

SUBLEASE AGREEMENT
(Manchester Grand Hyatt San Diego)

THIS SUBLEASE AGREEMENT (this “**Agreement**”), dated and effective as of the latter of the signature dates below (the “**Effective Date**”), is entered into by and between **Hyatt Corporation, as agent of HST San Diego HH LP, a Delaware limited partnership, d/b/a Manchester Grand Hyatt San Diego** (“**Lessor**”), and **MOBILITIE MANAGEMENT, LLC**, a Delaware limited liability company (“**Lessee**”). Lessor and Lessee are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS:

A. San Diego Unified Port District, a public corporation (the “**Ground Lessor**”), owns the property generally located at 1 Market Place, San Diego, California 92101 (the “**Property**”);

B. Ground Lessor leases the Property to Manchester Grand Resorts, L.P. (the “**Ground Lessee**”) pursuant to that certain ground lease entitled San Diego Unified Port District Amended and Restated Lease to Manchester Resorts, L.P. of Property Located at Southeast Corner of Harbor Drive and Kettner Boulevard, San Diego, California for Sixty-Six (66) Years, Commencing June 1, 2001 and Ending May 31, 2067 (the “**Ground Lease**”);

C. Ground Lessee owns the hotel building commonly known as Manchester Grand Hyatt San Diego (the “**Building**”) located at the Property;

D. Lessor leases the Building and subleases the Property from Ground Lessee;

E. Hyatt Corporation (the “**Hotel Manager**”) operates the Building and Property on behalf of Ground Lessee and Lessor;

F. Lessee desires to design, build, install, operate, and maintain a multi-carrier capable, neutral host distributed antenna system and/or similar system (including a small cell antenna system) capable of accommodating Carriers (defined below) (the “**Network**”) at the Building, and Lessor desires to have Lessee design, build, install, operate, and maintain the Network at the Building pursuant to the terms and conditions of this Agreement; and

G. Lessor desires to sublease certain areas within, around, and on top of the Building for use by Lessee for the installation and operation of the Network, and once constructed and operational, Lessee intends to enter into separate sublicense agreements with wireless operators (each, wireless operator, a “**Carrier**”, and each agreement, a “**Carrier Agreement**”) to access and use the Network and the Communication Facility.

H. Lessee will have the exclusive right to install any equipment or infrastructure for the provision of Wireless Communication Services (defined below) at the Building and Property.

NOW, THEREFORE, in consideration of the above premises, the mutual obligations and agreements in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The Recitals set forth above are incorporated herein as set forth in their entirety.

2. **SUBLEASE OF PREMISES.** Lessor hereby subleases to Lessee and Lessee hereby subleases from Lessor, pursuant to this Agreement: (A) that certain space within, around and on top of the Building containing approximately four hundred twenty-four (424) square feet as more particularly shown on **Exhibit 1** attached hereto (the “**Equipment Space**”); and (B) areas located within and around the Building for the placement of antennas, APs, small cell antennas, cabling, conduit and equipment that will be described and/or depicted on the attached **Exhibit 1-A**, as may be updated upon mutual written agreement to include other locations within the Building as Lessor and Lessee shall mutually approve after good faith consultation, which locations are determined to be sufficient in Lessee’s reasonable determination for the operation of the antennas (collectively, the “**Antenna Space**”). Additionally, Lessor irrevocably grants during the Term a non-exclusive license over, under, along, on top of and through the Building in locations reasonably determined necessary by Lessee, and approved in advance by Lessor in its reasonable discretion, from time to

time, to install, use, maintain, repair, replace and remove conduits, wires, cables, cable trays and other necessary equipment and connections between the Equipment Space and/or the Antenna Space and the electric power and telephone sources in the Building (collectively, the “**Connections**”). The Equipment Space, the Antenna Space and the Connections are hereinafter collectively referred to as the “**Premises**,” and are described and/or depicted on attached **Exhibits 1 and 1-A**. If any easements for connections are necessary outside the Building, Lessor will use commercially reasonable efforts to obtain the same. Lessee's taking possession of the Premises shall be conclusive evidence of Lessee's acceptance thereof in good order and satisfactory condition. Lessee agrees that it is taking possession of the Premises “as is.”

