

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

Section VI License Agreement

This License Agreement (“**Agreement**”) is between the **Suffolk County Vanderbilt Museum (“Museum” and/or “Licensor”)**, a privately endowed institution bequeathed to Suffolk County.; and

Insert Name (“Licensee”), having its offices at

The parties hereto as aforesaid desire to enter into a License Agreement for the installation, operation and maintenance of the Licensee’s Communications Facilities on the County’s property as set forth in Exhibits A through D in connection with Licensee’s federally licensed wireless communications business.

Term: (a) **License Agreement.** The term of this Agreement shall be twenty-nine (29) years beginning on the date this Agreement is fully executed by both Parties and ending on the twenty ninth (29th) anniversary of the Execution Date.

Revenue to Museum: The revenue to Museum shall be as set forth in Exhibit B, attached to and incorporated herein.

Terms and Conditions: The terms and conditions of the within License Agreement shall be as set forth in Exhibits A through D, attached to and incorporated herein.

Signatures are on page two of this Agreement.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

In Witness Whereof, the parties hereto have executed this License Agreement as of the latest date written below ("Execution Date").

Suffolk County Vanderbilt Museum

Licensee

By: _____
Carol Ghiorsi Hart
Executive Director

By: _____
Name
Title

Date: _____

Date: _____

Fed. Tax ID No. _____

Suffolk County Vanderbilt Museum

By: _____
Noel Gish
Board of Trustees Chairman

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

List of Exhibits

Exhibit A

General Terms and Conditions

1. Definitions
2. Precedence
3. Grant and Acceptance
4. Term
5. Termination of Agreement
6. License To Perform
7. Contingencies
8. Non-Interference
9. Access To Premises
10. Maintenance and Repairs; Utilities; Taxes
11. Representations
12. Liens
13. Insurance and Indemnification
14. Independent Licensee
15. Entire Agreement
16. No Oral Changes
17. Conflict of Laws
18. Removal of Personal Property
19. License, Not a Lease
20. Non-Recourse
21. Environmental Matters
22. No Broker
23. Headings/Captions/Titles
24. Severability and Waiver
25. Force Majeure
26. Wage Schedule – State
27. Assignment
28. Non-Waiver of Rights
29. Certification as to Relationships

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

Exhibit B Revenue to Museum

Exhibit C Notices and Contact Persons

1. Notices Relating to Operations and Payments
2. Notices Relating to Indemnification, Termination or Litigation
3. Emergency Contacts
4. Confirmation and Revisions
5. Method of Notice

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

Exhibit A General Terms and Conditions

Whereas, pursuant to Section 184-2 of the SUFFOLK COUNTY CODE, the County Legislature has full power and control over the Vanderbilt Museum's property and maintenance fund, while the Board of Trustees have control over the development, maintenance and operation of the Museum and the conduct of its programs and activities; and

Whereas, the Board of Trustees of the Suffolk County Vanderbilt Museum is authorized and empowered via Suffolk County Resolution No. 371-2009 to contract for wireless transmission services through an appropriate structure on the Museum's property; and

Whereas, the Board of Trustees of the Suffolk County Vanderbilt Museum is hereby authorized to negotiate its own monthly or annual fees for wireless services independent of any County-negotiated fee schedule; and

Whereas, all income derived from such contract, license and/or lease shall be appropriated for use by the Board of Trustees to fund the Museum's operations; and

Whereas, any such contract, license or lease for wireless transmission service shall be subject to approval by the Suffolk County Legislature; and

Whereas, the Licensee is a wireless communications carrier licensed by the Federal Communications Commission ("FCC") to operate in Suffolk County, New York; and

Whereas, the Licensee desires to construct, install, operate and maintain a wireless communication facility which includes, communication antenna(s) and associated equipment and connections, relating to its wireless communications business in order to expand and improve its wireless communications service; and

Whereas, the Museum property is well-suited for the purposes of constructing and operating a wireless communication facility; and

Whereas, the Museum and the County desire to make available suitable property located at the Vanderbilt Museum in Centerport for wireless communication carriers, on a fair and equitable basis, for use as a wireless communication facility; and

Whereas, the installation of such a wireless communication facility will have no material impact on the use of the County-owned property for municipal purposes; and

Whereas, the Licensee wishes to license from the Museum certain portions of the County-owned real property at the Suffolk County Vanderbilt Museum for the purpose of locating an unmanned wireless Communications Facility; and

Whereas, the Suffolk County Legislature has approved the placement of wireless communication facilities on County properties (Suffolk County Legislative Resolution No. 1208-2001, "Establishing A Policy for the Placement of Wireless Communications Facilities on County Property", Suffolk County Legislative Resolution No. 151-2002, "Authorizing Certain Technical Correction to Adopted Resolution No. 1208-2001" and Suffolk County Legislative Resolution No. 273-2003, "Initiating Process for Cell Tower Revenue at County Parks" and Resolution No 371-2009, "Authorizing a Cell Tower at the Vanderbilt Museum");

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

Now, Therefore, in consideration of the foregoing recitations and the mutual covenants, terms and conditions herein contained, it is agreed by the parties hereto, as follows:

1. Definitions

For all purposes of this Agreement, except as otherwise expressly stated or unless the context otherwise requires:

- a. The terms defined herein have the meanings ascribed to them as stated and include the plural as well as the singular.
- b. "Access" is defined in paragraph 9, entitled "Access to Premises."
- c. "Alterations" means Licensee's right to alter, improve, change, replace, substitute, repair, remove, withdraw, add, supplement, extend, or otherwise modify all or any portion of its Equipment.
- d. "Approved Plans" means any Plans submitted by the Licensee to the Museum, pursuant to this Agreement, and approved by the County pursuant to the terms of sub-paragraph (b) of paragraph 6, entitled "Licensee to Perform."
- e. "Building" or "Property" means the property owned by the Suffolk County on which the Suffolk County Vanderbilt Museum is located, 180 Little Neck Road Centerport, New York 11721.
- f. "Collateral" is defined in sub-paragraph (b) of paragraph 12, entitled "Liens."
- g. "Communications Facility" means a facility which may include, antennas, satellite dishes, microwave receiving and transmitting equipment, communication equipment, equipment room/shelter/cabinets, related or similar equipment, structures and devices, generator(s), electrical meters or submeters and panels, wires, conduits, all other items and replacements of, additions to, and substitutions, including any and all alterations, modifications and upgrades of, such items from time to time, all of which are used in connection with the operation of the communications facility.
- h. "Connections" is defined in sub-paragraph (a)(ii) of paragraph 3, entitled "Grant and Acceptance."
- i. "Equipment" and/or "Equipment and Antenna Space" shall mean antennas and equipment cabinets, communications and other related or similar equipment, cabinets, meters, panels, batteries, telephone, electrical, air conditioning, sprinkler, alarming, and other systems, generator(s), and supply sources, structures, devices, and components.
- j. "FAA" means the Federal Aviation Administration.
- k. "FCC" means the Federal Communications Commission.
- l. "Feasibility Testing" is defined in paragraph 7, entitled "Contingencies."
- m. "Governmental Approvals" is defined in paragraph 7, entitled "Contingencies".

