

## SITE USE AGREEMENT

This Site Use Agreement ("**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 ("**Effective Date**"), by and between, **MIDWEST NT 1 LLC**, a Delaware limited liability company ("**Owner**"), whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 and **COUNTY OF WILL** ("**User**"), whose address is 302 North Chicago St., Joliet, Illinois, 60432.

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### 1. Premises.

Owner currently leases, subleases, licenses, owns easement rights to, or owns, as applicable, a parcel of land ("**Land**") and owns and operates a telecommunications tower ("**Tower**") located thereon and having a physical location of 20269 W. County Rd. in the City of Wilmington, County of Will, State of Illinois, and identified by Owner as US-IL-5480 (the Tower and Land are, collectively, the "**Site**"). The Land is more particularly described in Exhibit A attached hereto and incorporated herein. Owner hereby licenses, leases, subleases, or grants to User, as applicable, and User licenses, leases, subleases and accepts the grant from Owner, as applicable, approximately \_\_\_\_\_ square feet of the Land (the "**Ground Space**") and a \_\_\_\_\_ (\_\_\_\_') contiguous envelope of space on the Tower between the \_\_\_\_\_ foot (\_\_\_\_') and \_\_\_\_\_ foot (\_\_\_\_') levels (such envelope of space, the "**Tower Space**" and collectively with the Ground Space, the "**Premises**") and grants User the right to install utility cables, conduits and pipes from the existing utility termination point on the Premises; said Premises and right-of-way for access being substantially as described in Exhibit B2 annexed hereto. Notwithstanding the foregoing, Owner grants User the non-exclusive right to use the Land to access the Premises and to install, maintain and repair utilities serving the Premises and improvements thereon.

### 2. Use.

Owner, for the term set forth herein and subject to the terms and conditions of this Agreement, and subject to the Prime Agreement (hereinafter defined), hereby grants to User a lease, sublease, or license, as applicable (referred to as the "**Property Right**") to use the Premises for (i) the transmission and reception of communication signals pursuant to all rules and regulations of the Federal Communications Commission ("**FCC**"), and (ii) the construction, alteration, maintenance, operation, repair of antennas, communications equipment, transmission lines and facilities and improvements related thereto as defined in Section 1 above and other improvements relating thereto, including an air conditioned equipment shelter or cabinets (collectively, the "**Facilities**") (all as more fully set forth on Exhibit B1 (Collocation Application) and Exhibit B2 (tower elevation and site plan)) and Modifications (defined below), subject to Section 10, and (iii) activities related to any of the foregoing, provided such activities do not require an expansion of the Premises (collectively, "**User's Permitted Use**"). User shall hold title to the Facilities and the Facilities shall remain User's personal property and are not fixtures. In no event shall User be permitted to make any Modifications, repairs, or take any action whatsoever with respect to the Tower.

### 3. Term.

The initial term of this Agreement ("**Initial Term**") shall be ten (10) years, commencing on the Commencement Date (as hereafter defined) unless otherwise terminated as provided in this Agreement. The Agreement shall commence on the earlier of: (A) the first day of the month in which User commences installation of its equipment on the Premises if such installation commences on or before the 15<sup>th</sup> day of the month, or the first day of the month after User commences installation of its equipment on the Premises if such installation commences after the 15<sup>th</sup> day of the month; or (B) \_\_\_\_\_ 1, 201\_ (such earlier date the "**Commencement Date**"). User shall have the right to extend the Term for one successive five (5) year period and fifteen (15) successive one (1) year

periods thereafter (each, a "**Renewal Term**") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for such successive Renewal Terms unless User notifies Owner of its intention not to renew this Agreement at least one hundred eighty (180) days prior to the commencement of the succeeding Renewal Term. For the purposes of this Agreement, "**Term**" shall mean the Initial Term and any applicable Renewal Term(s).

Notwithstanding the foregoing, if Owner's rights in the Premises are derived from the Prime Agreement or other similar agreement with a third party and such Prime Agreement has a shorter term or extension terms than those provided for under this Section 3, then User's right to extend this Agreement shall only be for as long as Owner has the right to extend its interest in the same applicable Premises.

4. Conditions Precedent and Rights Prior to Commencement Date.

(a) Notwithstanding anything to the contrary herein, the Commencement Date may only be delayed (if requested in writing by User and agreed upon by Owner with respect to clause (i)) in order to permit each of the following conditions to be satisfied and in no event beyond satisfaction of such conditions:

