

## MASTER LEASE AGREEMENT

This Master Lease Agreement (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, between **CITY OF CLEMSON**, with its principal offices located at \_\_\_\_\_, hereinafter designated LESSOR and **CELLCO PARTNERSHIP** d/b/a Verizon Wireless with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

### WITNESSETH

WHEREAS, LESSOR is the owner of or holds a leasehold interest in certain properties, buildings and/or facilities, which are located within the geographic area of a license to provide wireless services licensed by the Federal Communications Commission ("FCC") to LESSEE; and

WHEREAS, LESSEE desires to install, maintain and operate communications equipment in and/or upon certain of LESSOR's properties, utility poles, buildings and/or facilities; and

WHEREAS, LESSOR and LESSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which LESSOR may wish to permit LESSEE to install, maintain and operate communications equipment as hereinafter set forth; and

WHEREAS, LESSOR and LESSEE acknowledge that they will enter into a lease supplement ("Supplement"), a copy of which is attached hereto as Exhibit A, with respect to any particular location or site which the Parties agree to lease; and

WHEREAS, LESSOR owns the premises and facilities described below and desires to allow LESSEE to enter and utilize designated areas of the facilities and premises according to each Supplement.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

### **1. Location**

**1.1.** Pursuant to all of the terms and conditions of this agreement and the applicable Supplement the premises and facilities (hereinafter referred to as the "PREMISES") provided by LESSOR are described in the SITE PLAN attached to the applicable Supplement and incorporated therein as **Appendix "A"**. Included upon the PREMISES shall be an existing utility/street light pole or building, as defined herein. LESSEE antennas and equipment are (hereinafter referred to as "IMPROVEMENTS"). As a part of the SITE PLAN, LESSEE shall provide to LESSOR a map that identifies all of LESSEE's cell sites within the City of Clemson and within a one-mile radius of the boundaries of the City of Clemson. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"** of the respective Supplement. The lease authorized under the terms of this

Agreement shall be a license for the use of that portion of the PREMISES designated for use by LESSEE on the SITE PLAN.

**1.2. Site Plan.** The SITE PLAN must be approved by LESSOR prior to the execution of the applicable Supplement, with approval or disapproval not to be unreasonably withheld, conditioned or delayed. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under the Supplement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under the Supplement shall be in strict compliance with the SITE PLAN. If LESSEE's installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by LESSOR, then LESSOR shall have the right to terminate the Supplement upon notice to LESSEE, who has an opportunity to cure as provided under Section 5 herein. Any proposed material modifications to LESSEE'S SITE PLAN must be approved in writing by LESSOR before LESSEE may make any changes to its SITE PLAN as originally approved by LESSOR.

**1.3.** LESSEE shall inspect, examine and investigate the status of the title and condition of the PREMISES to the extent that LESSEE deems necessary, and LESSEE understands, acknowledges and agrees that it is entering into each Supplement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LESSEE conducts and not as a result of any representation, warranty, assurance, guaranty or promise of LESSEE or any person purporting to act on behalf of LESSEE, other than those which may be expressly set forth in this Agreement.

**1.4. LESSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER LESSOR NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE LESSOR, HAS MADE ANY, AND THE LESSOR EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE SUPPLEMENT AND THAT NO AGENT OR EMPLOYEE OF THE LESSOR OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT OR THE SUPPLEMENT.**

## **2. Use of Premises**

**2.1. Permitted Use.** Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, LESSOR agrees to allow installment of LESSEE IMPROVEMENTS, in accordance with the terms of this Agreement. LESSEE use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LESSEE shall obtain the written approval of the LESSOR prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall be evidenced by LESSOR'S execution of each Supplement, inclusive of all exhibits and special stipulations. LESSEE

understands, acknowledges and agrees that the use of the PREMISES by LESSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the SITE PLAN attached to the applicable Supplement. LESSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of LESSOR, which may be given or withheld for any reason or for no reason, in the LESSOR'S sole, absolute and unrestricted discretion.

**2.2. Prohibited Use.** LESSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LESSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by LESSOR for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

**2.3. Subletting of Use Premises or Improvements.** LESSEE may not sublet to or license others to use the PREMISES or LESSEE'S IMPROVEMENTS without the prior written consent of LESSOR. Any such attempt by LESSEE shall be without effect and may at LESSOR's option result in the termination of the applicable Supplement.

**2.4. Maintenance, Repair or Replacement of Improvements.** LESSEE may update, maintain, repair, or replace the IMPROVEMENTS located upon the PREMISES from time to time without LESSOR's approval, provided that the total of all IMPROVEMENTS do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to LESSOR, such approval not to be unreasonably withheld, conditioned or delayed. LESSEE shall submit to LESSOR for approval, a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for LESSOR's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of LESSEE's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, LESSEE shall have the right, at any time during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of LESSOR; provided, however that LESSEE shall provide LESSOR with advance written notice of any such change or addition and provided further that LESSEE agrees to comply with the terms and provisions of Section 9 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to LESSOR by LESSEE and maintained on file with LESSOR for the entire term of this Agreement and all renewals thereof.

