The University has finished their responses to vendor questions that were submitted prior to the deadline. Below is the full set of questions submitted, including those issued in Addendum #3, along with University responses. Because of the additional delay created by the University we are extending the bid opening time again from March 24, 2015 to March 30, 2015 at 2pm to allow prospective vendors ample time to respond. The location for delivery of the responses remains the same. All vendors responding to this RFB must incorporate these items into their response. Failure to do so may disqualify the vendor.

Q1. Carriers require a minimum of 25 years term due to their substantial capital investment in antennas and equipment. Can the term of the License Agreement be revised to an Initial Term of five years with four (4) five-year automatic renewals?
A1. No – See response to Question #9

Q2. Should a carrier require more than 75’ in height to provide adequate coverage from the proposed stealth monopole, the selected Contractor will most likely need to apply for a Dimensional Variance with the City of Waltham. Will UMA support said application?
A2. Yes – if it is ultimately determined that a Dimensional Variance with the City of Waltham is required.

Q3. Has the dilapidated building been environmentally tested, and/or remediated of lead and asbestos within its interior and exterior?
A3. No

Q4. Has the parcel that the dilapidated building resides on been environmentally tested /and or remediated for contaminated soils?
A4. No

Q5. Are there any environmental hazards known at the property or access to the property that may affect future Environmental Assessments?
A5. Unknown – testing may be required.

Q6. Would the selected Contractor be expected to perform the necessary environmental and other due diligence during the Contract For Services time period or upon commencement of the License Agreement?
A6. Upon commencement of the License Agreement
Q7. Can potential bidders conduct a site visit prior to the 3/10/15 submission deadline?
A7. Yes – Please contact Ray Jackson at e-mail address rjackson@facil.umass.edu to arrange a site visit.

Q8. Is UMA open to alternative proposals, such as a ground lease option?
A8. No

Q9. Due to the significant capital required for stealthning the tower and removing the barn, our financial model may not support a 15 year term. Will UMA entertain longer term proposals?
A9. Yes, the selected firm will be issued a license for an initial term of fifteen (15) years and have the option of renewing for one additional five (5) year term. Details of the term are more fully set out in the License Agreement included below and which is incorporated into the RFP by this Addendum #4.

In response to the above question, UMA hereby amends the RFP by deleting the third paragraph in section “VII. Contract”, in its entirety, and replacing it with the following two new paragraphs:
“Following acceptance by the University of the design and marketing phase of the project, the selected firm will be required to enter into a License Agreement substantially similar to the one attached hereto as “Schedule 1” and incorporated by reference. By submitting a response to this RFP the selected firm acknowledges and agrees to accept the terms and conditions set forth in Articles 9-12 “AS IS” and further understands that any request for a material or substantial change to the License Agreement may result the rejection of the selected firm’s bid.”

“Proposer Exceptions To License Agreement Terms and Conditions
If proposer takes exception to any of the License Agreement’s terms and conditions contained therein, it must be so noted in the bid. Such an exception may be grounds for rejection of the proposal, at the option of the UMA.”

Q10. In our experience, the types of contracts proposed by the University are not a good fit for the type of deployment requested by the RFP. Will UMA be open to using a contract from the bidder that combines all aspects of the proposed relationship into one document?
A10. No

Q11. : On the bid due date will there be a meeting where you will open the RFPs and read aloud the RFP amounts?
A11. Yes – all bid openings are public

Q12. Size of lease area: we are requesting 70’ x70’ or bigger
A12. The University will allow up to a 70’ X 70’ site.

Q13. Can you post the word version of the RFP is helps the bidders in authoring a response?
A13. Yes – we will post an “unofficial” word version for the vendors to use in their response.

Q14. Section III: Scope of Work P. 5 License: Change the word license to lease. We would prefer to enter into a lease since this is a real estate bid and property RFP. Just so you know any long term real estate license by Mass law is considered a lease anyway.
A14. No - the term will remain as written

Q15. Section III: Scope of Work P. 5 Concealed: Please delete word “concealed”, antenna. The City of Waltham permitting and zoning process will address antenna types. Concealed antennas limit the signal strength for wireless carriers and thus limit the commercial value of the lease
A15. Please propose on the base concealed antenna. You can additionally include other antenna type models for the University to alternatively consider in your proposal. University may or may not accept alternates proposed at their sole discretion.

Q16. Section III: Scope of Work P. 5 Barn demolition: please specify if the barn is wood or steel farm. Approximately, how old is the barn, 50-75-100+ years old?
A16. Wood framed - Best estimate is 75 years old.

Q17. Section IV: Term of Contract P. 5 Term of contract: The standard ground lease term is 25 to 30 years. We request, a 5 year initial lease term + 5, five year renewal terms that auto renew at bidders option
A17. See response to question #9

End of Q&A’s – Sample License Agreement referred to in Q&A #9 is listed below.
SYSTEM LICENSE AGREEMENT BETWEEN

THE UNIVERSITY OF MASSACHUSETTS AMHERST

&

SELECTED FIRM
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This License Agreement ("Agreement") is made as of __________, 2015 (the "Effective Date") by and among the UNIVERSITY OF MASSACHUSETTS AMHERST, a public institution of higher learning organized and existing under the laws of the Commonwealth of Massachusetts,
WHEREAS, UMASS issued Request for Proposal RFP# AA15-JM-5009 (the "RFP"), pursuant to which UMASS requested proposals for exclusive rights to design, install (including all site preparation and demolition) and maintain a stealth monopole cell tower with concealed antennas (“Tower”) at a satellite campus location for the Licensee as well as to provide a positive, shared revenue stream for the Licensee from this initiative to address deferred maintenance at the satellite campus (the “Project”);

WHEREAS, pursuant to said RFP, __________________ has been selected to implement and carry out the Project and to coordinate the operation and maintenance of said Tower, and to have the exclusive right to sublicense the Tower to other carriers or third parties, all subject to the terms of this Agreement; and

WHEREAS, UMASS and Licensee desire to enter into this Agreement to reflect the terms and conditions pursuant to which the Tower shall be installed and thereafter maintained and operated.

NOW, THEREFORE, the Parties hereto, for and in consideration of the fees, terms, conditions and covenants contained in this Agreement, agree as follows:
Article 1. Definitions

1.01 Definitions. Except as otherwise clearly indicated by the context, the following words, terms and phrases wherever used in this Agreement shall for the purpose of this Agreement have the following meanings:

"Satellite Campus" means the satellite campus site located in Waltham Massachusetts at the Waltham Experiment Station. UMASS campus as depicted on Exhibit X.

“Carriers” or “other Carriers” or “Sublicensees” means any FCC licensed cellular service providers other than the Licensee that sign up to participate in the Tower at any period of this license. All other Carriers must adhere to all the applicable terms and conditions in this license regardless of whether “Carriers” are specifically mentioned or not in the individual sections of this license.

"Connecting Equipment" shall mean those portions of the Licensee’s cables, conduits; inner ducts and other connecting hardware connecting Licensee’s Equipment or Sublicensee’s Equipment to the antenna(s) or through which Licensee otherwise provides End-User Services.

“Collection Point” is a space in a building where cables from several buildings come together to be interconnected to the campus network.

"Tower " means a stealth monopole cell tower with concealed antennas as approved by the Licensor.

"End-User Services" means (i) licensed commercial Wireless Telecommunications Services as defined in 47 C.F.R. Part 1.F, delivered by means of cellular, PCS, paging, enhanced convention and specialized mobile radio technology, or other radio technology; (ii) licensed wideband local multipoint distribution service.

"Equipment" means telecommunications and computer equipment owned by the Licensee from time to time, including wiring, cabling, antennas, cabinets, electronic or optronic equipment, radios, poles, dishes, masts, computer terminals, servers, routers, software, and other facilities and equipment comprising the Tower or any Licensee Equipment, small cells or equipment otherwise used in connection with the provision of End-User Services, and as further identified in Exhibit X.
“Licensee Project Manager” means the sole individual designated by Licensee to be in charge of the Project. This is the only person with the authority to speak for Licensee or its subcontractors regarding the Project. This person shall be the official single point of contact for Licensee with Licensor.

"Operating Year" means a twelve (12) month period, the first of which is the twelve (12) month period that starts on the Service Commencement Date.

