

NAVAJO NATION

TELECOMMUNICATIONS SITING REGULATIONS

§ 1. Title

These Regulations shall be referred to as the Telecommunications Siting Regulations.

§ 2. Authority; Delegation; Rescission of all Prior Delegations, Resolutions, Waivers, and Concessions

These Telecommunications Siting Regulations (“Regulations”) are adopted pursuant to the Navajo Nation General Leasing Regulations of 2013 (the “General Leasing Regulations”) (approved by Navajo Nation Council Resolution No. CO-53-13 (Oct. 22, 2013) and by the Assistant Secretary of Indian Affairs (May 16, 2014)), the Navajo Telecommunications Regulatory Act, 21 N.N.C. § 501 *et seq.*, (the “Telecommunications Act”), 2 N.N.C. §§ 500(C) and 501, Resolution No. _____ of the Resources and Development Committee of the Navajo Nation Council (____, 2017), and _____, 2017 Order of the Navajo Nation Telecommunications Regulatory Commission in Docket No. _____.

All previous delegations, resolutions, rights, and authorities of any nature granted by the Resources and Development Committee of the Navajo Nation Council (“RDC”) or any governmental bodies or agencies under the authority of the RDC relating to communications siting and leasing authority, and all resolutions, rights, waivers, and concessions granted by the RDC or any governmental bodies or agencies under the authority of the RDC to any party or parties relating to ground leases, rights of way, permits, licenses or similar rights, for the construction, development or use of communications towers or equipment, or for collocations of communications equipment on any structure, are hereby rescinded and replaced by these Regulations.

The Navajo Nation Division of Natural Resources (“DNR”) may delegate to programs within DNR, including to the Navajo Land Department (“NLD”) and General Land Development Department (“GLDD”), such authorities as are delegated to DNR hereunder.

The Department Manager of NLD is hereby delegated the authority to approve and enter into, modify, renew, and enforce collection of rent for, all Telecommunications Tower Leases

on Navajo Nation Land, all expansions of ground area rights in connection with Towers and communications equipment, all Collocations on Non-Tower Structures on Navajo Nation Land, and all issuances of Collocation Permits and TTPs. Any decision or determination noted to be made by NLD hereunder shall be made the Department Manager of NLD. The Department Manager of NLD may delegate to GLDD review and processing of any items to be submitted to NLD hereunder.

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”) is hereby delegated the authority to enforce compliance with all Navajo Nation laws and regulations relating to the transmission and receipt of radio frequencies for communications purposes, including without limitation, tower lighting and marking, and compound fencing and security, including all Federal Communications Commission rules, regulations, and orders.

§ 3. Purpose and Definitions

The purpose of these Regulations is to:

- A. Develop and streamline policies and procedures for the issuance of Telecommunications Tower Leases and Permits as they relate to surface land use for telecommunications, as well as Collocations on Non-Tower Structures, to implement the Navajo Nation General Leasing Regulations; and
- B. Delegate final approval authority from the RDC to DNR, acting through the Department Manager of NLD, to enter into, modify, renew, and enforce collection of rent for, all Telecommunications Tower Leases on Navajo Nation Land, all expansions of ground area rights in connection with Towers and communications equipment, and all Collocations on Non-Tower Structures on Navajo Nation Land; and
- C. Delegate authority to the Executive Director of NNTRC to enforce compliance with all Navajo Nation laws and regulations relating to the transmission and receipt of radio frequencies for communications purposes, including all Federal Communications Commission rules, regulations, and orders; and
- D. Grant authority to the Department Manager of NLD to write procedures for review and approval of Telecommunications Tower Leases, Permits, and Collocations Site Leases on Navajo Nation Land, as required by these Regulations; and
- E. Approve a new and updated form of Telecommunications Tower Lease and

Collocation Site Lease for Non-Tower Structures to be used by the Navajo Nation for new leases or renewal of existing lease relationships upon expiration; and

F. Consistent with these Regulations and other applicable law, help ensure that residents, businesses, government institutions, health facilities, and public safety facilities located on the Navajo Nation have reliable access to telecommunications networks and broadband to promote the health and welfare of the Navajo citizenry and to successfully bridge the “digital divide”; and

G. Encourage the further deployment and investment in communications infrastructure by carriers, neutral host tower companies, and other third parties by providing streamlined and established rules and regulations, and consistent non-discriminatory application of such rules and regulations; and

H. Create uniformity of review, approach, and management of existing and future Telecommunications Tower Leases and Collocation Site Leases, and uniformity of enforcement of established rules and regulations; and

I. Ensure that the placement, construction, and modification of Towers and Telecommunications Facilities comply with applicable federal and Navajo Nation law and are consistent with federal and Navajo Nation telecommunications and land use policies, and to protect the health, safety, welfare, aesthetic character, and traditional cultural values of the Navajo Nation, in part by:

1. Encouraging the use of existing Towers, where appropriate and feasible, for Collocations of Telecommunications Facilities to minimize the number of new Towers that would otherwise need to be constructed;
2. Encouraging the placement of Towers and Telecommunications Facilities in unserved and underserved areas of the Navajo Nation;
3. Conducting a Compliance Determination (biological and cultural compliance) consistent with Navajo law and land use policies and the General Leasing Regulations, and submit the compliance determination to the Federal Communications Commission (“FCC”).

Definitions:

- A. Accessory Equipment: Any equipment serving or being used in conjunction with a Telecommunications Facility or Tower for communications purposes. This equipment includes, but is not limited to, utility or transmission equipment, converters, power supplies, fuel tanks, generators, batteries, cables, wiring, equipment buildings, equipment cabinets and storage sheds, shelters or other structures.
- B. Allotted Lands: Individually owned federal trust acreage.
- C. Antenna(e): Any device used to collect or radiate electromagnetic radio frequencies for the provision of wireless communications services, including but not limited to, cellular, paging, personal communications services (PCS), public safety, broadcast radio and television, and microwave communications. Such devices include, but are not limited to, directional antennae, such as panels, microwave dishes and satellite dishes, and omnidirectional antennae.
- D. Authorized Occupant: Any lessee or permit holder who has been issued a valid approved instrument by the Navajo Nation or the BIA that is currently in effect.
- E. Ballasted Support Structure: Ballasted base frame supporting a monopole, without placement of foundations or footings in the ground.
- F. Carrier of Last Resort or COLR: A carrier that is required by law or commits to provide service to any customer in a service area that requests it, even if serving that customer would not be economically viable at prevailing rates. The carrier will be regulated by the state in which they are located and certified as such.
- G. Cell on Wheels (“COW”): A portable self-contained cell site that can be moved to a location and set up to provide local wireless services on a temporary or emergency basis. A COW is normally vehicle or trailer-mounted and contains a telescoping boom as the antenna support structure.
- H. Cell on Light Truck (“COLT”): A portable self-contained cell site that is located on a light truck and can be used to provide local wireless services on a temporary or emergency basis.
- I. Collocate: means to install, mount, maintain, modify, operate, or replace Telecommunications Facilities on or adjacent to an existing Tower or Utility Pole. “Collocation” has a corresponding meaning.

- J. Collocation Permit: means a permit issued to a Collocator authorizing installation of Telecommunications Facilities and/or Accessory Equipment.
- K. Collocation Site Lease: means a lease of space on a Non-Tower Structure to a communications provider.
- L. Collocator: A person or company that places equipment on a Tower or Non- Tower Structure and is not the owner or lessee of the tower.
- M. Navajo Nation Fee Lands: Lands partially or wholly owned in fee-simple by the Navajo Nation.
- N. Navajo Nation: Shall be defined in the same way as the definition found in 16 N.N.C. §2203 (F) of the Navajo Nation Civil Trespass Act.
- O. Navajo Nation Land(s): Shall be defined in the same way as the definition found in 16 N.N.C. §2203 (H) of the Navajo Nation Civil Trespass Act.
- P. New Land Disturbance: Any action by any person that would result in any ground disturbance (either laterally or with vertical depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this definition, “ground disturbance” means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils.
- Q. Non-Tower Structure: Such man-made structures as Utility Structures, buildings, and water tanks, which are not Towers.
- R. Permit: A permit or license given by an authorized public official or agency to allow a person or business to perform certain acts with respect to the maintenance, ownership, or operation of a Tower or Telecommunications Facilities, and shall include Collocation Permits and TTPs.
- S. Person: Shall be defined in the same way as the definition found in 16 N.N.C. §2203 (K) of the Navajo Nation Civil Trespass Act.

AA. Previous Instrument: Revocable Use Permit, Permit, Resolution, Rights-of-Way, or any other instrument, waiver or concession previously issued and approved by any entity to allow telecommunication use on Navajo Nation Land.

BB. Single Residence: A single or multi-extended family home, or small group of extended family residences, within a homesite(s), including hooghans.

EE. Substantial Modification: Means a proposed modification or replacement to an existing Tower or Utility Structure which will substantially change the physical dimensions of the Tower or Utility Structure under the objective standard for substantial change adopted by the Federal Communications Commission pursuant to 47 C.F.R. § 1.40001, or a proposed modification of the equipment compound boundaries in excess of the site dimensions specified in Section III.B of 47 C.F.R. Part 1, Appendix C.

FF. Telecommunications Facility: means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) coaxial or fiber-optic cable that is between wireless structures or Utility Structures or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.

GG. Telecommunications Tower Leases: Leases of Navajo Nation Land approved by and entered into by NLD for the erection of new Towers, or the rights to continue to lease land underlying existing Towers.

HH. Tower: A structure designed and erected as its primary purpose to support Telecommunications Facilities, including, but not limited to, monopoles, guyed, self-support, and lattice style towers.

II. Utility Structures: means a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function; provided, however, such term shall not include Towers or electric transmission structures (other than such electric transmission structures as are owned or controlled by any utility owned or controlled, in whole or in part, by the Navajo Nation).

§ 4. Scope and Applicability

These Regulations apply to all Towers and Telecommunications Facilities and related equipment or improvements placed on Navajo Nation Lands and on Non-Tower Structures located on Navajo Nation Lands by any Person, except that the following communications facilities and infrastructure are not subject to these Regulations:

- A. Fiber optic cable requiring a right-of-way under 25 C.F.R. Part 169;
- B. Antennae used by a Single Residence solely for personal communications;
- C. Cellular signal booster used solely for a Single Residence;
- D. Satellite reception antennae used solely for a Single Residence; and
- E. Communications equipment and facilities used by parties holding valid business leases or other permits, licenses or grants from the Navajo Nation for commercial operations, provided any such communications equipment and facilities does not create a ground disturbance as is used for the internal communications needs of the party and not for direct revenue generation or use by the public at large.

§ 5. Jurisdiction

Intentionally Deleted.

§ 6. Requirement for Neutral Hosting and Collocation on Existing Towers

All Towers on Navajo Nation Land shall be made available on a non-discriminatory basis by the applicable Tower owner for subleasing to other tenants/telecommunications providers at commercially reasonable rates to be determined by the Tower owner based on factors such as proposed height and location of the Telecommunications Facilities (RAD center), availability of loading, length of term, and amount of ground space requested, where such Towers are physically capable of supporting such Collocation based upon ANSI/TIA-222 Rev H standards, or such revised tower industry standards as may be subsequently published by the

Telecommunications Industry Association (the “TIA Standards”). Preference shall be given to Collocation on existing Towers (including prior to Collocation on Non-Tower Structures) over granting rights to develop new Towers. NLD shall review applications for construction of new Towers and, as part of its review, shall examine whether an existing Tower can support the requested Telecommunications Facilities intended to be installed on the new Tower based on proximity to the location of the proposed new Tower, structural/loading capacity of the existing Tower (including any proposed modifications to the existing Tower to support additional loading), and whether there would be a material and adverse impact upon the functionality or quality of the network proposed to be served by the Telecommunications Facilities if located on the existing Tower as compared to the proposed new Tower, and shall make recommendations to the Department Manager of NLD. An existing Tower shall be presumed to be acceptable for Collocation (and an application for a new Tower shall be denied unless such presumption is rebutted to the satisfaction of the Department Manager of NLD) if the existing Tower is located within a half mile radius of the location of the proposed new Tower and if the existing Tower can support the additional loading of the proposed Telecommunications Facilities or would require less than \$50,000 in modification costs to reinforce the existing Tower to support such additional loading. Any dispute or complaint by a party seeking to Collocate on a Tower or Non-Tower Structure relating to discriminatory treatment or alleging non-commercially reasonable terms by the owner of the Tower or Non-Tower Structure shall be heard and decided by the NNTRC within forty-five (45) days of filing of a formal complaint with NNTRC, and NNTRC will take appropriate actions as authorized under the Telecommunications Act. If the complainant wishes to appeal the decision of NNTRC, such party may do so by filing a notice of appeal pursuant to 21 N.N.C. 516 and following the appeals process set forth therein until final resolution. The Department Manager of NLD, upon recommendation from GLDD, may consider whether a Tower owner has acted in a non-discriminatory manner with respect to third party collocators in determining whether to renew or modify a Telecommunications Tower Lease.