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

- n. "Hazardous Materials" is defined in sub-paragraph (b)(ii) of paragraph 11, entitled "Representations."
- o. "Inspector" means a Vanderbilt Museum or County employee or agent who shall inspect all phases of the Licensee's installation of the Communications Facility.
- p. "Lender" is defined sub-paragraph (b)(i) of paragraph 12, entitled "Liens."
- q. "Non-Business Hours" means holidays and hours between 4:00 p.m. and 8:00 a.m. seven days per week.
- r. "Normal Business Hours" the hours of 8:00 a.m. and 4:00 p.m., excluding "Non-Business Hours."
- s. "Parties" means the Suffolk County Vanderbilt Museum, a privately endowed institution bequeathed to Suffolk County, and the Licensee set forth on page one of this Agreement.
- t. "Partners" shall have the meaning described in paragraph 20, entitled "Non-Recourse".
- u. "Plans" shall have the meaning described in sub-paragraph (b) of paragraph 6, entitled "Licensee to Perform."
- v. "Premises" means the space for equipment and antennas, connections, and access located at the Suffolk County Vanderbilt Museum, 180 Little Neck Road Centerport, New York.
- w. "Property" means the real property owned by the County known as Suffolk County Vanderbilt Museum, located at 180 Little Neck Road, Centerport, New York, a portion of which may be licensed to Licensee pursuant to this Agreement in order to construct, operate and maintain its Communications Facility.
- x. "Representation(s)" shall have the meaning described in paragraph 23, entitled "Non-Recourse."
- y. "RF MPE" means the radio frequency maximum permissible exposure produced by the Communications Facility.
- z. "SLA Commencement Date" the date that the building permit is issued to Licensee for the construction of the Communications Facility or ninety (90) days from full execution of the SLA, whichever occurs later.
- aa. "Term" means the initial term and any renewal term(s) of this Agreement or and accompanying Site License Agreements thereto, as described on page one of this Agreement.
- bb. "Work" means the installation, repair, replacement and/or maintenance, whether ordinary, extraordinary or an emergency, of Equipment.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

2. Precedence

The provisions of this Exhibit A and Exhibit D, entitled "Suffolk County Legislative Requirements," shall prevail over inconsistent provisions or other document not specifically referred to in this Agreement or made part hereof by this Exhibit A, or by subsequent amendment hereto in writing and signed by both parties, unless such subsequent amendment expressly and specifically amends the terms and conditions of this Exhibit A or Exhibit D.

3. Grant and Acceptance

- a. The County is the owner, operator or otherwise has property interests in real property and/or buildings and/or facilities in Suffolk County, New York ("Property"). The Museum hereby agrees to license to Licensee, and the Licensee hereby agrees to license from Museum space on the Property for the placement of Licensee's Communications Facility subject to all of the covenants, terms and conditions herein contained:
 - i. an exclusive license to those certain areas (the "Premises") where Licensee shall have the right to install equipment and antennas (collectively "Equipment"), which are reasonably necessary to construct, operate and maintain Licensee's Communications Facility; and
 - ii. an exclusive license to those certain areas where Licensee's conduits, wires, cables, cable trays and other necessary connections (hereinafter collectively referred to as "Connections") are located between Licensee's Equipment (including, Licensee's antennas) in the Premises, and between Licensee's Equipment and the electric power, telephone and fuel sources for the Building or structure, as the case may be. The Museum agrees that Licensee shall have the right to use the Premises to construct, operate and maintain the Communications Facility, and all uses incidental thereto subject to and consistent with the terms of this Agreement. In connection therewith, the Museum also agrees that Licensee shall have the right to install, maintain and operate Licensee's Equipment in the Premises, and Connections between Licensee's Equipment in the Premises, and between Licensee's Equipment and the electric power, telephone and fuel sources for the Property, and any other improvements approved in accordance with this Agreement.
 - iii. Notwithstanding any other contrary language in this Agreement, Licensee has the right to add, modify and/or replace equipment in order to be in compliance with any future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, provided that the Licensee has provided the Museum with proof of such mandate and has obtained the prior written approval of the Museum which approval shall not be unreasonably withheld, delayed or conditioned.
 - iv. The Licensee must submit complete plans, calculations and specifications to the Museum before proceeding with any new installation or modification to any existing installation. If necessary, Licensee shall apply to the County for a building permit for all new installations to existing Museum facilities.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

- b. The Licensee acknowledges the Museum's right, subject to the terms of this Agreement, to license other portions of the Property, excluding the Premises, to others. The Licensee, subject to the Museum's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, shall be permitted to perform Alterations to all or any portion of its Equipment at any time during the term of this Agreement, provided:
- i. no structural alterations to the Premises or the Property are required, subject to the provisions of paragraph 8, entitled "Non-Interference"; and
 - ii. there is no increase to the size of the Premises, the number of the Licensee's antennas. In the event the Alterations do require a structural alteration to the Premises or the Property, or increases the size of the Premises, or increases utility use or makes changes to any other building infrastructure, the number of the Licensee's antennas, the Licensee shall, prior to the commencement of such Alterations, obtain the Museum's written approval of the same and modify the License to reflect the anticipated Alterations. Museum's approval must be given or denied within ninety (90) business days after Licensee's request to make Alterations is received by Museum or the Alterations will be deemed approved. If the Museum rejects Licensee's request to make Alterations the Museum will provide Licensee with (i) written notice of the Museum's concerns with the proposed Alterations, and (ii) a written request for additional information from the Licensee that would make the Alterations approvable. Any increase in the size of any portion of the Premises, the number of the Licensee's antennas, shall require a reasonable increase in the compensation to be paid the Museum by the Licensee for the grant of the license hereunder. Notwithstanding the preceding sentence, any increase in the size of the Premises as a result of changes contemplated in paragraph 3 (a) (iii) may not require an increase in compensation paid to the Museum depending on the circumstances and expansion in size of the Premises and proof of mandated requirements.
- c. Except as otherwise stated herein, Licensee accepts the Premises "as is" and will suit the Premises to its use in accordance with the plans and specifications submitted to the Museum for its approval.
- d. All work performed hereunder by Licensee shall conform to all applicable laws, rules, regulations, ordinances, and codes and be undertaken and performed in a good and workmanlike manner.
- e. Any work to be performed by Licensee (or Licensee's contractors) under this Agreement shall not be performed during Non-Business Hours, except in the case of an emergency. If the Licensee wishes to continue any portion of the work beyond Normal Business Hours or in the case of an emergency, during Non-Business Hours, prior written permission shall be obtained from the Museum, giving ample time for a County Inspector to be present. The Licensee shall compensate Museum for additional inspection costs in connection with the Museum providing an Inspector beyond Normal Business Hours or during Non-Business Hours (such costs are detailed below in Section 3(i), *infra.*). Licensee also agrees that it will not disrupt or interfere with the use and occupancy of the property by other occupants of the property during the performance of any such work.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

- f.** The Licensee and all of the Licensee's contractors shall not commence work under this Agreement until all the required insurance as set forth in paragraph 13, entitled "Insurance and Indemnification" has been obtained and documentation submitted to the Museum. Approval of the insurance by the Museum shall not relieve or decrease the liability of the Licensee. The Licensee shall assume all responsibility for the insurance requirements for all its contractors.
- g.** Licensee agrees not to use the Premises for any purpose other than as stated herein. Licensee further agrees that it shall not use, or suffer or permit any person or persons to use the Premises and any other County-owned property of which the Premises are a part, or any parts thereof, for any use or purpose in violation of any federal, state or local law, rule, regulation, code or ordinance. Licensee further agrees that it shall not have the right to sublicense to third parties without the prior express written approval of the Museum, which shall not be unreasonably withheld, conditioned or delayed. Consent to a sublicense is at the sole discretion of the Museum.
- h.** It is the intent of the Museum to have an Inspector present for all phases of the Licensee's installation of the Communications Facility. It is expected that all Work will be performed during Normal Business Hours, except in the event of an emergency. Inspector shall have authority to stop any work not in accordance with plans or which he reasonably believes to be unsafe, until the non-conformity identified by the Inspector is corrected by Licensee or consented to by the Museum.
- i.** In the event that the Licensee requests permission to perform Work beyond Normal Business Hours or during Non-Business Hours, the Museum will review the scope of operations and determine on a case-by-case basis the extent of inspection services required, but such services shall not require more than one Inspector at any given time. The cost to be reimbursed to the Museum by the Licensee for inspection services beyond Normal Business Hours and/or during Non-Business Hours, shall be estimated at XX and 00/100 Dollars (\$XX.00) per hour, however, such rate is subject to change upon prior written notice to Licensee. Any costs Licensee incurs in connection with said inspection services shall be invoiced within sixty (60) days from the date the inspection services were rendered.