3. **PERMITTED USE.**

(a) Lessee may use the Premises (the “**Permitted Use**”) for the installation, construction, use, maintenance, operation, repair, replacement and upgrade of the communications fixtures and related equipment, cables, accessories for the Network and any improvements related thereto as may be needed by Lessee (and its Carriers or sublicensees, as applicable) from time to time to fully provide for the continuous transmission and reception of Wireless Communication Services (defined below) (the Premises, together with the foregoing shall be collectively referred to herein as the “**Communication Facility**”) over and through the Network. Lessee further has the right to add, modify and/or replace, from time to time, the Network equipment, cabling and conduit in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, provided any such work does not materially interfere with operation of the Building as a first-class hotel. Lessee shall not materially interfere with the date-to-day operation of the hotel, subject to the provisions of Section 9 (Interference). The “Permitted Use” shall also include the right to sublease or sublicense the use of the Communication Facility to the Carriers as provided herein through a Carrier Agreement. Ground Lessor’s consent shall not be required if said Carrier Agreement is in Substantial Conformance with **Exhibit 3** (“**Form Carrier Agreement**”), attached hereto, and is by and between Lessee and any of the following: AT&T, Verizon, T-Mobile or Sprint. Lessee shall submit any Carrier Agreement to Ground Lessor within ninety (90) days after execution of said Carrier Agreement to Executive Director, Real Estate, San Diego Unified Port District, Post Office Box 120488, San Diego, CA 92112-0488. If Ground Lessor determines, in its reasonable discretion, that a Carrier Agreement is not in Substantial Conformance with the terms of the Form Carrier Agreement, the Carrier Agreement shall be void, and Ground Lessor’s prior consent shall be required consistent with Ground Lessor’s policies and regulations in order for such Carrier Agreement to take effect; provided, however, if Ground Lessor does not provide written notice to Lessee within thirty (30) days after receipt of a Carrier Agreement that the subject Carrier Agreement is not in Substantial Conformance with the terms of the Form Carrier Agreement, such Carrier Agreement shall be considered deemed to be in Substantial Conformance with the Form Carrier Agreement. For purposes of this Agreement, “**Substantial Conformance**” means that no material changes have been made to the substance of the terms of the Form Carrier Agreement As used herein, the term “**Wireless Communication Services**” shall mean and refer to any cellular wireless, voice, data, messaging, or similar type of wireless services now or in the future offered to the public in general by Carriers using spectrum radio frequencies licensed by the Federal Communications Commission (“**FCC**”) or any successor agency, and Licensed Assisted Access and LTE-U or similar types of unlicensed wireless services.

(b) For a period of ninety (90) days (or such additional period of time thereafter as reasonably required by Lessee) following the start of construction of the Communication Facility, Lessor grants Lessee, its Carriers and sublicensees, the right to use such contiguous, adjoining or surrounding space within the Building (the “**Surrounding Space**”) as may reasonably be required to construct and install the Communication Facility and as approved in advance by Lessor in its reasonable discretion. In addition, Lessor grants to Lessee, its Carriers and sublicensees, the right to use the Surrounding Space during the term of this Agreement for maintenance, repairs and alterations to the Communication Facility as approved in advance by Lessor in its reasonable discretion and provided any such work does not materially interfere with operation of the Building as a first-class hotel. The timing of all work shall be coordinated with Hotel Manager.

(c) Lessee has the right to install and operate transmission cables from the Equipment Space to the antennas, electric lines from the main feed to the Equipment Space and communication lines from the Building’s main or other electric service entry point to the Equipment Space, and to make improvements, alterations, upgrades or additions appropriate for Permitted Use as approved in advance by Lessor in its reasonable discretion and provided any such work does not materially interfere with operation of the Building as a first-class hotel, vitiate the insurance or increase its insurance rates (collectively, “**Lessee Changes**”). Lessee Changes include the right to undertake appropriate means, with Lessor’s prior written consent (which shall not be unreasonably withheld, conditioned or delayed), to secure the Premises at Lessee’s expense. Lessee shall comply with all applicable governmental directives, laws, rules, statutes and regulations