### **3. Term**

**3.1.** This Agreement shall be for a term of twenty-five (25) years commencing upon the execution hereof by both Parties. Each Supplement shall be effective as of the date of execution by both Parties, provided, however, the initial term of each Supplement shall be for five (5) years and shall

commence on the first day of the month following the day that LESSEE commences installation of the equipment on the Premises (the "Effective Date"). For a period not to exceed one hundred eighty (180) days following the Effective Date, LESSEE shall have the right to terminate the respective Supplement by giving thirty (30) days written notice to LESSOR of such termination if LESSEE is unable to obtain all licenses and permits or authorizations required for LESSEE'S use of the PREMISES from all applicable government and/or regulatory entities (the "Governmental Approvals") for LESSEE'S intended use of and improvements to the PREMISES.

**3.2.** LESSEE is granted the option to renew each Lease Supplement for four (4) additional five (5) year terms, after the initial term expires. Unless LESSEE gives written notice to LESSOR of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, the Lease Supplement will automatically renew for each said renewal term as long as LESSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LESSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and the Supplement has not been renewed or superseded, the Lease Supplement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

**3.3.** Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Lease Supplements in effect until their expiration or termination.

#### **4. Payment Terms and Conditions**

**4.1. Rent Payment.** In consideration for providing the PREMISES for use by LESSEE, the LESSEE shall pay rent to LESSOR annually, with the first payment being due on the Effective Date of the Supplement. LESSOR and LESSEE acknowledge and agree that the initial rental payment for each Supplement may not actually be sent by LESSEE until forty-five (45) days after the Effective Date. LESSOR and LESSEE agree that they shall acknowledge in writing the Effective Date of each Supplement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LESSEE shall pay rent to LESSOR annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount equal to One Thousand, Eight Hundred and No/100 Dollars (\$1,800.00) per year for each PREMISES subject to a Supplement ("Rent Payment"). If the Supplement is terminated at a time other than the last day of the calendar year of the term for any reason other than a default by LESSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LESSEE.

**4.2. Rent Adjustment.** The Rent Payment for each Lease Supplement shall be increased by two percent (2%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term "Lease Year" shall mean the twelve-month period which commences on the first day of the

calendar month in which the Effective Date occurs. The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by two percent (2%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred two percent (102%) of the prior Lease Year's Rent shall be the Rent Payment for the Lease Year of the adjustment.

**4.3. Holdover Rent.** The Rent Payment, as defined in Section 4.1 above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

**4.4. Additional Fees.** LESSOR shall invoice and LESSEE shall pay any applicable transaction tax (including sales, use, gross receipts, or excise tax) imposed on LESSEE and required to be collected by the LESSOR based on any service, rental space, or equipment provided by LESSOR to LESSEE. LESSEE shall pay all personal property taxes, fees, assessments, or other taxes and charges imposed by any Government Entity that are imposed on LESSEE and required to be paid by LESSEE that are directly attributable to LESSEE's equipment or LESSEE's use and occupancy of the Premises. Payment shall be made by LESSEE within sixty (60) days after presentation of a receipted bill and/or assessment notice which is the basis for such taxes or charges. LESSOR shall pay all ad valorem, personal property, real estate, sales and use taxes, fees, assessments or other taxes or charges that are directly attributable to LESSOR's Property or any portion thereof imposed by any Government Entity.

**4.5. Legal Reimbursement Fees.** LESSEE will reimburse LESSOR Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) for legal fees incurred for preparing the Master Lease Agreement and will be due thirty (30) business days after the execution date of the Master Lease Agreement. LESSEE will reimburse LESSOR Five Hundred and No/100 Dollars (\$500.00) for legal fees incurred for preparing each Lease Supplement and will be due thirty (30) business days after the execution date of the each Lease Supplement Agreement.

**4.6. Payment Address.** Legal Reimbursement Fee Payments, Rent Payments and Additional Fees Payments shall be made payable to "City of Clemson", and mailed to City of Clemson Accounts Receivable, 1250 Tiger Blvd. STE 2, Clemson, SC 29631. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") including without limitation: (i) documentation evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits under each Supplement; (ii) a completed, most current version of Internal Revenue Service Form W-9, or equivalent for any party to whom rental payments are to be made pursuant to this Agreement or a Supplement; and (iii) other documentation requested by LESSEE and within thirty (30) days of obtaining an interest in any Property, Supplement or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE such Rental Documentation. All documentation shall be acceptable to LESSEE in LESSEE's reasonable discretion. Delivery of Rental Documentation to LESSEE shall be a prerequisite for

the payment of any rent by LESSEE and notwithstanding anything to the contrary herein or in any Supplement, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein.

