

COMMUNICATIONS LEASE AGREEMENT

LEASE COVERING PREMISES LOCATED AT:

San Jose State University
One Washington Square
San Jose, CA 95192

Lease No.:

THIS COMMUNICATIONS LEASE AGREEMENT, hereinafter called "Agreement", is made and entered into this _____ day of _____, 202_, by and between the Board of Trustees of the California State University, which is the State of California acting in its higher education capacity, on behalf of San Jose State University, hereinafter called "LESSOR", and _____, d/b/a/ _____, with its principal offices located at _____, hereinafter called "LESSEE." LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH:

WHEREAS, LESSOR has under its control certain real property located at One Washington Square, in the City of San Jose, in the County of Santa Clara, State of California, commonly known as San Jose State University; and more particularly described here and in **Exhibit 1**, and a portion of the real property commonly known as [_____], hereinafter called "Building" described in **Exhibit 2** designated as the site for placement of the equipment contemplated by this Agreement; and

WHEREAS, all construction, maintenance and repair work on Lessor property is required to comply with California State University policy requirements and overseen must be approved by Lessor's Facilities, Development and Operations department.

WHEREAS, LESSOR desires to make said portion of the Building available for lease and use by LESSEE as a wireless communications site for the benefit of the public and consistent with LESSOR's programs and needs; and

WHEREAS, LESSOR and LESSEE each desire that such a lease be consummated on the terms and conditions herein contained:

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. AREA

LESSOR does hereby lease to LESSEE, and LESSEE does hereby hire from LESSOR, [approximately [_____]feet by [_____]feet for a total of [_____]square feet of rooftop space on the Building] and, with LESSOR's prior written approval, such additional space as may be necessary for the installation, operation and maintenance of wires, cables, conduits, pipes, risers, equipment and related improvements running between and among the various portion of the Premises (defined below) and to all necessary electrical, telephone, fiber and other similar support services located within the Premises or the nearest public right of way, all located on property owned by LESSOR, situated in the County of Santa Clara, State of California, hereinafter called the "PREMISES", as depicted in **Exhibit 1 & Exhibit 2**. Any change to the Premises (including without limitation any proposal to install any telecommunications line that is not then depicted on Exhibit 2) shall require LESSOR's prior written approval in its sole discretion.

2. USE

- a. Permitted Use. The leased Premises shall be used during the term hereof solely for the purpose of constructing, operating, and maintaining a telecommunications (cell site/broadcast/receiver/repeater) facility described in LESSEE's plans attached hereto (the "Facility") and made a part hereof, as depicted on Exhibit 2, and such other transmitting and receiving equipment as LESSOR may from time to time consent to in writing in its sole discretion, and for no other purpose or purposes, whatsoever.
- b. Design, Permitting, and Construction. At least 180 days prior to the intended commencement of construction of the Facility and any other construction work at the Premises, LESSEE shall notify LESSOR in writing of its intent to undertake such work. LESSEE and LESSOR shall meet and confer regarding LESSEE's proposed design and LESSOR's required design, permitting, and inspection review cycle and anticipated review periods. LESSEE shall comply with all design and plan set submittals and milestone requirements of LESSOR, and construction may not proceed prior to approval of a complete set of plans by LESSOR in writing and issuance of all permits required in connection therewith (including applicable compliance with the California Environmental Quality Act). A complete set of plans shall include, without limitation, engineered drawings, specifications, product cut sheets for the antenna array or other radio frequency transmitting equipment, a current and updated radio frequency study that considers the cumulative radio frequency of LESSEE's proposed equipment and surrounding equipment, and any other information reasonably requested by LESSOR, all of which shall be prepared by licensed architects and engineers to the extent applicable. LESSOR shall serve as the building official and "authority having jurisdiction" with respect to all work performed in connection with this Agreement, but LESSOR does not warrant or represent that no other third-party permits or approvals will be required to carry out any work contemplated hereby. LESSEE shall notify LESSOR in writing upon completion of any construction work and LESSOR will inspect such work for conformity to plans, and LESSEE shall make any corrections required by LESSOR and provide a complete set of as-built drawings prior to issuance of permission of use granted to LESSEE. LESSOR must provide written approval to LESSEE before it may commence operations of the Facility or any reconstruction of or material modification to the same. All permitting, approval, and inspection requirements hereunder shall be at LESSEE's sole cost and expense, and LESSEE shall promptly reimburse LESSOR for any costs that LESSOR incurs in connection with the same. LESSOR reserves the right to charge a re-inspection charge or increase fees for re-inspections in the event of failed or repeated inspections.
- c. Compliance with Laws. LESSEE shall at its sole cost and expense, comply with all of the applicable requirements of all Municipal, State and Federal statutes, laws, ordinances, and regulations now in force, or which may be in force pertaining to the Premises and the construction and use of the Premises contemplated herein, including without limitation those regarding payment of prevailing wages as applicable.
- d. No Liens or Encumbrances. LESSEE will not create or suffer to be created any recorded or unrecorded mortgage, pledge, lien, charge, easement, rights of way or other rights, reservations, covenants, conditions, restrictions or encumbrance upon the Premises without the prior written consent of LESSOR in its sole discretion.