4. Term

The Term for both the Agreement shall be as set forth on page one (1) of this Agreement. Upon termination, the parties hereto are relieved of all rights and obligations hereunder, except those that specifically survive termination.

5. Termination of Agreement

a. Termination for Cause by Either Party

This Agreement may be terminated in writing by either party in the event of failure by the other party to fulfill its material obligations under this Agreement, provided that no such termination shall be effective unless the defaulting party is given fifteen (15) calendar days' written notice of intent to terminate ("Notice of Default"). During such fifteen (15) day period, the defaulting party will be given an opportunity for consultation with the other party and an opportunity to cure any material failure prior to termination. Prior to issuance of a written termination

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

notice ("Termination Notice"), the defaulting party shall be given an additional fifteen (15) days to cure any material failure to fulfill its obligations under this Agreement. In the event that the defaulting party has not cured any material failure to the satisfaction of the other by the end of the combined thirty (30) day period, the non-defaulting party may at its option (a) terminate this Agreement; or (b) in the event three (3) or more events of default occur within a twelve month period, terminate this Agreement.

b. Termination by Licensee

Except as otherwise provided herein, this Agreement may be terminated, by Licensee, without any penalty or further liability as follows:

- i. immediately upon written notice by Licensee if Licensee notifies Museum of any unacceptable results of any tests prior to Licensee's installation of the Communications Facilities on the Premises, or if Licensee does not obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Communications Facilities or Licensee's business;
- ii. upon ninety (90) days' written notice by Licensee if Licensee determines that the Property, the Communications Facilities or communication system to which the Communications Facilities belong are inappropriate or unnecessary for Licensee's operations for economic or technological reasons, design or engineering specifications;
- iii. immediately upon written notice by Licensee if the Premises or the Communications Facilities are destroyed or damaged so as in Licensee's reasonable judgment to substantially and adversely affect the effective use of the Communications Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Licensee shall be entitled to the reimbursement of any Rent prepaid by Licensee. If Licensee elects to continue this Lease, then all Rent shall abate until the Premises and/or the Communications Facilities are restored to the condition existing immediately prior to such damage or destruction; or
- iv. at the time title to the Property transfers to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Licensee's determination to render the Premises unsuitable for Licensee's use. The Museum and Licensee shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.
- v. In the event Licensee terminates pursuant to paragraph 5(b)(ii) Licensee shall pay to the Museum, as liquidated damages a sum equivalent to six (6) months of the then current rent;

c. Termination by Museum in the Public Interest

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

Notwithstanding anything herein to the contrary, if it reasonably determined, pursuant to federal and state laws, that termination is in the public interest because of a threat to the public safety, health or welfare, the Museum reserves the right to terminate this Agreement. Such termination shall occur upon one hundred eighty (180) days written notice of intent to terminate the Agreement. Licensee shall have an opportunity for consultation with the Museum's Executive Director, President of the Museum's Board of Trustees and the Presiding Officer of the Suffolk County Legislature or their designees prior to termination. Notwithstanding the foregoing, this Agreement shall not be terminable by the Museum under this provision because another licensee or use of the Licensee's Premises would offer greater financial gain.

d. Rights, Remedies and Responsibilities

- i. In the event that this Agreement is terminated due to the Licensee's failure to fulfill its obligations under this Agreement, the Museum shall have such rights or remedies as provided in this Agreement or at law or in equity all of such rights and remedies shall be cumulative. Upon the effective date of such termination, the Licensee shall promptly cease its operations under this Agreement, unless otherwise directed by the Termination Notice, and shall within a reasonable time remove its personal property, including, but not limited to, the Equipment, from the Premises in accordance with paragraph 18, entitled "Removal of Personal Property."
- ii. In the event that this Agreement is terminated due to either the Licensee's or the Licensor's failure to fulfill its obligations under this Agreement, each party shall also have the right to bring suit for the collection of any monies due pursuant to the terms of this Agreement, and damages (including without limitation reasonable attorney's fees and the cost of restoring the Premises as required in this Agreement), without Licensor entering into possession of said Premises or either party canceling this Agreement.
- iii. Any and all property, except collateral, belonging to the Licensee or to anyone claiming by, through, or under the Licensee which may be found on the Premises by the Museum upon such termination which was not removed in accordance with this Agreement shall become the property of the Museum and may be disposed of in accordance therewith, provided thirty (30) day written notice is given by the Museum to the Licensee as per the attached Exhibit C indicating the Museum's intention to accomplish same. This provision shall survive the expiration or earlier termination of this Agreement.
- iv. Upon termination pursuant to the provisions of this Agreement, the parties acknowledge and agree that they shall not be entitled nor shall they make a claim for consequential damages, punitive damages, lost profits or loss of anticipated earnings because of termination.
- v. Except for foundations and underground utilities, at the expiration or earlier termination of this Agreement, the Licensee shall remove the Equipment and all of its personal property and surrender the Premises to the Museum in the same condition as existed at the time this Agreement was first executed, reasonable wear and tear and damage from the

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

elements excepted. Upon termination, the parties hereto are relieved of all rights and obligations hereunder, except those that specifically survive termination. Any monies due the Museum as of the effective date of termination shall be paid by the Licensee within thirty (30) days of said effective date.

6. Licensee To Perform

- a. Licensee shall compensate the Museum as set forth in Exhibit B, entitled "Revenue to the Museum."
- b. The Licensee, at its sole cost and expense, shall be authorized to make reasonably appropriate Alterations to the Premises in order to construct the Communications Facility generally, in accordance with this Agreement. Prior to the commencement of the installation of the Communications Facility or any Alterations of the Communications Facility requiring Governmental Approvals, the Licensee shall submit to the Museum detailed plans and specifications of the planned installations (the "Plans") for the Museum's written approval, which approval shall not be unreasonably conditioned, withheld or delayed. Museum's approval must be given or denied within twenty (20) business days after Licensee's Plans are received by Museum or the Plans will be deemed approved. If the Museum rejects Licensee's Plans the Museum will provide Licensee with (i) written notice of the Museum's concerns with the proposed Plans, and (ii) a written request for additional information from the Licensee that would make the Plans approvable. In the event Governmental Approvals for any Alteration(s) are not required, the Licensee shall only be required to obtain the Museum's approval of the same pursuant to paragraph 3(b)(ii). All approved Plans shall be deemed incorporated and made a part of the License. The Museum shall not permit or suffer any person to copy or utilize the Plans for any purpose other than as provided in this Agreement and shall return the Plans to the Licensee promptly upon request.
- c. Licensee shall, at its sole cost and expense, submit to the Museum certificate(s) of authorization issued pursuant to §7210 of the New York Education Law to Licensee, its consultants, subconsultants, subcontractors and/or any other entity (including, but not limited to, any subsidiaries, divisions or affiliates of the Licensee or an entity under the control of the Licensee) performing all or part of the engineering services necessary hereunder, along with any Plans, surveys or other engineering work that is required to be submitted to the Museum for approval under this Agreement. Licensee's failure to file, submit or maintain said certificate(s) shall be grounds for rejection of the Plans or other engineering work submitted for approval under the terms of this Agreement.
- d. Licensee, at its sole cost and expense, shall install, operate and maintain any and all Connections and metering equipment necessary for the operation of the Equipment subject to review and written approval by the Museum, which approval shall be consistent with the plan approval process set forth in (b), above, and which shall not be unreasonably withheld, conditioned or delayed. All Connections and metering equipment depicted in the approved Plans shall not require any further approval from the Museum.
- e. Licensee, at its sole cost and expense, shall furnish a copy of its current valid FCC license prior to commencement of any installation or operation of the Communications Facility and, thereafter, within thirty (30) days receipt of a written request of the Museum. In the event that all of the Licensee's FCC licenses are not renewed or are revoked, the Licensee shall cease its operations

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

upon receipt of notice from the FCC thereof unless and until such license is renewed or reinstated. The violation of the provisions of the preceding sentence shall be grounds for termination for cause in accordance with paragraph 5 (c), entitled "Termination for Cause."