(i) User has diligently applied, pursued and obtained all governmental licenses, permits and approvals required of User for its use of the Premises, including without limitation applications for zoning variances, and administrative or special use permits (collectively referred to as "**Governmental Approvals**"); provided that User shall have the right, without the obligation to do so, to appeal any denial by a governmental agency, and the contingency date for obtaining Governmental Approvals shall be extended until such time as a final decision is rendered that is not the subject of any further appeal timely made or defended by User. Notwithstanding anything to the contrary herein, if the approval process is not completed on or before \_\_\_\_ 1, 201 \_\_, User must commence payment of the Use Fee (defined below) or may terminate this Agreement. Owner agrees to make reasonable efforts to cooperate with User and join in any application for Governmental Approvals, provided, however, that Owner shall be reimbursed by User for any of Owner's reasonable out-of-pocket costs associated with the foregoing within thirty (30) days of User's receipt of an itemized statement of such costs together with all supporting documentation;

(ii) Owner obtains consent to this Agreement from the owner of the Land or any ground lessor (if other than Owner), provided such consent is required; and Owner provides User with a true and correct copy (subject to redaction of economic, financial, and confidential terms) of either (a) that certain Ground Lease dated February 10, 2004 ("**Prime Agreement**"), by and between Owner and Owner's landlord (the "**Prime Landlord**") pursuant to which the Owner is leasing, subleasing, using (by way of easement), or licensing the Land or (b) a deed evidencing Owner as the owner in the fee simple interest of the Land.

(b) The parties further agree that prior to the Commencement Date:

(i) User, at its sole cost and expense, shall have the right to obtain a title report or commitment for a title policy from a title insurance company of its choice. If, in the reasonable opinion of the User, such title report shows any defects of title or liens or encumbrances which materially and adversely affect User's proposed use of the Premises, User shall notify Owner of such defect, lien or encumbrance, provide a copy of the applicable title report to User, and, at Owner's sole option, Owner may undertake to remedy or cure the defect, lien or encumbrance, or provide User with a title policy for Owner's interest in the Premises with such matter deleted or affirmatively insured over by the title company. In the event Owner has not completed the remedy of the defect within sixty (60) days from notification by User, User shall have the right to terminate this Agreement immediately upon written notice to Owner. If User does not obtain a title report or does not provide notice of any defect, lien or encumbrance to Owner as provided in this paragraph (i) prior to the Commencement Date, User shall be deemed to have waived any objection to any such matters;

(ii) User shall have the right to have the Site surveyed and to have structural tower analyses performed. Any structural tower analyses shall be performed by Owner upon User's prior written request, and User shall pay to Owner Owner's then current rate for any such structural tower analyses requested. In the event that any defects are shown by the survey or the structural analyses, which in the reasonable opinion of User, may materially and adversely affect User's intended use of the Site, User shall have the right to extend out the Commencement date as may be mutually agreed or terminate this Agreement immediately upon written notice to Owner, so long as User provides Owner with reasonable documentation confirming the unsuitability of the Site based on matters shown in the Survey or matters shown in the structural analysis; and

(c) The parties acknowledge and agree that a failure to satisfy the conditions set forth in Section 4(a) above, or User's termination of this Agreement pursuant to its rights under Section 4(b) above, shall relieve User and Owner from any of their respective obligations to perform under this Agreement.

5. Use Fee.

User shall pay to Owner a monthly fee, which fee is, in the case of a lease, sublease or easement rights, a rental payment, or in the case of a license, a license fee, in the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per month (the "Use Fee"), payable on the first day of the month, in advance, beginning on the Commencement Date. The Use Fee for any partial month during the Term shall be pro-rated based on the number of days of the Term in said month, as applicable; and Owner shall have the duty to reimburse any pre-paid Use Fee (to the extent User is not then in default), which duty shall survive termination of this agreement. The Use Fee shall be increased by three (3%) percent (the "Annual Adjustment Rate") on each annual anniversary of the Commencement Date. The Use Fee shall be mailed (or sent via electronic methods as agreed to by the parties in writing) to the following address:

**Vertical Bridge REIT, LLC  
P. O. Box 743368  
Atlanta, GA 30374-3368**

If the Use Fee is not paid in accordance with the terms hereof, User will pay interest on the past due amounts at the lesser rate of either: (i) one and one-half percent (1.5%) per month, or (ii) the maximum, non-usurious interest rate permitted by applicable law.

6. Tests.

Upon prior notice to Owner, User shall have the right at any time following the Effective Date to enter upon the Land for the purpose of making necessary engineering surveys, inspections, soil tests, borings, other reasonably necessary tests; provided, however, such tests and construction shall be at User's sole cost and expense and in no event shall User be permitted to conduct any Phase II environmental or similar testing. Prior to accessing the property to perform any such surveys, inspections, soil test, and other tests, User shall provide a certificate of insurance naming Owner as additional insured and indicating such coverages and amounts as provided in Section 14. Upon User's request, Owner agrees to provide promptly to User copies of all plans, specifications, surveys and tower maps for the Land or Tower in Owner's possession or available to Owner and not covered by any existing confidentiality obligation ("Collocation Package"). User shall indemnify and hold harmless Owner and its affiliates from and against any loss or damage to person or property suffered or incurred by Owner or any of its affiliates arising from or in any way relating to User's entry upon and conduct of tests, inspections, and construction as set forth in this paragraph (a). Such indemnity shall be effective even prior to the Commencement Date, and shall survive the termination or expiration of this Agreement.

