$250,000, or harmful to Licensor. Licensee agrees by executing this Agreement it shall defend, indemnify, and hold harmless Licensor until such deductible is paid or applied to any claim arising out of this Agreement, regardless of Licensee's evaluation of liability, as discussed in Section 9.1.

Licensor may assure Licensee's compliance with Licensee's insurance obligations. Seven (7) days before an insurance policy lapses or is canceled during the term of this Agreement, Licensee shall submit evidence of renewal or replacement of the policy. Licensee is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless Licensor, its officers, agents, and employees by Licensor's acceptance of insurance certificates. The minimum insurance coverage amounts do not relieve Licensee from liability in excess of such coverage.

C. Self-Insurance

Reasonable self-insurance programs and self-insured retentions in insurance policies are permitted by Licensor. If Licensee uses a self-insurance program or self-insured retention, Licensee must provide Licensor with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Further, execution of this Agreement is Licensee's acknowledgment Licensee shall be bound by all laws as if Licensee were an insurer as defined under Insurance Code section 23 and Licensee's self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code section 22.

Section 9.3 Failure to Procure and Maintain Insurance

If Licensee fails to procure, or maintain the insurance required by this Article in full force and effect, this Agreement may be terminated immediately by Licensor. In addition, if Licensee fails

to procure or maintain the insurance required by this Article, Licensee shall cease and desist from operating any business on the Site and the improvements erected thereon and shall prevent members of the public from gaining access to the Site during any period in which such insurance policies are not in full force and effect.

ARTICLE 10. Transfer or Assignment

This Agreement and the Site Licenses granted hereunder are exclusive and personal to Licensee. Except as hereinafter provided, Licensee shall not, without Licensor's and the Federal Highway Administration's ("FHWA") prior written consent (which consent may be withheld at Licensor's and FHWA's sole and absolute discretion) sell, transfer, assign, sublicense, or otherwise convey and assign (in whole or part) their rights, duties, obligations or interests under this Agreement, a Site License, or its interest in any particular Site or Site License or any part thereof. Notwithstanding the foregoing, Licensee may transfer or assign their rights, duties, obligations or interests this Agreement, a Site License or its interest in a particular Site or any part thereof without Licensor's or FHWA's consent to any person or business entity which is a one-hundred percent parent company. Any proposed transfer or assignment that is submitted to the Licensor and FHWA for their respective prior written consent shall state that the proposed transferee or assignee shall assume, perform and be responsible for all terms, covenants and conditions of the Licensee under the transferred or assigned interest, and describe the proposed transaction. Any request for a transfer or assignment shall require the payment of Two Thousand Five Hundred and 00/100 Dollars (\$2,500) (per Article 17) to Licensor as a processing fee.

ARTICLE 11. Repairs

Licensee shall, at all times during the term of any particular Site License and at Licensee's sole cost and expense, keep its facilities and equipment located on or about the Licensor's property Site and every part thereof in good condition and repair, reasonable wear and tear excepted, including making replacements when necessary. If Licensee fails to promptly make any repairs that are necessary to remedy a dangerous condition on the Site caused by Licensee, its agents, employees or contractors, or other condition caused by Licensee, its agents, employees or contractors which is materially adverse to the quiet enjoyment by Licensor or any other user of the Site, Licensor shall give Licensee written notice of its intention to make such repairs and the date on which such repairs shall commence. Except for emergencies, Licensee shall be given at least fifteen (15) days from the day the letter is sent to commence the repairs. If Licensee does not, prior to the date set forth in such notice, commence to make such repairs, Licensor may make such repairs and shall be reimbursed by Licensee for any and all reasonable costs incurred by Licensor in performing (or contracting to have performed) such repairs, including any overhead costs reasonably allocable to the performance thereof. Licensor shall provide Licensee reasonably detailed supporting documentation of such costs concurrently with any demand for reimbursement.

Licensee shall, at all times, during the term of any particular Site License and at Licensee's sole cost and expense, keep Licensee's equipment at the Site and any access roads constructed by Licensee for its sole use at the Site in good condition and repair, except for any access roads or improvements installed by Licensor or other third parties.