Within thirty (30) days of a written request from LESSEE, LESSOR or any assignee(s) or transferee(s) of LESSOR agrees to provide updated Rental Documentation. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE to such party and notwithstanding anything to the contrary herein or in any Supplement, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein.

**4.7. Lawful Currency.** Legal Reimbursement Fee Payments, Rent Payments and Additional Fees Payments shall be made according to paragraphs 4.5 and 4.6 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES. In no event will LESSEE be obligated to pay any general income taxes measured upon the income of the LESSOR. In the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LESSEE shall pay to LESSOR an amount equal to any and all amounts so imposed or levied as a component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the LESSOR may have with LESSEE or its parent or any subsidiary or affiliate.

**4.8. Late Payments.** If LESSOR has provided LESSEE with the Rental Documentation as set forth in Section 4.6 above, LESSOR may charge a late payment fee to the LESSEE if any invoice is not paid by LESSEE within 30 days of any unpaid invoice date. Late payment fees will not exceed 10% of the amount of the unpaid invoice. LESSOR will invoice LESSEE if a late payment fee is assessed to any unpaid invoice. Payments shall be made according to paragraphs 4.5 and 4.6 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever.

## **5. Termination**

**5.1. Termination for Cause.** Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, LESSOR may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under the respective Lease Supplement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LESSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LESSEE shall equitably compensate LESSOR in accordance with the terms of the respective Lease Supplement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by LESSOR. LESSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should LESSOR choose to exercise its option to terminate.

**5.2. Event of Default.** Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

(a) if LESSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;

(b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

**5.3. Termination by LESSEE.** This Agreement may be terminated by LESSEE, without penalty or further liability, as follows:

(a) upon written notice, if LESSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by LESSEE; or if LESSEE determines in its sole discretion that the cost of obtaining or retaining a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility is commercially unreasonable;

(b) on sixty (60) days written notice for any reason, other than 5.2(a) or (b) above, so long as LESSEE pays LESSOR a termination fee equal to three (3) month's rent at the current rate.

**5.4. Notice and Opportunity to Cure.** Upon the occurrence of an Event of Default, LESSOR shall deliver to LESSEE a Notice of Intent to Terminate that identifies in detail the event of Default, if the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, LESSOR may terminate the Supplement and the license granted herein by delivering to the LESSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 5.2(b).

**5.5. Primary Function of PREMISES.** The parties understand and agree that the interests of LESSEE in the PREMISES are superseded by the public health, safety, and welfare of the citizens of Clemson served by the PREMISES. In the event that the Clemson City Council or the Clemson City Administrator declares a public emergency or if there exists a threat to the PREMISES that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LESSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LESSEE is not able to timely respond, LESSOR may remove LESSEE'S IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LESSEE.

**5.6. Removal of Improvements.** If LESSEE'S IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 5.5 above, LESSEE shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by LESSOR, such approval not to be unreasonably withheld, conditioned or delayed, on LESSOR premises to allow LESSEE to continue to provide communications services and all related purposes. LESSEE may maintain its COW for a period of thirty (30) days past the date of

removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days, LESSEE must obtain written approval from LESSOR, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LESSEE at the end of the initial thirty (30) day period, LESSOR shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LESSEE to continue its operations as authorized by this Agreement.

## **6. LESSOR's Right of Entry or Access onto Premises**

**6.1.** LESSOR and LESSOR'S agents, employees or contractors may enter upon the PREMISES, except LESSEE'S secured areas, for the purpose of performing repairs and maintenance work to the PREMISES. If maintenance work is required, LESSOR agrees to provide LESSEE with reasonable notice prior to commencing such work to allow LESSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LESSEE will be required to remove such IMPROVEMENTS shall be within the reasonable discretion of LESSOR. If, however, in the reasonable discretion of LESSOR, repair or maintenance requires immediate action on the part of LESSOR, LESSOR will take reasonable efforts to notify LESSEE, but may enter the PREMISES, except LESSEE'S secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LESSEE. In no event shall LESSOR be liable for any expenses associated with LESSEE'S removal of IMPROVEMENTS or for lost or anticipated profits. LESSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the LESSEE'S equipment, as identified in the SITE PLAN.

## **7. Access**

**7.1.** LESSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time. Notwithstanding the foregoing, for security purposes, access to the PREMISES must be escorted. With respect to routine maintenance, LESSEE agrees to provide LESSOR with 24 hours prior notice before accessing the Premises. In the event of an emergency LESSEE agrees to provide LESSOR with as much advance notice as is reasonably practical under the circumstances. LESSOR shall call City of Clemson IT Department at 864-624-1129 to arrange for access to the premises. LESSOR will notify LESSEE in writing of any change in the foregoing telephone number(s).