7. Initial Install.

Prior to the initial installation of the Facilities, User shall submit its construction and installation plans and list of contractors and subcontractors, along with their respective certificates of insurance meeting the minimum

levels required by Owner, to Owner in writing and Owner shall approve such plans and lists, which approval shall not be unreasonably withheld, delayed or conditioned and shall be granted or denied within ten (10) business days of receipt thereof by Owner. Owner's approval of any installation is not a representation that such installation is in compliance with applicable laws, ordinances, rules and regulations or that it will not cause interference with other communications operations on the Site, if any. User shall not alter any plans approved by Owner without following the procedures set forth above. User shall be responsible for grounding all external and internal wiring and cabling installed by User. User shall not interfere with or damage any equipment or property of any other tenants, licensees, or third parties at the Site, if any. If the Tower is painted as required to be in compliance with codes and regulations, User, as part of its installation, shall paint to match as nearly as possible the color of any antennas and transmission lines to the color of the Tower as required for compliance at User's sole cost and expense. User shall promptly notify Owner if its intended installation and construction plans and schedule is going to change from what was submitted to and approved by Owner. User shall notify Owner at least two (2) business days prior to commencing User's initial installation. All construction and installation work shall be performed in a good and workmanlike manner.

8. Access.

User and User's employees, agents and subcontractors may enter on or across the Land twenty-four (24) hours a day, seven (7) days a week, at no charge, to obtain entry into the Premises for the purpose of constructing, installing, operating, maintaining and repairing those parts of the Facilities which are ground-based. Such access shall be as shown on Exhibit B2. Whether in an emergency or non-emergency, User shall not, without prior notice to and approval from Owner, perform or arrange to be performed any installation, maintenance or repair of the Facilities on the Tower.

9. Utilities.

(a) User shall draw electricity by separate utility service from any utility company that will provide service to the Site, and shall pay the costs of such utilities directly. Any easement necessary for such power or other utilities will be at a location acceptable to Owner, the User and the servicing utility company, such acceptance not to be unreasonably withheld, delayed or conditioned by either User or Owner. All costs and expenses of obtaining and maintaining utilities shall be borne by User.

(b) User shall have the right, at its sole cost and expense, to install a temporary emergency generator upon the Land, at a location designated and approved by Owner, provided sufficient space is available, and it must be removed within five (5) days of the emergency need unless otherwise mutually agreed and approved by Owner and User. User covenants that any such installation and use of the previously described equipment shall be in compliance with any applicable federal, state, or local environmental, health, fire, community awareness, safety laws or other applicable laws or regulations, now or hereafter enacted or promulgated by any governmental authority or court ruling having jurisdiction over the Site, including, without limitation, any applicable guidelines promulgated by the Environmental Protection Agency.

10. Modifications.

(a) Should User desire to make any installations, modifications, additions, changes, alterations or upgrades to its Facilities or Premises (collectively, "**Modifications**") which would require an enlargement of the Premises (whether Ground Space or Tower Space) or affect the loading on the Tower beyond the capacity originally approved under this Agreement, then User must inform the Owner who will coordinate and manage such expansions and Modifications, and receive Owner's prior written approval, which shall not be unreasonably withheld, conditioned or delayed and shall be granted or denied within ten (10) business days of receipt thereof by Owner; provided, however, it shall not be unreasonable for Owner to condition its approval of a Modification upon (i) an increase to the particular Use Fee, (ii) amending this Agreement to reflect User's new Equipment or particular Modification, and/or (iii) requiring User to complete a Collocation Application substantially similar in form as Exhibit B-1. In addition, such Modifications shall be subject to all governmental approvals and all requirements herein. Owner's approval of any installation is not a representation that such installation is in compliance with applicable laws, ordinances, rules and regulations or that it will not cause interference with other communications operations on the Site. Owner may require, in its sole reasonable discretion, that a new structural analysis of the

Tower be performed in connection with any such Modification, which structural analysis shall be performed on the basis of Rev G or any future standard that may replace Rev G. Such structural analysis shall be performed by, or caused to be performed by, Owner at the sole expense of User at Owner's then current rate of for structural analyses. Notwithstanding the foregoing, prior to any Modification, User shall submit detailed engineering plans and specifications of the planned Modifications and a Collocation Application, along with its installation schedule to Owner for Owner's written approval, which approval will not be unreasonably withheld, delayed or conditioned and shall be granted or denied within ten (10) business days of receipt thereof by Owner. If the Tower is painted as required to be in compliance with certain codes and regulations, User, as part of its Modification, shall paint to match as nearly as possible the color of any equipment and transmission lines to the color of the Tower as required for compliance at User's sole cost and expense.