3. TERM AND OPTION TO EXTEND

- a. The initial term of this Agreement shall be for five (5) years commencing on the Start Date (as defined below) ("Initial Term"), with two (2) separate LESSOR options to extend the term (at a renegotiated RENT) for additional periods of five (5) years each (each an "Extension Term") (i.e. total potential term of use equal to fifteen (15) years including the Initial Term and two (2) Extension Terms) subject to the following terms and conditions:

- i. Each Extension Term shall be exercised, if at all, by LESSOR delivering written notice ("Option Exercise Notice") to LESSEE no later than twelve (12) months prior to the expiration of the Initial Term or the 1st Extension Term, as the case may be. The Option Exercise Notice shall provide that it is LESSOR's intention to exercise the option to extend the Initial Term for the 1st or 2nd Extension Term, as the case may be, as well as LESSOR's proposed RENT for such Extension Term.
 - ii. LESSEE shall have sixty (60) days following receipt of such a timely delivered Option Exercise Notice within which to elect, in LESSEE's sole and absolute discretion, to accept or reject LESSOR's intended exercise of the option contained in the Option Exercise Notice. If LESSEE rejects LESSOR's intended exercise contained in the Option Exercise Notice in a written notice to LESSEE within the sixty (60) day period, then the Term of this Agreement shall expire as of the expiration date of the Initial Term or 1st Extension Term, as the case may be.
- b. All of LESSEE's right, title and interest in the Premises and any improvements thereon (including the Facility) shall, at the option of LESSOR, pass to LESSOR upon the expiration of the term or earlier termination of this Agreement. Except, however, if LESSOR shall choose not to exercise its option to acquire title to the improvements constructed by the LESSEE, the LESSEE shall remove the same within a reasonable time and restore the Premises to its original condition existing immediately prior to construction, reasonable wear and tear and damage from the elements excepted. Should the LESSEE fail to remove the property and/or improvements subject to this Agreement, LESSOR may perform this work or have it done, and the LESSEE shall assume liability for the cost of this removal and restoration of the site, including payment of prevailing wage as applicable.
- c. All of the equipment brought by LESSEE onto land, the Premises, and in or on the Building shall remain LESSEE'S personal property and will be removed or caused to be removed by LESSEE upon termination of this Agreement or any extension thereof in accordance with this Agreement.

4. TERMINATION

This Agreement may be terminated as follows:

- a. By either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default by that party, provided that the grace period for any monetary default is fifteen (15) days from receipt of written notice. No such failure, however, will be deemed to exist if the defaulting party has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence and within no more than one hundred eighty (180) days from receipt of written notice. Delay in curing a default will be excused if due to causes beyond the reasonable control of a party. If a defaulting party remains in default beyond any applicable cure period, then the non-defaulting party will have the right to exercise any and all rights and remedies available to it under law and equity.
- b. By LESSEE prior to the build-out of the Facility or sixty (60) calendar days after full execution and delivery of this Agreement, whichever is sooner, and without cost or liability for any additional RENT following the date of such termination, if LESSEE is unable to obtain any required government permit or code approvals for the improvements to the Premises contemplated herein.
- c. By LESSOR upon not less than twelve (12) months prior written notice, or such shorter period as may be reasonably required by LESSOR under the circumstances, in the event LESSOR is required to terminate this Agreement for the paramount educational needs of LESSOR as reasonably determined by LESSOR pursuant to a written determination of the California State University's Board of Trustees and/or the LESSOR's Campus President reasonably in furtherance of its/their/his/her authority and

responsibilities under the California Education Code, or as otherwise expressly required under other applicable laws or policy. Following LESSEE's receipt of LESSOR's written notice of termination, LESSEE may terminate this Agreement immediately upon notice to LESSOR, or within a period no longer than the period within which LESSOR is so required to terminate this Agreement.

d. By LESSEE upon sixty (60) days' prior written notice to LESSOR for any reason or no reason, so long as LESSEE pays LESSOR a termination fee equal to four (4) months' RENT (defined below), at the then-current rate (in addition to any RENT due for the remaining term until such termination), provided, however, that no such termination fee will be payable on account of the termination of this Agreement by LESSEE under any termination provision contained in any other Section of this Agreement.