**7.2.** LESSEE'S right of access is a contractual right for the benefit of LESSEE only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 22.9 herein, such right of access shall inure to the benefit of LESSEE'S assignee.

## **8. Damages to Property**

**8.1. Damage and Restoration of Property.** LESSEE shall immediately notify LESSOR of any and all damages resulting from, arising out of, or caused to, the PREMISES and LESSOR property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LESSEE'S operations, by LESSEE, its officers, agents, employees and invitees. LESSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to LESSOR.

**8.2. Failure to Restore Property.** If LESSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 8.1, LESSOR shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LESSEE shall pay LESSOR the cost thereof, plus an administrative fee of ten percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LESSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LESSEE'S control excepted.

**9. Electrical, Radio and Intermodulation Interference**

**9.1.** LESSEE shall operate its IMPROVEMENTS in a manner that will not cause measurable radio frequency interference to the LESSOR or other lessees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LESSEE'S IMPROVEMENTS. LESSEE'S installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

**9.2.** Prior to installation of any IMPROVEMENTS on the PREMISES, LESSEE shall conduct bandwidth testing of its IMPROVEMENTS and LESSOR equipment to check bandwidth conflict between LESSOR'S monitoring control system and LESSEE'S system. If such conflict occurs, LESSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of LESSOR. If the conflict cannot be remedied to the reasonable satisfaction of LESSOR, LESSOR may terminate this Agreement upon thirty (30) days written notice to LESSEE.

**9.3.** LESSEE shall not cause measurable electrical, radio or intermodulation interference to LESSOR or to any other lessee who is using the PREMISES prior to or at the time of LESSEE'S installation of its IMPROVEMENTS. Should such interference occur, LESSEE will promptly take all steps necessary to correct such interference within ten (10) days' notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LESSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to both LESSOR and LESSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LESSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

**9.4.** LESSEE shall not cause measurable electrical, radio or intermodulation interference to LESSOR at any time during or after installation or operation of LESSEE'S IMPROVEMENTS. Moreover, LESSEE'S use will not in any material way adversely affect or interfere with LESSOR'S signal operation or its communication system. Should such interference occur, LESSEE will promptly take all steps necessary to correct such interference within ten (10) days' notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LESSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both

LESSOR and LESSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LESSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

**9.5.** LESSOR will not grant a license to any other party for the use of LESSOR'S PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LESSEE'S signal operation or its communication system. Such provision shall be similar to the provisions required of LESSEE herein. Furthermore, license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LESSEE to check bandwidth conflict between third-party equipment and LESSEE'S equipment. If such conflict occurs, LESSOR shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LESSEE. If the conflict cannot be remedied to the reasonable satisfaction of LESSEE, LESSOR shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LESSEE shall have the right to terminate this Agreement upon ten (10) days written notice to LESSOR if another user of the PREMISES causes' interference with LESSEE'S operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LESSEE experiences interference caused by a third-party licensee, LESSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from LESSOR for damages, including, but not limited to, lost or anticipated profits.

**9.6.** LESSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. LESSOR shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for the enforcement of any of LESSEE'S rights provided by Section 9.5 of this Agreement.

**9.7.** Upon report to LESSEE, and all other third parties with communications equipment on that LESSOR-owned property, of measurable interference with any LESSOR-owned/operated radio emergency system, LESSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LESSEE'S operations, LESSEE agrees, within twelve (12) hours of first notification, to propose a plan of action to eliminate such interference. LESSOR and LESSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

**9.8.** If such interference results from LESSEE'S operations, LESSEE must correct such interference within twenty-four (24) hours of LESSOR'S original notification to LESSEE or shall discontinue all use of LESSEE'S IMPROVEMENTS upon the PREMISES. LESSEE'S IMPROVEMENTS cannot be reactivated until LESSEE can demonstrate that the cause of such interference has been eliminated.

**9.9.** Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

## **10. Condition of Premises**

**10.1.** LESSOR shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for LESSOR uses of the PREMISES and surrounding property, and in a manner which will not interfere with LESSEE'S reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LESSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LESSEE'S cost and expense. Title to all remaining improvements shall belong to LESSOR. However, upon vacation of the PREMISES, LESSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LESSEE'S control, as determined by LESSOR. If, as determined by LESSOR, the PREMISES are not surrendered in satisfactory condition, the LESSEE shall pay LESSOR within thirty (30) business days of demand an amount equal to the actual cost to restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs.