- f. Subject to approval by the Museum and compliance with all applicable laws, the Licensee, at its own cost and expense, may use the Premises to construct, install, operate, maintain, repair and upgrade its Equipment and any other accessories necessary to the successful and secure operation of the Communications Facility on the Premises. All portions of the Equipment or other property or improvements attached to or otherwise brought onto the Premises by the Licensee shall be and remain the Licensee's personal property and at the Licensee's option and expense, may be removed by the Licensee at any time during the Term, but not later than thirty (30) days after this Agreement has expired or has otherwise been terminated in accordance with this Agreement.
- g. Licensee shall comply, at its sole cost and expense, with all applicable FAA and FCC rules and regulations and with all other applicable Federal and State regulations governing radio operations. The Licensee shall also comply with all other applicable laws, statutes, ordinances, local laws, rules, regulations, decrees and orders, as same may be adopted, enacted, entered or amended from time to time. The Licensee shall obtain all licenses, approvals and/or permits necessary to fulfill its obligations hereunder and comply with the terms and conditions thereof. The Licensee shall make all diligent efforts to obtain, maintain and renew any and all licenses, approvals and/or permits necessary for the legal installation and operation of the Equipment on the Premises.
- h. Throughout the Term of this Agreement, the Licensee, at its sole cost and expense, shall promptly make all repairs to its Equipment, ordinary or extraordinary, structural or otherwise.
- i. The Premises, upon prior written notice to Licensee as per the attached Exhibit C, including the inside of the Licensee's equipment room/shelter, but not its cabinets, may be inspected at each site covered by this Agreement at any time by authorized representatives of the Museum, who shall be accompanied in every non-emergency situation by a representative of Licensee. Upon such inspection, the Licensee must correct any condition that the Museum reasonably determines to be in violation of this Agreement (including, but not limited to, Licensee's duty to keep the Equipment in good condition and repair and to repair any damage to the Premises caused by Licensee) or in violation of local, state, or federal rules and regulations within five (5) business days of written notice thereof by the Museum to the Licensee as per the attached Exhibit C. In the event that the Licensee cannot reasonably cure such condition within said five (5) business day period, the Licensee shall diligently cure such condition to completion within such reasonable time period as is necessary therefore and as the Museum sets forth in its written approval. The Museum shall have the right, but not the obligation, to correct any such condition not cured by the Licensee within the herein allotted time period in accordance with the foregoing. The Licensee shall reimburse the Museum for costs incurred in correcting such unsatisfactory condition, plus an administrative fee of ten percent (10%) of the actual costs incurred, within thirty (30) days of the Licensee's receipt of an invoice therefor. Museum must submit any such invoices to Licensee within sixty (60) days of the costs being incurred by Museum.
- j. If at any time during the Term of this Agreement the FCC or other governmental agency having appropriate jurisdiction issues a determination that the operation

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

of the Communications Facility is dangerous or poses a health or environmental hazard, the Museum may notify the Licensee of same in writing ("First Notice") and the Licensee shall correct such defective condition or remove the offending equipment within five (5) days of issuance of notice by the Museum to Licensee, and/or cease operation of the Communications Facility, as may be necessary to bring the Communications Facility into compliance. In the event removal of said offending equipment materially impairs Licensee's operations from the Premises under this Agreement, the Licensee shall have the right to terminate this Agreement upon ten (10) days written notice to the Museum, provided the Licensee has removed the offending equipment. The failure of Licensee to remove the equipment by the end of the five (5) day period set forth in the written notice, if such removal is required, shall be grounds for termination for cause in accordance with paragraph 5 (c), entitled "Termination for Cause." The Museum shall thereafter have the right to remove the offending equipment and invoice Licensee for the actual cost of such removal. The Museum shall have no liability to the Licensee by reason of any inconvenience, annoyance or interruption of service arising from the Museum's removal of the Equipment, provided such removal is necessary to actually protect persons or property from an actual health or environmental hazard. If the Museum removes the equipment, the Museum shall store same and invoice Licensee for the actual cost of such storage. The Licensee shall pay any invoices submitted by the Museum to it within thirty (30) days of receipt thereof for any costs incurred by the Museum hereunder.

- k. Any payments required to be made to the Museum by the Licensee under the terms of this Agreement, which are due and remain unpaid prior to the expiration or earlier termination of this Agreement shall survive such expiration or early termination.
- l. The Licensee hereby agrees that in the event the Property for any particular site is required by the FAA, the FCC, or other applicable agencies to be lit and/or marked as a result of the Licensee's use, the Licensee shall install, maintain and operate such lighting, at its sole cost and expense, and in compliance therewith. In the event such lighting and/or marking is required, the Museum agrees to reasonably cooperate with Licensee's efforts to comply with such lighting and/or marking requirements.

7. Contingencies

The Museum understands and agrees that this Agreement and Licensee's ability to use the Premises is contingent upon the reasonable suitability of the Premises to Licensee's intended use from both an economic and technical engineering basis. The Museum hereby authorizes the Licensee to conduct, at its sole cost and expense, any engineering studies, surveys, inspections, environmental tests, title searches and/or any other tests or studies which are reasonably necessary to determine the feasibility of the Licensee's intended use of the Premises, as contemplated by this Agreement (collectively, the "Feasibility Testing"). This Agreement and the Licensee's use of the Premises are also contingent upon the Licensee's ability to obtain all Federal, State, County and Local governmental licenses, permits, approvals or other relief required or deemed necessary by the Licensee, in its sole discretion, for its use of the Premises, as contemplated under this Agreement, including, without limitation, zoning variances, zoning approvals, special use permits, site plan approvals, and building permits (collectively referred to as "Governmental Approvals"). The Licensee shall have the right, without obligation, to diligently prosecute an appeal of any denial of any necessary Governmental Approval. The Museum specifically authorizes the Licensee to prepare,

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

execute and file all necessary or appropriate applications to obtain Governmental Approvals for its use under this Agreement. The Museum shall take no action that would adversely affect the status of the Property with respect to the proposed use thereof by the Licensee unless such action is deemed by the Museum, in its sole discretion, to be in the best interests of the Museum, the general public or the taxpayers of Suffolk County and is consistent with state and federal law. The Licensee shall make diligent efforts to obtain, maintain, and renew any and all necessary Governmental Approvals. The Licensee shall restore, at its sole cost and expense, the Premises and any portion of the Property that Licensee disturbs to the condition, which existed prior to the conduct thereon of any tests, inspections or surveys conducted hereunder. In the event that Licensor does not issue the building permit within thirty (30) days from submission of the Building Permit Application to the County by Licensee or if Licensee is not able to obtain or maintain any Federal, State County or Local governmental license, permit approval or is delayed by any governmental authority on permits or other necessary government actions or approvals, or other unforeseeable causes beyond the control and without the fault or negligence of Licensee, the Licensee may terminate the License upon written notice to Museum.