5. RENT & ADMINISTRATIVE CHARGE/FEE; TRIPLE NET LEASE

a. Commencing on the first day of the month following the completion of construction of the Premises and after LESSOR has issued written approval (the "Start Date"), LESSEE will pay LESSOR on or before the fifth (5th) day of each calendar month in advance the amount of [_____]Dollars (\$[_____]00), hereafter known as the "RENT". In any partial month occurring after the Start Date, RENT will be prorated. The initial RENT payment(s) will be forwarded by LESSEE to LESSOR within forty-five (45) days after the Start Date. In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly RENT will increase by the greater of four percent (4%) and the year-over-year change in CPI (defined below) over the RENT paid during the previous twelve (12) month period. Monthly RENT will be due and payable without a requirement that it be billed by LESSOR. The provisions of this subsection shall survive the termination or expiration of this Agreement, but no timely paid RENT shall be due after the effectiveness of any termination or expiration of this Agreement. As used in this Agreement, "CPI" means the Consumer Price Index for All Urban Consumers (base year 1982-84 = 100) for the San Francisco Area, as published by the United States Department of Labor, Bureau of Labor Statistics. If CPI is changed so that the base is changed from 1982-84 = 100, CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If CPI is discontinued or revised during the Initial Term or any Extension Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if CPI had not been discontinued or revised. If there is no such replacement, then LESSOR and LESSEE shall select another price index which is satisfactory to both.

b. Payments shall be made to: San Jose State University
Attn: Cashier's Office, Window 1
RE: _____Telecomm Lease
One Washington Square
San Jose, CA 95192

c. Within forty-five (45) days following the full execution and delivery of this Agreement, LESSEE shall make a one-time payment to LESSOR in the amount of _____Thousand Dollars (\$XXXX) to cover the costs to assure complete compatibility of operations at the Premises.

d. LESSEE acknowledges and agrees that this is a "triple net lease" and that LESSEE shall do all acts and make all payments connected with or arising out of its use and occupation of the Premises, such that LESSOR shall receive all rent provided for herein free and undiminished by any expenses, charges, fees, taxes and assessments, and LESSOR shall not be obligated to perform any acts or be subject to any liabilities or to make any payments, except as otherwise expressly provided herein. In addition to the RENT specified above, except as otherwise expressly provided herein, LESSEE shall pay to the parties respectively entitled thereto, or satisfy directly, all impositions, insurance premiums, repair and

maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses which may arise under this Agreement or with regard to the Premises during the Initial Term or any Extension Term or any period of use or occupancy by LESSEE hereunder. To the extent any such costs or expenses payable by LESSEE are paid by LESSOR, either because they cannot be charged directly to LESSEE or to cure a default or otherwise protect LESSOR's interests, LESSEE shall reimburse LESSOR the full amount of such payments, as additional rent, within thirty (30) days of written demand by LESSOR, and failure to timely pay such amounts shall be a default hereunder.

6. INDEMNIFICATION

LESSEE does expressly agree to indemnify, defend, and hold harmless the State of California, the Board of Trustees of the California State University, San Jose State University, its auxiliary organizations, and their respective officers, representatives, agents, employees and volunteers from any and all claims for loss, damage, injury, or liability (collectively "Claims") which may arise in connection with this Agreement or from the occupation and use by LESSEE of the Premises and Building herein permitted to be used or the property of LESSOR to which the LESSEE, its agents, employees, representatives, contractors, sublessees, licensees, or invitees may have access by reason of this Agreement (including without limitation Claims related to development, approval, permitting, financing, construction, maintenance, and operation of the Facility and any other improvements installed by LESSEE), except to the extent of any loss, damage, injury or liability arising from the gross negligence or willful misconduct of LESSOR or its agents, employees or contractors. LESSEE agrees to provide any required Workers' Compensation Insurance at the applicable statutory limits for all employees of LESSEE performing work or services pursuant to this Agreement upon the LESSOR's property, at the LESSEE's own cost and expense.

7. INSURANCE

Throughout the life of this Agreement, LESSEE shall pay for and maintain in full force and effect with the insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A:VIII" in Best Insurance Key Rating Guide, the following policies of insurance:

a. COMMERCIAL GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverage, Bodily Injury and Property Damage (including Fire Legal Liability) and the exclusion for explosion, collapse and underground shall be deleted. General Liability insurance with combined single limits of \$[___],000,000 per occurrence, and \$[___],000,000 general aggregate limit.

b. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY insurance covering all owned, non-owned and hired vehicles, with combined single limits of liability of \$[___],000,000 each occurrence for bodily injury and property damage.

c. WORKERS' COMPENSATION insurance as required under the California Labor Code and Employers Liability Insurance with limits of not less than \$[___],000,000 each accident/disease/policy limit.

d. ALL-RISK PROPERTY insurance against loss or damage to the Premises, Facility, Site Equipment, and any of LESSEE's equipment, furniture, fixtures, and other personal property at the Premises, including builders risk and course of construction extensions to cover claims occurring during any period of LESSEE construction.

e. POLLUTION AND ENVIRONMENTAL HEALTH AND SAFETY LEGAL LIABILITY insurance with limits of not less than \$[___],000,000 per occurrence, and \$[___],000,000 general aggregate, providing coverage for claims for bodily injury, property damage, clean-up costs and legal

defense costs resulting from the discharge or release of any HAZARDOUS MATERIALS (defined below) and specifically including (or not excluding or deleting from coverage) the discharge or release of any 5G and electromagnetic radiation.