**10.2.** LESSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

**10.3.** Intentionally deleted.

**10.4.** LESSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

**10.5.** In the event LESSOR or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LESSEE shall take reasonable measures at LESSEE'S cost to cover all of LESSEE'S IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. LESSOR shall not be responsible for any damages or costs incurred by LESSEE due to the actions or omissions of any third-party licensees upon the PREMISES. LESSOR shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to LESSOR undertaking such painting, construction, or other alterations.

**10.6.** By taking possession of the PREMISES, LESSEE accepts the PREMISES in the condition existing as of the Effective Date. LESSOR makes no representation or warranty with respect to the condition of the PREMISES and LESSOR shall not be liable for any latent or patent defect in the PREMISES. LESSOR agrees to notify LESSEE of the existence of any latent defects of which the LESSOR has knowledge.

## **11. Construction, Installation and Operation**

**11.1. Construction, Installation and Operation.** LESSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LESSEE intends to commence construction of its IMPROVEMENTS, LESSEE shall provide to the LESSOR for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the steps necessary to complete LESSEE'S construction

and installation: (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LESSEE'S construction and installation work; and (iv) copies, certificates or other proof that LESSEE or LESSEE'S contractors and subcontractors have obtained all necessary permits and licenses for the performance of LESSEE'S work. LESSOR's failure to respond in writing to LESSEE'S proposal within twenty (20) days of LESSOR'S receipt of the proposal shall constitute LESSOR's rejection of the proposal, and LESSEE shall not commence LESSEE'S work. LESSOR's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that LESSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LESSEE'S work.

**11.2. Marking and Lighting Requirements.** LESSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LESSEE'S installation and maintenance of IMPROVEMENTS under this Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LESSEE'S installation or maintenance of IMPROVEMENTS under this Agreement. If the LESSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, LESSOR may thereafter terminate this Agreement upon thirty (30) days written notice to LESSEE.

**11.3. Inspection and Tests.** Upon the Effective Date and for the term of this Agreement, LESSEE shall have reasonable access as provided in Section 7 above to the SITE and PREMISES as are necessary and approved by LESSOR for the purpose of inspection and planning. LESSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LESSEE shall provide to LESSOR a copy of the report. LESSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

**11.4. Payment, No Mechanics Liens.** LESSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LESSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LESSEE. LESSOR shall not be responsible for or with respect to the performance of LESSEE'S Work. LESSEE shall pay or cause to be paid all costs associated with LESSEE'S work. LESSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LESSEE'S work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LESSEE shall obtain the complete discharge and release thereof at LESSEE'S sole expense or expenditure (without any cost being imposed upon LESSOR.) However, LESSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LESSEE provides a bond or other form of security reasonably acceptable to LESSOR in an amount sufficient to hold LESSOR fully and completely harmless from any and all liability therefor or on account thereof.

**11.5. Improvements to Premises; Removal.** All IMPROVEMENTS constructed, installed and operated by or on behalf of LESSEE shall remain LESSEE'S personal property and are not fixtures. LESSEE shall remove all IMPROVEMENTS at its sole expense within sixty (60) days following the expiration or earlier termination of this Agreement, and LESSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore the PREMISES or SITE to the same condition as existed prior to such damage at its sole cost and expense. LESSEE shall provide to LESSOR in writing, by not later than the end of the prescribed sixty (60) day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LESSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed sixty (60) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LESSEE removes all IMPROVEMENTS and so notifies LESSOR.

**11.6. Liability for Damage/Outages.** LESSEE shall be solely responsible for any damage caused by LESSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless LESSOR, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LESSEE'S, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

## **12. Intentionally Deleted**

## **13. Compliance with Laws**

**13.1. By LESSEE.** LESSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LESSEE'S services, LESSEE'S construction, installation and operation work, IMPROVEMENTS and LESSEE'S use of the PREMISES. Without limiting the generality of the preceding sentence, LESSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (*e.g.*, NEBs, IEEE, Federal Communications Commission ("FCC") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LESSEE shall, at LESSEE'S sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the IMPROVEMENTS. In the event LESSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LESSEE, LESSEE shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

**13.2. By LESSOR.** LESSOR shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to comply in all material respects with all laws,

ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to LESSOR'S leasehold interest in the SITE.

#### **14. Complaint Resolution**

If either LESSEE or LESSOR receives a written complaint regarding LESSEE'S operations and such complaint, if reasonably determined by the LESSOR to be valid and if the cause of such complaint would cause LESSEE to be in default of this Agreement, LESSEE shall respond within twenty-four (24) hours of receipt of such written complaint. LESSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LESSEE has taken to resolve the Incident including, when necessary, all future actions LESSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LESSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to LESSOR approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LESSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to LESSOR approval, such approval not to be unreasonably withheld, conditioned or delayed. If LESSOR must step in and resolve a complaint regarding LESSEE'S operations, LESSEE shall reimburse LESSOR for all reasonable expenses incurred. If LESSOR imposes upon LESSEE a resolution to an Incident that does not involve a breach of the Agreement by LESSEE, the breach by LESSEE of any federal, state, or local law or ordinance or the commission by LESSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LESSEE does not wish to resolve the Incident in the manner directed by LESSOR, LESSEE may terminate this Agreement upon thirty (30) days' notice without penalty.