(b) In the event any Tower modifications are required as a result of a Modification undertaken by User's or User's operation of the Facilities, regardless of type, such modifications are to be performed by Owner at User's sole cost and expense, and upon completion, shall be considered a fixture and part of the Tower and therefore Owner's property.

(c) In the event User performs any Modifications without the prior written approval of Owner, any such Modifications shall be subject to an additional monthly fee ("**Additional Use Fee**"). The Additional Use Fee for each unapproved Modification shall be one hundred fifty percent (150%) of Owner's then current Use Fee at the time of discovery of such unapproved Modification, which shall accrue from the date such unapproved Modification was effected.

11. Non-Interference.

(a) Owner may enter into lease, sublease or license agreements with other companies for use of the Site, provided that Owner shall require such lessee, sublessee or licensee ("**New User**") to install equipment of types and frequencies that will not cause interference to User's operations then being conducted from the Premises. Owner agrees that in the event such New User causes interference with the Facilities, Owner will require such New User to take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within forty-eight (48) hours after receipt by Owner of notice from User of the existence of interference, Owner shall take such actions as are permitted by law and can be conducted without breach of the peace such as causing such New User to disconnect the electric power and shut down such New User's interfering equipment (except for intermittent operation for the purpose of testing, after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference) until such interference is corrected. If such interference is not rectified to the reasonable satisfaction of Owner within thirty (30) days after receipt by Owner of such notice from User, Owner shall cause such New User to remove such New User's interfering equipment from the Site. User agrees to exercise its best efforts to reasonably cooperate with Owner and any New Users to try to resolve any interference issues or problems which may arise regarding interference by such New User's Facilities (at the expense of such occupants or Owner).

(b) User agrees that in the event the Facilities cause interference with any existing equipment which was placed upon the Tower prior to the Commencement Date, or subsequently adds or modifies its Facilities which addition or Modification causes interference with any equipment existing upon the Tower as of the time of the addition or Modification, User shall take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within forty-eight (48) hours after receipt by User from Owner of notice of the existence of interference, User shall cease operation of the Facilities (except for intermittent operation for the purpose of testing, after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference) until such interference is corrected. If such interference is not rectified to the reasonable satisfaction of Owner within fifteen (15) days after receipt by User of such notice from Owner, User shall remove such interfering equipment from the Site. User covenants that the Facilities shall be operated in compliance with all applicable federal, state and local laws, ordinances and regulations. In no event shall User alter the operations of the Facilities or replace, upgrade or otherwise Modify the Facilities in a manner which will cause interference with the operations of any other equipment which is then in existence on the Tower.

(c) If antenna power output ("**RF Emissions**") becomes subject to any restrictions imposed by the

Federal Communications Commission (“FCC”) or any other government agency for RF Emissions standards on Maximum Permissible Exposure (“MPE”) limits, or if the Site otherwise becomes subject to federal, state or local rules, regulations, restrictions or ordinances, User shall comply with Owner’s reasonable requests for modifications to the Facilities which are reasonably necessary for Owner to comply with such limits, rules, regulations, restrictions or ordinances. Owner also shall request any other user(s) of the Tower to modify its equipment or otherwise assist in any actions which are reasonably necessary to comply with such limits, rules, regulations, restrictions or ordinances. The RF Emissions requirements of User shall be subordinate to any prior users of the Site. Similarly, the RF Emissions of users subsequent to User shall become subordinate to any requirements of User. If Owner or User require an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such evaluation or study shall be shared equally between Owner, User, and any other users of the Site. If said study indicates that RF Emissions at the Site do not comply with MPE limits, then Owner, User, and any subsequent tenants shall immediately take any steps necessary to ensure that they are individually, and collectively, in compliance with such limits or shall at the demand of Owner cease operations until a maintenance program or other mitigating measures can be implemented to comply with MPE limits. User shall have the right to terminate this Agreement in the event that such mitigation measures cannot be implemented without materially and adversely affecting the operation of the Facilities.

12. Intentionally Deleted.

13. Default.

(a) Either party shall be in default under this Agreement if such party materially breaches any of its representations or warranties contained herein or otherwise fails to perform any material duty or obligations under this Agreement and does not cure or remedy such breach of such representations or warranties or such failure to perform within thirty (30) days after receipt of written notice with respect thereto; provided, however, that, if such breach of any representations or warranties or such failure to perform shall necessitate a longer period to cure than thirty (30) days, then such cure period shall be extended for such time as is reasonably necessary to cure such breach of representations or warranties or such failure to perform, as applicable, but only so long as (i) such efforts to cure are commenced within fifteen (15) days of receipt of written notice from the non-defaulting party, and (ii) the defaulting party proceeds diligently and in good faith to effect a cure. Notwithstanding the foregoing, in no event shall the time within which a party may cure a failure in the payment of money exceed a single, ten (10) day period from the date of receipt by the defaulting party of written notice of the existence of the alleged default from the non-defaulting party, without extension, nor shall the time within which a party may cure a failure in the performance of requirements regarding interference exceed a forty-eight (48) hour period or thirty (30) day period whichever may be applicable.