The Policies shall also provide the following:

f. The Commercial General Liability and Automobile Liability insurance shall be written on ISO-approved occurrence form or its substantial equivalent and shall include: The State of California, the Board of Trustees of the California State University, San Jose State University, and their officers, representatives, employees, and volunteers as additional insureds as their interest may appear under this Agreement. The coverages required herein shall not limit the liability of LESSEE. LESSEE's coverage will be primary and will not participate with, nor be excess over, any valid and collectible insurance or program of self-insurance carried or maintained by LESSOR.

g. For any claims related to this Agreement, the LESSEE's required insurance coverage shall be primary insurance as respects the State of California, the Board of Trustees of the California State University, San Jose State University, its auxiliary organizations, and their respective officers, representative, agents, employees, and volunteers. Any coverage maintained by LESSOR shall be excess of the LESSEE's required insurance and shall not contribute with it. Policy shall waive right of recovery against LESSOR.

h. Upon receipt of notice from its insurer(s), LESSEE shall use commercially reasonable efforts to provide LESSOR at least thirty (30) days' prior written notice of cancellation of any required coverage that is not replaced. LESSEE shall also provide LESSOR with updated certificates of insurance ("Certificates") when applicable.

i. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code, to the extent Section 2782 is applicable

j. LESSEE shall furnish LESSOR with the Certificates and Blanket Additional Insured Endorsements for all required insurance, within forty-five (45) days of full execution of this Agreement and in any event prior to the commencement of any use or occupancy by LESSEE.

k. Proper Address for Certificates, Endorsements and Notices to:

San Jose State University
Attn: Senior Director, Business Services
risk-management-group@sjsu.edu
One Washington Square
San Jose, CA 95192

l. Upon notification of receipt by LESSOR of a Notice of Cancellation, major change, modification, or reduction in coverage, LESSEE shall file with LESSOR a copy of the required new certificates for such policy. Notwithstanding the forgoing, LESSEE may, in its sole discretion, elect to self-insure any of the required insurance under the same terms as required by this Agreement. In the event LESSEE elects to self-insure its obligation under this Agreement to include LESSOR as additional insureds, the following conditions apply:

- (i) LESSEE shall provide LESSOR with reasonably satisfactory evidence of its self-insurance capacity and ability to satisfy insurable claims;
- (ii) LESSOR shall promptly and no later than thirty (30) days after notice thereof provide LESSEE with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide LESSEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;
- (iii) LESSOR shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of LESSEE; and
- (iv) LESSOR shall fully cooperate with LESSEE in the defense of the claim, demand, lawsuit, or the like.

LESSEE's agents or independent contractors shall be required to maintain insurance with the same coverage limits and requirements as listed above and will not be permitted access to Premises, Building, or site until evidence of insurance has been approved by LESSOR.

Any variation from the above Agreement requirements shall only be considered by and be subject to approval by LESSOR's Procurement & Contract Services Officer and LESSOR's Risk Manager.

If at any time during the life of the Agreement or any extension, LESSEE fails to maintain the required insurance in full force and effect, all access under the Agreement shall be discontinued immediately, and all until acceptable replacement coverage notice is received by LESSOR. Any failure to maintain the required insurance shall be sufficient cause for LESSOR to terminate this Agreement.

8. NOTICES

All notices herein provided to be given or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited with a reliable overnight courier, or in the United States Mail, certified, postage prepaid, and addressed as follows:

To LESSOR: Senior Director, Business Services
San Jose State University
1 Washington Square
San Jose, CA 95192

Copies to: Senior AVP of Facilities Development &
Operations
San Jose State University
1 Washington Square
San Jose, CA 95192

The California State University
Office of General Counsel
401 Golden Shore
Long Beach, CA 90802-4210
Attn: University Counsel, San Jose State University

To LESSEE: [_____]

The addresses to which notices shall or may be mailed as aforesaid to either party shall or may be changed by written notice given by either party to the other, as herein before provided, but nothing herein contained shall preclude the giving of such notice by personal service.