#### **15. Utility Easements and Utility Cost**

**15.1.** LESSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LESSEE consumes in connection with the installation and operation of LESSEE'S IMPROVEMENTS and which are separately metered and charged to LESSEE by any public utility service company, without any expense therefor being imposed upon LESSOR.

**15.2.** If LESSEE first obtains LESSOR's written consent, which may be given or withheld for any reason or no reason in the LESSOR's sole discretion, LESSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such consent, LESSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LESSEE'S exclusive use).

**15.3.** LESSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LESSEE fails to pay any such charge required to be paid by LESSEE pursuant to this Section, LESSOR may, but shall not be required to, pay such charge on LESSEE'S behalf.

If LESSOR pays any such charge on behalf of LESSEE or incurs any cost with respect to any grant of any public utility service easement for the benefit of LESSEE pursuant to this Section, LESSEE shall reimburse and pay to LESSOR an amount equal to all such charges so paid and all such easement costs so incurred, within thirty (30) days after receipt of LESSOR'S demand, as Additional Fees.

**15.4. Additional Utility/Power Equipment.** In the event that LESSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LESSEE'S IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

## **16. Taxes**

**16.1.** LESSEE agrees to timely reimburse LESSOR for all taxes that are assessed against LESSOR, if any, due to the real property taxes attributable to LESSEE'S IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LESSEE on or about the PREMISES; provided, however, LESSOR shall use its best efforts to provide prior notification of any taxes for which LESSEE is to be charged, so LESSEE will have the opportunity to appear before the taxing authority and contest any assessment.

**16.2.** If LESSEE fails to pay any such taxes after such contest of any assessment and for which LESSEE is obligated, LESSOR may, but shall not be required to, pay such taxes on LESSEE'S behalf. If LESSOR pays any such taxes on behalf of LESSEE pursuant to the preceding sentence, LESSEE shall reimburse and pay to LESSOR an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

## **17. Liability and Indemnification**

**17.1.** LESSEE shall at all times comply with all laws and ordinances and all applicable rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the IMPROVEMENTS, authorized herein, and shall fully release, defend, indemnify and hold harmless LESSOR, its officers, officials, agents, servants or employees against any and all claims, damages, lawsuits, losses, costs, or expenses which may be sustained or incurred by LESSOR, its officers, officials, agents, servants or employees as a result of LESSEE'S installation, operation, or removal of such IMPROVEMENTS.

**17.2.** LESSEE undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors and subcontractors, all risk of dangerous conditions, if any on or about the PREMISES, and LESSEE hereby agrees to release, defend, indemnify and hold harmless LESSOR, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon LESSOR, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of LESSEE'S installation, operation, maintenance, condition or use of the PREMISES or LESSEE'S IMPROVEMENTS or LESSEE'S failure to comply with any applicable federal, state, or local statute, ordinance or regulation.

**17.3.** LESSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 17. Similarly, the existence of hazardous substances in electronic components, cables, basic cleaning supplies and other items used in the provision of telecommunication services shall not be a violation of this Section 17. LESSEE further agrees to release, defend, indemnify, and hold LESSOR, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability to the extent resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel. LESSEE shall not be liable for any environmental condition, including the release of a hazardous substance, that occurred prior to the effective date of this Agreement or otherwise does not result from the activities of LESSEE.

## **18. Insurance**

**18.1.** LESSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LESSEE'S sole expense, commercial general liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and reasonably approved by LESSOR upon the Effective Date of this Agreement. LESSEE must provide insurance in compliance with Appendix "B" attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LESSEE shall provide a certificate of insurance for the added term that shows LESSEE meets all insurance requirements under Appendix B.

**18.2.** In the event that LESSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LESSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide LESSOR with separate certificates of insurance or such other documentation as is reasonably required by LESSOR to evidence that each such third party obtains and maintains substantially the same insurance coverage as required of LESSEE throughout the term of its contract with LESSEE;

## **19. Notice**

**19.1.** Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage

prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

**LESSOR**

City of Clemson  
1250 Tiger Blvd. STE 2  
Clemson, SC 29631

**LESSEE**

CELLCO PARTNERSHIP d/b/a Verizon Wireless  
One Verizon Way  
Mail Stop 4AW100  
Basking Ridge, New Jersey 07920

LESSOR or LESSEE may from time to time designate any other address for this purpose by written notice to the other party.