8. Non-Interference

- a.** The Licensee, prior to installation of the Equipment, shall conduct, at its sole cost and expense, studies (including, but not limited to, RF MPE and intermodulation) to determine whether the operation of the Equipment will interfere with other existing users on the Property (as of the date of this Agreement), any existing County-owned and operated facilities on the Property (as of the date of this Agreement), and to determine whether the electromagnetic energy emitted by the Licensee's Equipment will cause the RF MPE emission levels for the Property to exceed the levels promulgated by the FCC and the United States Occupational Safety and Health Administration. A copy of any such studies shall be provided to the Museum within seven (7) days of the Licensee's receipt thereof. The Licensee shall not install its Equipment on the Premises until such studies are completed and there is no indication by such studies that there will be interference from the Licensee's operations at the Premises with other existing users on the Property or existing County-owned and operated facilities, which are legally operating under the terms of a valid FCC license, or that there will be excessive RF MPE emission levels. The Licensee may terminate this Agreement if such studies indicate that the Licensee's operations at the Premises will cause interference with such existing legally operating users on the Property or County-owned facilities on the Property. At no time shall the Licensee's operations or communications interfere with the normal and lawful operation of the County's current facilities or radio communications or with any other existing user's equipment, which is lawfully operating under the terms of a valid FCC license. The Museum agrees to eliminate any interference caused by its facilities or radio communications as a result of any unlawful operations within a reasonable length of time after receipt of written notice thereof, and to promptly cause the elimination of interference caused by other users on the Property as a result of any subsequently permitted operations or unlawful operations after notice by the Licensee to the Museum of such interference. If any interference by any party cannot be eliminated within a reasonable length of time after receipt of written notice thereof, the offending party shall cease operations until such time as the interference is eliminated, except for brief tests necessary for the elimination of the interference. If interference by the Licensee to the Museum's operated facilities is not eliminated within a reasonable length of time after receipt of

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

written notice thereof from the Museum, the Licensee may terminate this Agreement on ten (10) days written notice. Notwithstanding the foregoing, if interference to Licensee's operations by other users on the Property, as a result of subsequently permitted operations or unlawful operations, is not eliminated by the Museum or the other user within ten (10) days of receipt of written notice to the Museum by Licensee, the Museum shall promptly take all actions necessary to cease such offending user's operations and Licensee shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Agreement on ten (10) days written notice. The Museum shall include in all future licenses, leases and other agreements relating to the Property a clause substantially similar to that contained in this sub-paragraph (a).

- b. The Licensee, prior to installation of the Equipment at each individual site, shall conduct, at its sole cost and expense, such structural surveys, studies and tests on the Premises necessary to determine whether the Equipment can be placed safely thereon in accordance with generally accepted engineering practices. The Licensee shall provide copies of said surveys, studies and tests to the Museum within seven (7) days of the Licensee's receipt thereof. In the event such surveys and studies indicate that the Equipment cannot be safely placed on the Premises, the Licensee may terminate any individual Site License Agreement on thirty (30) days written notice to the Museum or may perform such work, at its sole cost and expense and subject to the prior written approval of the Museum of drawings and plans for such work, as will make the Premises safe to place the Equipment thereon in accordance with generally accepted engineering practices. The Licensee shall, at its sole cost and expense, restore the Premises and/or the Property to the condition that existed prior to the conduct of such surveys, studies and tests.

9. Access To Premises

- a. The Museum shall be permitted access to the Premises, including the interior of any equipment shelter/room, but not cabinet(s), at all times for emergencies (including emergency inspections) and during Normal Business Hours for inspections, provided that the Licensee's technology and proprietary interests remain secure and the Licensee's operation of its Communications Facility is not adversely affected. Museum shall provide prior notice to Licensee of its intent to access the Premises by contacting Licensee's Network Operations Control Center, as listed in Exhibit C, paragraph 3. The Museum shall provide the Licensee with reasonable notice, so that the Licensee can arrange for an employee of the Licensee to accompany Museum staff for the inspection. In the event that the Licensee fails to arrange for an employee to accompany Museum staff for an inspection, or in the event of an emergency, the Museum shall have the right of access to the Premises, including the interior of any equipment shelter/room or cabinet(s).
- b. In the event the Museum is required to make repairs caused as a result of use of the Premises by the Licensee, which repairs were not made by the Licensee within thirty (30) days (or such shorter period of time as is necessary under the circumstances) of the Licensee's receipt of notice from the Museum of such required repair, the Licensee shall promptly reimburse the Museum for its reasonable costs in making the repairs within thirty (30) days of receipt of written notice of the charges. Museum must invoice Licensee within sixty (60) days of the date of said required repair. The Licensee shall have access to the Premises during Normal Business Hours on reasonable notice to the Museum, however, the Licensee's employees, contractors and agents shall be required to first

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

present their business identification to the appropriate Museum employee. During Non-Business Hours, the Licensee shall have access to the Premises, on reasonable notice to the Museum, which shall not be less than twenty-four (24) hours, except in the event of an emergency. In the event of an emergency, the Licensee shall contact the Museum at such telephone number as Museum shall provide the Licensee in writing. At all times, Museum shall have the right to have a representative of the Museum present to escort the Licensee. Licensee's aforementioned rights of access during Normal Business Hours, Non-Business Hours and at any time during an emergency are defined as the "Access".

10. Maintenance and Repairs; Utilities; Taxes

- a. The Licensee shall be fully responsible for any installation and alteration, and for all repairs or damage, whether structural or nonstructural, of every nature and kind whatsoever, to said Premises or to any County-owned property arising directly in connection with or caused by the Licensee's activities described or referred to in this Agreement and all reasonable costs associated therewith. All installations and repairs shall be performed in a good and workmanlike manner and in accordance with good, sound and accepted engineering and construction practices.
- b. The Licensee shall perform and pay for all repairs necessary to keep its Equipment located on or about the Premises in good condition, reasonable wear and tear and damage from the elements excepted. The Museum shall maintain and repair the Property, and access thereto, in good condition and repair, reasonable wear and tear and damage from the elements excepted.
- c. In the event repairs to the Premises by the Museum require the temporary discontinuance of the operation of the Communications Facility for more than one (1) day then the Museum shall provide the Licensee with thirty (30) days written notice prior to the commencement of such work, except in the event of an emergency, and, if the discontinuance of the operation of the Communications Facility would be required for less than one (1) day, then the Museum shall provide the Licensee with five (5) days notice, except in the event of an emergency. In the case of an emergency, the Museum shall provide the Licensee with as much notice as possible by contacting the Licensee at such other number as Licensee shall provide to the Museum in writing. The Licensee may erect on an unused portion of the Property a temporary communications facility, which shall include, without limitation, the equipment deemed necessary by Licensee to provide service to its customers and an antenna support structure, for the period of time the Premises are not usable due to the making of said repairs. The placement of a cell on wheels ("COW") or other temporary facility shall be permitted in lieu thereof at the option of Licensee, to the extent practicable. Such temporary facility and the placement thereof on the Property shall be subject to the Museum's written approval, which shall not be unreasonably withheld or delayed, and no Museum work shall proceed until such approvals of the temporary facility are received. The Museum shall apply best efforts to schedule with the Licensee such disruption of the Communications Facility concerned so as to affect same only during its off-peak period as determined by Licensee.
- d. The Licensee, at its cost and expense, shall undertake appropriate means to restrict access to and to secure the Equipment, subject to the prior written approval of the Museum as set forth in paragraph 6(b). Such approval is deemed granted if the proposed means of restriction is set forth the Approved Plans. Notwithstanding the foregoing, the Licensee, without the consent of the

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

Museum, shall be permitted to lock its equipment shelter/room and/or equipment cabinets.