relating to its construction, installation, maintenance and use of the Communication Facility in the Building and shall not do or fail to do anything that would cause Ground Lessee to violate the provisions of the Ground Lease. Subject to Lessor's prior written consent, which shall not be unreasonably withheld: (1) Lessee shall have the right to modify, supplement, replace, upgrade and/or otherwise make alterations within the Equipment Space; and (2) Lessee shall have the right to modify, supplement, replace and upgrade all other portions of the Network and related equipment in the Equipment Space and Antenna Space, including, without limitation, increasing the number of antennas or equipment at any time during the Term of this Agreement. Notwithstanding the foregoing, Lessee shall also have the right, without Lessor's consent but in coordination with Lessor or Hotel Manager regarding the timing of the work, to (i) modify, supplement, replace, upgrade and/or otherwise make alterations within the Equipment Space so long as such alterations are not structural in nature, (ii) replace any antennas that make up the Network and/or the Communication Facility so long as such antennas are substantially similar in size, weight and operation, and (iii) make such alterations to the Premises as may be necessary to ensure that Lessee's Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

(d) In the event Lessee desires to modify or upgrade the Communication Facility, which would require Ground Lessor's prior written consent, and Lessee requires additional space for the Equipment Space within the Building (the "**Additional Premises**") for such modification or upgrade, Lessor agrees to negotiate with Lessee for an area to serve as the Additional Premises, if any area is then available, upon terms and conditions as negotiated and agreed to by the parties, and subject to Ground Lessor's prior written consent.

(e) Lessee shall comply with all federal, state, county and city laws, ordinances and regulations relating to the performance of this Sublease, the operation of Lessee's business as contemplated by this Sublease, and the employment of persons therefor. If any governmental license or permit is required for the lawful conduct of the business or other activity carried on by Lessee in the Premises Lessee shall, at Lessee sole cost and expense, procure and maintain such license or permit throughout the Term, submit upon request such license or permit for inspection by Lessor and comply at all times with all terms and conditions thereof. Lessee acknowledges, understands and agrees at all times to conduct its operation in a manner conforming with the image and quality of service, cleanliness, and professionalism standards of the Building.

(f) Lessor shall make available to Lessee and the Carriers, and their respective employees, agents, and subcontractors, parking facilities on the same terms and conditions as are available to guests of the Property, when such parties require or desire to be at the Building in connection with this Agreement and the design, installation, construction, maintenance, operation, repair and/or replacement of the Communication Facility.

(g) Lessor and Hotel Manager have not granted and will not grant (directly or indirectly), after the Effective Date, a lease, license, or any other right to any third party for use of any portion of the Property or Building (including but not limited to the rooftop, exterior and interior of the Building) for the installation of any equipment or infrastructure for provision of Wireless Communication Services. Lessor and Hotel Manager shall ensure that no other party grants, after the Effective Date, a lease, license, or any other right to any third party for use of any portion of the Property or Building (including but not limited to the rooftop, exterior and interior of the Building) for the installation of any equipment or infrastructure for the provision of Wireless Communication Services. Notwithstanding the foregoing, if Lessee is unable to execute a Carrier Agreement with at least one (1) Carrier within twenty-four (24) months after the Effective Date, then Lessor or Hotel Manager shall have the right to install its own (or a third-party provider's) distributed antenna system or similar wireless communications infrastructure at the Property or Building with any Carriers that do not have a Carrier Agreement executed with Lessee at such time, provided, however, if Lessor or Hotel Manager has not initiated installation of its own (or a third-party provider's) distributed antenna system or similar wireless communication infrastructure, or signed an agreement for the foregoing, at the Property or Building prior to Lessee entering into a binding Carrier Agreement with at least one (1) Carrier, Lessor and Hotel Manager's right to install such equipment shall cease, and Lessee's right to be the exclusive provider of such infrastructure shall be reinstated.