"Phase I Construction" means all work to be completed during the Start Up Period including Licensee's initial demolition of preexisting improvements and preparation of the Premises for the installation of a cell tower, as more fully described in Exhibit X, as updated by the Phase I Plans and Specifications as defined in Section 3.06.

"Phase II Construction" means Licensee's construction of the cell tower and installation of certain additions and enhancements in accordance Plans and Specifications approved in writing by UMass.

"Preliminary Plans and Specifications" [To Be Developed By Successful Bidder and Approved By UMass]

"Premises" means the licensed as more set forth in Exhibit X.

"Service Commencement Date" means the date that is the first day of the month following the date all Phase II Construction has been completed and the Tower fully operational.

“Start Up Period" means the undetermined period of time between the execution of the Agreement by the Parties and the Service Commencement Date.

“UMass Project Manager” means the person designated by UMass to serve as project manager. This person is the only person with the authority to officially speak for the University regarding any issues involving the design and installation of the Tower. This person shall be the official point of contact for the University with Licensee.

Article 2. RFP and RFP Response
2.01 **RFP and RFP Response.** This Agreement is the result of UMASS’s Request for Proposal AA15-JM-5009 (the "RFP") and Addenda 1 through 6, inclusive and Licensee's Response to the RFP (the “RFP Response”). Many of the terms contained in this Agreement originate in the RFP and RFP Response. This agreement includes by reference the RFP (and addenda) and the RFP response (collectively, the “RFP Documentation”). This Agreement and subsequent additions and amendments executed by both parties shall have priority over the RFP Documentation.

2.02 **Incorporation of Exhibits.** All Exhibits to this Agreement are incorporated into and made a part of this Agreement. In the event of a conflict or inconsistency between the Exhibits and this Agreement, this Agreement shall control. It is understood by both Parties that Exhibits ___________ will need to be revised during the term of this Agreement. Revisions to any of the above Exhibits must be approved in writing by both Parties. Properly approved revisions shall be tracked and maintained separately but deemed part of this Agreement mutatis mutandis.

### Article 3. Grant of License Rights

3.01 **Term.** Except as otherwise expressly provided in this Agreement, the term of this Agreement, as may be extended pursuant to the terms of this Agreement (“Term”), includes the Start Up Period as defined in Article 1 herein, plus fifteen (15) Operating Years (the "Initial Term"). In no event shall the Start Up Period last more than four (4) months.

The initial fifteen (15) year operating period shall commence upon the Service Commencement Date and shall be memorialized by the parties by a written confirmation.

3.02 **Extension of Term.** The Initial Term shall be automatically extended for an additional period ("Renewal Term") of five (5) Operating Years, unless Licensee terminates it at the end of the then current term by giving Licensor written notice of intent to terminate at least six (6) months, prior to the expiration of the initial or renewal terms, as applicable, or unless either Licensor or Licensee terminates the Agreement pursuant to Section 8.03 due to an uncured default by the other party or as otherwise provided in this Agreement. In consideration of the Licensee’s investment, UMASS will give good faith consideration to extending the term of the Agreement for an additional period of time after the end of the Renewal Term, as may be permissible under then applicable law. The Initial Term as extended by the Renewal Terms is hereinafter referred to as the “Term.”

3.03 **Use of Premises.**
(a) Licensee shall use the Premises only to install, demolish, operate, repair, modify, upgrade, alter, maintain, access and remove the Tower, Licensee equipment and related communications fixtures, equipment, cables, appurtenances, utilities and improvements as may be needed from time to time by Licensee (and its sublicensees). No other uses are permitted unless set forth in this Agreement or previously authorized by UMASS in writing, which authorization may be withheld in UMASS’s sole discretion.

(b) Licensee acknowledges and agrees that Licensee is licensing the Premises on an “As-Is, Where-is” basis and the Licensor shall have no obligation whatsoever, except as required herein, to make any improvements to the University Property any time prior to or during the Term of this License.

3.04 License in Premises.

(a) Subject to the terms and conditions of this Agreement, and in consideration of the duties, covenants and obligations of Licensee hereunder, UMASS hereby grants to Licensee an exclusive license to demolish, install, operate, repair, modify, upgrade, alter, maintain, access and remove, at Licensee’s sole expense and risk, the TOWER, the Licensee Equipment and related communications fixtures, equipment, cables, appurtenances, utilities and improvements as may be needed from time to time by Licensee (and its sublicensees) in the Premises, all for the limited purpose of providing End User Services. This Agreement creates a license which is only terminable under the terms hereof. At all times throughout the term, and at no additional charge to Licensee, Licensee and its employee’s agents and contractors shall have pedestrian and vehicular access to and over the campus for the installation, maintenance and operation of the TOWER and any related utilities serving the Premises, subject to the terms and requirements hereof. Normal designated travel areas require no special permission but non-designated areas will require prior approval. Approval will not be unduly withheld. All vehicles must adhere to all normal University parking regulations, including permitting.

(b) The location of the Equipment installed in the Premises shall be limited as set forth in the terms and conditions of this Agreement, as amended from time to time.

I Except as set forth in Section 5A.08, UMASS makes no warranty or representation that the Campus or the Premises are suitable for Licensee’s use. Licensee has investigated the feasibility of the Campus
and Premises for Licensee’s business operations and use. Licensee has inspected the Premises and the Campus and, except as otherwise expressly provided herein, takes the same in “AS IS” condition (or has assumed the risk for failure to investigate) and agrees that, except as relating to providing fiber to the Premises as described in Section 5A.08 and 6.09 and utilities under Section 6.05, UMASS is under no obligation to perform any work or provide any materials to prepare the Premises or Campus for Licensee, but UMASS covenants and agrees to maintain the Campus in a commercially reasonable manner in relation to the standard of other university campuses in the United States of comparable size and age. Notwithstanding the foregoing, should Licensee’s investigations of particular locations disclose environmental or other site conditions that make those areas unsuitable for Licensee’s installations, the parties will work in good faith to identify alternative locations for such installations and UMASS shall have no obligation to perform any work or provide any materials to prepare any such areas for Licensee’s use.

3.05 **Relocation.** Intentionally Omitted

3.06 **Phased Construction.** The Parties hereto acknowledge and agree that construction of the TOWER will occur in phases.

(a) During the Start Up Period, Licensee will finalize the Plans and Specifications for the Phase I Construction (the “Phase I Plans and Specifications” as contained in Exhibit X) and will present such Phase I Plans and Specifications to UMASS’s Project Manager for UMASS’s approval, such approval not to be unreasonably withheld, conditioned or delayed. UMASS's review and approval process for the Phase I Plans and Specifications will proceed in good faith and include, without limitation, review and approval through the project review system in UMASS’s Design and Construction Department and UMass IT. After obtaining UMASS's approval, Licensee shall proceed to demolish all preexisting improvements identified for demolition by UMass at the Satellite Campus and preparing the Premises for the constructing of the Tower in accordance with the Phase I Plans and Specifications, and the Parties hereto shall execute an amendment documenting the Premises as shown on the Phase I Plans and Specifications. In the event UMASS does not deliver approval or rejection of such Phase I Plans and Specifications within thirty (30) days of their submission, then such Plans and Specifications may be deemed approved by Licensee, or Licensee shall have the right, but not the obligation, to terminate this Agreement on thirty days’ notice to UMASS. Upon such termination by Licensee this Agreement shall become null and void, and the Parties shall have no further obligations, including the payment of money, to each other. UMASS acknowledges and agrees that Licensee may operate Equipment
installed pursuant to approved Phase I Plans and Specifications during the Start-Up Period. UMass “approval” is limited to their agreement with Licensee’s approach only and will not relieve Licensee from any of their responsibilities to insure that the systems are installed and working properly.

(b) Upon implementation of the Phase I Construction, Licensee will finalize the Plans and Specifications for the Phase II Construction (the "Phase II Plans and Specifications" as contained in Exhibit X) and will present such Phase II Plans and Specifications to UMASS’s Project Manager for UMASS’s approval, such approval not to be unreasonably withheld, conditioned or delayed. UMASS's review and approval process for the Phase II Plans and Specifications will include, without limitation, review and approval through the project review system in UMASS's Facilities Planning Department and UMass IT. After obtaining UMASS's approval, Licensee shall proceed to build the enhancements to the TOWER in accordance with the Phase II Plans and Specifications, and the Parties hereto shall execute an amendment documenting the Premises as expanded on the Phase II Plans and Specifications. In the event UMASS does not deliver approval of such Phase II Plans and Specifications within 120 days after Licensee present such Plans, Licensee shall have the right, but not the obligation, to withdraw such Phase II Plans and Specifications, and in such event, Licensee shall be deemed to have satisfied the coverage requirements under Article 5 of this Agreement.