§ 7. Treatment of Leases and Rights Effective Prior to these Regulations

A. Transfer to New Standard Lease Form for Prior Existing Leases and Rights

All leases and other rights existing as of the date of these Regulations and granting to any party the use of Navajo Nation Lands or Navajo Nation Non-Tower Structures for communications purposes shall be transferred to substantially the form of Lease attached as Appendix 1 at the earliest possible time, as more particularly set forth in these Regulations.

i. Transfers of Non-BIA/Non-Lease Rights

All valid and effective current Rights-of-Way, Revocable Use Permits, Permits, Resolutions and any other instrument (other than leases) relating to Towers, or Collocations on Non-Tower Structures or Utility Structures (including any such structures owned or used by utility companies operating for the benefit of the Navajo Nation) (“Non-BIA/ Non-Lease Rights”) shall be transferred and converted to Leases at the earliest date permissible without breaching the terms of any such grants. To the extent any such Non-BIA/Non-Lease Rights are terminable, notice of termination shall be deemed to have been given on the effective date of these Regulations.

ii. Transfers of BIA/Lease Rights

Any Revocable Use Permit, Right-of-Way, Permit, lease or other instrument that was issued by the Bureau of Indian Affairs, and any lease issued by the Navajo Nation to any party, including any utility companies operating for the benefit of the Navajo Nation (collectively “BIA/Lease Rights”), which BIA/Lease Right is for Towers, Telecommunications Facilities, COWs, COLTs, Collocations on Non-Tower Structures or Utility Structures, or any other communications related use will expire, if not already expired, 5 years from the date of the original lease or other instrument, unless an earlier expiration or termination is set forth or permitted therein, in which case they will expire upon such earlier expiration or be deemed to receive notice of termination as of the effective date of these Regulations.

iii. Timeline and Grace Period for Execution of New Leases

All holders of Non-BIA/Non-Lease Rights and BIA/Lease Rights that have expired or are terminated on the effective date of these Regulations in accordance with Section 7.A.i. and ii. above shall have four (4) months from the effective date of these Regulations (subject to extension of one (1) month in the event of a force majeure event or due to delays by NLD) to obtain a valid Lease pursuant to these Regulations. Holders of any other Non-BIA/Non-Lease Rights and BIA/Lease Rights that have not expired or are not terminated as set forth in this Section 7 shall apply for and obtain a new valid Lease at least four (4) months prior to expiration of their existing rights. An extension beyond the four (4) month period or beyond expiration of an existing

right may be considered upon request to the Department Manager of NLD and may be granted or denied in his/her sole discretion based on the following considerations: a) such party shall have applied for a new Lease as soon as reasonably possible, not unnecessarily delayed application for a new Lease, and acted in good faith to obtain a new Lease as quickly as possible so as not to unnecessarily extend the duration of the expired or terminated right; and b) the application is not complete due to a delay in obtaining grazing official approval.

iv. Application Process for Transfers to Leases

Applications for transfers to Leases shall comply with the Lease Application Checklist attached as Appendix 2 to these Regulations and shall not be deemed complete until all items on the Application Checklist have been submitted and approved. Upon submission of a complete application, the Department Manager of NLD may enter into and execute a Lease in substantially the form attached as Appendix 1 to these Regulations. So long as the land use area subject to the Lease has not been modified or expanded beyond the prior area and use, the Department Manager of NLD may, in his/her sole discretion, in lieu of obtaining new or updated versions, accept resubmission of any prior approved environmental and cultural compliance documents, clearances, and surveys.

v. Prohibitions on Transfers to Lease

No transfer to Lease under this Section 7 shall be permitted or processed if the transfer applicant has not paid all current, past due or uncollected amounts of rent, permit fees, taxes or other fees due to the Navajo Nation, or is otherwise not in compliance with the laws of the Navajo Nation. It shall be the responsibility of each applicant for a transfer to Lease to provide evidence that all payments for the underlying interest are current.

§ 8. New Leases; Modifications; Collocations and Collocations Permits

A. Telecommunications Tower Leases for New Communications Sites

i. Leases Required

All requests for the use of Navajo Nation Land for communications

infrastructure or any infrastructure with a primary use of providing communications equipment and services, including Towers, if approved in accordance with these Regulations, shall be fulfilled by use of a Telecommunications Tower Lease in substantially the form attached as Appendix 1. Permits, easements, rights-of-way, licenses, revocable use permits, separate resolutions, waivers, concessions, and all other types of rights or interests that are not a Lease substantially in the form of Appendix 1 shall not be permitted, granted, or used for communications infrastructure of any sort. Business site lease holders shall not enter into leases or grant rights to third parties to use any of the premises granted under the business site lease for communications purposes.

- ii. Telecommunications Tower Leases shall be in substantially the form attached as Appendix 1. Each Telecommunications Tower Lease shall ensure that there is adequate ingress and egress to a public road. If there are no adequate existing roads to be used for ingress and egress and roadways need to be improved or created, the holder of the Telecommunications Tower Lease must apply for a Right-of-Way separately through GLDD.
- iii. Applications for Telecommunications Tower Leases for new communications sites shall comply with the Lease Application Checklist attached as Appendix 2 to these Regulations and shall not be deemed complete until all items on the Application Checklist have been submitted and approved. Upon submission of a complete application, the Department Manager of NLD may enter into and execute a Telecommunications Tower Lease in substantially the form attached as Appendix 1 to these Regulations.
- iv. To obtain a Telecommunications Tower Lease, the applicant must obtain reviews and approvals to comply with the General Leasing Regulations, the Land Withdrawal Regulations, and the Telecommunications Act. The reviews include:
 - a. Biological Resources Compliance Form, obtained from the Navajo Nation Department of Fish and Wildlife, and permission to proceed or mitigation actions that must be taken prior to proceeding. If the Navajo Nation Department of Fish

and Wildlife does not provide a response within thirty (30) days of request, it shall be deemed to have granted permission to proceed without any mitigation actions required;

- b. Cultural Resources Compliance Form, obtained from Navajo Nation Department of Historic Preservation, and permission to proceed or mitigation actions that must be taken prior to proceeding. If the Navajo Nation Department of Historic Preservation does not provide a response within thirty (30) days of request, it shall be deemed to have granted permission to proceed without any mitigation actions required;
- c. Compliance Determination by GLDD. If GLDD does not provide a response as to its Compliance Determination within thirty (30) days of request, GLDD shall be deemed to have approved the application as in Compliance. Notwithstanding anything to the contrary, Compliance Determinations are not required for Collocations, COWs, COLTs, or temporary Ballasted Structures, or on already disturbed land for which an environmental review has been previously conducted; and
- d. Grazing Official Consent. The applicable grazing official shall be consulted as early in the application process as practical. In the event a grazing official has not responded with an approval or denial prior to expiration of the 150 day review period identified in clause (v) below, the grazing official shall be deemed to have consented and approved the proposed location for the Telecommunication Tower Lease; provided, however, in no event shall a grazing official have less than sixty (60) days to respond (which period may extend the 150 day review period below). It shall be the obligation of the applicant to prove with certainty that a request has been made to the applicable grazing official, and the date such request was made.
- e. Chapter Resolution. A Chapter Resolution acknowledging the proposed new tower site shall be requested from the applicable Chapter. After request, each Chapter shall have thirty (30) days to review and issue the acknowledgment. If a Chapter fails to issue a written acknowledgment within such thirty (30) day

period, the Chapter shall be deemed to have issued its acknowledgment for finalization of the approval of the Lease. If a Chapter provides a detailed written objection to the location of the Lease (and such objection may only be as to location and not as to any other aspect of the proposed Tower), such objection shall be submitted to the Department Manager of NLD for review. If the Department Manager agrees with the objections noted by the Chapter, the Lease at the proposed location shall be denied and the applicant shall be free to resubmit a new application for a new location. If the Department Manager disagrees with the objections noted by the Chapter, the applicant may submit the issue to RDC for ultimate review and determination.

All of these departmental requests may be pursued in parallel to provide for expedited timing on overall reviews of applications.

- v. Applications for Telecommunications Tower Leases for construction of new Towers shall be reviewed and approved or denied in writing within one hundred fifty (150) days of receipt of the application and relevant supporting documentation. NLD, in reviewing such applications, shall take into consideration the factors set forth in Section 6 above, as well as the following:
 - a. The proposed location of the Tower and any historic or cultural significance of the proposed location,
 - b. The amount of ground space required and availability of such ground space,
 - c. Safety and security of the Tower and the public, including fencing surrounding the Tower compound and other components, including generators,
 - d. Availability of nearby Towers capable of supporting the proposed Anchor Collocation in lieu of construction of a new Tower,
 - e. execution of an acceptable Telecommunications Tower Lease between NLD and the owner of the Tower in substantially the form attached as Appendix 1 as may be updated from time to time,
 - f. such other items as may reasonably be requested by NLD.

B. Modifications

- i. Any modifications to a Telecommunications Tower Lease to increase the area of land granted as the premises under the Telecommunications Tower Lease require approval by NLD and compliance with NLD's procedures, and may include an increase in rent payable for the premises and compliance with Land Withdrawal Regulations, if applicable. Any expansion of premises hereunder shall not require a new grazing official approval beyond any approval previously obtained for the Telecommunications Tower Lease as long as the expansion of the compound or premises is not a Substantial Modification.
- ii. Modifications to add or replace equipment on any Tower or Non-Tower Structure must first be notified in writing to NLD and, for Non-Tower Structures, must obtain NLD approval prior to installation. If NLD requests, the applicant shall provide a structural analysis for the Non-Tower Structure under the TIA Standards inclusive of the proposed modifications, additions or replacements. If the structural analysis indicates a failure, such modifications, additions or replacements shall be deemed denied. If a Substantial Modification is required, the applicant shall follow the procedures for Substantial Modifications set forth herein. Notwithstanding anything to the contrary, like for like exchanges or exact replacements of equipment shall not require notice or approval.
- iii. NLD is authorized to create and maintain copies of standard procedures and checklists, and update same, for all modifications to ground space and modifications to equipment for Towers and Non-Tower Structures.

C. Collocations

- i. On Towers
 - a. If the following requirements are met, any proposed Collocation on

Towers shall be permitted by right (i.e., no special use, conditional permit, or variance will be required):

1. Written notice of the Collocation, together with a copy of the applicable subtenant lease or a certified summary thereof, inclusive of economic terms, is provided to NLD at least twenty (20) days prior to the proposed installation of the Telecommunications Facilities (the “Review Period”).
2. A copy of a structural analysis of the Tower, inclusive of the proposed Telecommunications Facilities, is provided to NLD within the Review Period, and such structural analysis indicates that the Tower will not fail under the TIA Standard upon installation of such proposed Telecommunications Facilities.
3. The Collocation will not require a Substantial Modification.
4. The applicant obtains and pays for a Collocation Permit as more particularly set forth below.