Licensee, at its sole cost and expense, shall restore all Licensor property which is destroyed or damaged by Licensee's activities on a Site subject to an individual Site License. Licensee agrees to commence performance of any remedial work within thirty (30) days of written notice by Licensor, or as soon thereafter as is reasonably practicable, and to complete remedial work required in the reasonable opinion of Licensor to restore the Site to its original condition, reasonable wear and tear excepted, within the number of days specified in the written notice. The number of days specified in the written notice shall be reasonable. If remedial work is not undertaken and completed within the specified time, Licensor may, on ten (10) days prior written notice to Licensee, undertake and complete the remedial work with its own forces and/or independent contractors, and Licensee shall pay all actual costs or charges incurred by Licensor by reason of such work. Licensor shall provide Licensee reasonably detailed supporting documentation for such costs and charges.

ARTICLE 12. Surrender of Site; Holding Over

Upon the Agreement expiration, end of option or other termination of a Site License, Licensee shall peacefully vacate the Site in as good order and condition as the same were on the Commencement Date, reasonable wear and tear, and damage not caused by Licensee excepted. If Licensee fails to promptly remove all of its facilities and equipment from the Site within sixty (60) days after expiration or earlier termination of the Site License, Licensor may, after five (5) days prior written notice to Licensee, remove the same (without any liability to Licensee for any damage to such equipment and/or facilities which may result from reasonable efforts at removal), and Licensee shall pay to Licensor on demand any and all reasonable costs incurred by Licensor in removing and storing such improvements and equipment prior to retrieval of same by Licensee. Licensor has no obligation to store such equipment, and Licensee shall have no claim if Licensor destroys the equipment if it is not removed by Licensee as provided herein. Any improvements Licensor desires to remain shall be governed by the provisions of Article 4.

Should Licensee continue to hold the Site after the termination of a Site License, whether the termination occurs by lapse of time or otherwise, such holding over shall, unless otherwise agreed to by Licensor in writing, constitute and be construed as a tenancy at will with an annual rent equal to the current Annual License fee plus an additional Annual License Fee equal to 18.0% (eighteen percent) of the current Annual License Fee., subject to all of the other terms set forth herein including the annual percentage increase.

ARTICLE 13. Default and Remedies

The occurrence of any one or more of the following events shall constitute an "event of default" or "default" under the particular Site License(s) to which it applies:

- a) if Licensee fails to pay any Annual License Fee or other sums payable by Licensee under the Site License as and when the Annual License Fee or other sums become due and payable and such failure continues for more than ten (10) days after written notice thereof from Licensor is received pursuant to Article 15;
- b) if Licensee upon actual receipt of any formal written order or directives relating to the Site from any governmental entity fails to comply with such order or directive within the time

limits set forth in such order or directive and any applicable administrative or judicial appeal rights having been exhausted;

- c) if Licensee fails to perform or observe any other term of the applicable Site License(s), and such failure continues for more than thirty (30) days after written notice thereof from Licensor provided that in the event of a default which cannot with due diligence be cured within a period of thirty (30) days, Licensee shall have such extended periods as may be required beyond such thirty (30) day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and Licensee commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion, or such longer period as mutually agreed by the parties hereto;
- d) if any petition is filed by or against Licensee, under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee and such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee shall be adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof;
- e) if Licensee becomes insolvent or makes a transfer in fraud of creditors; or
- f) if a receiver, custodian, or trustee is appointed by Licensee or for any of the assets of Licensee which appointment is not vacated within ninety (90) days of the date of the appointment;

In any notice of an alleged default by Licensee from Licensor, Licensor shall specify the nature of the default and the Site License(s) potentially affected thereby. After applicable notice and grace periods have expired, at any time thereafter that Licensee remains in default, Licensor may terminate the Site License(s) directly affected by such default and, if all Site Licenses shall be affected, this Agreement, without notice or demand. Upon the applicable termination, Licensee shall immediately surrender all applicable Sites then licensed to Licensee under the affected Site License to Licensor and, subject to Article 4 remove all of its facilities and equipment therefrom. If Licensee fails to promptly remove all of its facilities and equipment from the Site as required under this Agreement, Licensor may remove the same (without any liability to Licensee for any damage to such equipment and/or facilities which may result from reasonable efforts at removal), and Licensee shall pay to Licensor on demand any and all costs incurred by Licensor in removing and storing such facilities and equipment prior to retrieval of same by Licensee.