(h) Lessee agrees, (i) upon not less than one hundred eighty (180) days' prior written notice from Lessor to Lessee with respect to the Equipment Space, or (ii) upon (90) days' prior written notice from Lessor to Lessee for anything outside of the Equipment Space, Lessor may require Lessee relocate the Communication Facility (or any part thereof) to another location designated by Lessor in the Building, at Lessor's sole cost and expense, provided that the new location (i) is comparable in size and configuration to the Premises from which Lessee is removed, (ii) shall be sufficient to permit Lessee to operate, and Carriers to access and use, the Communication Facility, and (iii) shall permit Lessee to provide (in Lessee's reasonable judgment) at least the same quality and capacity of communication service as previously provided at

the Premises. Such relocation shall be performed, to the extent reasonably practicable, in a manner so as to avoid any interruption of Lessee's business. During such period of relocation, Lessee will be allowed to locate a so-called cell on wheels ("COW") or other temporary structure for mounting and operation of the Network at a location on the Property reasonably acceptable to Lessor and Lessee. Lessor agrees to not exercise the right to relocate the Equipment Space more than two (2) times during the Term unless such relocation is required in connection with (x) the renovation of the Equipment Space and other areas of the Building, (y) capital improvements to the Building, or (z) to comply with any law, ordinance or other legal requirement.

(i) Lessee shall not use the Premises or permit the use thereof by Carriers for any illegal purposes or in any manner conflicting with any applicable law, ordinance, rule or regulation of any governmental authority having jurisdiction, or in any manner which would vitiate the insurance or increase the rate of insurance on the Premises; nor commit or suffer to be committed any waste or nuisance upon the Premises; nor shall Lessee use the Premises, or permit the use thereof, in violation of Lessor's reasonable rules and regulations (the "**Rules**") as such may exist from time to time, which Rules shall be provided in writing to Lessee in advance and provided the Rules do not materially alter the rights and obligations of Lessee under this Agreement and in the event of a conflict between the provisions of the Rules and this Agreement, the provisions of this Agreement shall prevail.

(j) Construction of the Network shall be substantially complete prior to the date that is the later of one hundred eighty (180) days (i) following the full execution of the first Carrier Agreement, or (ii) after Lessee's receipt of the Design Plan Approvals from Lessor (as set forth in Section 6(b) herein), which date shall be extended by one day for each day Lessee is delayed due to force majeure, government delays (e.g. scheduling of inspector visits to sign off on permit compliance) or by the actions or inactions of Lessor (or its employees, agents or contractors) (as so extended, the "**Substantial Completion Deadline**") Substantial completion of the Network means the Network is available for use by the Carriers for the installation and interconnection of their equipment.

4. **TERM.**

(a) This Agreement shall be effective upon the Effective Date, but the initial term hereof shall be ten (10) years, commencing on the Commencement Date (defined below) (the "**Initial Term**"). The "**Commencement Date**" shall be the first (1st) of the month following the earlier of (i) the date that a Carrier commences commercial operation on the Network, or (ii) sixty (60) days following the Substantial Completion Deadline.

(b) Unless Lessee provides written notice to Lessor prior to expiration of the Initial Term that Lessee will not renew the Term of this Agreement, this Agreement will automatically renew for one (1) additional ten (10) year period (the "**Extension Term**"), upon the same terms and conditions set forth in this Agreement.

(c) The Initial Term and Extension Term are collectively referred to as the "**Term**".

5. **PAYMENTS.** During the Term, Lessee agrees to make the following payments to Lessor (each of (a) and (b), an "**Up Front Payment**" and collectively the "**Up Front Payments**"):

(a) Fifty Thousand and 00/100 Dollars (\$50,000.00) payable on the Effective Date.

(b) For the first Carrier that commences commercial operation on the Network, One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) payable within thirty (30) days after such Carrier commences commercial operation on the Network.

(c) For the second and each subsequent Carrier thereafter that commences commercial operation on the Network, Two Hundred Thousand and 00/100 Dollars (\$200,000.00) per each such Carrier that commences commercial operation on the Network within thirty (30) days after each such Carrier's operational commencement on the Network.