A proposed Collocation on a Tower that does not satisfy the permitted by right requirements of this paragraph C(i) shall require prior review and approval by NLD; provided, however, if NLD has not approved or denied such proposed Collocation within ninety (90) days of the date of receipt of all necessary information relating to the Collocation (including structural analysis and proposed height and area for a Substantial Modification, if applicable), such proposed Collocation shall be deemed approved. Once approved and upon receipt of the applicable payment, the applicant shall receive a Collocation Permit as described below.

ii. On Non-Tower Structures

All Collocations on Non-Tower Structures owned, controlled, or operated for the benefit of the Navajo Nation must obtain a Collocation Site Lease from NLD. Collocations on all other Non-Tower Structures shall require issuance of a Collocation Permit.

- a. All Collocations of Telecommunications Facilities on Non-Tower Structures and any Accessory Equipment shall not extend more than

15 feet above the highest part of the existing Non-Tower Structure unless specifically approved by NLD upon reasonable justification for the need to extend higher than such 15 feet.

- b. Any proposed Collocation on Non-Tower Structures owned, controlled, or operated by or on behalf of the Navajo Nation or a utility owned or controlled, in whole or in part, by the Navajo Nation, shall be subject to the prior review and approval of NLD, which shall examine, among other things:
 1. the proposed location of the Telecommunications Facilities on buildings or other occupied Non-Tower Structures,
 2. a structural analysis showing the Non-Tower Structure is capable of supporting the proposed Collocation,
 3. methods of attachment,
 4. aesthetics,
 5. safety and security,
 6. availability of nearby Towers capable of supporting the Telecommunications Facilities,
 7. historic or cultural significance of the Non-Tower Structure,
 8. ease of access to the Telecommunications Facilities on the Non-Tower Structure for ongoing maintenance and repair, and
 9. execution of an acceptable Collocation Site Lease between NLD and the party seeking to Collocate equipment in substantially the form attached as Appendix 3. If the requested Collocation is on a Utility Structure, the applicant shall also provide an acknowledgement letter from the utility owner/agency of the Utility Structure indicating it has received notice of the proposed Collocation and that the Telecommunications Facilities to be installed at the proposed location upon the Utility Structure would not interfere with or impede the successful operations of the utility. If such acknowledgement letter or a written objection detailing the reason for the objection by the utility is not provided within thirty (30) days of request by the applicant, the utility owner/agency shall be deemed

to have acknowledged and consented to the proposed Collocation.

- c. In the event the Non-Tower Structure is a Utility Structure owned or controlled by, or operated for the benefit of, the Navajo Nation (including any such Utility Structures utilizing Nation resources), the utility entity may continue to operate its utility functions on such Utility Structure; however, all Collocations of Telecommunications Facilities other than those used by the utility provider solely for its own internal communications network shall require Collocation Site Leases with NLD (and any such existing site leases on applicable Utility Structures shall be assigned by the Utility to NLD or transferred to lease as set forth in Section 7(a)).
- d. Any application to place Telecommunications Facilities and/or Accessory Equipment on a Non-Tower Structure not owned by the Navajo Nation or a public utility owned or controlled by, or serving the Navajo Nation, and which Non-Tower Structure is located on Navajo Nation Land, shall obtain a Telecommunications Collocation Permit (“Collocation Permit”) issued by NLD to authorize installation of the Telecommunications Facilities and/or Accessory Equipment. NLD shall review an application for a Collocation Permit in accordance with the procedures set forth in these Regulations and shall take into consideration the factors set forth in Section 8(C)(ii)(b).

D. Collocation Permits

All installation of Telecommunications Facilities and Accessory Equipment, whether in connection with Collocations on Tower or on Non-Towers Structures, shall require receipt of a Collocation Permit issued by NLD in accordance with this Section.

- i. A Collocation Permit may only be issued for placement of Telecommunication Facilities and Accessory Equipment on Towers and Non-Tower Structures that are situated on a valid surface lease or on land withdrawn for Navajo Nation or federal governmental purposes, and where such placement will not cause any New Land Disturbance. The Collocation Permit applicant must have written permission from the Authorized Occupant, and the Authorized Occupant must be in compliance with all Navajo Nation laws, including payment of rent and any taxes due.

- ii. Collocation Permits are issued pursuant to the Nation's authority as a sovereign Indian government and convey no possessory interest in Navajo Nation Land.
- iii. If approved for issuance, the Collocation Permit shall permit installation of only the Telecommunication Facilities and Accessory Equipment identified in the application, shall be necessary only in connection with the initial installation, and shall be issued upon payment of a permit fee of \$500. Any installation of additional Telecommunications Facilities or Accessory Equipment shall require application for an additional Collocation Permit. Exact replacements or like for like replacements shall not require issuance of a new Collocation Permit.

§ 9. Leases on Allotments

The DNR and its departments do not have jurisdiction to enter into leases on allotments. However, notification that a communications lease has been entered into on a Navajo allotment must be sent in writing to NLD and NNTRC within fifteen (15) days of entering into such lease. Any leases on allotments must still comply with all laws and regulations of the Navajo Nation and the Federal Communications Commission. Violators will be subject to enforcement as set forth in these Regulations.

§ 10. Leases on Encumbered Trust Land

This section applies to any and all Leases, Permits, and other land rights that are administered or granted by NLD, GLDD, DNR and NNTRC on encumbered Trust land.

- A. If a party desires to develop a Tower on a parcel of land that has an existing business site lease or is withdrawn for a specific purpose, the lessee or party holding an interest in such land ("Other User") must relinquish that portion of the land where the Tower is intended to be developed. The relinquished portion of land must be resurveyed and otherwise comply with all of the requirements and procedures for obtaining a Telecommunications Tower Lease. The Other User must consent to the development of a Tower on the relinquished portion of land, which consent will be evidenced in an amendment to the original lease or other right granted to such Other User also reflecting the relinquishment of the applicable portion of land.

- B. An Other User cannot receive rents, compensation or receive anything of value from a Tower or owner of a Tower on Navajo Land, or from relinquishing a portion of its land.

§ 11. Leases on Navajo Nation Fee Land

- A. Telecommunications Tower Leases may be entered into on Navajo Nation Fee Land following the same leasing and permitting processes set forth in these Regulations in Sections 6 through 8. Permission from the Authorized Occupant of such fee land must be produced to NLD as part of the application process.
- B. The original lease or other right granted between the Navajo Nation and the Authorized Occupant must be amended to allow for the additional use.

§ 12. Temporary Telecommunications Permits

- A. Every Person seeking to temporarily place any non-permanent communications structure, including COWs, COLTs, or Ballasted Support Structures on Navajo Nation Land is required to obtain a Temporary Telecommunications Permit (“TTP”) issued by NLD.
- B. TTPs will only be issued for placement on land that is: already disturbed or authorized to be disturbed pursuant to a valid surface lease or authorized to be disturbed within a land withdrawal area because the site has gone through a satisfactory federal or Navajo Nation environmental review. Placement of a COW, COLT or Ballasted Support Structures on Navajo Nation Land where these conditions are not met shall require a Lease which may be short-term in nature if requested by the applicant.
- C. Issuance of a TTP is subject to the express written permission of the Authorized Occupant of the encumbered or withdrawn Navajo Nation Land.
- D. TTPs are issued pursuant to the Nation’s authority as a sovereign Indian government and convey no possessory interest in Navajo Nation Land.
- E. The maximum term of a TTP shall be 90 days and may be renewable for additional 90-day periods not to exceed two hundred seventy (270) days in total upon petition to NLD. Should an emergency repair situation on a tower occur, temporary approval may be granted via email by NLD, and the formal application for a TTP shall

be submitted within fifteen (15) days of any temporary email approval.

F. A TTP may be revoked at any time and for any reason by NLD upon 15 days' notice to the permit holder, after which the owner of the COW, COLT or Ballasted Support Structure shall have 15 days to remove the Structure and restore the land to its original condition. Failure to comply shall result in a daily running fine of \$500 per day.

G. A TTP shall be revoked by NLD upon a written request by the Authorized Occupant of the encumbered or withdrawn land. In the event of a revocation of the TTP through no fault of the permit holder, the permit holder shall be entitled to reimbursement from the Nation for any additional term paid by the permit holder after revocation. In no event shall the Nation be responsible for reimbursement of any payments made to the Authorized Occupant by the permit holder.

H. The Department Manager of NLD shall set reasonable rates and fees for the issuance of TTPs.

§ 13. Lease, Permit and TTP Rentals and Fees.

Notwithstanding the General Leasing Regulations §2234, the Department Manager of NLD is authorized to determine reasonable market rental rates and fees for each Lease, Permit, or TTP pursuant to 16 N.N.C. §2234 of the General Leasing Regulations. Reasonable market rates shall take into consideration the location and size of the land for Telecommunications Tower Leases requested, the windloading and type of Telecommunications Facilities and Accessory Equipment to be installed on a Non-Tower Structure in a Collocation Site Lease, any public benefit, whether the applicant is a Certified Carrier of Last Resort, and such other factors as may be applicable. The Department Manager of NLD may rely on information submitted by third parties to establish reasonable market rates based on the size and location, and competitive market forces, for Leases. In no event shall the Department Manager of NLD enter into Leases for no or nominal consideration without prior approval from RDC; provided however, the following agencies of the Navajo Nation shall be presumed to be permitted to Collocate for no or nominal consideration payable to Nation so long as the purpose of the Collocation is to fulfill such agencies' primary mandates and is not for the use of third party communications providers: Department of Education, Navajo TV, NTUA, NNTU, NDOT, Navajo Nation police departments and first responders, and such other Navajo Nation agencies involved in providing public health, safety, education and irrigation services. In addition, any application requesting a reduction or elimination of rent or fees by a COLR shall include proof of state certification as a COLR, the location of Tower and Non-Tower Structures for which such reduction or elimination of rent or fees applies to, an indication of the number of households served by such COLR as such locations, and a full financial analysis justifying any reduction or elimination of rent or fees.

§ 14. Enforcement of Terms and Conditions of Telecommunications Tower Leases, Permits and These Regulations.

A. The DNR Executive Director shall be responsible for enforcing the contract terms and conditions of Telecommunications Tower Leases, Collocation Site Leases, Collocation Permits, TTPs on Navajo Nation Lands, and the provisions of these Regulations.

B. Failure to obtain a Lease, Collocation Permit, or TTP, as applicable, in compliance with these Regulations for the development and siting of a new Tower or for installation of Telecommunications Facilities and Accessory Equipment, and failure to renew or maintain any such rights while continuing to operate or install a Tower or Telecommunications Facilities and Accessor Equipment, shall be a civil trespass. Pursuant to 16 N.N.C §2282, the DNR Executive Director may issue a Notice of Trespass and Order to Comply. If the requirements in the Notice of Trespass and Order to Comply are not met, the violators may be charged with a civil trespass assessment as authorized under such Act, and may also subject such Persons to a civil sanction, including, but not limited to, the exclusionary process included in 17 N.N.C. § 1901 and fines and penalties as may be assessed by the DNR Executive Director pursuant to the Telecommunications Act at 21 N.N.C. §506.

§ 15. Design Requirements

A. For Towers

Unless a variance is approved by the Department Manager of NLD in his/her sole discretion based upon a reasonable and justifiable basis for such request, the following design requirements shall apply to development of all Towers from and after the effective date of these Regulations:

1. Tower height and registration must comply with requirements established by the FCC and Federal Aviation Administration (FAA) requirements and is otherwise subject to the approval of NLD if taller than 150 feet above ground level.
2. A tower blueprint approved and stamped by a certified engineer shall be

submitted to NLD with a description of the proposed Tower.

3. Accessory Equipment, including any buildings, cabinets, or shelters shall be used only to house equipment and other supplies in support of the operation of the Telecommunications Facility or Tower. Any equipment not used in direct support of such operation shall not be stored on the site.
4. Buildings or shelters shall be covered with materials that are compatible with the surrounding development and landscape.
5. All anticipated antennae and mounting hardware shall be shown on drawings for review.
6. All cable runs and conduits should be through tower portals and within the Tower itself. Other than on lattice towers, where cable is required to be located on the exterior of a tower for Collocation of additional antennae, the cable shall match as closely as practicable the tower color.
7. Tower shall not be lighted or marked unless required by the FCC or FAA.
8. Towers and all related equipment and improvements shall be secured and enclosed with fencing not less than six feet in height and may include up to three strands of barbed or razor wire at the top.
9. No third-party advertising or display is permitted on any Telecommunication Facility or related equipment. All Towers must clearly include the FCC required Antenna Structure Registration and contact information for the tower owner, and relevant warning signs.
10. The Department Manager of NLD in his discretion may require Towers to be developed with concealment measures.