- e. The Licensee shall obtain and pay for any and all necessary utility service for the operation of the Equipment including the cost to provide such service and the installation of any meters therefor. Utility service shall include, but not be limited to, electric service, telephone and fiber optics service, and gas service. The Museum shall approve the location of any utility lines to be installed by or for the Licensee, which approval shall not be unreasonably withheld, delayed or conditioned. Such approval by the Museum for the location of utility lines shall not be required in the event the same was set forth in the Approved Plans. Except as provided in sub-paragraph (f) below, the Museum shall not be liable or responsible for the provision of any utilities under this Agreement. The Museum shall cooperate with the Licensee to facilitate the acquisition of necessary utility services, provided, however, that the grant of any easements or agreements necessary therefor shall be reasonably acceptable to the Museum and subject to the approval of the Suffolk County Legislature, when applicable. Notwithstanding anything to the contrary contained herein, upon the expiration or early termination of this Agreement, the ownership of all utility service infrastructure and connections installed on the Premises and/or the Property under this Agreement, other than those obligated to be maintained and repaired by the utility service provider pursuant to an easement, shall vest in the Museum. The Licensee shall, at its sole cost and expense, repair and maintain said utility service infrastructure and connections during the Term of this Agreement. The provisions of this sub-paragraph shall survive the expiration or early termination of this Agreement.
- f. Except to the extent caused by the Museum, the Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage to persons, property, interference with the Licensee's business or lost profits sustained by reason of any defect, deficiency, reduction or impairment of the gas, electrical apparatus, telephone equipment, heating equipment, water supply equipment, or wires (if any) furnished for the Premises hereby granted, or by reason of any loss, reduction or impairment of light, current, or other electrical service, telephone service or water supply which may occur from time to time from any cause, or resulting from fire, water, storm, tornadoes, requirement of governmental authority, civil commotion, acts of terrorism, strike, riot, accident or other cause whatsoever. The Licensee hereby expressly waives all rights, claims, and demands and forever releases and discharges the people of the State of New York, the County, the Museum and their officers, employees and agents from any and all demands, claims, actions and causes of action arising from any of the causes in this paragraph 10(f), except in the event of loss or impairment caused by the Museum and/or County, their officers, agents and employees. The Museum, upon thirty (30) days written notice to the Licensee, may comply with any voluntary controls or guidelines promulgated by a governmental authority relating to the conservation of energy, gas, light, water or electricity without creating any liability of the Museum to the Licensee, provided same does not adversely or materially affect the operation of the Communications Facility and provided further that the Licensee shall pay Museum for any loss of monetary incentives resulting from the Museum's inability to take full advantage of such voluntary controls or guidelines.
- g. The Museum makes no representations as to the adequacy of any utility service to the Premises and shall not be responsible for any interruptions in electrical or other utility service to the Premises or the Equipment unless caused by the Museum.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

- h.** The Licensee shall pay any and all personal and real property taxes assessed on or any portion of such taxes directly attributable to the Communications Facility. The Licensee shall, upon presentation of bills therefor, reimburse the Museum within thirty (30) days of receipt thereof any increase in real property taxes levied or assessed against the Property concerned above those taxes levied or assessed as of the date of execution of this Agreement, provided the Licensee shall have the right but not the obligation to appeal, challenge or seek modification of any such increase payable by the Licensee. The Licensee shall be entitled to the refund resulting from the appeal of any such increase in real property taxes. The Museum agrees that it will cooperate with an appeal of such taxes, including, without limitation, executing any consent to appeal or similar document, and shall promptly pay all real estate taxes levied or assessed against such Property.
- i.** If applicable, any poles or towers, excluding Collateral, erected by the Licensee pursuant to this Agreement shall, at the option of the Licensee, become the property of and title shall be vested in the Museum at the expiration or early termination of this Agreement, except for temporary facilities erected pursuant to sub-paragraph (c) above. Such title shall be lien and encumbrance free and the Licensee shall defend same at its expense. This provision shall survive the expiration or termination of this Agreement.

11. Representations

- a.** The Parties represent that:

 - i.** they each have full authority to enter into and execute this Agreement; and
 - ii.** the individuals executing this Agreement on behalf of Parties have the authority to execute same; and
 - iii.** they have taken all necessary action under all applicable laws (including, without limitation, the requirements of the New York State Environmental Quality Review Act, as codified in Article 8 of the N.Y. Env. Cons. Law, and the statewide implementing regulations set forth in Part 617 of Title 6 of the New York Rules and Regulations) and issued all relevant documentation to approve the License, and authorize the signatories to execute same.
- b.** The Museum further represents that:

 - i.** there are no liens, judgments or other impediments that affect the County's title to any Property covered by this Agreement, and that there are no covenants, easements, restrictions or violations that would prevent or impede the Licensee's intended use of any such Property; and
 - ii.** no such Property has ever been used or permitted to be used for the generation, storage or transfer of any pollutants or hazardous or toxic substances, materials or wastes (collectively, the "Hazardous Materials"), and has never been on any list of any governmental authority requiring clean-up or closure because of contamination by any Hazardous Materials.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

12. Liens

- a. The Licensee shall keep the Premises and the Property free from any liens and encumbrances. In the event liens or encumbrances have been created by or permitted to be attached to the Premises or the Property by the Licensee, the Licensee, at its sole cost and expense, shall, upon receipt of written notice of such lien, immediately discharge as of record any such mortgage, lien, security interest, encumbrance, charge on, pledge, conditional sale or other title retention agreement with respect to the Premises or the Property. If the Licensee shall fail to so remove any such lien, the Museum may, but shall not be required to, upon thirty (30) days written notice to Licensee as per the attached Exhibit C, pay the amount necessary to remove such lien or encumbrance without investigating the validity thereof. The amount so paid by the Museum shall be payable on demand by the Licensee and shall not limit any other remedies available to the Museum under this Agreement. Nothing contained in this Agreement shall be construed to authorize the Licensee to do any act, which shall subject the County's title to the Premises or the Property to any liens or encumbrances whether claimed by operation of law or by express or implied contract. The Licensee shall defend, indemnify and hold harmless the Museum and Suffolk County from and against any claims, liabilities, judgments or costs (including reasonable attorney's fees and costs) arising out of or in connection with any such liens or encumbrances.
- b. The Museum hereby:
 - i. consents to the collateral assignment and granting of a security interest, from time to time, in favor of any holder of indebtedness borrowed by the Licensee (the "Lender"), whether now or hereafter existing, in and to all of the Licensee's right, title and interest in and to the Equipment installed on the Premises, including, without limitation, telecommunications switching facilities; equipment shelters and/or cabinets, and associated antennae and mounting equipment; telephone, electric and radio cables and other transmission lines; and other related equipment and facilities in which Lender has been granted a security interest by the Licensee (collectively the "Collateral"); and
 - ii. provided the Licensee has given the Museum prior written notice of Lender's name and address, agrees to simultaneously provide Lender with a copy of any notice of default under this Agreement sent to the Licensee and allow Lender the opportunity to remedy or cure any default as provided for in this Agreement within the applicable time periods; and
 - iii. agrees to permit Lender to inspect or remove from the Premises any of the Collateral in accordance with any security documents granted in favor of Lender, provided, however, that Lender shall promptly repair, at Lender's expense, any damage to the Premises associated with said removal. Nothing in this sub-paragraph shall be deemed to relieve the Licensee of its obligations hereunder.
 - iv. waives any and all lien rights it may have, statutory or otherwise, concerning the Licensee's Equipment or Antenna Space or any portion thereof, which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and gives Licensee the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Licensee's sole discretion and without Museum's consent.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

13. Insurance and Indemnification

- a. For each site covered by this Agreement, the Licensee agrees to procure, pay the entire premium for and maintain throughout the term of this Agreement insurance in amounts and types specified by the Museum, for each site covered by this Agreement, the Licensee also agrees to require that all if its contractors, in connection with work performed for the Licensee related to this Agreement, procure, pay the entire premium for and maintain throughout the term of this Agreement insurance in amounts and types equal to that specified by the Museum for the Licensee. Unless otherwise specified by the Museum and agreed to by the Licensee, in writing, such insurance will be as follows:
 - i. **Commercial General Liability insurance**, including contractual liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage, provided such amounts may be satisfied through an umbrella policy.
 - ii. **Automobile Liability insurance** (if any vehicles are used by the Licensee in the performance of this Agreement) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand (\$100,000.00) for property damage per occurrence; and
 - iii. **Worker's Compensation and Employer's Liability insurance** in compliance with all applicable New York State laws and regulations and Disability Benefits insurance, if required by law. Licensee shall furnish to the Museum, prior to its execution of this Agreement, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, this Agreement shall be void and of no effect unless the Licensee shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- b. All policies providing such coverage shall be issued by insurance companies with an A.M. Best rating of A- or better.
- c. The Licensee shall furnish to the Museum Declaration Pages for each such policy of insurance and upon request, a true and certified original copy of each such policy, evidencing compliance with the aforesaid insurance requirements. In the case of commercial general liability insurance, the Museum and County of Suffolk shall be named as an additional insured and the Licensee shall furnish a Declaration Page and endorsement page evidencing the Museum's and County's status as an additional insured on said policy.
- d. All such Declaration Pages, certificates and other evidence of insurance shall provide for the Museum to be notified in writing thirty (30) days prior to any cancellation, nonrenewal or material change in said policies. Such Declaration Pages, certificates, policies and other evidence of insurance and notices shall be mailed to the Museum at its address as set forth in this Agreement in the

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

paragraph entitled "Notices and Contact Persons" or at such other address of which the Museum shall have given the Licensee notice in writing. The parties agree that, as appropriate, documents may be redacted to exclude confidential information of the Licensee.