(b) In addition to the foregoing, User shall be in default under this Agreement if:

(i) it shall become bankrupt, insolvent or file a voluntary petition in bankruptcy, have an involuntary petition in bankruptcy filed against User which cannot be dismissed by said party within sixty (60) days of the date of the filing of the involuntary petition, file for reorganization or arrange for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of said party’s assets, or said party makes an assignment for such purposes for the benefit of creditors;

(ii) The imposition of any lien on the Site except as may be expressly authorized by this Agreement, or an attempt by User or anyone claiming through User to encumber Owner’s interest in the Site and the same shall not be dismissed or otherwise removed within thirty (30) days.

(c) Upon the occurrence of a default, the non-defaulting party may pursue any and all remedies

available under applicable law and any one or more of the following remedies, separately or concurrently or in any combination, without further notice or demand whatsoever:

(i) The recovery from the defaulting party of all costs and expenses incurred by the non-defaulting party of any of its duties and obligations accrued under this Agreement prior to the effective date of such termination;

(ii) The recovery from the defaulting party of all damages incurred by the non-defaulting party for the breach by the defaulting party of any of its duties and obligations under this Agreement;

(iii) Upon the expiration of the notice period under Section 13(a) above, Owner may declare to be immediately due and payable, without regard to any early termination of such Term on account of an event of default or other right to terminate this Agreement, a sum equal to (a) all Use Fee and other charges, payments, costs and expenses due from User to Owner and in arrears at the time of the default, plus (b) the Use Fees reserved for the then entire unexpired balance of the term of this Agreement (taken without regard to any early termination of the Term), plus all other charges, payments, costs and expenses herein agreed to be paid by User up to the end of such Term; and/or

(iii) Owner may terminate this Agreement upon expiration of the notice period under Section 13 (a) and, on the date specified in such notice, this Agreement and the Term are hereby terminated and all rights of User hereunder shall expire and terminate (but not any obligations that expressly survive termination or expiration of this Agreement), and User shall thereupon quit and surrender possession of the Premises to Owner in the condition elsewhere herein required and User shall remain liable to Owner during the removal period as herein provided, unless otherwise agreed by the parties hereto.

14. Termination.

Following the Commencement Date and provided that no default exists at the time of issuance of User's written notice, this Agreement may be terminated by User upon thirty (30) days prior written notice in the event that the User is unable to obtain or maintain, through no fault of its own, any Governmental Approval that is necessary for the construction or operation of the Facilities.

15. Removal of Equipment.

User shall surrender the Premises to Owner on the date of expiration or early termination of this Agreement, as applicable, and User shall, at its sole cost and expense, and within thirty (30) days after termination remove the Facilities and restore the Premises to substantially the same condition existing as of the Commencement Date, except for ordinary wear and tear, casualty, or acts of God. In the event the Facilities remain on the Premises more than thirty (30) days following the expiration or early termination of this Agreement (even if it has been disconnected) or if User does not completely surrender the Premises or restore the Site, User shall pay to Owner holdover fees equal to one hundred fifty percent (150%) of the Use Fee then in effect, prorated from the date of expiration or early termination to the date User completes its obligations under this Agreement. If User has not completed its obligations under this Agreement on or before the sixtieth (60th) day following the expiration or early termination, User shall be deemed to have abandoned the Facilities and thereupon, Owner may remove the Facilities and dispose of same in Owner's sole discretion without accounting to User for the value thereof, if any.

16. Casualty and Condemnation.

(a) In case of damage to the Site or those portions of the Site which are essential to the operation of the Facilities, by fire or other casualty, Owner shall, to the extent permitted by its lenders and the Prime Agreement, at its expense, cause the damage to be repaired to a condition as nearly as practicable to that existing prior to the damage, with reasonable speed and diligence, subject to delays which may arise by reason of governmental

regulations, and for delays beyond the control of Owner, including "force majeure". However, Owner shall not be required to repair any damage beyond the extent that insurance proceeds are inadequate to pay for such repairs.

Owner shall not, however, be obligated to repair, restore, or rebuild any of User's personal property, including but not limited to the Facilities. Owner shall not be liable for any inconvenience or annoyance to User, or injury to User's business resulting in any way from such damage or the repair thereof except, to the extent and for the time that the Site is thereby rendered unusable for User's intended purpose, the Use Fee shall proportionately be abated.

Notwithstanding the foregoing, User shall be permitted to terminate this Agreement in the event the Premises have been rendered unusable for User's intended purpose and Owner's estimated period for completion of the repair and restoration exceeds one hundred twenty (120) days.