B. For Collocations on Non-Tower Structures

Any Collocations on Non-Tower Structures, such as Navajo Nation or commercial buildings, water towers, or other structures, must coordinate with the building owner, the

appropriate Navajo Nation office (such as Facilities Maintenance) if it is a government building, and NLD for approval of the proposed equipment and location of the Collocation. Any damages caused by Collocators on a Non-Tower Structure shall be the sole responsibility of the Collocator.

§ 16. Abandonment

Any Telecommunications Facility or Tower that is not operating as evidenced by removal or lack of communications equipment, lack of electricity to the site, or lack of any transmission or reception of radio frequencies for a period of 180 consecutive days shall be deemed abandoned. In such event, any Lease, Permit, TPP, or any other right or grant for the use of land or a Non-Tower Structure shall no longer be valid, cannot be transferred or assigned, and any such Telecommunications Facilities or Towers shall become the exclusive property of the Navajo Nation and may be resold or leased by the Nation unless the owner of the Telecommunication Facility or Tower removes such property and restores the land or Non-Tower Structure to substantially the condition it was in prior to installation of the relevant equipment and improvements. If Telecommunications Facilities or Towers are abandoned and the Navajo Nation takes ownership of same, such property uninstalled, dismantled and removed, and the last owner of record shall be liable for the total cost of removal plus a ten percent (10%) administration fee.

§ 17. Compliance with Laws; Non-Interference; Navajo Preference

A. Federal and Navajo Nation Regulations: All Telecommunications Facilities and Towers must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the Navajo Nation or Federal Government with the authority to regulate Telecommunications Facilities and Telecommunications Carriers.

B. Interference Requirements: All Telecommunications Facilities shall be installed, operated, and maintained in accordance with all applicable laws, regulations, and ordinances so as not to interfere or cause interference with existing communications including, but not limited to, other carrier systems, radios, televisions, computers, and the Navajo Nation's or other public entity's emergency broadcast systems.

C. Maintenance: Ordinary Maintenance of Telecommunications Facilities and Towers shall be exempt from permitting/approval requirements. This includes subcontracting with other companies to perform maintenance.

D. All owners of Telecommunications Facilities and Towers shall endeavor to

contract and employ Navajo companies and workers for any site maintenance, inspections, tower climbing (if certified), and repair and maintenance work, to the extent available and commercially reasonable within the workforce.

§ 18. Taxes

All owners, lessees, and operators of Telecommunications Facilities and Towers shall register with the Office of the Navajo Tax Commission, shall comply with all applicable Navajo Nation tax laws under Title 24 of the Navajo Nation Code and corresponding regulations, and shall be responsible for payment of all taxes due to the Navajo Nation in connection with their ownership of possessory interests, and gross receipts from sales and business activities, within the territorial jurisdiction of the Navajo Nation. In particular, such parties are responsible to determine and satisfy all liability for the following taxes payable to the Nation:

A. Navajo Nation Sales Tax, at the prevailing rate, on gross receipts for all work performed within the territorial jurisdiction of the Navajo Nation pursuant to 24 N.N.C. §§601 *et seq.*, and the Navajo Nation Sales Tax Regulations §§6.101 *et seq.*, as amended from time to time. Except that work performed within the jurisdictional boundaries of the To’Nanees’Dizi Local Government (Tuba City Chapter) or the Kayenta Township is subject to their respective local sales taxes as amended from time to time and shall be paid directly to Tuba City Chapter or the Kayenta Township. In addition to being subject to Navajo Nation Sales Tax, all owners, lessees, and operators of Telecommunications Facilities and Towers shall be subject to local sales tax on gross receipts for all work performed within a governance-certified chapter that imposes a local sales tax pursuant to a duly enacted local tax ordinance and the Uniform Local Tax Code, 24 N.N.C. §§150 *et seq.* Such local sales taxes shall be paid to the Office of the Navajo Tax Commission on behalf of the governance-certified chapters.

B. Possessory Interest Tax (PIT) pursuant to 24 N.N.C. §§201 *et seq.*, and the Navajo Nation Possessory Interest Tax Regulations §§1.201 *et seq.*, as amended from time to time, at the prevailing tax rate established under 24 N.N.C. §206, based on the valuation method determined by the Office of the Navajo Tax Commission subject to 24 N.N.C. §205; and

C. Any other applicable Navajo Nation taxes under Title 24 of the Navajo Nation Code and corresponding regulations.

§ 19. Penalties for failure to comply with these regulations

These Regulations will be enforced by the DNR Executive Director pursuant to the Navajo Nation Trespass Act, found at 16 N.N.C. § 2201 *et seq.*; and the General Leasing

Regulations, found at 16 N.N.C. § 2301 *et seq.*, and such other penalties as may be enacted from time to time by RDC pursuant to resolution or amendment to these Regulations.

§ 20. Emergency Exclusion

COWs, COLTs, or Ballasted Support Structures placed for a period of not more than 120 days after a Declaration of an emergency or a disaster by the Navajo Nation President and/or the Emergency Management Commission are excluded from these regulations. However, any party availing itself of this emergency exclusion must coordinate with Navajo Emergency Management Department and notify NLD in writing of the placement and location of all COWs and COLTs. All such structures must be removed upon the earlier of expiration of the 120-day period or the termination of the Declaration of emergency.

§ 21. Severability

If any provision of this Act or the application of such provision shall be held invalid the remainder of the Act and the application of such provision other than those held invalid shall not be affected thereby.

§ 22. Subsequent Amendments

These Regulations are intended to create uniformity, consistency, and transparency in telecommunications siting and deployment across the Nation. It is contemplated that subsequent amendments may be needed to these Regulations to address circumstances not fully detailed or addressed in these Regulations. These Regulations shall be reviewed and amended or updated from time to time by RDC. In the event of any ambiguity in provisions of these Regulations or any circumstances that are not addressed, the Department Manager of NLD and the Executive Director of NNTRC, acting unanimously, may determine such ambiguity or resolve circumstances not addressed within these Regulations; provided, any such ambiguities or decisions made by the Department Manager of NLD and the Executive Director of NNTRC shall be reported in detail no less frequently than quarterly to RDC and RDC may at such times as it deems appropriate amend these Regulations as necessary. It is the determination and will of RDC in passing these Resolutions that separate waivers, side agreements, or preferential or discriminatory arrangements not be permitted, and all benefits and burdens of these Regulations and communications operating on the Nation's land be equal as to all parties.

[END]

APPENDIX 1
FORM OF TELECOMMUNICATIONS TOWER SITE LEASE

**TELECOMMUNICATION TOWER LEASE
BETWEEN
THE NAVAJO NATION
AND**

THIS TELECOMMUNICATION TOWER LEASE is made and entered into this ____ day of _____, 2020 (the “Effective Date”), by and between THE NAVAJO NATION, hereinafter called the “Lessor,” or the “Nation,” whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and _____, hereinafter called the

“Lessee,” whose address is _____
_____. This Lease is made in accordance with the provisions of 2 N.N.C. § 501(B)(2)(a), 16 N.N.C. § 2301 *et seq.*, and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof.

1. DEFINITIONS.

(A) “Hazardous Substance” means any “hazardous substance as defined at § 2104 Q. of the NNCERCLA, 4 N.N.C. § 2101 *et seq.*, including all amendments or successors thereto.

(B) “NNCERCLA” means the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act, 4 N.N.C. § 2101 *et seq.*

(C) “Regulated Substance” means any regulated substance as defined at § 1502 V. of the Navajo Nation Underground and Aboveground Storage Act, 4 N.N.C. § 1501 *et seq.*, which includes petroleum and petroleum products.

(D) “Sublease” means an agreement between Lessee and a third party whereby Lessee subleases space at the Leased Premises to such third party, including the right to co-locate cellular antennas or other communications equipment on the tower, for ground space, for utility line access, and access to the Leased Premises, as defined in Section 2 below, all subject to the supervision and control of and responsibility of the Lessee.

(E) “Subtenant” means a third party under a Sublease providing communications services or utilities necessary for the provision of communications services at the Leased Premises.

2. LEASED PREMISES.

For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all, or a portion of, that tract or parcel of land situated within the chapter of _____, Navajo Nation, state of _____, more particularly described in the survey map with legal description attached hereto as Exhibit "A," and by this reference made a part hereof, containing approximately _____ acre(s), more or less, together with the right of reasonable ingress and egress, and the right to install utilities pursuant to Section 10 below, subject to any prior, valid, existing rights-of-way, hereinafter called the "Leased Premises." Lessor reserves and excepts from the Leased Premises rights-of-way for utilities constructed by or on authority of Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises during the Term. The Navajo Land Department ("NLD") will submit one copy of this document to BIA for recording pursuant to 16 N.N.C. §2322(B).

3. COMPLIANCE WITH LAW.

This Lease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the "Mandatory Provisions"). Incorporation of the Mandatory Provisions into this Lease is designed to assure that the Lease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Lease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Compliance with all federal and tribal historic and cultural preservation laws—specifically work cessation and notification to the Nation is required if artifacts are discovered to prevent unauthorized destruction of resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Lease be construed to waive any requirement of federal law.

Lessee agrees to comply with all federal and Navajo Nation laws, including those relating to payment of taxes, with respect to its use and operation of the Leased Premises, and not to permit any Subtenant or any other party to access, use, or operate from the Leased Premises in violation of applicable federal, state, municipal, and Navajo Nation law.

4. PURPOSE, UNLAWFUL USES.

(A) Lessee shall develop, use and occupy the Leased Premises solely for the purpose of constructing, operating and maintaining a communications tower and related communications facilities. Lessee shall fence all, or a portion, of the Leased Premises as required by applicable law and, at a minimum, shall fence and secure the tower compound and all Subtenant equipment shelters.

(B) The Leased Premises shall not be developed or used by Lessee for any purpose other than as described in Section 4(A) above.

(C) Lessee shall not use, or permit to be used, any part of the Leased Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the Leased Premises.

5. TERM.

(A) Primary Term. The Primary Term of this Lease shall be for a period of ten (10) years, commencing on the Effective Date.

(B) Renewal Terms. The Lessee shall have the option to renew the term of this Lease for three (3) additional five (5) year terms (each a "Renewal Term") provided Lessee is in compliance with the terms and conditions of this Lease at the time of its notice of exercise and as of the commencement of the applicable Renewal Term, and is not in default hereunder. If Lessee exercises its right to renew the term, Lessee shall provide written notice of exercise to Lessor no earlier than ninety (90) days and no later than thirty (30) days prior to expiration of the Primary Term or the then current Renewal Term, as applicable. To exercise its renewal option hereunder, Lessee shall send three (3) copies of the signed written notice of exercise to NLD with a self-addressed, stamped envelope. NLD will verify Lessee's compliance with the terms of the Lease and, assuming full compliance and no default by Lessee, shall return one copy of the renewal request to Lessee as evidence of the renewal. NLD will submit one copy of the renewal confirmation to BIA for recording pursuant to 16 N.N.C. §2322(B).

6. RENT.

(A) Lessee hereby covenants and agrees to pay Lessor, in lawful money of the United States, a monthly rent of \$ _____ ("Base Rent"), payable in advance on the first of each month during the term of this Lease. The first payment of Base Rent is due within fifteen (15) days of the Effective Date. Should any payment be received more than five (5) days after the date due, a late charge of 12% shall be due from Lessee immediately without notice or demand.

(B) The Base Rent shall be adjusted on each anniversary of the Effective Date by two and one half percent (2.5%) over the Base Rent amount from the immediately preceding twelve month period.