- e. In the event Licensee shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Agreement, the Museum may, but shall not be required to, obtain such policies and charge the cost thereof to Licensee under this Agreement or any other agreement between the Museum and Licensee.
- f. The risk of loss, damage or destruction from any peril to the Equipment or other personal property of the Licensee shall be borne by the Licensee. The Licensee agrees that the Museum and County, their officers, employees, agents and independent contractors shall not be liable for the loss of the use thereof, except to the extent caused by their negligence or willful act.
- g. Licensee and Museum each agree to indemnify and hold harmless the other party from and against any and all claims, damages, costs expenses, including reasonable attorney fees, to the extent caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on any Property by the indemnifying party or the or the employees, agents, contractors, licensees of the indemnifying party, or a breach of any obligation of the indemnifying party under this Agreement. Licensee agrees to indemnify the Museum and County of Suffolk for any damage or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property, arising out of or in connection with the negligence of the Licensee or any person claiming by, through or under the Licensee or any of the Licensee's officers, agents, employees, contractors, subcontractors, guests or invitees in connection with the activities described or referred to in this Agreement or for environmental damage or contamination caused solely by Licensee. The provisions of this subparagraph shall survive the expiration or termination of this Agreement.
- h. Licensee and Museum hereby waive and will require its insurance carrier to waive the right to subrogation against the other party on account of any loss, claim or damages of whatsoever kind or nature arising in connection with this Agreement, except to the extent said loss, claim or damages arise from the negligence or willful misconduct of the other party, its agents, employees, contractors, Licensees, licensees, or assigns.

14. Independent Licensee

It is expressly agreed that the Licensee's status hereunder is that of an independent contractor. Neither the Licensee nor any person hired by the Licensee shall be considered employees of the Museum and/or County Licensor for any purpose.

15. Entire Agreement

It is expressly agreed that this instrument represents the entire agreement of the parties and that all previous understandings are merged in this Agreement. No modifications, renewals, extensions or amendments to this Agreement will be effective unless in writing signed by the parties hereto.

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

16. No Oral Changes

No modification of this Agreement shall be valid unless written in the form of an Addendum or Amendment signed by both parties.

17. Conflict of Laws

This Agreement and the performance thereunder shall be governed, interpreted, construed and regulated by the laws of the State of New York, without regard to its conflict of law provisions, and the local laws of the County of Suffolk. Venue is designated as Suffolk County, New York or the United States District Court for the Eastern District of New York.

18. Removal of Personal Property

- a.** Within sixty (60) days of the expiration or earlier termination of this Agreement, the Licensee shall remove its personal property (including, but not limited to, the Equipment) from the Premises, and on failure to do so, after five (5) business days of receipt of written notice as per the attached Exhibit C to the Licensee, the Museum, by its officers, employees, and agents, may handle, remove, store or otherwise dispose of said personal property at the risk and expense of the Licensee and the Museum shall not be responsible for the preservation or the safekeeping thereof and shall not be held responsible for the condition of such personal property, and shall have the right, but not the obligation, to sell the said personal property so seized or removed in accordance with the provisions of applicable law and recover by such sale or legal process the costs of removal and storage and any and all sums due to the Museum under the terms of this Agreement including the costs of such sale. The Licensee shall pay to the Museum upon demand any and all expenses incurred in such removal and all storage charges therefor so long as the same shall be in the Museum's possession or under the Museum's control. The Museum and County shall not be liable to prosecution, damage, or damages to or for loss of any personal property belonging to the Licensee or any party upon or occupying said Premises or any part thereof from any causes whatsoever by reason of such removal, and the Licensee expressly waives any and all claims for damages and loss against the Museum or its officers, employees, agents or contractors for or on account of any act done or caused to be done in exercising this right. The amount of any funds remaining after deducting the above costs shall be applied to any amounts the Licensee owes the Museum upon said expiration or termination. Any personal property not removed shall be deemed abandoned and title thereto shall vest in the Museum. This provision shall survive the expiration or earlier termination of this Agreement.
- b.** Upon removal of its personal property, the Licensee shall restore the Premises and any other portions of the Property affected by such removal to the condition that existed prior to the execution of this Agreement, reasonable wear and tear and damage by the elements or casualty loss excepted. If the Licensee fails to perform such restoration work within thirty (30) days of receipt of written notice thereof from the Museum, the Museum may perform such work and bill the Licensee for the costs thereof. The Licensee shall pay the Museum within thirty (30) days of receipt of a bill setting forth the charges for such restoration work. This provision shall survive the expiration or earlier termination of this Agreement.

19. License, Not a Lease

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

It is expressly understood and agreed that this License Agreement (LA), except as otherwise noted herein, create only non-exclusive licenses for the purposes specified herein and are NOT leases, that NO interest in real or personal property is leased to the Licensee, and that the Licensee's right to exercise the license hereby granted may be terminated by the Museum at any time upon written notice to the Licensee subject to the Termination provisions set forth in paragraph 5. This MLA shall be deemed to be a license coupled with an interest. It is understood and agreed by and between the Parties that this Agreement grants to the Licensee a limited use of the Premises as contained in this Agreement and for no other purposes. The Museum specifically reserves to itself the use of the Property for the general public, subject to the provisions of this Agreement.

20. Non-Recourse

Notwithstanding any provisions contained herein to the contrary, it is expressly understood and agreed by the Parties that each and every representation, undertaking or agreement (collectively, the "Representation(s)") made herein on the part of the Parties was not made, nor intended to be made, as a personal Representation on the part of any incorporator, stockholder, director, officer, partner, employee or agent, past, present or future, of the Parties (collectively, the "Partners"), and no personal liability or personal responsibility is assumed by, nor shall any recourse be asserted or enforced against any such Partners, all recourse, in common law, in equity, by statute or otherwise, is expressly forever waived and released.

21. Environmental Matters

- a. Each party agrees that it shall:
 - i. not generate, store or dispose of hazardous substances (as defined under applicable Federal or State law) on the Premises, nor allow others within the party's control or the party's guests, invitees, contractors and subcontractors to do so. Notwithstanding the foregoing, the Licensee shall be permitted to store, in accordance with applicable law, rule, regulation or code, such hazardous substances as are permitted by law to be used in batteries which are commercially available and for generators for the purposes of providing an uninterrupted power supply to the Equipment, but shall be liable for any and all costs associated with the release of any such hazardous substances unless caused by the negligent or willful act of the Museum;
 - ii. comply with all environmental laws (including, but not limited to laws regulating the application of pesticides on the Premises);
 - iii. defend, indemnify and hold harmless the other, its officers, agents and employees for any environmental liability (including, but not limited to, violation of any applicable Federal, State or local laws pertaining to the environment) caused by the other, its officers, agents, employees, contractors, subcontractors or consultants at the Premises, unless such environmental liability is caused by the indemnifying party, its officers, agents and/or employees or is related to an existing condition of the Premises or the Property.
- b. In the event Licensee becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

relating to the Property that, in Licensee's sole determination, renders the condition of the Premises or Property unsuitable for Licensee's use, or if Licensee believes that the leasing or continued leasing of the Premises would expose Licensee to undue risks of government action, intervention or third-party liability, Licensee will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Licensor.