9. ASSIGNMENT/SUBLEASE

Except as provided herein, LESSEE shall not without previous consent in writing from LESSOR transfer its interest in the Premises or Facility, in whole or in part, or assign or sublease this Agreement or any interest therein. The LESSOR's consent to any such assignment or transfer may be withheld in LESSOR's sole discretion. Notwithstanding the above, LESSEE may, upon notice to LESSOR, transfer or assign this Agreement without LESSOR's consent (i) to any of LESSEE's partners or parent firms and (ii) to LESSEE's Affiliates and subsidiaries; provided, (1) that any such transferee or assignee fulfills all of LESSEE's obligations hereunder and (2) that no such transfer or assignment shall relieve LESSEE of its obligations hereunder. For the purpose of this Agreement, an "Affiliate" is defined to include any person or entity which directly or indirectly controls, is controlled by, or under common control with, LESSEE. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise. Except as provided above, any change, assignment, or transfer of the LESSEE's interest herein, in whole or in part, either voluntarily or involuntarily or by operation of law, shall be null and void, and LESSOR shall have the right to pursue all remedies available to LESSOR under Section 4a above or applicable law.

10. FAILURE TO PERFORM

Subject to the terms and conditions of Section 4a above, in the event of the failure, neglect, or refusal of LESSEE to do or perform work, or any part thereof, or any act or thing in this Agreement required to be done and performed by said LESSEE, LESSOR shall, after giving LESSEE sixty (60) days prior written notice, at its option, have the right to do and perform the same, and the LESSEE hereby covenants and agrees to pay LESSOR the reasonable and actual cost thereof within thirty (30) days following receipt of a written invoice accompanied by reasonable substantiation of any such cost.

11. HEIRS AND SUCCESSORS

The terms of this Agreement, the covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns, and successors-in-interest of the parties hereto.

12. DISPUTE RESOLUTION

If any dispute arises under this Agreement that is not settled promptly in the ordinary course of business, the parties shall seek to resolve any such dispute between them, first by negotiating promptly with each other in face-to-face negotiations. These face-to-face negotiations shall be conducted by the respective designated senior management member of each party. Both parties agree to negotiate in good faith to resolve any disputes. In the event any dispute cannot be so resolved between the parties within thirty (30) days from the date the dispute arises, then either party may commence legal action. The use of such procedure shall not be construed to affect adversely the rights of either party under the doctrines of laches, waiver or estoppel. Nothing in this paragraph shall prevent either party from resorting to judicial proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful or (b) interim resort to a court is necessary to prevent serious and irreparable injury to a party or to others.

13. EASEMENTS AND RIGHTS-OF-WAY

This Agreement is subject to all existing easements and rights-of-way. LESSOR further reserves the right to grant additional easements as may be necessary for the provision of utilities and services to the campus or other licensees, provided such additional easements do not materially interfere with LESSEE's use

and or operations on the Premises allowed by this Agreement.

14. DUMPING

No dumping of refuse by the LESSEE is permitted in any area of the Premises.

15. RELATIONSHIP OF PARTIES

Nothing herein contained shall be construed as constituting the parties herein as partners, or as employer and employee.

16. MAINTENANCE/UTILITIES

a. LESSEE will keep and maintain the Premises in good, clean, and orderly condition, reasonable wear and tear and damage from the elements excepted, and may not store any property or materials anywhere outside of the Premises. LESSOR will maintain and repair the property and access thereto, the Building, and all areas of the Premises where LESSEE does not have exclusive control, in tenantable condition, subject to reasonable wear and tear and damage from the elements. LESSOR will be responsible for maintenance of landscaping on the property, including any landscaping installed by LESSEE as a condition of this Agreement or any required permit, excluding any damage to the property caused by LESSEE or its employees, agents, contractors or representatives.

b. LESSEE will be responsible for paying on a monthly or quarterly basis, or other billing frequency utilized by the utility provider, all utilities charges for electricity, telephone service or any other utility used or consumed by LESSEE on the Premises, and LESSOR shall also have the right to require that the Premises be sub-metered to ensure all associated utilities charges are borne by LESSEE. In the event LESSEE cannot secure its own metered electrical supply, LESSEE will have the right, at its own cost and expense, to sub-meter from LESSOR. When sub-metering is required or allowed and utilized under this Agreement, LESSOR will read the meter and provide LESSEE with an invoice and usage data on a monthly basis. LESSEE will remit payment within thirty (30) days of receipt of invoices, which will include usage data. If LESSEE submeters electricity from LESSOR, LESSOR agrees to give LESSEE at least twenty-four (24) hours advanced notice of any planned interruptions of said electricity.

17. ACCESS TO PREMISES

LESSOR shall provide LESSEE access to the Premises as needed to fulfill the intent of this Agreement. LESSEE shall notify LESSOR's University Facilities, Development & Operations Department at via email at _____, at least forty eight (48) hours prior to each incident of accessing the site. In the event after-hours access is required, LESSEE will be required to physically check-in with the University Police Department. All of LESSEE's employees must carry identification clearly indicating that they are employed by LESSEE. LESSEE must provide LESSOR's University Facilities, Development & Operations and the University Police Department with any keys and/or access codes necessary to access LESSEE's Premises in the event of an emergency.