**20. Remedies**

**20.1.** LESSEE'S failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LESSEE shall be given fifteen (15) days from receipt of written notice from LESSOR (that such payment is overdue for the third time within such 12-month period) to cure. If LESSEE fails to make payment as required; if LESSEE abandons or vacates the PREMISES; or if LESSEE becomes insolvent; and has not filed for bankruptcy, LESSOR shall have the right, at its option, in addition to and not exclusive of any other remedy LESSOR may have hereunder or by operation of law, with fifteen (15) days' notice, require LESSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall LESSOR or anyone acting on LESSOR'S behalf attempt to remove LESSEE'S communications equipment, except as provide for in Section 5.5 herein. Upon such occurrence, LESSOR may either (a) declare this Agreement and license granted herein at an end, in which event LESSEE shall immediately pay LESSOR a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LESSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate LESSOR for all detriment proven to be directly caused by LESSEE'S failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LESSEE upon such terms and conditions as LESSOR may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees actually incurred, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to LESSOR hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LESSEE shall pay LESSOR any deficiency monthly, notwithstanding that LESSOR may have received Rental Fees in excess of the Rental Fees stipulated in this Agreement in previous or subsequent months, and LESSOR may bring an action therefor as such monthly deficiency shall arise.

**20.2.** No re-entry and taking of possession of the PREMISES by LESSOR shall be construed as an election on LESSOR's part to terminate this Agreement, regardless of the extent of renovations and alterations by LESSOR, unless a written notice of such intention is given to LESSEE by LESSOR.

### **21. Force Majeure**

**21.1.** Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days' notice.

### **22. Miscellaneous Provisions**

**22.1. Modifications.** LESSEE'S operations and all LESSOR approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

**22.2. Entire Agreement.** This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

**22.3. Capacity.** Both LESSEE and LESSOR represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

**22.4. Governing Law.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of South Carolina, and exclusive venue for any action concerning this Agreement shall be in a court with jurisdiction over Pickens County, South Carolina.

**22.5. Amendment.** This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

**22.6. Legal Construction; Severability.** In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

**22.7. Nonwaiver.** No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of

every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

**22.8. Independent Contractor.** LESSEE covenants and agrees that LESSEE is an independent contractor and not an officer, agent, servant or employee of LESSOR; that LESSEE shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between LESSOR and LESSEE, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between LESSOR and LESSEE.

**22.9. Successors and Assigns.**

(a) LESSOR and LESSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither LESSOR nor LESSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of LESSOR. LESSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LESSEE'S IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of LESSOR. LESSOR'S consent may be conditioned upon LESSEE successfully obtaining contracts from such third parties wherein those parties agree to directly compensate LESSOR for all benefits incurred by the use of the PREMISES. (b) Notwithstanding anything in Section 22.9(a) to the contrary, LESSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LESSEE'S assets in the market where the Premises are located without LESSOR'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LESSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment. (c) If LESSOR shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, LESSOR shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LESSEE'S rights under this Agreement. If the PREMISES are so disposed of, LESSEE shall not disavow any of LESSEE'S obligations pursuant to this Agreement but shall at torn to the purchaser or transferee thereof for the performance of LESSOR'S obligations under this Agreement.

**22.10. Applicable Laws.** This Agreement is entered into subject to the charter and ordinances of LESSOR as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

**22.11. Subordination to Mortgage.** As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which LESSOR shall notify LESSEE in writing, shall be deemed to be prior in time and senior to the rights of the LESSEE under this Agreement. LESSEE subordinates all of its interest in the Premises created by this Agreement to the lien of

any such mortgage. LESSOR and LESSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LESSEE hereunder. As condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future mortgage encumbering all or any part of the Premises, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement in favor of LESSEE in a form reasonably satisfactory to LESSEE and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and to have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Premises, then Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of this Agreement, (2) fulfill LESSOR's obligations under this Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under this Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that this Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Premises, and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any deed to secure debt or other real property interest encumbering all or any part of the Premises, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such deed to secure debt or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

**22.12. Contract Interpretation.** Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

**23. Use of Public Rights-of-Way.** Use of Municipal Public Rights-of-Way will be agreed upon with each lease supplement.

SIGNATURES CONTAINED ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LESSOR:**

**City of Clemson**

WITNESS

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LESSEE:**

**Cellco Partnership d/b/a Verizon Wireless**

WITNESS

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Aparna Khurjekar  
Title: Vice President Field-Network  
Date: \_\_\_\_\_

**EXHIBIT "A"**

**LEASE SUPPLEMENT**

This Lease Supplement ("Supplement"), is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between **CITY OF CLEMSON** a <BUSINESS ORGANIZATION>, whose principal place of business is <Address>, City, State, ("Lessor"), and <**VERIZON WIRELESS ENTITY**>, a Delaware limited partnership, d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Lessee").