(C) In addition to Base Rent, the Lessee shall pay, at the same time and in the same manner as payment of Base Rent, additional monthly rent ("Additional Rent") in the amount of twenty percent (20%) of gross revenues (excluding any amounts for pass-through expenses or reimbursements) received by Lessee, or of the fair market value of any non-monetary consideration received by Lessee or any affiliate of Lessee, from Subtenants or any other parties at the Leased Premises.

(D) Each payment of Base Rent shall be accompanied by payment of any applicable taxes due to the Navajo Nation.

(E) Base Rent, Additional Rent, taxes and any other amounts due or payable by Lessee under this Lease shall be collectively referred to as "Rent". Should any payment of Rent be received more than five (5) days after the date due, a late charge of 12% shall be due from Lessee immediately without notice or demand. All payments of Rent under this Lease shall be addressed to, unless and until NLD provides a payment instruction notice changing such information: Navajo

Nation, Telecom Accounts Receivable, c/o Vertical Bridge AM II, LLC, 750 Park of Commerce Dr., Suite 200, Boca Raton, FL 33487.

7. CONDITION OF LEASED PREMISES.

Lessee has examined the Leased Premises and any improvements thereon and accepts the same in “as-is” condition. No representations as to the condition of the Leased Premises have been made by Lessor or any agent of Lessor, prior to or at the time of execution of this Lease. Lessee warrants that its decision to enter into this Lease is based solely upon Lessee’s independent investigation of the Leased Premises.

8. IMPROVEMENTS.

(A) All buildings and other improvements to the Leased Premises, including the tower and any equipment shelter or cabinet (collectively, the “Improvements”), as well as any and all equipment, conduits, fixtures and personal property, shall remain the property of Lessee or the applicable Subtenant during the Term.

(B) Lessor agrees and acknowledges that Lessee shall have the right to remove all property, without limitation and including, but not limited to Improvements, equipment, conduits, fixtures and personal property of Lessee, at any time during the term, up to ninety (90) days after the expiration or termination of the term. Up to ninety (90) days after the expiration or termination of the Term, at Lessee’s expense, Lessee shall remove any Improvements and all personal property in a workmanlike manner, and shall restore the Leased Premises to substantially its original state. Any Improvements which are not removed within ninety (90) days after the expiration or termination of the Lease shall become the property of the Navajo Nation without notice, demand or presentment required.

9. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.

(A) All Improvements placed on the Leased Premises by Lessee or its Subtenants shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of Improvements visible to the public or from adjacent premises shall be reasonable neat in appearance so as not to constitute a nuisance or eyesore, and all service areas shall be screened from public view upon the reasonable request of NLD.

(B) Lessee shall maintain the Leased Premises and all Improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

10. ACCESS; UTILITY SERVICE LINE AGREEMENTS.

(A) During the term, Lessee, and its guests, agents, customers, lessees, sublessees and assigns shall have the unrestricted, exclusive right to use (subject to reservations in favor of the Nation expressly set forth in this Lease), and shall have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. Lessor for itself, its successors and assigns, hereby grants and conveys unto Lessee, its customers, employees, agents, invitees,

sublessees, sublicensees, successors and assigns a nonexclusive easement (a) for ingress and egress, and (b) for the construction, installation, operation and maintenance of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement or right of way for the benefit of and access to the Leased Premises, subject to the terms and conditions herein set forth. Lessor agrees to cooperate with Lessee's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, Lessee may utilize such utilities and services.

(B) Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of electricity, fiber, and telecommunication services to the Leased Premises on the condition that:

- (1) such agreements are for the sole purpose of supplying electricity, fiber, or telecommunication services to the Leased Premises;
- (2) such agreements authorize utility service lines only within the Leased Premises or any approved areas within access or utility easements or rights of way granted by NLD;
- (3) such agreements do not extend beyond the Term of this Lease;
- (4) executed copies of such agreements, together with surveys, plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor within thirty (30) days of their execution;
- (5) such agreements make Lessee and its Sublessee solely responsible for any charges; and
- (6) such agreements are otherwise in accordance with the provisions of 25 C.F.R. Part 169.51-56, including any amendments or successors thereto.

(C) Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises intended to serve the Navajo Nation public, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises. Lessor shall notify Lessee in writing prior to entering into any service line agreements crossing the Leased Premises.

11. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.

(A) Lessee shall not permit any liens arising from any work performed, materials furnished, or obligations incurred by Lessee to be enforced against the Leased Premises, any interest therein or any Improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.

(B) Lessee shall pay, before becoming delinquent, all property, sales, use or gross receipts taxes or assessments, or any other taxes or charges levied upon or against the Leased Premises or upon Lessee by the Navajo Nation or any other taxing authority, including any interest therein or any Improvements thereon. Upon request by Lessor, Lessee shall furnish Lessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom.

(C) Lessee agrees to protect and hold harmless Lessor and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith.

(D) Lessee shall pay, before becoming delinquent, all charges for electricity, fiber and telecommunication services supplied to the Leased Premises. Lessee may permit Sublessees to pay such charges directly, but in the event of nonpayment by Sublessee, Lessee shall be responsible for paying such charges.

(E) Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Lessor, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the greater of (a) twelve percent (12%) per annum, or (b) the highest allowable rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee. Interest shall accrue from the date of payment or incursion thereof by Lessor until repayment is made by Lessee, without requirement for notice or demand by Lessor.

12. ASSIGNMENTS.

Lessee shall not assign, convey, or otherwise transfer this Lease, directly or indirectly, whether by merger, sale of equity, restructuring, conversion, foreclosure or conveyance in lieu of foreclosure, or otherwise (a "Transfer"), without the prior written approval of Lessor. Any attempted Transfer without Lessor's prior written approval shall be void and of no effect and shall constitute a default under this Lease, which default is not capable of being cured and shall permit Lessor to take any remedies available to Lessor pursuant to this Lease. The approval of Lessor to any Transfer may be granted, conditioned, or withheld in the sole discretion of Lessor. Notwithstanding the foregoing, Lessor's consent shall not be required for a Transfer of this Lease upon written notice of the Transfer to Lessor by Lessee and confirmation, along with supporting documentation as reasonably requested by Lessor, that: (a) the Transfer is to an affiliate of Lessee that has at least fifty percent (50%) direct or indirect ultimate beneficial common ownership with Lessee, or (b) the Transfer is to a party that acquires all or substantially all of Lessee's assets.

13. INTERFERENCE WITH NAVAJO NATION OWNED FACILITIES.

Lessee acknowledges that all telecommunications activities on lands of the Nation, as the Nation is defined by 7 N.N.C. § 254, are under the jurisdiction of and regulated by the Navajo

Nation Telecommunications Regulatory Commission (NNTRC), in accordance with the Telecommunications Regulatory Act, 21 N.N.C. §§ 501 *et seq.* Lessee shall take prompt and immediate action to eliminate any interference caused by Lessee's facility (alone or in combination with other equipment) to any Navajo Nation owned telecommunications facilities located on or near the Leased Premises at the time this Lease was executed or placed in service before the interfering equipment was installed by Lessee or its Sublessee, as well as other actions that may be required by the NNTRC.

14. SUBLEASES.

Lessee may enter into Subleases to permit a Sublessee to co-locate cellular antennas or other communications equipment on the Lessee's tower or on the grounds of the Leased Premises, provided all applicable laws and regulations have been complied with. Subleases shall only be entered into for the purpose set forth in Section 4(A) and not any use unrelated to providing communications. For colocations on an existing Tower and within the existing compound, Lessor's consent to a Sublease is not required; provided, however, Lessee must provide a copy of the fully executed Sublease to Lessor prior to the Sublease becoming effective. Lessee shall pay any Additional Rent associated with each new Sublease as and when Rent is due hereunder. NLD will submit one copy of each Sublease to BIA for recording pursuant to 16 N.N.C. §2322(B). Lessee agrees to obtain Lessor consent to sublease if the sublease is of all or substantially all of the tower compound, or a sublease of the land underlying the tower.

15. QUIET ENJOYMENT.

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

16. ENCUMBRANCE.

- A. This Lease or any right to or interest therein may not be encumbered, other than by a Sublease, without the prior written approval of the Lessor, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of the Lessee or the subleasehold interest of a Sublessee and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms.
- B. In the event of default by Lessee or Sublessee of the terms of an approved encumbrance, the other party may exercise any rights provided in such approved encumbrance, provided that in no event shall a Transfer occur without the prior written consent of Lessor.

17. DEFAULT; REMEDIES.

(A) Time is of the essence in this Lease. Lessee shall be in default under this Lease if any monetary obligation, including payment of Rent, is not received by Lessor within ten (10) days of the date such amount is due, and if any non-monetary obligation is violated or not fulfilled and such non-monetary default is not cured to the satisfaction of Lessor within thirty (30) days of written notice from Lessor; provided, however, for non-monetary defaults Lessee shall have an additional period of sixty (60) days if such non-monetary default is not reasonably capable of being cured within the thirty (30) day cure period and Lessee has commenced and is diligently prosecuting the cure of same.

(B) Should Lessee be in default and remain in default under the terms of this Lease beyond any applicable cure period, Lessor shall have all rights and remedies available to it under applicable law, including any contained within the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(C) No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor, or any other rights or remedies now held or which may be held by Lessor in the future.

18. SANITATION.

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Nation, and to dispose of all solid waste in compliance with applicable federal and Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition, presenting a good appearance both inside and outside the Leased Premises.

19. HAZARDOUS AND REGULATED SUBSTANCES.

(A) Lessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Leased Premises without first notifying Lessor and obtaining Lessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Leased Premises, with or without Lessor's consent, or if the premises become contaminated in any manner, Lessee shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Leased Premises, damages due to loss or restriction of rentable or usable space, any and all sums paid for settlement of claims, and any costs related to marketing the Leased Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Lease term and arising as a result of such contamination regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by the federal government or the Nation. Without limitation of the foregoing, if Lessee causes or permits any Hazardous or Regulated

Substance on the Leased Premises and the presence of such results in any contamination of the Leased Premises, including, but not limited to, the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the contamination by any such Hazardous or Regulated Substance on the Leased Premises. Lessee shall first obtain Lessor's approval for any such remedial action.

(B) Lessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, or remediation at the premises subject to this Lease which Lessee is required by applicable law, or regulation, to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program
Navajo Environmental Protection Agency
Post Office Box 3089
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department
Navajo Environmental Protection Agency
Post Office Box 1690
Window Rock, Navajo Nation (Arizona) 86515

and with a copy to NLD,

or their respective institutional successors.

20. PUBLIC LIABILITY INSURANCE.

(A) Lessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 for personal injury to one person and \$2,000,000.00 per occurrence and \$500,000.00 for damage to property. Lessor and such other party or parties as Lessor may direct shall be named as an Additional Insured with respect to this Lease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage be primary, contributing or excess. Lessee shall provide for thirty (30) days advance notification to Lessor prior to any reduction in policy limits and amounts or any cancellation or non-renewal of said policy for any reason including non-payment of premium. A Certificate of Insurance evidencing the above coverage shall be furnished to Lessor annually, or more frequently upon written request.

(B) Lessor may require that the amount of the insurance policy required by subsection (A) of this Section 20 be increased at any time, whenever it shall determine that such increase is reasonably necessary.

(C) In no event shall the amount of Lessee's insurance policy limit Lessee's liability or its duty to indemnify Lessor under this Agreement.

21. PERFORMANCE BOND

Lessee shall obtain a performance bond in the amount of \$ _____ to cover the cost of removal of Improvements and remediation.

22. NON-LIABILITY.

Neither Lessor nor the United States Government, nor their officers, agents, or employees (collectively, the "Lessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, that is caused by any use of the Leased Premises by Lessee or any Sublessee or any of their agents, contractors, employees, invitees, or that results from any defect in any Improvements existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Lessor Parties' negligence or intentional misconduct. Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to defend and hold Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Lessor Parties' negligence or intentional misconduct.