(b) If the whole or any substantial part of the Site shall be taken by any public authority under the power of eminent domain so as to materially interfere with User's use and occupancy of the Premises, then the Agreement shall terminate as to the part of the Premises so taken, and the Use Fee shall be reduced or abated in proportion to the actual reduction or abatement of use and/or operation of the Premises. Any Use Fee paid in advance shall be refunded to User, as appropriate, within thirty (30) days. User shall be entitled to pursue its interest under a separate claim. In the event that there is sufficient remaining space upon the Site, and with Owner consent as well as the Prime Landlord's consent, if needed, the User may place a temporary communications facility upon the Site for a period of up to one (1) year after the termination at a rental rate equal to two-third (2/3) of the amount of the rental provided for herein.

17. Insurance.

(a) User, at its own cost and expense, shall carry the following insurance during the term of this Agreement: (i) "All Risk" property insurance which insures the insuring party's property for its full replacement cost; and (ii) Comprehensive General Liability Insurance with a Commercial General Liability endorsement having a minimum limit of liability of \$2,000,000 aggregate, with a combined limit of \$1,000,000 for bodily injury and/or property damage for any one occurrence, and which includes coverage for hired and non-owned automobiles; and (iii) Excess or Umbrella coverage of \$5,000,000. User shall also carry, at its expense, Commercial Automobile and Workers' Compensation at statutory limits. All policies shall name Vertical Bridge Towers, LLC, its parents, affiliates, subsidiaries, successors and/or assigns, ATIMA as additional insured. All policies, including any renewals thereof, must specify that such coverage shall not be canceled or materially changed to reduce limits or to terminate waiver of subrogation without a minimum of thirty (30) days prior written notification to Owner. If User's insurer is unable to provide such notice, then User shall provide such written notice to Owner. Such insurance requirements shall be increased at each renewal by current industry standards.

(b) User agrees to require all agents, representatives and contractors who perform any task, installation, modification, upgrade, maintenance, repair and /or removal at the Premises or of the Facilities, including any Modifications, at its own expense to: (i) match User's insurance requirements from section 17(a)(ii), above; (ii) carry Business Automobile Insurance having a minimum limit of \$1,000,000 per occurrence; (iii) carry Excess or Umbrella coverage of \$5,000,000; and (iv) carry Workers' Compensation Insurance at statutory limits.

Said coverage provided by User's agents, representatives and contractors shall be primary and non-contributory.

User shall provide Owner with proof of said insurance in the form of a certificate of insurance ("COI"), and Owner must provide its written approval of said insurance coverage before any agent and/or contractor may perform any task, installation, modification, upgrade, maintenance, repair and/or removal at the Premises. Said COI shall list both User and Owner as additional insureds for both current and completed operations coverage. In the event User and any of its agents, representatives and contractors fail to maintain insurance coverage as required herein, User shall indemnify, defend and hold Owner Harmless from any claims, damages, injuries and expenses (including attorneys' fees and court costs) which may arise. All policies shall name *Vertical Bridge Towers, LLC, its parents, affiliates, subsidiaries, successors and assigns, ATIMA* as additional insurance. All policies, including renewals thereof, must specify that such coverage shall not be canceled or materially changed to reduce limits or to terminate waiver of subrogation in Owner's and User's favor without a minimum of thirty (30) days prior written notification to Owner. If User's insurer is unable to provide such notice, then User shall provide such written notice to Owner.

18. Indemnification.

(a) User agrees to indemnify, defend and hold Owner and its affiliates, and their respective officers, directors, employees, managers, equity holders, agents, lenders, and representatives (the “**Owner Indemnified Parties**”) harmless from and against injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) which may be imposed upon or incurred by or asserted against Owner Indemnified Parties occurring during the Term of this Agreement or during any period of time prior to the Commencement Date hereof or after the expiration date hereof when User may have been given access to or possession of all or any part of the Premises arising from any work or act done in, on or about the Premises or any part thereof; any negligence or other wrongful act or omission on the part of User or any of its agents, contractors, subcontractors, servants, employees, subtenants, licensees or invitees (together, “**Agents**”); any accident, injury or damage to any person or property occurring in or on the Premises or any part thereof, unless caused by the negligence or willful misconduct of the Owner Indemnified Parties.

(b) Owner agrees to indemnify, defend and hold User and its affiliates, and their respective officers, directors, employees, managers, equity holders, agents, lenders, and representatives (the “**User Indemnified Parties**”) harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from any willful act or omission or the negligence of Owner or its employees or agents, or the breach of this Agreement except to the extent attributable to the gross negligence or intentional act or omission of the User Indemnified Parties or their respective independent contractors.

(c) Each party hereto hereby waives any and every claim which arises or which may arise in its favor and against the other party hereto during the Term of this Agreement or any extension or renewal thereof for any and all loss of, or damage to, any of its property located within or upon or constituting a part of the Site, to the extent that such loss or damage is recovered under the respective party's insurance policy or policies. Notwithstanding anything in this Agreement to the contrary, each of User and Owner hereby waives any claim that they may have against the other party with respect to any consequential, punitive, special or incidental damage or lost profits.