18. INTERFERENCE

LESSEE shall operate the Facility in a manner that will not cause interference to LESSOR, its operations, or its users, students, faculty, staff, officers, contractors, subcontractors, consultants, representatives, visitors, clients, licensees, or invitees. All operations by LESSEE shall be lawful and in compliance with all Federal Communications Commission (FCC) requirements. Prior to or concurrent with the execution of this Agreement, LESSOR has provided or will provide LESSEE with a list of radio frequency user(s) and frequencies used on the property, a calculation of frequency emissions, and any other information in connection therewith reasonably requested by LESSOR (the "Frequency Information") as of the Effective Date, and shall provide updated Frequency Information for LESSOR's review prior to the effectiveness of any changes or modifications to the Facility, Site Equipment (defined below), or LESSEE's operations that would require or effect a change in the Frequency Information. LESSEE warrants that its use of the Premises will not interfere with those existing licensed radio frequency uses on the property in violation of this Section, as long as the existing licensed radio frequency user(s) operate

and continue to operate within their respective frequencies in the manner permitted by the FCC and in accordance with all applicable laws and regulations.

19. BREACH OF OBLIGATION

If either party breaches its obligations under the above paragraphs 17 or 18 and receives notice in writing from the other of any such breach, the party receiving notice shall use commercially reasonable efforts to correct and eliminate such harmful interference. If the breaching party cannot correct such harmful interference within the applicable time period set forth in Section 4 of this Agreement, then the other party shall have the right, in addition to any other rights that it may have at law or in equity, to terminate this Agreement.

20. PROPERTY OF LESSEE

LESSEE shall provide all transmitters, receivers, antennas and all related electronic equipment (the "Site Equipment") as well as all labor required for the installation and operation of LESSEE's Facility. Any personal property that is not affixed to the Premises is and shall remain the sole property of LESSEE and may be removed from the Premises by LESSEE at any time.

21. MAINTENANCE AND REPAIR OF SITE EQUIPMENT

LESSEE shall, at its sole cost and expense, maintain and repair its Site Equipment.

22. LESSOR OPERATIONS

During this Agreement, notwithstanding any other provision herein any possession of rights of the LESSEE hereunder, there shall be and is hereby expressly reserved to LESSOR and to any of its agencies, contractors, agents, employees, or representatives the right at any and at all times, and any and all places, to enter upon said property Premises, or the Facility for survey or other lawful LESSOR purposes. However, LESSOR agrees that it will not, and will not allow its agencies, contractors, agents, employees or representatives to, alter, modify, repair or in any way materially interfere with LESSEE's equipment or operations on the Premises. LESSOR shall endeavor to give LESSEE at least twenty-four (24) hours prior notice before accessing the Premises in writing or telephonically to LESSEE's Network Operations Center at 1-800-264-6620 or *[INSERT EMAIL ADDRESS]*. In the event of an emergency that constitutes an imminent threat of physical harm to persons or property due to the presence of LESSEE's Facility, related operations, or material interference with LESSOR's ability to conduct its normal operations at the Building, LESSOR shall have the right to enter the Premises at any time if, given the nature of the emergency, prior notice is not feasible provided that LESSOR (i) provides LESSEE subsequent prompt written notice of such access which includes the time and date of access, the nature of the emergency and any and all action taken in relation thereto; and (ii) does not access LESSEE's equipment cabinets unless access to the same is needed to resolve the emergency.

23. HOLDOVER

Any holding over after the expiration of the term of this Agreement with the consent of LESSOR expressed or implied shall be deemed to be a tenancy only from month to month. Consideration is to be paid monthly pro rata at 150% of the rate applicable at the expiration of the term. Said monthly tenancy shall be subject otherwise to all the terms and conditions of the Agreement so far as applicable. In no event shall any expressed or implied consent be given that would allow the term of this Agreement to reach or extend twenty (20) years or more in total.

24. PAYMENT OF TAXES, ASSESSMENTS OR CHARGES

a. LESSEE agrees to pay all lawful taxes, assessments, or charges which at any time may be levied by any public entity upon LESSEE's interest in this Agreement or any possessory right which

LESSEE may have in or to the Premises or LESSEE's improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by LESSEE in or about said Premises. If LESSEE is not separately assessed for such taxes, LESSOR shall provide LESSEE with evidence reasonably satisfactory to LESSEE of the taxes due by LESSEE.

b. The Santa Clara County Assessor may value the possessory interest created by this agreement, or any sub-agreements. Under California Revenue and Taxation Code Section 107, a property interest tax may be levied on that possessory interest. LESSEE is obligated to pay this tax, and failure to do so may be considered a material breach of the agreement.

25. WAIVER OF LIEN RIGHTS

LESSOR waives any lien rights it may have concerning the portions of LESSEE's Facility which may be deemed LESSEE's personal property; and LESSEE has the right to remove the same at any time without LESSOR's consent consistent with the terms of this Agreement.