If either Licensor or Licensee shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this License), or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this clause shall excuse Licensee from prompt payment of any rent, taxes, insurance or any other charges required of Licensee.

In the event of a termination of a Site License, it shall be lawful for Licensor, after not less than thirty (30) days prior written notice, to reenter into and upon the Site, and every part thereof, and to remove at Licensee's expense all of Licensee's property therefrom and to repossess and occupy the Site. In the event Licensor terminates a Site License pursuant to this Section, Licensor shall not be required to pay Licensee any sum or sums whatsoever related to that Site License.

ARTICLE 14. Covenants/Disclaimer

Licensor agrees that:

- With respect to each particular Site, Licensor owns or has control of the land on which the Licensor's property and Site is located and has the right to enter into the Site License with Licensee with respect thereto and if Licensor is leasing a particular Site, a copy of the underlying agreement, License, Right-of-Way deed or other instrument will be attached to the individual Site License.
- Except as otherwise disclosed to Licensee in writing prior to the execution of any Site License, there are, to Licensor's actual knowledge (without any independent investigation), no known liens, restrictions, mortgages, covenants, conditions, easements, licenses, agreements of record or not of record, which would adversely affect or prohibit Licensee's use and enjoyment of the Site under a Site License.
- Licensor has the full authority to enter into and execute this Agreement and any Site License pursuant to this Agreement.
- Licensee shall have access to the Site and the quiet and peaceful use, enjoyment and possession of the Site during the term for its permitted uses.
- Except as specifically set forth in an individual Site License, to the best of its knowledge, no Hazardous Substances are present on, in, or under the Site in violation of applicable law, and, to the best of Licensor's knowledge all operations on the Site are and have been in substantial compliance with all laws regulating such Hazardous Substances, no litigation has been brought or threatened, nor any settlements reached with any governmental, quasi-governmental entity or private party concerning the actual or alleged presence, disposal, release or threatened release of such Hazardous Substances in, on, about or under the Site, and Licensor has not received notice of any violation, or any alleged violation of any law related to Hazardous Substances and relating to the Site. "Hazardous Substances" includes substances, chemicals or wastes that are identified as hazardous, toxic or dangerous in any applicable federal or state law.

Nothing herein shall be construed or interpreted to require that Licensor remediate any Hazardous Substance at any Site. If Licensee discovers hazardous substances on the Site during the Local Permitting Period, its sole remedy shall be to cancel the Site License. Any work needed to remove or remediate any Hazardous Substance or other Environmental Hazard that requires the removal or relocation of Licensee's equipment shall be treated as "Licensor's use of a Site" pursuant to Article 4.

Licensor and Licensee each respectively agree that:

- it has full right to make this Agreement;
- the making of this Agreement and the performance thereof will not violate any laws, ordinances, restrictive covenants, or other agreements under which it is bound;

- it is fully organized/formed, validly existing and in good standing and has all rights, power and authority to make this Agreement and bind itself hereto through the party set forth as signatory set forth below; and,
- neither party has liability for any brokerage commission due to any broker in connection with this Agreement or any Site License.

Except as expressly provided herein, Licensor does not agree or covenant:

- whether particular Site is suitable for the purposes contemplated hereunder, including without limitation the adequacy of such Site's location, its condition, or the condition of any structure or appurtenances thereto; or,
- whether Licensee will be required to obtain (or will be able to obtain) any licenses, permits or approvals or any applicable governmental authority necessary for Licensee's Operations at any particular Site.

ARTICLE 15: Notices

Unless otherwise provided herein, any notice or demand required or permitted to be given hereunder shall be given in writing by hand delivery, first class certified or registered mail, return receipt requested, or by recognized overnight mail, in a sealed envelope, postage prepaid, to be effective when received or refused. Notice shall be addressed to the parties at the addresses set forth on the signature pages. Either party hereto may change the place for the giving of notice to it by like written notice to the other as provided herein.

ARTICLE 16: General Provisions

This Agreement and the Site Licenses entered into by the parties constitute the entire agreement and understanding between the parties, and supersede all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement or any Site License must be in writing and executed by both parties.