(c) This Section shall survive the expiration or earlier termination of this Agreement.

19. Assignment.

(a) The rights of User under this Agreement may not be assigned without the prior written consent of Owner, which consent shall not be unreasonably withheld or denied, except that User may assign its rights and delegate its duties hereunder to any firm, corporation, partnership, association, trust or other entity which directly controls, is controlled by, or is under common control of the User or an entity that obtains control of User during the term of this Agreement. For the purposes of this Section, the term "control" means the ownership, direct or indirect, of sufficient voting shares of an entity, or otherwise the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, or the power to veto major policy decisions of any such entity, whether through the ownership of voting securities, by contract or otherwise. In no event may User sublet all or any part of its interest in the Premises, nor shall User permit or engage in co-planing or network sharing. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and permitted assigns. Owner may freely assign its rights and obligations under this Agreement at any time so long as the assignee agrees to be bound by the terms and conditions of this Agreement.

(b) Notwithstanding anything else contained herein, User may, without Owner's consent, pledge, mortgage, convey by deed of trust or security deed, assign, create a security interest in, or otherwise execute and deliver any and all instruments for the purpose of securing bona fide indebtedness all or any portion of User's interest in this Agreement, and/or all or any portion of User's right, title, and interest in and to any and/or all of the Facilities. Promptly on User's or User's lender's request, Owner shall execute and deliver, and shall assist in facilitating the execution and delivery of, all documents reasonably requested by any of User's lenders including but not limited to waivers of Owner's right to levy or distrain upon for Use Fee any of User's property given as security for a debt, acknowledgements that none of the Facilities shall become fixtures, consents to giving notice to User's lender(s) in the event of User's default under the provisions of this Agreement, consents to User's assignment to any lender(s) of any and all of User's interest in or to this Agreement and the Facilities and nondisturbance agreements

from Owner and Owner's lenders.

20. Waiver of Lien.

User hereby waives any and all lien rights User may have, statutory or otherwise, in and to the Site or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

Owner hereby waives any and all lien rights Owner may have, statutory or otherwise, in and to the Facilities or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

21. Warranty of Title and Quiet Enjoyment.

Owner warrants that subject to the Prime Agreement: (i) Owner owns, licenses or leases the Land or occupies the Land pursuant to an easement and owns and operates the Tower located thereon and has rights of access thereto; (ii) Owner has full right to make and perform this Agreement; and (iii) Owner covenants and agrees with User that upon User paying the Use Fee and observing and performing all the terms, covenants and conditions on User's part to be observed and performed, User may peacefully and quietly enjoy the Premises.

22. Non-Recourse.

Anything in this Agreement, either expressed or implied, to the contrary notwithstanding, User acknowledges and agrees that each of the covenants, undertakings and agreements herein made on the part of Owner are made and intended not as personal covenants, undertakings and agreements of Owner, or for the purpose of binding Owner personally or the assets of Owner, except Owner's interest in the Site; and that no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against Owner, any partner of Owner, any parent, subsidiary or partner of Owner or any partner of Owner, or any of their respective heirs, personal representatives, successors and assigns.

23. Estoppel Certificate.

User agrees that it will from time to time, within ten (10) days after receipt of written request by Owner, execute and deliver to such persons as Owner shall request, a statement, in recordable form, certifying that the Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which fees and other charges payable under the Agreement have been paid, stating that to the best of User's knowledge (without independent investigation) that Owner is not in default under the Agreement (or if User alleges a default, stating the nature of such alleged default), and further stating such other matters as Owner may reasonably request regarding the status of this Agreement.

24. Subordination.

This Agreement is and shall be subordinate to the Prime Agreement and all ground or underlying leases of the entire Land, all mortgages, deeds of trust and similar security documents which may now or hereafter be secured upon the Land or the Premises, and to all renewals, modifications, consolidations and extensions thereof. This clause shall be selfoperative and no further instrument of subordination shall be required by any lessor or mortgagee, but in confirmation of such subordination, User shall execute, within ten (10) days after receipt of written request, any certificate that Owner may reasonably require acknowledging such subordination. Notwithstanding the foregoing, the Owner shall use reasonable efforts to cause any party holding the instrument to which this Agreement is subordinate, in the event of any foreclosure sale or possessory action, to recognize and preserve this Agreement, and, if permitted in such case, this Agreement shall continue in full force and effect and User shall attorn to such party and shall execute, acknowledge and deliver any instrument, in a form reasonably acceptable to User, that has for its purpose and effect the confirmation of such attornment. For the benefit of User if requested, Owner shall use reasonable efforts, but shall have no obligation, to obtain from its current mortgagee a Subordination, Non-Disturbance and Attornment Agreement (an "SNDA"), in which User shall join, under which this Agreement and the rights of User hereunder shall not be affected or modified by foreclosure or the exercise of any other right or

remedy by the mortgagee so long as User shall not be in default under any of the provisions of this Agreement beyond any applicable period of grace, and under which User shall attorn to and recognize the mortgagee or any purchaser at foreclosure sale or other successor-in-interest to the Owner as User's licensor hereunder. In addition and notwithstanding anything to the contrary in this Section, User further agrees that this Agreement shall be subordinate to the lien of any mortgages hereafter placed upon the Site. The SNDA shall be in the form required by the lender. User covenants and agrees to execute and deliver to Owner or to the lender the SNDA within ten (10) days after receipt of written demand therefore.