26. STATE LAW

LESSOR represents, warrants and agrees that: A) LESSOR has full right to make this Agreement; B) upon LESSEE paying the charges and observing and performing all the terms, covenants and conditions on LESSEE's part to be observed and performed, LESSEE may peacefully and quietly enjoy the Premises, subject nevertheless to the terms and conditions of this Agreement; and C) LESSOR will not knowingly cause or permit the Premises to be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements, which would materially and adversely affect LESSEE's permitted use and enjoyment of the Premises under this Agreement or the other rights expressly granted or conferred to LESSEE by LESSOR under this Agreement.

27. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by all parties.

28. ENFORCEABILITY

If any provision of this Agreement is determined to be invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

29. HAZARDOUS MATERIALS

a. Use, handling, or storage of any hazardous or toxic waste, substance, or chemical, pollutant, contaminant, pesticide, oil, petroleum, fuel product, or other solid liquid or gaseous substance or product (i) that is currently or hereafter listed, regulated or designated as, or is determined to be (in whole or in part) toxic, hazardous, or harmful (or words of similar meaning and regulatory effect), or with respect to which governmental regulatory obligations of any kind be imposed under any laws or legal requirements (including common law or strict liability provisions, and any judicial orders or administrative regulations) relating to health, safety, industrial hygiene, any of the foregoing materials, pollution, the environment, or related matters, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) {42 USC 9601 *et seq* } or the Superfund Amendments and Reauthorization Act (SARA) and any similar State or Federal law or (ii) exposure to

which may pose an environmental, health, or safety threat or hazard is prohibited (any of the foregoing, "Hazardous Materials"); except only pesticide, oil, petroleum, or fuel materials packaged and purchased for consumer use in containers not to exceed one gallon, or fuel in a vehicle fuel tank. Use of pesticides should be minimized, and will be applied only by authorized personnel and in accordance with all applicable laws, regulations, and label instructions. Aerial application is prohibited.

b. Accumulation, storage, treatment, or disposal of any waste material is prohibited; excepting only temporary storage, not to exceed fourteen (14) days or non-hazardous solid refuse produced from activities on the Premises for pick up by municipal or licensed commercial refuse service, and lawful use of sanitary sewers (if any) for domestic sewage.

c. Manufacturing; maintenance of equipment or vehicles, or use, installation or construction of vessels, tanks, (stationery or mobile), dikes, sumps, or ponds; or any activity for which a license or permit is required from any government agency for (1) transportation, storage, treatment, or disposal of any waste, (2) discharge of any pollutant including but not limited to discharge to air, water, or a sewer system is prohibited.

Any discharge, spill or release of any Hazardous Material will be immediately reported to LESSOR as well as to appropriate government agencies, and shall be promptly and fully cleaned up and the Premises and Building (including soils, surface water, and groundwater) restored to their original condition as directed by LESSOR and any other government agencies having jurisdiction.

Should LESSEE desire to use pesticides on the area (herbicides, rodenticides, or insecticides) all applicable Environmental Protection Agency (EPA) standards must be met and prior written approval must be received from LESSOR (it is understood that LESSOR is not obligated to approve all EPA-approved pesticides). No dumping of any kind (including without limitation Hazardous Materials, refuse (except as expressly provided herein) or any petroleum products) shall be permitted. LESSEE shall notify LESSOR in writing at least seven (7) days prior to its proposed application of pesticides. LESSOR reserves the right to disapprove the use of any pesticide. LESSEE shall obtain all county, state, LESSOR and/or federal permits required, including restricted pesticide use and burning permits and comply with all conditions of those permits. LESSEE shall submit to LESSOR a copy of all permits.

d. LESSEE agrees that it shall be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, or ordinances, regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to LESSEE's activities conducted in or on the property governed by this Agreement.

e. LESSOR covenants and agrees that LESSEE shall have no liability or other responsibility for any Hazardous Materials on the property governed by this Agreement prior to or after the Effective Date unless and solely to the extent that such Hazardous Materials were brought on the property by LESSEE, its employees, agents, or contractors, or LESSEE or its employees, agents, or contractors exacerbated an existing Hazardous Materials condition on the property.

30. SUBLET AND CHANGE IN USE

Except to an Affiliate of LESSEE, LESSEE shall not license, permit or suffer any use of the leased Premises or any part thereof, or lease space in any building or Facility constructed on said land, provide telecommunications equipment for the use of others, or cause or permit any change of any equipment installed in such Premises, including power outputs, except upon making a written request to LESSOR for each such transaction and the obtaining of LESSOR's prior written consent thereto in its sole

discretion. LESSEE shall display on each piece of equipment the appropriate license from the federal regulation agency.

31. COMPLIANCE WITH STATUTES

All of LESSEE's operations hereunder, including any construction, repair, and maintenance work and the installation and maintenance of the telecommunications equipment of LESSEE, shall be performed in a neat and workmanlike manner and shall conform in all respects to the fire, safety and construction standards applicable to such installation. LESSEE shall at all times comply with the statutes, laws, ordinances and regulations of any competent government authority which are applicable to this Agreement and its operations and maintenance at the Premises.