6. **APPROVALS; DESIGN CONTINGENCY.**

(a) Lessor agrees that Lessee's ability to use the Premises is contingent upon the suitability of the Premises and the Building for Lessee's Permitted Use and Lessee's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Lessee for its use of the Premises, including, without limitation, applications for California Coastal Act approvals for exterior improvements, zoning variances, zoning

ordinances, amendments, special use permits and construction permits (collectively, the “**Government Approvals**”). Provided the Ground Lessor has approved the execution of this Sublease, Lessor authorizes Lessee to prepare, execute and file all required applications to obtain Government Approvals for Lessee’s Permitted Use under this Agreement and agrees to reasonably assist Lessee at and with no cost to Lessor with such applications and with obtaining and maintaining the Government Approvals. In addition, Lessee shall have the right, in coordination with Lessor and Hotel Manager, to initiate the ordering and/or scheduling of necessary utilities at Lessee’s sole cost and expense.

(b) Within sixty (60) days of the date Lessee enters into the first Carrier Agreement, Lessee shall prepare and submit to Lessor and Hotel Manager a design plan including any applicable drawings, for the layout, design, construction and installation of the Communication Facility (“**Design Plan**”). Lessee represents that the Design Plan shall be for a neutral host system capable of accommodating four (4) Carriers. Lessee will obtain Lessor’s and Hotel Manager’s prior written approval with respect to the location of the Equipment Space, Antenna Space, and the Connections in connection with the initial construction of the Network (collectively, the “**Design Plan Approvals**”), such approvals not to be unreasonably withheld, conditioned, or delayed, in accordance with the following process:

(i) Lessee will provide Lessor and Hotel Manager with an initial draft of the proposed Design Plan Approvals, for Lessor’s and Hotel Manager’s review and approval, which approvals shall not be unreasonably, withheld, conditioned or delayed.

(ii) Lessor and Hotel Manager will approve or disapprove Lessee’s submitted Design Plan Approvals within thirty (30) days after receipt. Failure to timely respond by Lessor and/or Hotel Manager shall be deemed as a disapproval by Lessor and/or Hotel Manager (as applicable) in which case Lessee shall resubmit such Design Plan Approvals to Lessor and/or Hotel Manager (as applicable) and shall caption its submittal letter with the following “SECOND REQUEST FOR APPROVALS- FAILURE TO RESPOND WITHIN TEN (10) DAYS IS DEEMED APPROVAL”. If Lessor and/or Hotel Manager does not respond to Lessee’s second request for approval of the Design Plan Approvals within ten (10) days, Lessee’s Design Plan Approvals shall be deemed approved. In the event of disapproval, Lessee will use commercially reasonable efforts to address Lessor’s and/or Hotel Manager’s comments and will resubmit the Design Plan Approvals to Lessor and Hotel Manager. This process will continue until the Design Plan Approvals are approved or this Agreement is terminated pursuant to Section 7 below.

(c) Lessor further agrees that, after the Effective Date, Lessee shall have the right to evaluate the design of the Communication Facility and Network and conduct such due diligence regarding the same as Lessee determines necessary or desirable in its sole discretion, provided that any due diligence performed on the Property or on or in the Building shall be approved in writing by Lessor in advance and coordinated with Hotel Manager.

(d) Lessor shall provide to Lessee an executed consent to this Agreement from Ground Lessor, whereby Ground Lessor consents to this Agreement, prior to the Effective Date. In addition, but not as a condition to the effectiveness of this Agreement, Lessor agrees to use commercially reasonable efforts to obtain from Ground Lessor, for the benefit of Lessee, an agreement whereby Ground Lessor will recognize this Agreement and provide non-disturbance to Lessee in the event of a termination of the Ground Lease for any reason. Lessor will endeavor to obtain the non-disturbance agreement in the form attached hereto as **Exhibit 2**, but in no event shall obtaining such non-disturbance agreement be a condition to the effectiveness of this Agreement.

(e) Within thirty (30) days from the Effective Date, Lessor shall provide Lessee with a complete set of as-built drawings for the Building in AutoCAD format. Within thirty (30) days from the Commencement Date and each subsequent Carrier commencing commercial operations on the Network, Lessee shall provide Lessor with a complete set of as-built drawings for the Equipment Space and the Antenna Space in AutoCAD format.