23. INSPECTION.

The Lessor and its authorized representatives, including any agents of NNTRC or NLD, shall have the right, upon reasonable notice to Lessee, to enter upon the Leased Premises, or any part thereof, to inspect the same and all Improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the Leased Premises, the protection of the Leased Premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. If testing for environmental contamination reveals environmental contamination in violation of applicable law, in addition to the requirements of Section 19 and the remedies set forth in Section 17, Lessee shall pay the costs of such testing provided such contamination arose due to Lessee's acts or omissions or any party acting by, through or under Lessee. Nothing in this section shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

24. MINERALS.

All minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor. Lessor also reserves the right to enter upon the Leased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or any improvements constructed by Lessee.

25. EMINENT DOMAIN.

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor and Lessee as their respective interests may appear at the time of such taking.

26. DELIVERY OF LEASED PREMISES.

At the termination of this Lease, Lessee will peaceably and without legal process deliver up the possession of the Leased Premises to Lessor, in good condition, usual wear and tear excepted.

27. HOLDING OVER.

Except as otherwise provided, holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder in or to the Leased Premises or to any improvements located thereon. During any period of holdover, Base Rent shall be 200% of the amount of Base Rent as was payable in the last month of the term of the Lease.

28. ATTORNEY'S FEES.

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing the provisions of this Lease or in pursuing an action against Lessee or any Sublessee for breach, default or liability arising under this Lease.

29. INDEMNIFICATION.

Except to the extent of the negligence or intentional misconduct of Nation and its agents, employees and contractors, Lessee shall defend, indemnify and hold harmless the Nation and its authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Leased Premises by Lessee or any Sublessee.

30. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.

Lessee and Lessee's employees or agents, and Sublessees and their employees or agents agree to abide by all laws, regulations, and ordinances of the Nation and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect including, but not limited to applicable Navajo tax laws, the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA) and the Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*

31. GOVERNING LAW.

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Lease. Any action or proceeding brought

by Lessee against the Nation in connection with or arising out of the terms and conditions of this Lease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Lessee against the Nation in any court or administrative body of any State.

32. DISPUTE RESOLUTION.

In the event that a dispute arises under this Lease, Lessee, before initiating any action or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Lease.

33. CONSENT TO JURISDICTION.

Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Nation in connection with all activities conducted by the Lessee within the Nation.

34. COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Lease, on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Nation government is not a government of general jurisdiction, or that the Nation government does not possess police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Nation.

35. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

36. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom. This provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

37. OBLIGATIONS TO THE UNITED STATES.

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease and the obligations of its sureties are to the United States as well as to Lessor.

38. NOTICES AND DEMANDS.

(A) All notices, requests, claims, demands, and other communications hereunder shall be in writing and may be hand delivered (provided the deliverer provides proof of delivery) or sent by nationally-established overnight courier that provides proof of delivery, or certified or registered mail (postage prepaid, return receipt requested). Notice shall be deemed received on the date of delivery as demonstrated by the receipt of delivery. Notices shall be delivered to a party at the party's respective address below, or to such other address that a party below may provide from time to time:

To or upon Lessor:

President
The Navajo Nation
Office of the President/Vice-President
P.O. Box 9000
Window Rock, Navajo Nation (Arizona) 86515
Fax: 1- 928-871-4025

With a copy:

Department Manager
Navajo Land Department

To or upon Lessee:

(B) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail (followed by regular mail). Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail (followed by regular mail), on the next business day following actual delivery and receipt.

(C) Lessor and Lessee may at any time change their addresses for purposes of this section by Notice.

39. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all

contractors and subcontractors of Lessee. Except as the context otherwise requires, the term “Lessee,” as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

40. RESERVATION OF JURISDICTION.

There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Lease and all lands burdened by the Lease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Lease; and the area under the Lease and all lands burdened by the Lease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

41. EFFECTIVE DATE; VALIDITY.

This Lease shall take effect on the date it is executed by both parties. No modification of or amendment to this Lease shall be valid or binding on either party until it is executed by both parties.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.

THE NAVAJO NATION, LESSOR

_____, **LESSEE**

Date: _____

Date: _____

By: _____

By: _____

W. Mike Halona, Director
Navajo Land Department
Navajo Nation

Exhibit A

**Legal Description
and Survey Map of Leased Premises**

APPENDIX 2
CHECKLIST FOR LEASES



**General Land Development Department
New Telecommunication Tower
NAVAJO NATION**

CHECKLIST

- 1. \$500 FILING FEE
- 2. Letter from Navajo Nation for Permission to Survey
- 3. Letter of Application
- 4. Supporting Chapter Resolution or Deemed Approval
- 5. Grazing Official or Land Board Consent or Deemed Approval
- 6. Survey Plat with Legal Description/GPS Coordinates
- 7. Required Compliance Forms:
 - Biological Resource Compliance Form (NN Fish & Wildlife)
 - Cultural Resources Compliance Form (Historic Preservation Dept.)
 - Compliance Determination (General Land Development Dept.)
- 8. Contact Utility Company for Power
- 9. Right-of-Way for Access Road, if necessary
- 10. Telecommunication Lease (signed by applicant)

**Contact: General Land Development Department (GLDD)
 P.O. Box 69
 St. Michaels, AZ 87511
 Phone: (928) 871-6447
 Fax: (928) 871-7039
 Department Manager email: elerina_yazzie@frontier.com**

APPENDIX 3
FORM OF COLLOCATION SITE LEASE

LEASE NO. _____

NON-TOWER STRUCTURE COLLOCATION LEASE

THIS NON-TOWER STRUCTURE COLLOCATION LEASE ("Lease") is entered into this _____ day of _____, 202__ ("**Commencement Date**"), by and between, THE NAVAJO NATION, hereinafter called the "Lessor," or the "Nation," whose address is P.O. Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and _____, hereinafter called the "Lessee," whose address is _____. This Lease is made in accordance with the provisions of 2 N.N.C. § 501(B)(2)(a), 16 N.N.C. § 2301 *et seq.*, and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162, and all amendments or successors thereto, which by this reference are made a part hereof. Lessor and Lessee may each be referred to as a "**Party**" or collectively as the "**Parties**".

WHEREAS, Lessor owns the building or structure (the "**Structure**") located on a portion of the real property described on **Exhibit A** attached hereto and incorporated herein (the "**Property**", and collectively with the Structure, the "**Site**"). The Property has a physical address of _____ and the Structure has the following coordinates: _____.

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee certain space on the Structure on the Property pursuant to the terms and conditions of this Lease.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. **Premises and Use.**

Subject to the terms and conditions of this Lease Lessor hereby leases to Lessee, and Lessee leases from Lessor (i) certain space on the Structure for the installation and attachment of Lessee's Structure based Facilities (as hereinafter defined) (the "**Structure Space**") (ii) certain space on or within the Property measuring approximately _____ () square feet for the installation of Lessee's ground based Facilities (the "**Ground Space**"), and (iii) certain non-exclusive space running between the Structure Space, Ground Space and certain electrical, fiber, accessory and telephone utility sources located on or about Property for the installation, operation and maintenance of wires, fiber, cables, conduits and pipes (the "**Cable Space**"), and collectively with the Ground Space and Structure Space, the "**Premises**"). The

Structure Space and Ground Space shall be used for (the “**Permitted Use**”): the installation, operation and maintenance of the communications equipment, antennas, technology, wires, coaxial cables, and accessory equipment described on **Exhibit B-1** attached hereto and incorporated herein (collectively, the “**Facilities**”) and for the transmission and reception of communication signals pursuant to and in compliance with all applicable laws, ordinances, rules, and regulations of any governmental entity or agency (federal, state or local) having jurisdiction over the Site and Lessee’s operations, including without limitation the Federal Communications Commission (the “**FCC**”) and the Navajo Nation. In the event Lessee provides Lessor installations plans for Lessee’s Facilities, such installations plans shall be attached hereto as **Exhibit B-2**.

2. **Term.**

The initial term of this Lease shall be five (5) years, commencing on the Commencement Date (“**Initial Term**”). Lessee shall have the right to renew this Lease for three (3) successive five (5) year periods (each, a “**Renewal Term**”) on the same terms and conditions as set forth herein. This Lease shall automatically be renewed for such successive Renewal Terms unless Lessee notifies Lessor of its intention not to renew this Lease at least one hundred eighty (180) days prior to the commencement of the succeeding Renewal Term. For the purposes of this Lease, “**Term**” shall mean the Initial Term and any applicable Renewal Term(s).

3. **Initial Install of Facilities.**

(a) Prior to the installation of the Facilities on the Premises:

(i) Unless the condition in this Section 3(a)(i) is waived by Lessor, Lessee shall submit to Lessor for Lessor’s review and approval: (i) Lessee’s final set of installation plans and/or construction and engineering drawings for the Facilities (which approved final set of installation plans and/or construction and engineering drawings and (ii) Lessee’s final installation schedule for the installation of the Facilities (collectively, the “**Installation Plans**”). If Lessor rejects all or a portion of the Installation Plans, then the Parties shall cooperate in good faith to amend the applicable item(s) to the extent necessary to cause the Parties to mutually agree on the substance of the Installation Plans. Lessor’s approval of the Installation Plans is not a representation that Lessee’s Facilities or operations are in compliance with any laws, ordinances, rules or regulations or that Lessee’s Facilities or operations will not cause interference with other communications operations on the Site, if any;

(ii) If applicable in Lessor’s reasonable discretion, Lessor may require Lessee to perform and submit to Lessor, at Lessee’s sole cost and

expense, a structural analysis of the Structure and of any mounts to be used by Lessee, on the basis of applicable ANSI/TIA codes and other applicable standards. If such structural analysis determines that the Structure requires structural modifications for the Structure to accommodate the weight and/or wind load of the Facilities, including any mounts, then Lessee shall have the right to: (A) to terminate this Lease upon written notice to Lessor, or (B) request that Lessor perform, at Lessee's sole cost and expense, the necessary structural modifications to the Structure for the Structure to accommodate the weight and/or wind load of the Facilities. If Lessor agrees to perform such Structure modifications, then Lessee shall submit a purchase order to Lessor for the Structure modifications and Lessor shall thereafter promptly commence performing the structural modifications to the Structure. If Lessor does not agree to perform such Structure modifications, then the Parties shall agree to terminate this Lease in writing; and

(b) Lessee shall not commence the installation of the Facilities unless and until the conditions in Section 3(a) are completed and Lessor issues Lessee a Notice to Proceed authorizing Lessee to commence installation of the Facilities. Lessee shall notify Lessor at least five (5) business days prior to Lessee, its agents, employees, contractors and/or subcontractors commence the installation of the Facilities on the Premises. Lessee shall install the Facilities in accordance with the Installation Plans and in compliance with the standards of good engineering practice and the requirements of the FCC, Navajo Nation, and all other government bodies or agencies with jurisdiction over Lessee, the Facilities and Lessee's operations. If the Structure is painted to be in compliance with certain codes or regulations, then Lessee shall paint its Facilities to match as nearly as possible the color of the Structure. During the installation of the Facilities, Lessee, its agents, employees, contractors and/or subcontractors shall not interfere with Lessor's operations at the Site and the operations of its respective lessees, sublessees, and licensees. Upon completing the installation of the Facilities, Lessee shall clear the Site of all debris, machinery, and materials not intended to remain on the Premises for the operation of Lessee's Facilities.

4. **Rent.**

Lessee shall pay Lessor monthly rent in the amount of _____ Dollars (\$____.00) per month (the "**Rent**"), payable on the first day of the month, in advance, beginning on the Commencement Date. The Rent for any partial month during the Term shall be pro-rated based on the number of days in such month. On each anniversary of the Commencement Date, the Rent shall increase by two and one half percent (2.5%) of the Rent for the immediately preceding twelve (12) month period. The Rent shall be mailed (or sent via electronic methods as agreed to by the parties in writing) to the following address until such time as notified in writing by Lessor to send payment to a

different address:

Navajo Nation, Telecom Accounts Receivable
c/o Vertical Bridge AM II, LLC
750 Park of Commerce Dr., Suite 200
Boca Raton, FL 33487

Should any payment of Rent be received more than five (5) days after the date due, a late charge of 12% shall be due from Lessee immediately without notice or demand.