UMass “approval” is limited to their agreement with Licensee’s approach only and will not relieve Licensee from any of their responsibilities to insure that the systems are installed and working properly.

(c) Upon implementation of the Phase II Construction, Licensee shall test the system and determine if the Tower is fully operational.

(d) Upon completion of the Phase II Construction and the Licensor determining that the Tower is fully operation, the Licensor shall issue a certificate of completion and notice of the Service Commencement Date. UMass’ determination is limited to determining Service Commencement Date and will not relieve Licensee from any of their responsibilities to insure that the systems are installed and working properly.

3.07 **Access.** UMASS hereby grants to Licensee, its employees and/or agents, a license for the Term, as the Term may be extended pursuant to this Agreement, for ingress to and egress from the nearest public rights of ways to the various portions of the Premises twenty-four hours a day, seven days per week, subject to UMASS's security policies and the terms and conditions contained in
this Agreement. Access to the remote units of the TOWER (as opposed to the Head-End Space) must be coordinated through UMASS on-call staff, a schedule for which will be provided to the Licensee. Such access shall also be granted for the purpose of design, construction, installation, upgrading, maintenance and repair of the TOWER.

3.08 **Upgrade.** Licensee shall have the right to upgrade the Equipment and implement new technologies and/or use different and additional spectrum on the Campus to permit Licensee to better serve End Users, provided that (i) such actions by Licensee do not impair UMASS’s rights hereunder, materially increase Licensee’s rights to use space on the Campus beyond the locations identified on the Exhibits attached hereto, or result in any interference with other operations of UMASS at the Campus existing at such time; and (ii) such actions by Licensee are undertaken in accordance with and are governed by the terms of this Agreement. Prior to making upgrades to the TOWER that would diminish service for more than one (1) hour which are outside of the maintenance window of 11pm to 6am, Licensee shall provide reasonable advance notice to UMASS Vice Chancellor for Information Technology or designee. In the event that Licensee’s upgrading of Equipment or implementation of new technologies or spectrum would involve an expansion of the Premises, then Licensee shall request UMASS's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, UMASS acknowledges and agrees that Licensee will have the right to conduct maintenance of the Equipment from time to time without need for consent from UMASS, subject to UMASS's security policies and the terms and conditions contained in this Agreement.

3.09 **Resellers and Roaming Services.** Intentionally Omitted.

3.10 **Licensee.** ___________ is the Licensee and point of contact for UMASS under this Agreement. The Licensee acts for and on behalf of other Carriers with respect to the TOWER, which is assumed in all references to the Licensee hereunder unless otherwise specified.

**Article 4. License Fees**

4.01 **Payment Obligation.** In consideration of the rights and privileges hereby granted to Licensee by UMASS, Licensee shall pay to UMASS as compensation therefore, the amounts set forth in this Article 4. Licensee's obligation to make payments to UMASS under this Agreement shall commence on the Service Commencement Date.

4.02 **License Fee. T.B.D**

4.03 **Payment Schedule. T.B.D**
4.04 **Payments, T.B.D**

4.05 **Taxes and Government Fees.** In addition to the fees required in Article 4 of this Agreement, Licensee and all other Carriers shall pay as the same become due all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against Licensee or other Carriers.

**Article 5. Equipment and Installation**

The purpose of this Article 5 is to set forth certain terms from the RFP Documentation which pertain to the terms of this Agreement. The RFP Documentation are incorporated by reference into this document with this document having priority.

5.01 **Scope of Work.**

The major points of the scope of work of the neutral hosting and TOWER are summarized as follows:

(a) Demolish preexisting improvements/structures identified for demolition by UMass at the Satellite Campus.

(b) Design, construct, maintain, market, and upgrade as needed a Tower locate on the Premises.

(c) Installation of TOWER coverage reliability independent of Carriers and their technologies, as provided in this Agreement.

(d) Market TOWER.

(e) Licensee must be sensitive to aesthetics on the Campus and use stealth antennas and TOWER elements that blend into its surrounding. Part of UMASS' approval process for each phase of construction requires approval from UMass Design and Construction.

5.02 **Intentionally deleted.**

5.03 **Tower**

(a) Coverage: The TOWER shall be designed, so that upon completion of each of the two phases of construction the Tower shall meet the following criteria:
• **T.B.D**

(b) Continuous Operation: The Licensee shall use commercially reasonable efforts to operate the TOWER on a twenty-four hour/7 days per week basis, subject to service interruption for ordinary maintenance and backup power failures.

(d) Other than additions to the fiber optic plant that UMass requests when the Licensee is installing additional fiber optic cable as described in section 5.05.1 (f), the Licensee will not require UMASS to pay anything, including but not limited to, the TOWER design, planning, construction, implementation, management, installation, utility placements and supporting infrastructure (electric meter loops, electrical conduit, building & fire code fees, physical plant alterations & improvement (A&I) fees, roof penetrations and patching, etc.), monitoring & maintenance, continual upgrading, and marketing.

(e) Other than the pre-existing cell site(s) and distribution antenna system, UMASS will grant to the Licensee the sole and exclusive right to market and sublicense the TOWER to cellular/wireless carriers for the use of the cell sites and fiber-based microcellular (distributed antenna) systems in any and all of the buildings on the Campus. UMASS and the Licensee will work together to identify the placement of the Equipment on the Campus.

(f) Licensee must be sensitive to aesthetics of the Satellite Campus and use stealth antennas and antennas that blend into its surroundings. During each phase, Licensee must provide renderings to UMASS of each proposed outside antenna(s) as they would appear upon final installation. To clarify: drawings will be used to obtain approvals from UMass Design and Construction Services. All construction related work will require a building permit, plans stamped by a registered engineer in MA, and will need to comply with the State building code.

(g) **T.B.D.**

(h) The Licensee shall coordinate all activity and hardware installation that affects the use of fiber, conduit, and cable tray with UMASS’s Information Technology Department.

5.04 **Preliminary Implementation Plan.**

The Licensee shall construct the TOWER substantially in accordance with the construction schedule attached hereto as Exhibit X, subject to delays due to factors outside the control of the Licensee.
5.05  **Construction.**

5.05.1  **Construction Timetable.**

The Licensee’s construction timetable shall reflect the specific method and schedule of construction of the TOWER. The Licensee’s plan shall reflect the following:

(a) Detailed plan to demolish all structures identified for demolition by UMass at the Satellite Campus. A timetable reflecting when each stage of work shall be completed.

(b) Location of all facilities including antennas and any other required structures. A timetable reflecting when each stage of work shall be completed.

(c) Licensee is solely responsible for obtaining all permits, licenses, certificates, approvals, and authorizations for construction activities in locations outside the contiguous main campus. Licensee will pay any expenses in connection with such permits.

(d) The Licensee shall promptly notify UMASS’s Project Manager of all delays known or anticipated in the construction, re-build, or extension of the TOWER. UMASS may extend the construction timetable in the event the Licensee, acting in good faith, experience delays by reason of circumstances beyond their control.

In support of the Licensee, UMASS will provide the following:

(e)  **T.B.D**

(f) UMASS shall deliver to the Licensee the following documentation, if available:
   •  **T.B.D**

5.05.2  **Construction Standards.**

Licensee and other Carriers must adhere to all federal state and local law, codes, regulations and UMASS's Design and Construction Guidelines. ("UMASS Design and Construction Guidelines") as attached hereto as Exhibit X for the presentation of the Phase I Plans and Specifications and for the installation, operation and maintenance of Equipment installed pursuant to the Phase I Plans and Specifications. For subsequent phases, Licensee’s plans presented for UMASS approval must adhere to the then current version of such UMASS Design and Construction Guidelines, provided any changes contained in the then current draft
from the Summer version attached as Exhibit X are reasonable and do not materially increase Licensee’s obligations and costs. UMASS acknowledges and agrees that a) notwithstanding anything to the contrary contained in the UMASS Design and Construction Guidelines or this Agreement, Licensee and other Carriers shall not be obligated to modify plans or the current phase installation, operation or maintenance based on revisions to the UMASS Design and Construction Guidelines arising after the date the applicable phase plans are presented to UMASS and b) adherence to a later version of such guidelines for a subsequent phase shall not mean that a prior phase is then subject to the updated guidelines.