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, the provision shall be construed in a manner that will eliminate only the part of the provision that is invalid or unenforceable; the remainder of the provision shall remain in full force and effect; and all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties. To the extent any provisions of this Agreement are in conflict with, or inconsistent with regulations or rules promulgated by the California Public Utilities Commission such provisions shall be null and void. This Agreement and the Site Licenses shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

This Agreement and each Site License shall be governed by the laws of the State of California without regard to any conflict of laws doctrine. Licensor and Licensee agree that any dispute, action or proceeding arising out of this Agreement or any Site License shall be subject to the jurisdiction of the Superior Courts of the State of California, shall be subject to venue in the County of Sacramento with respect to disputes arising out of this Agreement, and shall be subject to venue in the county in which the Site is located for disputes arising out of an individual Site License.

Licensee may record an appropriate Notice or Memorandum of any Site License.

In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement or any individual Site License, such party shall not unreasonably delay, withhold or condition its approval or consent.

All riders and Exhibits annexed hereto form material parts of this Agreement.

This Agreement may be executed in duplicate counterparts each of which shall be deemed an original.

Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, or physical handicap. Licensee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin or physical handicap. (See California Government Code Sections 12920-12994 for further details.)

Licensee shall not commit, suffer, or permit any waste on the licensed Site or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the licensed Site for any illegal or immoral purposes.

ARTICLE 17: Administrative Fee

Licensee shall pay a one-time charge of Five Thousand and 00/100 Dollars (\$5,000.00) when applying for a Site License to cover the costs associated with the preparation and the engineering and technical analysis of the Site License to assure complete compatibility of operations at the Site. This payment will entitle Licensee to the Local Permitting Period without additional charge. This amount may be periodically adjusted to reflect an actual change in the costs incurred by Licensor with the preparation and the engineering and technical analysis for the Site. This is in addition to general permits required by any party entering Licensor's property, especially if entry is sought for an access-controlled roadway, such as annual district survey permit, encroachment permits, or maintenance permits.

Subsequent documents requiring approval including assignments, and sublicenses require an administrative fee of Two thousand Five Hundred and 00/100 Dollars (\$2,500.00) to cover cost of review. Minor requests for Site modification requiring no review fee. Modifications requiring District Airspace Review Committee review shall require an administrative fee of Two thousand Five Hundred and 00/100 Dollars (\$2,500.00).

ARTICLE 18: Casualty Responsibilities

Neither party will keep improvements which are constructed or installed by the other party under the provisions of this Agreement insured against fire or casualty, and neither party will make a claim of any nature against the other party by reason of any damage to the business or property of the other party in the event of damage or destruction by fire or other cause. Each party is solely

responsible for insuring, or self-paying, all expenses caused by the destruction or damage of its facilities regardless of cause or fault.

ARTICLE 19: Relocation Assistance

Licensee acknowledges it is not entitled to any relocation assistance payments at the conclusion of this Agreement or any Site License under State (Government Code Section 7260 et seq.) or federal law (42 U.S.C. 4601 et seq.), and Licensee further agrees it will not file or pursue any such claim.

ARTICLE 20: Collocation - Licensor

Unless otherwise specified in a Site License, the facility to be constructed by Licensee at that particular Site shall be built to include the following specifications below to allow for Licensor's possible use, to the extent reasonably feasible and approved by the appropriate permitting agencies, at no cost to Licensor, subject to Licensee's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Licensee shall not be required to modify any portion of Licensee's Equipment or Site to accommodate Licensor's installation of additional equipment or modification of existing equipment, as determined within the sole discretion of Licensee.

- If Licensee will be constructing a monopole or other tower at the Site for its use, such tower/monopole shall, upon completion of construction, be available to Licensor to use for one 800 MHZ omni-antenna approximately 90" long, 2.6" in diameter, with a weight not to exceed twenty pounds, to be mounted at a height designated by Licensee, not less than twenty (20) feet high. In lieu of said antenna, Licensor may install another antenna of similar size and capability for Licensor's possible use.
- If Licensee will be constructing a vault at the Site, Licensee shall make available, upon completion of initial construction, a 2' x 2' x 7' space for Licensor's equipment; if Licensee will be constructing an equipment pad, Licensee shall make available, upon completion of initial construction, at least 2.5' x 2.5' of space for Licensor's equipment cabinet.
- Conduit or a cable tray for transmission from equipment area to antenna.
- Cable access to phone and electrical lines.