- c. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

22. No Broker

The Parties represent to each other that they have not negotiated with any broker or agent in connection with this Agreement. The Parties agree that should any claim be made against the other for a broker's commission, finders fee or the like by reason of the acts of such Party, the Party upon whose acts such claim is predicated shall indemnify and hold the other party free and harmless from all losses, costs, damages, claims, liabilities and expenses in connection therewith (including, but not limited to, reasonable legal fees) and shall defend such action by counsel reasonably acceptable to the indemnified other Party.

23. Headings/Captions/Titles

The headings, captions and titles in this Agreement are for ease of reference only and shall not affect the interpretation or construction of any provisions.

24. Severability and Waiver

- a. It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
- b. Either party's failure to insist upon strict compliance of any of the terms, conditions or covenants herein contained shall not be deemed a waiver of that term, condition or covenant, nor shall any waiver in writing amendatory to the within contract be deemed a waiver for any date, time, or place not contained within such amendment.

25. Force Majeure

Neither party shall be held responsible for any delay or failure in performance hereunder to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, civil or military authority, act of God, act or omission of carriers or similar causes beyond its control ("force majeure conditions"). If any force majeure condition occurs, the party delayed or unable to perform shall give immediate notice to the other party as per the attached Exhibit C.

26. Wage Schedule - State

In accordance with Section 220 of the Labor Law, rates which are the minimum rate to

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

be paid on a project have been established by the State of New York, Department of Labor. Any person or corporation that willfully pays, after entering into a contract, less than this established wage schedule shall be guilty of a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or both fine and imprisonment; a second offense carries heavier penalties.

Licensees are advised to fully familiarize themselves with all applicable provisions of the New York State Labor Law and more specifically, Article 8, Public Work. Wages and supplements to be paid and provided for workers employed on a public work project shall be not less than those listed in the current prevailing wage rate schedule for that project.

It is the responsibility of the prime contractor to provide each of its subcontractors with the prevailing wage rate schedule. The prime contractor is responsible for any underpayments of prevailing wages or supplements by its subcontractors.

27. Assignment

- a.** This Agreement made pursuant thereto may not be sold, assigned or transferred by the Licensee, except to the Licensee's principal, affiliates, subsidiaries of its principal or of the Licensee, or to any entity which acquires fifty percent (50%) or more of Licensee's stock or assets by reason of a merger, acquisition or other business reorganization or controls, is controlled by or in common control with Licensee. Licensee shall use commercially reasonable efforts to notify Licensor of any such assignment within sixty (60) days thereof, it being understood by and between the parties that Licensor shall have no obligations to the assignee until notice of such assignment has been received by Licensor as per the attached Exhibit C.
- b.** As to all other parties, this License may not be sold, assigned or transferred without the written consent of the Licensor, which such consent will not be unreasonably withheld, conditioned or delayed.
- c.** Notwithstanding anything to the contrary contained in this Agreement, Licensee may collaterally assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Licensee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.
- d.** Museum may not assign this Agreement without the written consent of the Licensee, which consent shall not be unreasonably withheld, conditioned, or delayed. In such case, the assignment may be evidenced by written notice to Licensee within sixty (60) days thereafter, provided that the assignee recognizes this Agreement and assumes all of Museum's obligations herein,

28. Non-Waiver of Rights

The failure of the Licensee or the Museum to insist upon strict performance of any of the terms, conditions or covenants in this Agreement or to exercise any rights or remedies

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

shall not be construed as a waiver of its rights to assert any of the same or to rely on any such terms, conditions or covenants or a waiver at any time thereafter.

29. Certification as to Relationships

The parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid Agreements with the Museum, there is no known relationship within the third degree of consanguinity, life partner, or business, commercial, economic, or financial relationship between the parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Agreement.

End of Text for Exhibit A

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

**Exhibit B
Revenue to Museum**

1. Licensee shall pay Museum a License Fee for pursuant to the following schedule on a monthly basis beginning on the one (1) year anniversary of the Commencement Date of this MLA, however, prior to the one (1) year anniversary of the Commencement Date of this MLA, Licensee shall pay Museum a License Fee of \$XX.00 (payable on a monthly basis) for any additional transmitters that has commenced pursuant to the terms and conditions herein.

Number of Active Transmitters	License Fee per Month
Three (3) or Fewer	\$
4	\$
5	\$
6	\$
7	\$
8	\$

The License Fee for each additional transmitter after the first three (3) shall commence on the "Commencement Date" as defined herein and the first payment is due within thirty (30) days of the Commencement Date of the applicable Transmitter. The second payment of is due on the six (6) month anniversary of the Commencement Date of the additional transmitter.

2. For all remaining years the License Fee shall increase by X percent (X%) annually (rounding to the next highest whole dollar amount). All payments are due on a monthly, to be paid in advance on the six (6) month anniversary of the Commencement Date for each applicable transmitter.
3. All amounts paid by the Licensee under this Agreement shall be made by check payable to the "Suffolk County Vanderbilt Museum and Planetarium" in currency of the United States of America which is legal tender for all debts at the time of payment. All payments should be forwarded to the Executive Director of the Vanderbilt Museum (or successor) at the address set forth in paragraph 1 of Exhibit C, entitled "Notices and Contact Persons."
4. Except as otherwise noted herein, all payments made by the Licensee under this Agreement shall be made without any setoff or deduction whatsoever. Upon expiration or termination of this Agreement, any pre-paid rent shall be pro-rated.

End of Text for Exhibit B

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

Exhibit C Notices and Contact Persons

1. Notices Relating to Operations, Insurance and Payments

Any communication, notice, claim for payment, report or other submission necessary or required to be made by the parties regarding this Agreement shall be deemed to have been duly made upon receipt by the Museum or the Licensee or their designated representative at the following address or at such other address that may be specified in writing by the parties:

For the Museum

By First Class or Certified Mail, Return Receipt Requested in Postpaid Envelope or by Courier Service or by Fax or by Email

Suffolk County Vanderbilt Museum
180 Little Neck Road
Centerport, New York 11721-0605

Att. Carol Ghiorsi Hart

and

For the Licensee

By First Class or Certified Mail, Return Receipt Requested in Postpaid Envelope or by Courier Service or by Fax or by Email

To be Inserted

2. Notices Relating to Indemnification, Termination or Litigation

Any communication or notice regarding indemnification, termination or litigation shall be deemed to have been duly made upon receipt by the parties at the following addresses, or at such other addresses that may be specified in writing by the parties:

For the Museum:

By First Class and Certified Mail, Return Receipt Requested in Postpaid Envelope or by Nationally Recognized Courier Service or Personally and by First Class Mail

Suffolk County Vanderbilt Museum
180 Little Neck Road
Centerport, New York 11721-0605
Att. Carol Ghiorsi Hart, Executive Director

and

License Agreement for Wireless Communications Facility at the Vanderbilt Museum

For the Licensee:

By First Class and Certified Mail, Return Receipt Requested in Postpaid Envelope or by Nationally Recognized Courier Service or Personally and by First Class Mail

To be Inserted

3. Emergency Contacts

Essential personnel that are available on a seven (7) day twenty-four (24) hour basis, including name, telephone number, cell number and e-mail address, are set forth below:

For the Museum:

8 AM – 4 PM weekdays	Carol Ghiorso Hart	(631) 854-5550
After hours and weekends	Security	(631) 854-5570

For the Licensee:

24 hours a day 7 days a week

4. Confirmation and Revisions

Each party shall provide, in writing, either confirmation or revisions, to the other party for all contact names required in paragraphs 1, 2, and 3 above, on or before the 31st day of January in each year of this Agreement's duration. Notwithstanding the requirement for annual notification, each party is responsible to give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s) or his or her designated successor(s) required in paragraphs 1, 2 and 3 above.

5. Method of Notice

Notices shall be deemed to have been duly delivered (i) if mailed, upon the seventh business day after the mailing thereof; or (ii) if by nationally recognized overnight courier service, upon the first business day subsequent to the transmittal thereof; or (iii) if personally, pursuant to New York Civil Practice Law and Rules Section 311; or (iv) if by fax or email, upon the transmittal thereof. "Business Day" shall be defined as any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.

End of Text for Exhibit C