5.05.3 Construction Methodology.
All wires, conduits, cables and other equipment shall be constructed and installed by the Licensee in an orderly and workmanlike manner. Such wires, conduits, cables and other equipment when installed shall be concealed to the extent reasonably feasible and as shown on the Plans and Specifications for the corresponding phase. In any case no cable shall be run exposed (unless above a dropped ceiling) outside of an equipment/hub room unless specifically approved by UMass.

5.05.4 Underground Infrastructure. As part of this License, UMASS may provide Licensee with space in its existing conduits and other underground pathways, to the extent reasonably necessary or appropriate, to operate, repair, modify, upgrade, alter or maintain the TOWER, the Licensee Equipment and related communications utilities and fixtures.

5.05.5 Generator. Any proposed construction or placement of a generator or other similar equipment shall be subject to UMASS's approval (including, without limitation, approval by UMASS's Design and Construction Department), which approval may be obtained in the applicable phase plans and specification approval process. To the extent UMASS grants the Licensee permission to construct a generator or other similar equipment outside a building on ground level, then all utility connections between the exterior equipment and building shall be constructed underground to adhere to UMASS Design and Construction Guidelines, in accordance with the version indicated in Section 5.05.2. No pole line construction or the direct buried method will be approved or provided by UMASS.

Article 5A. Equipment and Installation.

5A.01 Construction Standards. The TOWER shall be constructed in an orderly and workmanlike manner and in accordance with the UMASS Design and Construction Guidelines as more fully set out at the below link: http://www.umass.edu/fp/projectmanagement/designguidelines/
5A.02 **Governmental Approvals.** It is understood and agreed that Licensee’s ability to use the Premises and the Equipment is contingent upon their obtaining at their sole cost and expense after the execution date of this Agreement all of the certificates, permits, and other approvals (collectively the "Governmental Approvals") that may be required by any federal, state or local authorities as well as a satisfactory building structural analysis and environmental analysis. UMASS shall cooperate with Licensee in its efforts to obtain such approvals and shall take no action that would adversely affect the status of the Premises with respect to the proposed use thereof. In the event that any of such applications for such Governmental Approvals should be finally rejected, or each Licensee (with respect to such Licensee’s Equipment) or Licensee (with respect to the TOWER) determines that any such Governmental Approvals may not be obtained in a timely manner or any Governmental Approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the relevant governmental authority or a Licensee determines that the Premises is no longer technically compatible for such Licensee's intended use, or that a Licensee, in its sole discretion, determines that the Licensee will be unable to use the Premises for its intended purposes, then Licensee shall have the right to terminate this Agreement. Notice of Licensee's exercise of its right to terminate shall be given to UMASS pursuant to the Notice Section hereof. All License Fees paid prior to said termination date shall be retained by UMASS. Upon such termination by Licensee on behalf of Carriers, this Agreement shall become null and void and the Parties shall have no further obligations, including the payment of money, to each other.

5A.03 **Location of Equipment.** T.B.D

5A.04 **Installation.** UMASS hereby accepts the Preliminary Plans and Specifications attached hereto as Exhibit X solely for purposes of entering into this Agreement and commencing the Start-up Period. The TOWER will be installed in phases in accordance with Section 3.06 and otherwise in accordance with Exhibit X. Licensee shall make no material changes or alterations to the plans and specifications in effect under this Agreement (the Preliminary Plans and Specifications, followed by the Phase I Plans and Specifications, followed by the Phase II Plans and Specifications without the prior approval of UMASS, which approval shall not be unreasonably withheld, conditioned or delayed. UMASS shall respond within thirty (30) days of receipt of any request for approval of a change to the plans and specifications in effect under this Agreement or such change shall be deemed accepted. Subject to the terms and conditions herein, Licensee, on behalf of the Carriers and at the Licensee’s cost and expense, except as otherwise provided herein, shall install the TOWER. Each Carrier, at its cost and expense, will install its individual Carrier Equipment and reimburse Licensee for its pro rata share of the Licensee’s capital costs in construction the TOWER (including costs of design, planning, permitting, marketing, construction and installation of the TOWER and securing carrier licenses), as determined and negotiated by Licensee in its sole discretion.
The reimbursement process for such capital costs by such third party carriers shall be as set forth on Exhibit X attached hereto.

5A.05 **Marking of Equipment.** Licensee shall ensure that all Equipment is identified with permanently marked, weather-proof labels, and that each Licensee's cables are so marked in each telephone closet through which cables pass, at each antenna bracket, at the transmission line entry point, at the interior wall feed-through or any other transmission line exit point, and at any transmitter combiner, duplexer or multifeed receive port, with such Licensee's name and the location where each cable originates and terminates.

5A.06 **Approval of Outside Contractors.** UMASS shall have the right to approve all outside contractors performing any work relating to the installation, modification, maintenance or removal of the Equipment on the Campuses on behalf of Licensee and other Carriers, which approval shall not be unreasonably withheld, conditioned or delayed. UMass hereby acknowledges that Licensee has secured __________ as a primary contractor.

5A.07 **Location of Connecting Equipment.** Connecting Equipment shall be installed in accordance with the Plans and Specifications, which shall specifically show the location of all cabling, conduits and electronic equipment, and their connections with the remainder of Licensee’s Equipment.

5A.08 **Interconnection.** T.B.D

5A.09 **Campus Expansion.** Intentionally Omitted.

5A.10 **Parking.**

5A.11 **As-Built Drawings.** Within three (3) months of the execution of this Agreement, Licensee shall deliver to UMASS as-built drawings of such installation in accordance with the UMASS Design and Construction Guidelines in the version indicated in Section 5.05.2. Upon delivery and acceptance by UMASS, such as-built drawings shall be attached hereto and incorporated herein as Exhibit X.

5A.12 **Environmental Due Diligence.** Prior to constructing each phase in accordance with the applicable approved plans and specifications, Licensee shall work with UMASS to conduct environmental due diligence of the approved locations for the Premises for such phase. Licensee’s environmental due diligence shall be conducted at Licensee’s sole cost and expense. In the event such testing for any location produces results that are not acceptable to Licensee, in Licensee’s sole judgment, Licensee shall have the right to modify the plans and specifications for such phase to provide for an alternative location instead of the location with unacceptable test results. The plans and specifications for such phase will then be revised to provide for the alternative location, which shall be subject to UMASS's approval, such approval not to be unreasonably withheld,
conditioned or delayed. Licensee acknowledges and agrees that the results of any such environmental testing will only be utilized for Licensee’s internal evaluations of the locations, unless otherwise required by applicable law.

UMASS hereby agrees that Licensee may conduct physical and geotechnical testing and environmental inspections, tests, collect samples of soil, water, soil vapor, indoor air, building materials and other substances, including in regard to painted surfaces, sufficient samples of paint by removing it from the structure for laboratory analysis, and perform any other environmental assessment activities that Licensee reasonably determines to be appropriate. Without limiting the generality of the foregoing, the Licensee and its representatives may drill into the soil, drill through pavement, remove reasonable amounts of soil, install and sample monitoring wells, and perform other tests, actions, procedures, and treatments to assess (A) the environmental condition of the Premises and (B) past or present compliance with all environmental, health and safety laws applicable to the Premises. Licensee and its agents shall undertake all activities on the Premises in compliance with applicable laws and shall use commercially reasonable efforts to minimize the extent and duration of any interference with UMASS’s operations on the Premises. All activities in this paragraph are subject to UMASS's approval, such approval not to be unreasonably withheld, conditioned or delayed.