7. **TERMINATION.** In addition to other grounds for termination as set forth herein, this Agreement may be terminated, without penalty or further liability (except as otherwise set forth herein), as follows:

(a) by either Party on thirty (30) days’ prior written notice, if the other Party remains in default under Section 16 of this Agreement after the expiration of the applicable notice and cure periods;

(b) by Lessee upon written notice to Lessor, if Lessee, through no fault of Lessee, is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental

authority necessary for the construction, use or operation of the Communication Facility as now or hereafter intended by Lessee; or if the cost of obtaining or retaining the same results in a frustrated contract as a result of any changes in law or regulations governing such permits or licenses;

(c) Intentionally omitted;

(d) by Lessor, in the event Lessor enters into a contractual agreement to sell the Building, requests a purchaser of the Building to assume this Agreement, and the purchaser declines to assume the Agreement; provided, however, (i) the foregoing termination shall be effective on the later of (1) sixty (60) days' after Lessee has received written notice of such termination from Lessor, and (2) Lessee's receipt of the Early Termination Fee (as hereinafter defined), and (ii) if the foregoing sale to said purchaser is not consummated or otherwise fails to close then Lessor's election to terminate this Agreement shall be deemed rescinded and null and void as to said sale. In the event that Lessor terminates this Agreement pursuant to this paragraph, it shall be liable to Lessee for payment of an Early Termination Fee, which such payment shall be made by Lessor to Lessee within thirty (30) days after Lessee provides Lessor with written notice of the amount of the Early Termination Fee (the "**Termination Fee Notice**"). The "Early Termination Fee" means the sum of the following: (i) an amount equal to the costs incurred by Lessee to design, construct, install and modify the Network as of the date of termination (the "**Network Costs**"), multiplied by a fraction, the numerator of which is the number of months remaining in the Initial Term as of the date of termination and the denominator of which is one hundred twenty (120); plus (ii) an amount equal to the costs incurred by Lessee to upgrade the Network as of the date of termination (the "**Network Upgrade Costs**"), multiplied by a fraction, the numerator of which is the difference between one hundred twenty (120) and the number of months that have elapsed from the date of completion of the applicable Network upgrade to the date of termination, and the denominator of which is one hundred twenty (120). The amortization will be on a straight-line basis. Lessee shall furnish Lessor with an itemization of the Network Costs and Network Upgrade Costs (if any), along with documentation evidencing the Network Costs and Network Upgrade Costs (if any) incurred concurrently with the Termination Fee Notice. In the event Lessor objects to Lessee's calculation of the Early Termination Fee, Lessor shall notify Lessee within thirty (30) business days after Lessor's receipt of the Termination Fee Notice and Lessor's failure to so notify Lessee within such time frame shall be deemed to be Lessor's approval of the Early Termination Fee amount. Lessee's initial estimate of the Network Costs is \$2,500,000, however, such estimate is nonbinding and subject to change based on the actual costs incurred by Lessee in constructing the Network. This Section 7(d) shall survive the earlier termination of this Agreement;

(e) by Lessor upon thirty (30) days' prior written notice to Lessee, if on or before twelve (12) months following the Effective Date ("Lessee's Marketing Period"), or as further extended as set forth in Section 7(e)(i) below, Lessee has not entered into a binding Carrier Agreement with one (1) Carrier, provided, however, if Lessee enters into a binding Carrier Agreement prior to the expiration of the thirty (30) day notice period, such termination shall be null and void and this Agreement shall continue in full force and effect (and further provided, the termination right set forth herein shall be null and void as of the date Lessee enters into the first binding Carrier Agreement);

(i) Provided Lessee has achieved the milestones listed below, Lessee's Marketing Period shall be extended for an additional six (6) months, so Lessor shall not have the right to exercise Lessor's option to provide such thirty (30) day notice of Termination unless Lessee has not entered into a Carrier Agreement within eighteen (18) months of the Effective Date:

(1) Lessee shall have obtained design approval of a multi-carrier capable Network from at least one (1) Carrier;

(2) Lessee shall have delivered to any interested Carrier a fixed price quotation for such Carrier to join a multi-carrier capable Network, provided the overall pricing is similar in total all-in costs (including internal and external costs) to what such Carrier would pay directly to construct the same Network at the Building; and

(3) Lessee shall have delivered to at least one (1) Carrier the initial draft of a Carrier Agreement for such Carrier.