32. PROHIBITED USES

a. LESSEE shall not commit, suffer, or permit any waste on the leased Premises or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the leased Premises for any illegal or immoral purposes, and shall not create or permit any nuisance therein.

b. Since the Premises are situated on the grounds of San Jose State University, LESSEE will comply with all rules and regulations adopted by said institution which are adopted and applied in a uniform and in a manner that does not discriminate based on any constitutionally protected status. Said rules prohibit but are not limited to, the possession or use of firearms, liquor, or illegal drugs on the Premises, and also regulate, among other things, campus safety and protection of minors. Any violation of said rules and regulations or of the terms of this Agreement will be subject to the right of LESSOR to declare a default pursuant to the notice and cure periods set forth in Section 4a above.

33. FIRE AND CASUALTY DAMAGES

a. LESSOR will not keep improvements which are constructed or installed by LESSEE under the provisions of this Agreement insured against fire or casualty, and LESSEE will make no claim of any nature against LESSOR by reason of any damage to the business or property of LESSEE in the event of damage or destruction by fire or other cause, arising other than from or out of gross negligence or willful misconduct of agents or employees of the State of California in the course of their employment.

b. If any of LESSEE's improvements or equipment is destroyed by acts of nature, LESSEE shall immediately notify LESSOR and shall have the right to replace them with improvements and equipment of the same general type that meets or exceeds the technical specifications of the original equipment, subject to LESSEE first obtaining any then-required permits and approvals from LESSOR and any other applicable governmental agency with jurisdiction for such replacement work. The improvements shall occupy no more space area and the equipment shall consume no more electrical power than contained in the original specifications. LESSEE shall immediately notify LESSOR of the date the replacement is completed.

34. DISPOSITION OF LESSEE'S IMPROVEMENTS

All improvements constructed on and all other improvements placed on the leased Premises or its appurtenances by LESSEE, and all wires, equipment, and other property' placed in, upon, or under the leased Premises or its appurtenances by LESSEE shall remain the property of LESSEE and shall be removed by LESSEE, at its sole cost and expense and only after any required permits for demolition or removal have been issued, within sixty (60) days after the expiration or earlier termination of LESSEE's tenancy of the leased Premises, but should LESSEE fail to do so within sixty (60) days after expiration or earlier termination of this Agreement, LESSOR may do so at the risk of LESSEE, and all reasonable and actual cost and expense of such removal as aforesaid shall be paid by LESSEE within thirty (30) days following receipt of a written invoice by LESSEE from LESSOR, accompanied by reasonable substantiation of any such cost or expense including, as applicable, prevailing wage; provided, however,

upon said termination of LESSEE's tenancy, LESSEE may, with the written consent of LESSOR, abandon in place any and all of said improvements, whereupon title to said improvements as abandoned by LESSEE shall vest in LESSOR.

35. VACATING THE PREMISES

LESSEE shall, on the last day of said term or sooner termination of this Agreement, peaceably and quietly leave, surrender, and yield to LESSOR, all and singular, the leased Premises in good order, condition, and repair, reasonable use and wear thereof and damage by acts of nature, excepted. Upon termination, a qualified LESSOR representative shall have the right to inspect the Premises to determine that the Premises were left in accordance to the terms specified, which inspection shall be performed in a timely manner after LESSOR's receipt of notice that LESSEE's removal obligations are complete. In the event damage has occurred and is caused by LESSEE, LESSEE shall assume liability for the cost to restore the leased Premises to its prior condition as required by this Agreement.

36. DISCRIMINATION

LESSEE will not discriminate against any employee or applicant for employment because of race, color, religious creed, ancestry, sex, age, national origin, medical condition, genetic information, marital status, gender, gender identity, gender expression, sexual orientation, military and veteran status, or physical or mental disability. The LESSEE will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, ancestry, sex, age, national origin, medical condition, genetic information, marital status, gender, gender identity, gender expression, sexual orientation, military and veteran status, or physical or mental disability. (See, e.g. California Government Code Sections 12920-12994).

37. GOVERNING LAW; VENUE

This Agreement shall be governed by the laws of the State of California. Venue shall be in the County of Santa Clara, California.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto as of the date last hereinafter written.

“LESSOR”

The Board of Trustees of the California State University, which is the State of California acting in its higher education capacity, acting by and through San Jose State University

By: _____

Print Name: _____

Title: _____

Date: _____

“LESSEE”

d/b/a _____ By:

Its:

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT I
DESCRIPTION OF LESSOR
PROPERTY

Exhibit II

DESCRIPTION OF PREMISES

Page 1 of 2

The Premises are described or depicted as follows:

(See Attached "CELL SITE LOCATION")

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by LESSEE.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.