5A.13 **Installation, Sampling, and Removal.** UMASS shall cooperate with Licensee and its agents regarding all installation, monitoring, sampling, removal, and related activities that Licensee conducts on the Premises. UMASS shall cooperate in locating buried utilities and improvements on the Premises at the request of any agent or contractor of Licensee and shall assist the Licensee in avoiding impacts to such buried or concealed features. UMASS authorizes Licensee to obstruct temporarily, but for a reasonable period of time, access to, or use of, limited areas of the Premises for the purpose of safety, operation of equipment, testing and sampling activities, and installation or removal of monitoring wells. Licensee may use any electrical or other utility outlets or connections on the Premises to conduct its activities. Licensee shall ensure that Licensee agents remove their equipment and restore any part of the Premises that was affected by its activities to a condition that is substantially similar to its condition at the time immediately preceding the commencement of said activities. All activities in this paragraph are subject to UMASS's approval, such approval not to be unreasonably withheld, conditioned or delayed.

UMASS acknowledges and agrees that it is the sole and lawful owner of any samples that are taken during the activities undertaken pursuant to this License, and any investigation-derived media (i.e., drill cuttings, well purge water) generated by the investigation, and that this media may require off-site disposal based upon test results. UMASS agrees to execute all manifests as requested by Licensee for proper disposal. The cost of off-site disposal of media will be paid for by Licensee or the appropriate Licensee representative, not UMASS.
Article 6. Operation and Maintenance of TOWER

6.01 **Design of TOWER.** Licensee shall design, install, operate, manage, and maintain the TOWER in accordance with the Plans and Specifications and the obligations under this Agreement.

6.02 **Non-Discrimination.** The Licensee shall provide access to the TOWER on a nondiscriminatory basis to other Carriers for the provision of End-User Services.

6.03 **Marketing of the TOWER.** Throughout the Term of the Agreement, Licensee shall maintain and follow a marketing plan designed to inform potential Carriers of the capabilities of the TOWER and to encourage them to enter into arrangements with the Parties to use the TOWER to reach End-Users on the Campuses. Licensee shall provide UMASS with advance copies of the TOWER marketing materials and marketing plans for UMASS’s review and approval, such approval not to be unreasonably withheld, conditioned or delayed. UMASS acknowledges and agrees that such marketing plan shall consist solely of the submission of a letter outlining the TOWER delivered to each of the FCC licensed wireless providers delivering End-User services on the Campus.

6.04 **Other Carriers.** Intentionally Omitted.

6.05 **Utilities.**

Electrical power to Premises and all improvements located thereon shall be provided by Licensee and at no cost to UMASS. Subject to UMASS’s approval (including, without limitation, approval by UMASS’s Design and Construction Department), such approval not to be unreasonably withheld, conditioned or delayed, Licensee shall have the right to install permanent generators, or to the extent such permanent generators are not approved or are not feasible, Licensee are hereby permitted to install temporary back-up generators as needed. The location of any such permanent or temporary back-up generators shall be subject to the approval of UMASS (including, without limitation, approval by UMASS’s Design and Construction Department), which approval may be obtained in the applicable phase plans and specifications process.

6.06 **Maintenance of the TOWER.** Licensee shall keep the TOWER and all of its components in good working order throughout the term of the Agreement. Licensee, with the assistance of other Carriers, and shall develop and implement a program for periodic maintenance of the TOWER, to include a schedule for replacement and overhaul of system components. The maintenance program
and day-to-day maintenance operations shall comply with industry practices in the telecommunications and information technology fields for networks comparable to the TOWER. Licensee shall keep records of all of their maintenance and repair activities in accordance with standard industry practices, and shall provide such records to UMASS for the previous year upon request.

6.07 **Maintenance of Premises.** Except as otherwise provided herein, Licensee shall perform all required maintenance for those portions of the Premises that are used exclusively by Licensee. UMASS shall not be required to make repairs or improvements of any kind in the Premises.

6.08 **Quality of Repairs.** All repairs done by any Carrier or on its behalf shall be in a good workmanlike manner in both materials and workmanship. All repairs shall be made in conformity with all applicable government rules and regulations.

6.09 **Fiber.** T.B.D.

6.10 **Operation.** Except as otherwise authorized by UMASS in writing, Licensee shall:

(a) subject to the terms and conditions of this Agreement, operate the TOWER continuously, except for periods of scheduled maintenance during the maintenance window set forth in Section 3.08, on the Campus from the Service Commencement Date throughout the Term UMASS acknowledges that the TOWER will only be designed for sufficient capacity to meet wireless industry needs and expected growth for the term of the Agreement and in keeping with Licensee’s industry knowledge and expertise; and

(b) not use the University Property for any illegal purpose or violate any statute, regulation, rule, or order of any governmental body, nor create or allow to exist any nuisance or trespass, nor do any act in or about the University Property, nor bring anything on University Property that will in any way increase the University’s insurance premiums.

6.11 **Compliance with Rules and Regulations.** Licensee covenants to use commercially reasonable efforts to assure UMASS that Licensee’s employees and agents, while on the Campuses, shall comply with the Commonwealth of Massachusetts’ and UMASS's site rules, regulations, and Campus Policies, including any applicable security policies (collectively, the “Policies”) as established from time to time, provided that (a) such Policies will not materially alter the rights and obligations of Licensee under this Agreement, (b) in the event of a conflict between the terms of the Policies and the terms of this Agreement, the terms of this Agreement will control (c) Licensee shall have received notice of any applicable rule or regulation or Policies not less than thirty (30) days
before UMASS issues any notice of default for failure to abide by any such rule or regulation and (d) provided further that such site rules are customary and reasonable and uniformly applied and enforced.

6.12 **Key Personnel.** The Licensee shall not substitute key personnel assigned to the performance of this Agreement without fifteen days prior written notice to UMASS.

6.13 **Care of Property.** Each Licensee agrees that it shall take proper care of UMASS property while performing this Agreement and will reimburse UMASS for loss or damage of UMASS property to the extent caused by the negligence or willful misconduct of such Licensee.

6.14 **Contractor Personnel.** UMass expects the Licensee and all other carriers and contractor personnel to behave in a respectful and appropriate manner. UMass may at any time and solely at its own discretion require that the Licensee, a Carrier or sub-contractor remove any worker or employee assigned to this project from the campus.

**Article 7. Interference**

7.01 **Non-Interference.** The operation of the Equipment shall not interfere with the mechanical or electrical systems of an University campus, or the operation of any pre-existing radio or telecommunications equipment operated on or from University campuses. If the operation of the TOWER or the Equipment violates any of the foregoing terms or conditions of this Section, then, after UMASS has notified Licensee of such violation, Licensee will take all commercially reasonable steps necessary to correct and eliminate the violation (or notify the applicable Carrier to do the same if the violation has been caused by such carrier). To the extent Licensee is unable to cure any violation caused by Licensee, Licensee shall voluntarily power down the portion of the Equipment causing the violation, except in any case for intermittent testing until such time as the violation is remedied. In the event of an interference or other emergency issue, UMASS may contact Licensee at the following phone number: _____________. In no event will UMASS be entitled to terminate this Agreement or relocate the Equipment as long as Licensee is making a good faith effort to remedy the interference issue and UMASS agrees that UMASS and/or any other tenants of the Campuses who currently have or in the future take possession of the Campuses will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Equipment. The Parties acknowledge that there may not be an adequate remedy at law for noncompliance with the provisions of this Section and therefore, any Party shall have the right to seek equitable remedies, such as, without limitation, injunctive relief and specific performance.

7.02 **RF Studies.** Licensee agrees, prior to commencing operations from the Campus, to conduct a radio frequency interference study by qualified personnel and to
submit the report to UMASS for review.

Article 8. Default and Remedies

8.01 **Licensee Default.** Licensee shall be in default under the Agreement should any one or more of the following circumstances occur, each constituting a default (“Default”):

(a) The Premises is not cleared

(b) The Premises is deserted, vacated, or becomes unoccupied by Licensee and, in so being, causes a situation or circumstance which in the sole opinion of the Licensor is disadvantageous to Licensor from a business or legal perspective;

(c) Insolvency of Licensee, including, but not limited to, an assignment for the benefit of creditors or transfer property in fraud of creditors;

(d) Licensee shall make an assignment for benefit of creditors;

(e) A receiver is appointed for any of Licensee's assets;

(f) Licensee breaches or fails to comply with any term, provision, condition, covenant, obligation of this License or any of the rules and regulations now or hereafter established by Licensee to govern the operation of the Premises; provided that such Default continues for fifteen (15) days after written notice for monetary defaults or thirty (30) days after written notice for nonmonetary defaults, and provided further that this Agreement shall not be terminated if the Default cannot reasonably be cured within thirty (30) days of such notice and such Licensee commences the cure within such thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.