5. **Access.**

Lessee, its agents, employees, contractors and subcontractors shall have the non-exclusive right to access the Premises using common or designated access routes to the extent reasonably necessary to enable Lessee to install, operate, and maintain the Facilities and to otherwise undertake Lessee's obligations set forth in this Lease. Subject to the terms and conditions of this Lease, Lessee shall have the right to access its ground-based Facilities twenty-four (24) hours a day, seven (7) days a week. Lessee acknowledges that Lessor's control of access to the Structure is essential to the safe operations of all parties utilizing the Structure; accordingly, if Lessee wishes to access Lessee's Facilities located on the Structure, Lessee shall provide reasonable advance notice to Lessor of Lessee's need to do so and Lessor and Lessee shall coordinate a mutually agreeable time for Lessee to access Lessee's Facilities located on the Structure. In the event of an emergency threatening life or property damage, Lessee shall have the right to access its ground and Structure based Facilities upon telephonic notice to _____.

6. **Utilities.**

(a) Lessee shall at its sole cost and expense initiate, contract for, obtain and pay for any electrical, telephone, fiber or other utility services used by Lessee at the Premises. Lessee agrees to cooperate with Lessor's reasonable requests regarding the manner and timing of the installation of Lessee's utilities. A meter shall be installed and maintained by Lessee at Lessee's sole cost and expense which shall separately record the amount of the electrical power used by Lessee. Lessee shall timely pay all charges for electrical power and all other services used by Lessee in connection with the operation of Lessee's Facilities. In no event shall Lessor be liable for the quality, quantity, failure or interruption of electrical service to the Premises or damages resulting directly or indirectly therefrom by reason of or resulting from any accident, or the need or priority of repairs or improvements, or by reason of orders of any military, civil or governmental authority, or strikes, riots, insurrections or invasions, or any reason beyond the control of Lessor.

(b) Upon the prior written approval of Lessor which approval may be granted, conditioned, or withheld in Lessor's sole discretion, Lessee shall have the right, at its sole cost and expense, to install a temporary emergency generator on the Property at a location designated and approved by Lessor, provided sufficient space is available. The generator must be removed within five (5) days following the emergency need unless otherwise agreed to by Lessor. Lessee agrees that any such installation and use of a generator shall be in compliance with all applicable federal, Navajo Nation, state, and local environmental, health, fire, community awareness, safety laws and other applicable laws or regulations, now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Site, including, without limitation, any applicable guidelines promulgated by the Environmental Protection Agency or NNTRC.

7. **Maintenance and Repairs.**

(a) Lessor or the applicable Navajo Nation governmental entity that owns the Structure shall maintain the Structure (but not Lessee's Facilities) in reasonable condition and in compliance with applicable rules and regulations, and shall promptly repair any material damage to same; provided, however, when such maintenance or repair is made necessary by or because of the acts or omissions of Lessee (reasonable wear and tear excepted), Lessee shall reimburse Lessor for the cost thereof. In the performance of its obligation to maintain and repair the Structure, and to allow other lessees to install, remove, relocate, maintain and repair their equipment, it may be necessary from time to time for Lessor to require Lessee to temporarily cease transmission activities, to turn off electrical power, and/or to make other adjustments to its Facilities or operations. Lessor shall use commercially reasonable efforts to schedule such work so as to cause minimum disruption to Lessee's operations. Lessee agrees to cooperate with Lessor and to comply with and honor Lessor's requests for temporary cessation of transmission activities, to turn off electrical power, and/or to make adjustments to its Facilities or operation, as necessary, to allow orderly performance and carrying out of such work.

(b) Lessee, at its sole cost and expense, shall carry out maintenance of the Facilities, including, but not limited to, the electrical and mechanical maintenance of the Facilities. Maintenance shall be conducted by Lessee in accordance with standards of good engineering practice to assure that at all times the Facilities conform to the requirements of the FCC and all other government bodies or agencies with jurisdiction over Lessee, the Facilities and Lessee's operations.

8. **Modifications.**

(a) Should Lessee desire to make any installations, modifications, additions, changes, alterations or upgrades to its Facilities or Premises (a "**Modification**"), Lessee shall complete and submit to Lessor for Lessor's review and approval, a Collocation Application

(using Lessor's then current form of Collocation Application) detailing Lessee's desired Modification. Lessee shall not be permitted to perform a Modification without Lessor's prior written approval. If the Modification will result in an enlargement of the Premises (whether Ground Space or Structure Space) or increase the weight or wind load of Lessee's Facilities beyond the amount originally approved under this Lease or the amount then existing, then Lessor shall have the right to condition its approval of a Modification upon (i) an increase to Lessee's then current Rent, (ii) receipt of a structural analysis of the Structure on the basis of applicable ANSI/TIA codes and other applicable standards demonstrating sufficient structural capacity and integrity of the Structure to Lessor's satisfaction, (iii) to the extent not included within the structural analysis, receipt of a mount analysis of Lessee's mount on the basis of applicable ANSI/TIA standards satisfactory to Lessor and (iv) executing an amendment to this Lease to memorialize Lessee's Modification. Any approved Modification shall further be subject to Lessee obtaining all applicable governmental licenses, permits and approvals necessary for Lessee to perform the Modification. Lessor's approval of a Modification is not a representation that the Modification is in compliance with applicable laws, ordinances, rules or regulations or that the Modification will not cause interference with other communications operations at the Site.

(b) Notwithstanding the foregoing, if the structural analysis or mount analysis provided to Lessor in connection with a proposed Modification determines that the Structure requires structural modifications for the Structure to accommodate the weight and/or wind load of Lessee's proposed Modification, then Lessee shall either (i) elect to forego performing the Modification or (ii) request that Lessor or the applicable Navajo Nation governmental entity that owns the Structure perform, at Lessee's sole cost and expense, the necessary structural modifications to the Structure for the Structure to accommodate the weight and/or wind load of the Modification. If Lessor or the applicable Navajo Nation governmental entity that owns the Structure agrees to perform such structural modifications to the Structure, then Lessee shall submit a purchase order to Lessor or the applicable Navajo Nation governmental entity that owns the Structure for the Structure modifications, Lessor or the applicable Navajo Nation governmental entity that owns the Structure shall thereafter promptly commence performing the structural modifications to the Structure, and Lessee shall pay for such modifications to the Structure pursuant to the purchase order to Lessor. If Lessor or the applicable Navajo Nation governmental entity that owns the Structure, in its sole discretion, does not agree to perform such structural modifications to the Structure, then Lessee shall forego performing the Modification or the portion thereof adding excess weight and/or wind load to the Structure.

(c) In the event Lessee performs a Modification without the prior written approval of Lessor, such Modification shall be subject to an additional monthly fee in the amount of one hundred fifty percent (150%) of the fair market rental value of the Modification at the time of discovery of such unapproved Modification (the "**Additional Rent**"). The Additional Rent shall accrue (i.e., shall be back-billed) from the date the installation of such unapproved Modification

commenced. In addition, Lessor may require Lessee to immediately remove any unapproved Modification and restore the Structure and Premises to the condition they were in prior to the unapproved Modification.

9. **Non-Interference.**

(a) If the Facilities or portion thereof (the “**Interfering Equipment**”) cause interference with any equipment placed on the Site prior to the Interfering Equipment, then Lessee shall take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within forty-eight (48) hours after receipt by Lessee from Lessor of notice of the existence of interference, Lessee shall cease operating and power-down the interfering Equipment (except for intermittent testing for the purpose of correcting such interference) until the interference is corrected. If the interference is not rectified to the reasonable satisfaction of Lessor within fifteen (15) days after receipt by Lessee of such notice from Lessor, Lessee shall remove the Interfering Equipment from the Site. Lessee agrees that it shall not alter the operations of the Facilities or replace, upgrade or otherwise Modify the Facilities in a manner which will cause interference with the operations of any other equipment which is then operating on the Site.

(b) If the communications equipment belonging to another tenant of Lessor’s on the Site causes interference with the Facilities or portion thereof, as applicable, and the interfering equipment was installed on the Site after the Facilities being interfered with, then Lessor will require such tenant to take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within forty-eight (48) hours after receipt by Lessor of notice from Lessee of the existence of interference, Lessor shall take such actions as are permitted by law and can be conducted without breach of the peace such as causing the Tenant to cease operating and power-down its interfering equipment (except for intermittent testing for the purpose of correcting such interference) until such interference is corrected. If the interference is not rectified to the reasonable satisfaction of Lessee within fifteen (15) days after receipt by Lessor of such notice from Lessee, Lessor shall exercise any remedies available to it under the interfering tenant’s written agreement granting the tenant an interest in the Site to cause such tenant to cease the interference. Lessee agrees to exercise its commercially reasonable efforts to cooperate with Lessor and the tenant causing interference to try to resolve any interference issues on the Site.

(c) If antenna power output (“**RF Emissions**”) becomes subject to any restrictions imposed by the FCC or any other government agency for RF Emissions standards on Maximum Permissible Exposure (“**MPE**”) limits, or if the Site otherwise becomes subject to federal, state or local rules, regulations, restrictions or ordinances, Lessee shall comply with Lessor’s reasonable requests for modifications to the Facilities which are reasonably necessary for Lessor to comply with such limits, rules, regulations, restrictions or ordinances. The RF

Emissions requirements of Lessee shall be subordinate to any prior users of the Site. Similarly, the RF Emissions of users subsequent to Lessee shall become subordinate to any requirements of Lessee. If Lessor or Lessee require an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such evaluation or study shall be shared equally between Lessor, Lessee, and any other users of the Site. If said study indicates that RF Emissions at the Site do not comply with MPE limits, then Lessor, Lessee, and any subsequent tenants shall immediately take any steps necessary to ensure that they are individually, and collectively, in compliance with such limits or shall at the demand of Lessor cease operations until a maintenance program or other mitigating measures can be implemented to comply with MPE limits. Lessee shall have the right to terminate this Lease in the event that such mitigation measures cannot be implemented without materially and adversely affecting the operation of the Facilities.

10. **Taxes.**

Lessee shall be responsible for payment of any taxes and assessments attributable to Lessee's Facilities and operations on the Premises, including without limitation, any sales tax. Lessor may invoice Lessee for payments of any taxes due on a monthly or annual basis, as Lessor may elect.

11. **Default.**

(a) Time is of the essence in this Lease. Lessee be in default under this Lease if any monetary obligation, including payment of Rent, is not received by Lessor within ten (10) days of the date such amount is due, and if any non-monetary obligation (other than interference which shall be governed by the terms of the interference provisions of this Lease) is violated or not fulfilled and such non-monetary default is not cured to the satisfaction of Lessor within thirty (30) days of written notice from Lessor; provided, however, for non-monetary defaults Lessee shall have an additional period of sixty (60) days if such non-monetary default is not reasonably capable of being cured within the thirty (30) day cure period and Lessee has commenced and is diligently prosecuting the cure of same.

(b) Should Lessee be in default and remain in default under the terms of this Lease beyond any applicable cure period, Lessor shall have all rights and remedies available to it under applicable law, including any contained within the provisions of 25 C.F.R. Part 162, including any amendments or successors thereto.

(c) No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other

remedies, by suit or otherwise, which may be exercised by Lessor, or any other rights or remedies now held or which may be held by Lessor in the future.

12. **Removal of Equipment.**

Upon the expiration or termination of this Lease, this Lease and the Term shall terminate and all rights of Lessee hereunder shall expire and terminate (but not any obligations that expressly survive termination of this Lease) and Lessee shall surrender the Premises to Lessor and, within thirty (30) days after the expiration or termination of this Lease, remove the Facilities and restore the Premises to substantially the same condition existing prior to Lessee commencing the installation of the Facilities on the Premises, except for ordinary wear and tear, casualty, or acts of God. In the event the Facilities remain on the Premises for more than thirty (30) days following the expiration or termination of this Lease (even if it has been disconnected) or if Lessee does not completely surrender or restore the Premises, Lessee shall pay Lessor holdover fees equal to one hundred fifty percent (150%) of the Rent in effect immediately prior to the expiration or termination of this Lease, which holdover fees shall accrue from the date of expiration or termination to the date Lessee completes its obligations under this Section 12. If Lessee fails to complete its obligations under this Section 12 within one hundred twenty (120) days following the expiration or termination of this Lease, Lessor shall have the right perform Lessee's obligations hereunder. If Lessor performs Lessee's obligations under this Section 12, Lessor shall not be liable to Lessee for damage to the Facilities in the course of such removal, and Lessee shall reimburse Lessor for any restoration costs or any damages to the Property caused by such removal. This Section 12 shall survive the expiration or termination of this Lease.