1. **Master Lease Agreement.** This Supplement is a Supplement as referenced in that certain Master Lease Agreement between City of Clemson and Cellco Partnership d/b/a Verizon Wireless, dated \_\_\_\_\_, 201\_\_, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. **Premises.** Lessor hereby leases to Lessee certain spaces on and within Lessor's Property located at <INSERT SITE ADDRESS>, [add if applicable: including, without limitation, approximately (\_\_\_\_) square

feet of Floor Space and approximately \_\_\_\_\_ (\_\_\_\_\_) square feet of Rooftop Space on the Building]. The Floor Space, Rooftop Space, Antenna Space and Cabling Space are as shown on Exhibit "1" attached hereto and made a part hereof.

3. **Term.** The Commencement Date and the Term of this Supplement shall be as set forth in the Agreement [*add if applicable: provided, however, that the Term of this Supplement shall be subject to the term of the Ground Lease (as hereinafter defined).*].

4. **Consideration.** Rent under this Supplement shall be as set forth in the Agreement. In consideration for electrical service, an amount shall be added to the annual rent due under this Supplement as additional rent as set forth in the Agreement.

5. **Ground Lease [if applicable].** The parties acknowledge that Lessor's rights in the Site derive from a certain agreement dated \_\_\_\_\_ between Lessor and \_\_\_\_\_ ("Land Owner"), hereinafter referred to as "Ground Lease" and attached hereto as Exhibit 2 to this Supplement.

6. **Consent [if applicable].** The consent of the Land Owner to this Supplement [**check as applicable**]: \_\_\_ is NOT required; \_\_\_ is required and the executed Land Owner's Consent is attached hereto as Exhibit 3 to this Supplement.

7. **Site Specific Terms.** (Include any site-specific terms)

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

LESSOR

<ENTITY NAME>

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_

WITNESS

LESSEE

<VERIZON WIRELESS ENTITY>

\_\_\_\_\_

WITNESS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

WITNESS

EXHIBIT 1

**SITE PLAN OF ROOFTOP SPACE, FLOOR SPACE  
ANTENNA SPACE AND CABLING SPACE**

EXHIBIT 2  
GROUND LEASE

**EXHIBIT 3**

**LANDOWNER'S CONSENT**

THIS DOCUMENT IS A COPY OF THE ORIGINAL DOCUMENT AND IS NOT A LEGAL INSTRUMENT. IT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE ORIGINAL DOCUMENT. THE ORIGINAL DOCUMENT IS THE ONLY COPY OF THE ORIGINAL DOCUMENT THAT IS VALID AND BINDING. THIS DOCUMENT IS NOT VALID AND BINDING UNLESS IT IS SIGNED AND DATED BY THE ORIGINAL PARTY.

## Appendix B: Minimum Insurance Coverage Requirements

Coverage	Limits of Insurance	Comments		
Commercial General Liability	Each Occurrence	\$1,000,000	COI should name the city/town as an additional insured Explosion, Collapse & Underground (XCU) should not be excluded if the work contemplates this exposure For extensive construction work, the General Aggregate limit should apply per project. Be sure the work being done or service provided is specifically described under "Description of Operations" on the COI.	
	Damage to rented premises	\$100,000		
	Med Expense(per person)	\$5,000		
	Personal & Advertising Injury	\$1,000,000		
	General Aggregate	\$2,000,000		
Products-Completed Operations Aggregate	\$2,000,000			
Automobile Liability	Combined Single Limit	\$1,000,000	If the contractor will be performing work where the use of their vehicle is more than incidental, the COI should name the city/town as an additional insured. An example would be hiring a contractor to perform garbage collection.	
	Split Limits	Bodily Injury per person		\$500,000
		Bodily Injury per occurrence		\$1,000,000
	Property Damage	\$500,000		
Workers' Compensation	Statutory	Statutory	Even though SC law only requires Workers' Compensation Insurance for a business employing four or more employees, those with fewer than four employees or no employees can purchase Workers' Compensation Insurance. If they have not purchased the coverage, then the municipality hiring them will be responsible for injuries incurred while working for the municipality as their "statutory employer." Waivers will not supersede the statutory requirements of law. If a sole proprietor with NO employees, they can purchase a "ghost policy" which means they have formally rejected coverage under Workers' Compensation. If the contractor is domiciled in a state other than South Carolina, it should specifically state that coverage is afforded in South Carolina. Additional insured status is not available for Workers' Compensation however you can require a Waiver of Subrogation.	
Employers Liability	Each Accident	\$1,000,000	This is part of Workers' Compensation coverage	
	Disease- each employee	\$1,000,000		
	Disease- policy			
	limit	\$1,000,000		