8.02 **UMASS Default.** In the event there is a default by UMASS with respect to any of the provisions of this Agreement or its obligations under it, or in the event any representation or warranty made by UMASS herein shall prove to be false or incorrect, Licensee shall give UMASS written notice of such default. After receipt of such written notice, UMASS shall have thirty (30) days in which to cure any such default, provided UMASS shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and UMASS commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.

8.03 **Remedies.** Upon a default by either party, the non defaulting party may at its option (but without obligation to do so) perform the defaulting party’s duty or obligation on such party’s behalf, including but not limited to, in the case of Licensee default, the obtaining of reasonably required insurance policies. The
costs and expenses of any such performance by the non defaulting party shall be
deue and payable by the other party upon invoice therefor. In the event of a default
beyond all notice and grace periods provided hereunder, by either party with
respect to a material provision of this Agreement, without limiting the non
defaulting party in the exercise of any right or remedy which it may have by
reason of such default, the non defaulting party may terminate this Agreement
pursuant to Section 8.01 or Section 8.02, as applicable, and/or pursue any remedy
now or hereafter available to it under the laws or judicial decisions of the
Commonwealth of Massachusetts; provided, however, such party shall use
reasonable efforts to mitigate its damages in connection with such default. A
termination notice sent by a Carrier is only effective as to that Carrier, unless
Licensee sends a termination notice on behalf of all Carriers.

8.04 **Transfer of Title.** The TOWER and Licensee Equipment and Equipment are
personal property of the Licensee and the Licensee at all times owns and controls them and
may remove any portion of them at any time during the term. Licensor and Licensee agree,
and Licensor shall so inform, any purchaser or mortgagee of the Premises, of this
Agreement and that all Equipment forming a part of the TOWER and Licensee Equipment
shall be and remain the property of Licensee under all circumstances, under Licensee’s
exclusive control, free and clear of any liens or encumbrances other than those permitted by
Licensee, and shall be deemed to be and remain personal property and not part of the real
estate on which the same are located.

If the Term expires and is not renewed or extended by Licensee or is terminated by
Licensee for any reason permitted hereunder, then Licensee will, upon such termination or
expiration, will be permitted to remove its Equipment. If the Agreement is terminated for
a Default by Licensee, at any time during the term, Licensee agrees that it will transfer title
to and ownership of all Licensee’s Equipment used for multi-carrier use (excluding
Licensee’s specific Licensee Equipment) to Licensor at the time of such termination for a
price equal to the depreciated value of such Equipment, using a twenty (20) year
depreciation schedule. Such Equipment to be transferred in AS-IS, WHERE-IS condition
without any warranty, express or implied. Any Licensee Equipment or improvements not
removed by the Licensee within ninety (90) days after the expiration or earlier termination
of the Term that shall be deemed abandoned.

8.05 **Re-entry by UMASS.** If this Agreement is terminated because of a Default,
beyond applicable notice and cure periods, by the Licensee, UMASS or its
agents or employees may, upon thirty (30) days further written notice, or at any
time thereafter, (i) re-enter the Premises and remove Licensee, Licensee’s
agents, subcontractors, invitees and property from the assigned Premises; and
(ii) assume control over and continue the operation of the TOWER and all
associated Connecting Equipment. Re-entry and removal may be affected by
summary dispossessory proceedings or by any suitable action or proceeding at
law. UMASS shall not be liable in any way in connection with any action it
takes pursuant to this subparagraph, except as may be provided by law.
8.06 **No Waiver.** The rights and remedies set forth herein shall be in addition to any other right and remedy now and hereafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No delay by UMASS or Licensee in exercising a right or remedy shall constitute a waiver or acquiescence to a default. No waiver of a default shall be effective unless it is in writing. No waiver of a default shall extend or affect any other default, excuse future similar defaults, or impair any right or remedy with respect thereto.

**Article 9. Assignment**

9.01 **Assignment.** This Agreement may not be sold, assigned or transferred by the Licensee or UMASS without the written approval or consent of the other, which such consent would not be unreasonably withheld or delayed. Notwithstanding the above, the Licensee may, without written approval, transfer this Agreement to its principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of the Licensee’s assets in the market defined by the Federal Communications Commission in which the property is located by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of a Licensee or transfer or corporate dissolution would constitute an assignment by Licensee.

**Article 10. Representations, Warranties, and Covenants**

10.01 **Representations, Warranties and Covenants of UMASS.** As material inducements to Licensee to enter into this Agreement, UMASS represents, warrants and covenants to Licensee as follows as of the date of this Agreement:

(a) UMASS is an Institute of Higher Education, validly existing, and in good standing under the laws of the Commonwealth of Massachusetts.

(b) UMASS has the requisite power and authority to enter into this Agreement, to carry out its obligations hereunder, and to grant to Licensee the licenses described in this Agreement in accordance with the terms and conditions hereof.

(c) This Agreement has been duly executed on behalf of UMASS by duly authorized officers of UMASS. To the knowledge of the UMASS officers signing this Agreement, UMASS has received no written notice of currently pending actions, suits, or arbitrations, at law or in equity, other than any action(s), suit(s) or arbitration(s) which would not reasonably be expected to have a material adverse effect on the use of the Premises or any material portion thereof for Licensee’s intended uses for a material period of time.

(d) UMASS is entering into this Agreement after soliciting and evaluating multiple
competing proposals submitted in open competition in response to UMASS's RFP# AA15-JM-5009 and Addenda.

(e) UMASS selected Licensee's response proposal dated October 29, 2013, and has determined that Licensee’s proposal best met the criteria of the RFP. Each and every representation and warranty by and of UMASS contained in this Agreement is true and correct as of the date hereof.

10.02 **Representations, Warranties and Covenants of each Licensee.** As material inducements to UMASS to enter into this Agreement, each Licensee represents, warrants and covenants in favor of UMASS as follows:

(a) Licensee acknowledges that the ability to use the Premises is contingent upon its obtaining all certificates, permits, licenses, and other approvals that may be required by any governmental authorities. UMASS shall, at no cost to it, use good faith efforts to cooperate with Licensee in its effort to obtain such certificates, permits, licenses, and other approvals. During the term of the Agreement, UMASS agrees to sign such papers as are reasonably required to file applications with the appropriate governmental authorities for the proper certificates, permits, licenses, and approval as are required for the use of the Premises intended by the Licensee, provided, however, that Licensee may not file such applications as would impose any restrictions that would interfere with UMASS’s current or reasonably anticipated future use of the its Property as a an institute of higher learning. Licensee will perform all other acts and bear all expenses associated with any zoning or other procedure necessary to obtain any certificate, permit, license, or approval for the Property deemed necessary by Licensee. University agrees not to register any written or verbal opposition to any such procedures that comply with this paragraph. Licensee has the requisite power and authority to enter into this Agreement, to carry out its obligations hereunder, and to license from UMASS the Premises in accordance with the terms and conditions hereof.

(b) This Agreement has been duly executed on behalf of Licensee by a duly authorized officer of Licensee.

(c) Licensee is a duly organized, validly existing __________ corporation.

(d) Neither the execution and delivery of this Agreement nor performance by Licensee in compliance with the terms of this Agreement will result in a breach of the terms and conditions of or constitute a default under the organizational and governance documents of Licensee.

(e) No consent or approval which has not otherwise been obtained is required by virtue of the execution hereof by Licensee or the consummation by Licensee of any of the transactions and obligations contemplated herein in order to avoid violation, breach of, default under, or the creation of a lien on
assets of Licensee pursuant to the terms of any regulation, order, decree, or award of any court or governmental agency or any lease, contract, mortgage, note or any other instrument to which Licensee is a party or by which Licensee is bound or to which Licensee or any of its property is subject.

(f) Licensee and Carriers shall not introduce, use, generate, store, or dispose of any Hazardous Materials on the University Property or Licensor’s Surrounding Property. For purposes of this Agreement, “Hazardous Materials” shall mean petroleum or any petroleum product, asbestos, and any other substance, chemical, or waste that is identified as hazardous, toxic, or dangerous in any applicable Federal, State, or Local law, rule or regulation. Notwithstanding the above, the Licensee may store generator fuel, batteries and the like in pre-approved locations, so long as such materials are used, stored and maintained in compliance with Industry standards, UMASS policy and any applicable laws.