25. Maintenance and Repairs.

(a) User shall perform all repairs necessary or appropriate to keep Facilities on or about the Premises or located on any appurtenant rights-of-way or access to the Premises in good and tenable condition.

(b) Owner, at Owner's sole cost and expense, shall maintain the Site, and its improvements thereto in good order and repair and in the condition required to be maintained by Owner pursuant to the Prime Agreement, ordinary and reasonable wear and tear, damage by fire, the elements and other casualty excepted and in substantial compliance with all laws, codes, regulations and orders of any governmental or regulatory entity. Damage resulting from the negligent acts or omissions of User, shall be repaired by User, at User's cost and expense within thirty (30) days of being notified by Owner unless otherwise provided herein.

(c) Owner covenants that it will keep the Tower in good repair as required by all federal, state, county and local laws. Owner shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers and shall be responsible for the cost and expense of painting and maintaining the Tower only. The cost of painting and repairing Owner's Tower shall be borne by Owner unless the damage to the Tower is caused by User, in which case Owner shall repair such damage and User will reimburse Owner for all costs and expenses incurred by Owner in connection with such repair.

26. Mechanics Liens.

Owner and User expressly acknowledge and agree that neither User nor any one claiming by, through or under User, including without limitation contractors, sub-contractors, materialmen, mechanics and laborers, shall have any right to file or place any mechanics' or materialmen's liens of any kind whatsoever upon the Site nor upon any building or improvement thereon; on the contrary, any such liens are specifically prohibited. All parties with whom User may deal are hereby put on notice that User has no power to subject Owner's interest in the Site to any claim or lien of any kind or character and any persons dealing with User must look solely to the credit of User for payment and not to Owner's interest in the Site or otherwise. User shall allow Owner to post notices of non-responsibility on the Premises. User agrees to allow such notices to remain posted in the Site throughout the construction period and to notify Owner if such notices are damaged or removed. However, if by reason of any alteration, repair, labor performed or materials furnished to the Site for or on behalf of User any mechanic's or materialmen's lien shall be filed, claimed, perfected or otherwise established or as provided by law against the Site, User shall discharge or remove the lien by bonding or otherwise, within thirty (30) days after User receives notice from Owner of the filing of same.

27. Hazardous Substances.

User agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Site in violation of any law or regulation. Owner represents, warrants and agrees (1) that neither Owner nor, to Owner's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Site in violation of any law of regulation except, as disclosed to User in any environmental reports provided to User and (2) that Owner will not generate, store or dispose of any Hazardous Material on, under, about or within the Site in violation of any law or



Owner or User may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or rejection.

(e) This Agreement shall be governed by the laws of the State where the Premises are located without regard to the principles of conflict of laws thereunder. Proper venue for any litigation hereunder shall be the courts of Will County, Illinois

(f) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such approval or consent shall not be unreasonably conditioned, delayed, or withheld.

(g) This Agreement may be executed in counterparts, and for convenience purposes may be executed in facsimile or portable document file (PDF) form, all of which shall be deemed when taken together, to be originals.

30. Freedom of Information Act (FOIA)

Both parties agree that User is a "Public Body" as that term is used in the Illinois Freedom of Information Act (FOIA) and, therefore, this agreement is subject to FOIA. Accordingly, in the event the User receives a FOIA request pertaining to this agreement, User shall immediately notify and transmit a copy of said FOIA request to Owner. Owner shall then, within the statutory time frame required to respond to FOIA requests as set forth within the FOIA laws, advise User whether Owner deems the information sought is exempt from disclosure, shall advise User the reason(s) said information is exempt, citing the exact provision(s) within the FOIA laws justifying exemption, without simply claiming the information is generally confidential, proprietary, exempt from disclosure, or the like, and Owner shall bear all costs, including, but not limited to, litigation costs, defending any action in support of Owner's exemption position.

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

**OWNER:**

**USER:**

**MIDWEST NT 1 LLC**  
a Delaware limited liability company

**COUNTY OF WILL**

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

Name:

Name:

Title:

Title:

Witnesses for Owner:

Witnesses for User:

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

Name:

Name:

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

Name:

Name:

## **EXHIBIT A**

Land

**EXHIBIT B-1**

Collocation Application

**EXHIBIT B-2**

Tower Elevation / Site Plan (Premises).

**EXHIBIT C**

Redacted Ground Lease or Deed