13. **Structure Damage.**

In the event that the Structure is fully or partially destroyed or damaged by fire, lightning, windstorm, explosion, collapse, vandalism, civil disturbance, aircraft or other vehicle damage or other casualty so as to be unfit for Lessee's occupancy and Permitted Use and Lessor determines, in Lessor's sole discretion, that the Structure cannot be restored or rebuilt by Lessor within 180 days or Lessor determines, in Lessor's sole discretion, that it shall not undertake restoring or rebuilding the Structure then either Lessor or Lessee may elect to terminate this Lease by written notice to the other Party. Lessee shall be entitled to a pro rata refund of its prepaid Rent for such time as it is unable to conduct its normal operations as a result of such total or partial destruction or damage or need of repair. Under no circumstances shall Lessor be liable for any financial loss due to business interruption caused by the aforementioned circumstances.

14. **Eminent Domain.**

If the portion of the Property upon which the Structure, its foundation, or associated improvements is located or the Premises are acquired or condemned under the power of eminent domain whether by public authority, public utility, or otherwise, then this Lease shall terminate as of the date title shall have vested in public authority. Lessor shall be entitled to the entire amount of any condemnation award, except that Lessee shall be entitled to make claim for and retain a condemnation award based on and attributed to the expense of removing its Facilities.

15. **Insurance.**

(a) Lessee shall obtain and maintain a commercial public liability insurance policy in an amount of no less than \$1,000,000.00 for personal injury to one person and \$2,000,000.00 per occurrence and \$500,000.00 for damage to property. Lessor and such other party or parties as Lessor may direct shall be named as an Additional Insured with respect to this Lease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage be primary, contributing or excess. Lessee shall provide for thirty (30) days advance notification to Lessor prior to any reduction in policy limits and amounts or any cancellation or non-renewal of said policy for any reason including non-payment of premium. A Certificate of Insurance evidencing the above coverage shall be furnished to Lessor annually, or more frequently upon written request.

(b) Lessor may require that the amount of the insurance policy required by subsection (A) of this Section 20 be increased at any time, whenever it shall determine that such increase is reasonably necessary.

(c) In no event shall the amount of Lessee's insurance policy limit Lessee's liability or its duty to indemnify Lessor under this Agreement.

16. **Compliance with Law.**

This Lease hereby incorporates by reference, and shall be deemed to include, all the mandatory provisions regarding a business lease set forth in 25 C.F.R. §162.413 (the "Mandatory Provisions"). Incorporation of the Mandatory Provisions into this Lease is designed to assure that the Lease complies with all applicable requirements of federal law and to facilitate the processing and administration of this Lease. The Mandatory Provisions require compliance with federal and tribal laws pursuant to the 25 C.F.R. §162.014. Compliance with all federal and tribal historic and cultural preservation laws—specifically work cessation and notification to the Nation is required if artifacts are discovered to prevent unauthorized destruction of

resources pursuant to 16 U.S.C. §470ee. In no circumstances shall the Lease be construed to waive any requirement of federal law.

Lessee agrees to comply with all federal and Navajo Nation laws, including those relating to payment of taxes, with respect to its use and operation of the Leased Premises, and not to permit any Subtenant or any other party to access, use, or operate from the Leased Premises in violation of applicable federal, state, municipal, and Navajo Nation law.

17. **Assignments.**

Lessee shall not assign, convey, or otherwise transfer this Lease, directly or indirectly, whether by merger, sale of equity, restructuring, conversion, foreclosure or conveyance in lieu of foreclosure, or otherwise (a "Transfer"), without the prior written approval of Lessor. Any attempted Transfer without Lessor's prior written approval shall be void and of no effect and shall constitute a default under this Lease, which default is not capable of being cured and shall permit Lessor to take any remedies available to Lessor pursuant to this Lease. The approval of Lessor to any Transfer may be granted, conditioned, or withheld in the sole discretion of Lessor. Notwithstanding the foregoing, Lessor's consent shall not be required for a Transfer of this Lease upon written notice of the Transfer to Lessor by Lessee and confirmation, along with supporting documentation as reasonably requested by Lessor, that: (a) the Transfer is to an affiliate of Lessee that has at least fifty percent (50%) direct or indirect ultimate beneficial common ownership with Lessee, or (b) the Transfer is to a party that acquires all or substantially all of Lessee's assets.

18. **Subleases.**

Lessee may enter into subleases to permit a sublessee to co-locate cellular antennas or other communications equipment on the Premises, provided all applicable laws and regulations have been complied with. Subleases shall only be entered into for communications uses. For colocations on the existing Premises, Lessor's consent to a sublease is not required; provided, however, Lessee must provide a copy of the fully executed sublease to Lessor prior to the sublease becoming effective. NLD will submit one copy of each sublease to BIA for recording pursuant to 16 N.N.C. §2322(B). Lessee agrees to obtain Lessor consent to sublease if the sublease is of all or substantially all of the tower compound, or a sublease of the land underlying the tower.

19. **Quiet Enjoyment.**

Lessor hereby covenants and agrees that, upon performing each of its covenants,

agreements, terms and conditions contained in this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

20. **Encumbrances.**

(a) This Lease or any right to or interest therein may not be encumbered, other than by a sublease, without the prior written approval of the Lessor, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of the Lessee or the subleasehold interest of a sublessee and shall not jeopardize in any way Lessor's interest in the Structure or the Property. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms.

(b) In the event of default by Lessee or sublessee of the terms of an approved encumbrance, the other party may exercise any rights provided in such approved encumbrance, provided that in no event shall a Transfer occur without the prior written consent of Lessor.

21. **Hazardous and Regulated Substances.**

(a) Lessee shall not cause or permit any Hazardous or Regulated Substance to be used, stored, generated or disposed of on or in the Premises without first notifying Lessor and obtaining Lessor's prior written consent. If Hazardous or Regulated Substances are used, stored, generated or disposed of on or in the Premises, with or without Lessor's consent, or if the premises become contaminated in any manner, Lessee shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Leased Premises, damages due to loss or restriction of rentable or usable space, any and all sums paid for settlement of claims, and any costs related to marketing the Premises), as well as attorneys' fees, consultant and expert fees arising during or after the Lease term and arising as a result of such contamination regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by the federal government or the Nation. Without limitation of the foregoing, if Lessee causes or permits any Hazardous or Regulated Substance on the Premises and the presence of such results in any contamination of the Premises, including, but not limited to, the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the contamination by any such

Hazardous or Regulated Substance on the Premises. Lessee shall first obtain Lessor's approval for any such remedial action.

(b) Lessee shall provide the Navajo Environmental Protection Agency and the Risk Management Department of the Nation with a clear and legible copy of all notices or reports concerning release of Hazardous or Regulated Substance, testing, or remediation at the premises subject to this Lease which Lessee is required by applicable law, or regulation, to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Environmental Protection Agency shall be by first class mail to:

Waste Regulatory and Compliance Program
Navajo Environmental Protection Agency
Post Office Box 3089
Window Rock, Navajo Nation (Arizona) 86515

and,

Risk Management Department
Navajo Environmental Protection Agency
Post Office Box 1690
Window Rock, Navajo Nation (Arizona) 86515

and with a copy to NLD,

or their respective institutional successors.

22. **Non-Liability.**

Neither Lessor nor the United States Government, nor their officers, agents, or employees (collectively, the "Lessor Parties"), shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, that is caused by any use of the Premises by Lessee or any sublessee or any of their agents, contractors, employees, invitees, or that results from any defect in any Improvements existing or erected thereon, or that arises from accident, fire, or from any other casualty on said premises or from any other cause whatsoever, except to the extent of the Lessor Parties' negligence or intentional misconduct. Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to defend and hold Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the

condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith to the full extent permitted by applicable law, excepting however, all claims to the extent arising from the Lessor Parties' negligence or intentional misconduct.

23. **Attorney's Fees.**

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing the provisions of this Lease or in pursuing an action against Lessee or any Sublessee for breach, default or liability arising under this Lease.

24. **Indemnification.**

Except to the extent of the negligence or intentional misconduct of Nation and its agents, employees and contractors, Lessee shall defend, indemnify and hold harmless the Nation and its authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the construction on or maintenance, operation, occupancy or use of the Premises by Lessee or any Sublessee.

25. **Agreement to Abide by Navajo Nation and Federal Law.**

Lessee and Lessee's employees or agents, and Sublessees and their employees or agents agree to abide by all laws, regulations, and ordinances of the Nation and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect including, but not limited to applicable Navajo tax laws, the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* (NPEA) and the Navajo Nation Business Opportunity Act, (NNBOA), 5 N.N.C. § 201 *et seq.*

26. **Governing Law.**

Except as may be prohibited by applicable federal law, the laws of the Nation shall govern the construction, performance and enforcement of this Lease. Any action or proceeding brought by Lessee against the Nation in connection with or arising out of the terms and conditions of this Lease, to the extent authorized by Navajo law, shall be brought only in the courts of the Nation, and no such action or proceeding shall be brought by Lessee against the Nation in any court or administrative body of any State.

27. **Dispute Resolution.**

In the event that a dispute arises under this Lease, Lessee, before initiating any action

or proceeding, agrees to use good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution in connection with this Lease.

28. **Jurisdiction.**

Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Nation in connection with all activities conducted by the Lessee within the Nation.

Lessee hereby covenants and agrees not to contest or challenge the legislative, executive or judicial jurisdiction of the Nation in connection with any enforcement of this Lease, on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Nation government is not a government of general jurisdiction, or that the Nation government does not possess police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing in this section shall be construed to negate or impair federal responsibilities with respect to the Leased Premises or to the Nation.

29. **No Waiver of Sovereign Immunity.**

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

30. **Interest of Member of Congress.**

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom. This provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

31. **Obligations to United States.**

It is understood and agreed that while the Structure and Property are located on trust lands or in restricted status, all of Lessee's obligations under this Lease and the obligations of its sureties are to the United States as well as to Lessor.

32. **Notices and Demands.**

(a) All notices, requests, claims, demands, and other communications hereunder

shall be in writing and may be hand delivered (provided the deliverer provides proof of delivery) or sent by nationally-established overnight courier that provides proof of delivery, or certified or registered mail (postage prepaid, return receipt requested). Notice shall be deemed received on the date of delivery as demonstrated by the receipt of delivery. Notices shall be delivered to a party at the party's respective address below, or to such other address that a party below may provide from time to time:

To or upon Lessor:

President
The Navajo Nation
Office of the President/Vice-President
P.O. Box 9000
Window Rock, Navajo Nation (Arizona) 86515
Fax: 1- 928-871-4025

With a copy:

Department Manager
Navajo Land Department

To or upon Lessee:

(b) All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail (followed by regular mail). Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail (followed by regular mail), on the next business day following actual delivery and receipt.

(c) Lessor and Lessee may at any time change their addresses for purposes of this section by Notice.

33. **Successors and Assigns.**

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors of Lessee. Except as the context otherwise requires, the term “Lessee,” as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

34. **Effective Date; Validity; Counterparts.**

This Lease shall take effect on the date it is executed by both parties. No modification of or amendment to this Lease shall be valid or binding on either party until it is executed by both parties. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any faxed signature page hereof shall be considered an original signature page and be effective for all purposes to evidence such party’s execution hereof.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

LESSOR:

The Navajo Nation

By:

Name:
Title: Department Manager, NLD

Witnesses for Lessor:

By:

Name:

By:

Name:

LESSEE:

By:

Name:
Title:

Witnesses for Lessee:

By:

Name:

By:

Name:

EXHIBIT A

Property

EXHIBIT B-1

Collocation Application

EXHIBIT B-2

Installation Plans