(g) To the knowledge of Licensee’s officer signing this Agreement, no legal action has been filed by any state or federal governmental authority against the Licensee that purports to affect or pertain to this Agreement or any of the transactions contemplated hereby.

(h) Each and every representation and warranty by Licensee contained in this Agreement is true and correct as of the date hereof and shall be and remain true and correct during the Term.

Article 11. Casualty, Condemnation, Indemnification and Insurance

11.01 Casualty. If the Campus or the Premises or the means of access thereto is damaged by casualty, fire, flood, tornado or other action of the elements, the damage (except to any equipment which may have been placed in or upon the Campuses or the Premises by or at the expense of Lead Carrier, or a Licensee) will be repaired by UMASS, subject to an appropriation being made therefor, unless this Agreement is terminated as hereinafter provided.

License Fees, until such repairs are made, will be abated in proportion to the portion of the Campus and the Premises which are unusable for Licensee’s activities. If the damage is so extensive as to render the Campus or the TOWER or the Equipment wholly unusable for Licensee’s activities, the License Fees will abate until such time as the Campus or the Premises have been made usable for such activities. If the damage by casualty, fire, flood, tornado or by other action of the elements substantially amounts to the destruction of the Campus or the TOWER or the Equipment, either UMASS or Licensee may elect to terminate this Agreement by giving written notice to the other Party. Licensee shall have the right to enter the Premises during the rebuilding or reconstruction to repair, restore or install the Equipment or the TOWER in
In accordance with this Agreement.

In case of damage to the Campus or the Premises, or to the means of access thereto, by casualty, fire, flood, tornado or any other action of the elements, the Party first becoming aware of such damage shall give prompt notice thereof to the other Party. In the event of damage by casualty, fire, flood, tornado or other action of the elements to the Campus or the TOWER or the Equipment that cannot reasonably be expected to be repaired within forty-five (45) days following same, or if the Campus or the TOWER or the Equipment is damaged by such events so that such damage may reasonably be expected to disrupt Licensee’s operations for more than forty-five (45) days, then Licensee may at any time following such damage, provided UMASS has not completed the restoration required to permit Licensee to resume their operations, terminate this Agreement upon fifteen (15) days written notice to UMASS. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement.

11.02 **Eminent Domain.** If any material part of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, then at the option of either UMASS or Licensee, this Agreement shall be cancelled and all Parties shall be relieved of all obligations herein imposed. Should this Agreement be so cancelled, then Licensee or Carrier shall have no claim against UMASS and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of such involuntary conversion whether brought about by suit or agreement for the cancellation of such Agreement or for Licensee’s interest; any and all of such amounts shall belong to UMASS and all rights of Licensee to damages therefor, if any, are hereby assigned by Licensee to UMASS. Licensee shall, however, have the right to claim and recover from the condemning authority, but not from UMASS, and only to the extent that such recovery by Licensee will not diminish the amounts recoverable by UMASS, such compensation as may be separately awarded or recoverable by Licensee in Licensee’s own right on account of any and all damage to Licensee by reason of the condemnation and for or on account of any cost or loss which Licensee might incur in removing the TOWER or the Equipment and relocating the TOWER or the Equipment to other premises.

11.03 **Indemnification.** The Licensee shall defend, indemnify, and hold harmless the Commonwealth, the University of Massachusetts Building Authority, the University, its Trustees, Officers, servants, and employees (collectively, the “Indemnitees”) from and against any and all claims, liability, losses, third party claims, damages, costs, or expenses (including attorneys’ and experts’ fees)
arising out of or resulting from the performance of the services performed by the Licensee, its agents, servants, employees, or contractors under this License, provided that any such claims, liability, losses, third party claims, damages, costs, or expenses are attributable to bodily injury, personal injury, pecuniary injury, damage to real or tangible personal property, resulting therefrom and caused in whole or in part by any intentional or negligent acts or omissions of the Licensee, its employees, servants, agents, or contractors. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Commonwealth and/or the University that would otherwise exist. UMASS shall give Licensee prompt and timely notice of any claims, threatened or made, or any law suit instituted against it which could result in a claim for indemnification hereunder. The extent of this License of indemnification shall not be limited by any obligation or any term or condition of any insurance policy. The obligations set forth above shall survive the expiration or termination of this License. Licensee shall include the foregoing indemnification of the Indemnitees as a requirement in its Carrier sublicenses, but shall not have any liability to UMASS under any such Carrier indemnities.

Licensee shall cause its subcontractors and hired parties to indemnify the Indemnitees to the same extent Licensee is required to indemnify the Indemnitees.

Licensee shall purchase and maintain at its sole cost and expense throughout the term of the License Agreement adequate insurance coverage. Licensee shall cause the other carries and any subcontractors and other hired parties to maintain throughout the term of the License Agreement adequate insurance coverage. Such insurance must include but is not limited to the following types and amounts of coverage:

11.04 Insurance Requirements.

(1) The Licensee and Carriers shall collectively procure and maintain at their expense during the Term the following insurance coverage from an insurance company or companies qualified to do business in the Commonwealth of Massachusetts. UMASS shall be included as an additional insured on all policies except Workers' Compensation and Employer's Liability. Upon receipt of notice from its insurer(s), Licensee will use best efforts, to provide thirty (30) days advance notice to UMASS of cancellation or non-renewal of a given policy. UMASS, at its reasonable discretion, may waive any of the foregoing insurance requirements. All of Licensee’s and Carriers’ policies shall be primary as relates to their operations and agrees that any insurance maintained by UMASS shall be excess of and non-contributing with respect to the Licensee’s and Carriers’ insurance in this regard. Licensee shall cause its subcontractors and hired parties to purchase, carry, and maintain all insurance coverage and limits that this Insurance Section (11.04) requires Licensee to have. Licensee’s and/or Licensee’s subcontractor’s failure to provide or to continue in full force the insurance that this section requires.
The Licensee shall purchase and maintain at its sole cost and expense throughout the term of the License Agreement adequate insurance coverage. The Licensee shall cause the wireless carriers and any subcontractors and other hired parties to maintain at throughout the term of the License Agreement adequate insurance coverage. Such insurance must include but is not limited to the following types and amounts of coverage:

(a) **Comprehensive Automobile Liability**
Automobile Liability Insurance covering owned, non-owned, and hired vehicles with combined limits for bodily injury and property damage of at least one million dollars ($1,000,000) per accident. The policy must be endorsed to include the Indemnites as additional insureds.

(b) **Commercial General Liability**
Commercial General Liability Insurance including premises and operations liability, products and completed operations liability, personal and advertising injury, independent/subcontractor liability, and contractual liability coverage, written on an occurrence form, with combined limits for bodily injury, personal injury, and property damage of at least two million dollars ($2,000,000) per occurrence, two million dollars ($2,000,000) personal and advertising injury, three million dollars ($3,000,000) products and completed operations aggregate and three million dollars ($3,000,000) general aggregate. Coverage shall be in form no less broad than the most recent version of ISO CG 00 01 with no exclusionary endorsements material to the Licensee’s obligations under the Contract for Services. The policy must be endorsed to include the Indemnites as additional insureds.

(c) **Workers' Compensation and Employer's Liability**
Workers’ Compensation Insurance in compliance with applicable federal and state laws in which work is performed, in which employees reside or through which employees may travel in the course of the Contract, including Employers Liability Insurance with limits of at least one million dollars ($1,000,000) per accident, one million dollars ($1,000,000) by disease- policy limit and one million dollars ($1,000,000) by disease- each employee.

(2) Licensee shall provide UMASS with a valid certificate of insurance within ten (10) days after this Agreement is fully executed exhibiting coverage as required herein. In addition, prior to commencing any work pursuant to this Agreement, any subcontractor of any Licensee shall provide UMASS a valid certificate of insurance exhibiting coverage, as applicable, as required herein. These certificate(s) of insurance shall be provided on the industry standard form (ACORD 25) or equivalent and the contract number shall be listed on the Certificate of Insurance and issued to: UMASS's Contract Administrator.
(3) All insurance maintained by the Licensee pursuant to this Agreement shall be written by insurance companies licensed to do business in the Commonwealth of Massachusetts. All insurance companies to be used by the Contractor must have a Best’s Rating of not less than A- and be reasonably acceptable to the University Licensee.