If Licensor chooses to occupy a tower/monopole built by Licensee, it may engage a contractor to install its equipment on Licensee's facilities. Licensee reserves the right to approve Licensor's list of contractors prequalified to perform the equipment installation. Contractors utilized by Licensor must all provide proof of adequate insurance coverage and must name Licensee as an additional insured. Licensee shall inspect the installation and advise Licensor of any deficiencies noted. Alternatively, Licensor may request that Licensee install Licensor's equipment. All expenses that Licensee actually incurs for ancillary equipment purchased or installed for the benefit of Licensor, or for radio tower work performed by Licensee for the benefit of Licensor, shall be at Licensor's expense, provided that such costs are commercially competitive and documented in reasonable detail.

When Licensor occupies a tower/monopole constructed by Licensee, the parties agree to negotiate in good faith issues concerning such occupation by Licensor, including but not limited to issues relating to site access, insurance, maintenance, interference and indemnity. If parties other than

Licensee will co-use a Site with Licensee, it shall be Licensor's responsibility to ensure, through the use of its approval rights set forth in Article 22 that any space reserved for Licensor pursuant to this article remains available and technically feasible with respect to structural and technical interference issues.

ARTICLE 21. Collocation

This Agreement is non-exclusive. Licensee shall allow collocation with other carriers (each a collocatee) at the Site if the collocation is reasonably feasible, the project does not interfere with Licensee's current use of the Site, the project is compliant with this Agreement, the project is approved by Licensor and the project is approved by the appropriate permitting entities. These collocation covenants apply to requests by Caltrans to share facilities at a later date. Collocation requests shall follow the same standard of review/approval process as the original Site License.

Each collocatee shall have a separate Site License subject to this Agreement with the term(s) running coterminous (all starting and expiring on the same date) with the primary or original Licensee Site License. There are two types of collocatees pursuant to this Agreement, Sub-Users and Direct-Users. A Sub-User is a collocatee that uses Licensee's antenna mount and Licensee's equipment area to mount the Sub-User's antennas and house the sub-User's equipment within the existing Site maximum footprint area (contiguous equipment improvement but may be fenced off from other collocatees). A Direct-User is a collocatee that only uses the Licensee's antenna mount but requires separate ground space from Licensee's on Licensor's property for the Direct Users equipment area. The separate area is not contiguous (has own ingress/egress and equipment pad) to the original Site License footprint area. The annual base license fee for a Sub-User shall be the greater of:

- (i) 50% of the Licensee's annual payment,
- (ii) 50% of the payment the collocatee pays the Licensee.

The annual base license fee for a Direct-User shall be the greater of

- (i) the full annual base license fee based on the number of antennas,
- (ii) the full annual base license fee based square footage of the enclosed equipment area (Article 5.1).

The administration fee payable to the Licensor for collocations on an existing facility is Five thousand and 00/100 Dollars (\$5,000.00) and the Licensor's review/approval cannot be unreasonably withheld, conditioned or delayed. However, if the collocation is submitted as one proposal with Licensee's the submission, or as multiple collocatees, only one administration fee for the entire review shall be required.

ARTICLE 22: Business Summary Affidavit

Once per calendar year, Licensor, may submit a written request (see Article 15) to Licensee for a business summary affidavit pertaining to Licensee's collocater fee agreements for the prior twelve (12) month period, and Licensee shall provide such written accounting to Licensor within sixty (60) days after Licensee's receipt of such written request. Licensor, at its sole discretion, may elect to not enter, renew or exercise any Site License option if, based on a review of the business summary affidavit, Licensor determines, in its sole opinion, that Licensee is not in compliance

with Article 21 of this Agreement. Copies of annual financial statements filed with the Securities and Exchange Commission (“SEC”) may fulfill this requirement if Licensee is a publicly traded corporation. If Licensee desires to fulfill this requirement by submitting the Annual Financial Statement of a parent or affiliated corporation, then that parent or affiliated corporation shall guarantee Licensee's performance of all obligations required by this Agreement and the applicable Site License.

LICENSEE DBA: _____

By: _____
(Signature) (Title)

(Print Name) (Date)

Address: _____

Phone Number: _____

LICENSOR: State of California, Department of Transportation

By: _____
(Signature) Office Chief, Real Property Services

(Print Name) Date

Address: Department of Transportation
Division of Right of Way and Land Surveys
Office of Real Property Services
1120 "N" Street, MS 37
Sacramento, CA 95814