(4) Professional Liability Insurance, Coverage shall apply to liability for a professional error, act, or omission arising out the Licensee’s services in limits not less than two million dollars ($2,000,000) per claim annual aggregate. If coverage is written on a claims-made basis, any retroactive date shall be no later than the effective date of the License Agreement, and continuous coverage will be maintained or an extended discovery period will be exercised for a period of six (6) years beginning from the time that work under the License Agreement is complete, whichever is later. This obligation shall survive the expiration or termination of this Agreement. These obligations shall survive the expiration or termination of this Agreement.

(5) All insurance maintained by the Licensee shall provide that insurance for the benefit of the Indemnitees shall be primary and the Indemnitees’ own insurance shall be non-contributing.

(6) Licensee shall or Licensee shall cause wireless carriers or subcontractors to provide Property Insurance covering the Neutral-Host Distributed Antenna System (TOWER) at replacement cost using special form causes of loss.

(7) The foregoing notwithstanding, whether the cause of any damage, loss or liability is insurable, insured or not insured, foreseen or unforeseen, in no event shall either party be responsible or liable to the other party for anticipatory profits or any indirect, special, incidental or consequential damages of any kind or nature arising directly or indirectly in connection with the construction, use or operation of the Premises or the exercise of any rights related thereto, whether based on an action or claim in contract or tort, including negligence, strict liability or otherwise.

**Article 12. Miscellaneous**

12.01 **Governing Law.** This Contract is entered into in the Commonwealth of Massachusetts, and the laws of the Commonwealth, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this Contract and all of the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance and enforcement.

12.02 **Forum Selection.** The Parties agree to bring any action arising out of or relating to this Contract or the relationship between the Parties in the state courts of the Commonwealth of Massachusetts which shall have exclusive jurisdiction thereof.
Licensee expressly consents to the jurisdiction of the state courts of the Commonwealth of Massachusetts in any action brought by the Commonwealth or the University arising out of or relating to this Contract or the relationship between the Parties, waiving any claim or defense that such forum is not convenient or proper. This paragraph shall not be construed to limit any other legal rights of the Parties.

12.03 **Notices.** All notices to be given to the Parties hereto shall be in writing unless otherwise stated and shall be properly given when personally delivered to the address specified below and left with a responsible person, or delivered by overnight service such as Federal Express, and, in both instances, an appropriate receipt is obtained, or when sent by registered or certified mail addressed to the Parties at their respective addresses specified in the Agreement. The Parties may change the below information upon thirty (30) days written notice given as herein specified. The date of notice shall be deemed, when notice is mailed, to be the date of mailing so long as the Postal Service certified actual delivery. A refusal of overnight service or a registered or certified mail notice shall constitute actual delivery hereunder.

To UMASS:  Randy Sailer, Director, Telecommunications
740 North Pleasant Street
A217 LGRC Lowrise
Amherst, MA 01003

To Licensee

12.04 **Approvals.** Whenever this Agreement calls for approval by a Party to this Agreement, such approval shall be deemed to require reasonable and timely decisions of said Party.

12.05 **Risk of Loss.** The Licensee shall bear the risk of loss of any Licensee materials and equipment used in constructing, maintaining or repair of the TOWER System.

12.06 **Compliance with Laws.** The parties hereto each agree to comply with all applicable local, state, and federal laws, regulations and ordinances in the performance of their respective obligations under this Agreement.

12.07 **Conflict of Interest.** Licensee acknowledges that it may be subject to the
Massachusetts Conflict of Interest statute, Mass. Gen. Laws ch. 268A, and to that extent, Licensee agrees to comply with all requirements of the statute in the performance of this Contract.

12.08 Independent Contractors. UMASS and Licensee acknowledge and agree that the relationship between them is solely that of licensor and licensee, and nothing shall be construed to constitute the Parties as employer and employee, partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

12.09 Force Majeure. Neither party shall be liable to the other or be deemed to be in breach of this License for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of nature or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

12.10 Certification. Licensee certifies under the pains and penalties of perjury that pursuant to Mass. Gen. Laws ch.62C, §49A, that the Licensee has filed all state tax returns, paid all taxes and complied with all applicable laws relating to taxes; and that pursuant to Mass. Gen. Laws ch.151A, §19A(b), have complied with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System; and, if applicable, with all laws of the Commonwealth relating to Worker’s Compensation, Mass. Gen. Laws ch.152 and payment of wages, Mass. Gen. Laws ch. 149, § 148. Pursuant to federal law, Licensee shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and Licensee shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. Notwithstanding the above, this section is subject to any exceptions disclosed that might be applicable to the status of the Licensee’s tax filings and payments at the time this Contract is entered.

12.11 Subcontracts. Licensee is fully responsible for all work performed under Agreement by its subcontractors. The Licensee may, with the prior written consent of UMASS, such consent not to be unreasonably withheld, conditioned or delayed, enter into written subcontracts for performance of certain of its functions under the Agreement. No subcontract shall be implemented or effective until approved in writing by UMASS as noted above. No subcontracts, which a Licensee enters into under the Agreement, shall in any way relieve such Licensee of any responsibility for performance of its duties under this Agreement. Licensee and other Carriers are responsible to fully notify its
subcontractors, if any, of their responsibilities under any subcontract. All payments to subcontractors shall be the sole responsibility of the Licensee or other Carrier retaining such subcontractors.

12.12 **Employment of UMASS Personnel.** The Licensee shall not, without UMASS's prior written consent, knowingly recruit for engagement, on a full time, part time, or other basis during the period of this Agreement, any individuals who are UMASS employees.

12.13 **Nondiscrimination in Employment.** The Licensee shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation or a person who is a member of, applies to perform, or has an obligation to perform service in a uniformed military service of the United States, including the National Guard on the basis of that membership, application or obligation. The Licensee agrees to comply with all applicable Federal and State employment statutes, rules and regulations.

12.14 **Waiver.** All conditions, covenants, duties and obligations contained in this Agreement can be waived only by written agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party.

12.15 **Confidentiality.** Subject to applicable law, the parties each shall use reasonable efforts to protect the confidentiality of any files, data or other materials provided to them by the other party in connection with this Agreement or the TOWER and shall use reasonable care to restrict their use to purposes of performing this Agreement. The Licensee shall take reasonable steps necessary to safeguard any data, files, reports or other information in Licensee’s or other Carriers possession from loss, destruction or erasure. Neither party shall use the name, trademarks or non public information concerning the other in any publicity or otherwise without the prior written consent of the other party.

12.16 **Tax Exempt Status.** The University is exempt from federal excise, state, and local taxes; therefore, sales to the University are exempt from Massachusetts sales and use taxes. If the University should become subject to any such taxes during the term of this License, the University shall reimburse the Licensee for any cost or expense incurred. Any other taxes imposed on the Licensee on account of this License shall be borne solely by the Licensee.

12.17 **Severability.** If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then said provision shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of this Agreement.

12.18 **Ambiguities.** If any term of this Agreement is ambiguous, it shall not be construed
for or against any Party on the basis that the Party did or did not write the Agreement.

12.19 **Headings.** Headings contained in this Agreement are for reference purposes only and shall not be considered to be a substantive part of this Agreement.

12.20 **Counterparts.** This Agreement may be executed in any number of counterparts, which, taken together shall constitute but one and the same Agreement. Delivery of executed counterparts by facsimile or email shall be effective as an original.

12.21 **Amendments.** Any amendment or modification to this agreement must be in writing and signed by a duly authorized officer of each of the Parties.

12.22 **Entire Agreement.** The Parties hereto understand and agree that this Agreement (including all Exhibits) and amendments (if any) constitute the entire understanding between the Parties and supersede all other verbal and written agreements and negotiations by the Parties relating to the services under this Agreement. The Parties executing this Agreement represent that they have full authority to execute this Agreement on behalf of the entity for which they are acting.

12.23 **Quiet Enjoyment.** UMASS covenants that upon Licensee’s observation and performance of all the terms, covenants and provisions of this License on Licensee part to observe and perform, Licensee shall peaceably and quietly have, hold and enjoy the Premises, subject nevertheless to the terms and conditions of this License. UMASS further covenants that it is seized of good and sufficient title and interest to the Premises and has full authority to enter into this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement as of the day and year first written above.

**List of Exhibits**