8. **INSURANCE.**

(a) During the Term, Lessee shall secure and maintain in full force and effect (and shall cause each Carrier to secure and maintain in full force and effect) the following insurance:

(i) “**All Risk**” property insurance for its property’s replacement cost.

(ii) Commercial general liability insurance (“**CGL**”) with a combined single limit of not less than Three Million Dollars (\$3,000,000) per occurrence aggregate, written on an occurrence basis and on a comprehensive form and covering claims and liability in connection with or resulting from Lessee’s activities and performance of services under this Agreement, for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any activities or performance of services of Lessee or anyone directly or indirectly employed by it and including, without limitation, Lessee’s indemnity obligations contained in this Agreement.

(iii) Automobile insurance, on a comprehensive form, providing coverage on the basis of the date of any accident, with a combined single limit for bodily injury and property damage per accident of not less than One Million Dollars (\$1,000,000) for all owned, non-owned or hired automobiles, trucks and motorized vehicles directly or indirectly used in Lessee’s or its employee’s activities or performance of services under this Agreement.

(iv) Workers compensation insurance as required by statute and employer’s liability insurance.

Lessor shall be endorsed as an additional insured under the CGL and automobile insurance required above for liability resulting from Lessee’s or its employees’ activities pursuant to this Agreement. All insurance required by this Agreement shall be endorsed to be primary and not contributing with any other liability insurance available to Lessee and Lessor, as applicable. Prior to commencing any work on the Building, and from time to time thereafter upon the request of Lessor, Lessee shall provide to Lessor certificates which indicate that Lessee has obtained and there is in full force and effect the required insurance coverages showing the type, amount, coverages, effective dates and expiration dates of the policies.

(b) During the Term, Lessor shall secure and maintain in full force and effect commercial general liability insurance with a combined single limit of not less than Three Million Dollars (\$3,000,000) per occurrence aggregate, written on an occurrence basis and on a comprehensive form and covering claims and liability in connection with or resulting from Lessor’s activities, for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any activities of Lessor or anyone directly or indirectly employed by it and including, to the extent insurable, without limitation, Lessor’s indemnity obligations contained in this Agreement. Lessee shall be endorsed as an additional insured under Lessor’s commercial general liability insurance policy for liability resulting from Lessor’s or its employees’ activities pursuant to this Agreement.

(c) Lessee and Lessor each mutually release each other from liability and waive all right of recovery against the other for any property loss or damage covered by its own property insurance policy or policies actually carried or required to be carried under this Agreement, and in the event of such insured loss, it is agreed that neither Party’s insurance company shall have a subrogation claim against the other. Each Party shall obtain special endorsements required by its insurer to allow such waiver of rights of subrogation, but the failure to obtain same shall not impair the effectiveness of this waiver and/or release between the Parties.

(d) Lessee shall furnish to Lessor a Certificate of Insurance evidencing the coverage required by Sections 8(a)-(b). Lessee shall continue to provide Lessor with subsequent Certificates of Insurance within sixty (60) days following the expiration date on the previous certificate of insurance evidencing uninterrupted compliance with this insurance requirement until termination of this Agreement.

9. **INTERFERENCE.**

(a) Lessor shall not install in the Building or enter into a new agreement that would permit the installation of any equipment in the Building that would interfere with or restrict the operation of the Network and/or the Communication Facility. Lessor agrees that, should any such interference be encountered in Lessee’s Network and/or Communication Facility operation as a result of Lessor’s, or any other party’s equipment pursuant to a new agreement, in, on or about the Building, Lessor will, or will require that such other party to, cause such interference to be eliminated

in a timely manner. Lessor and Lessee shall cooperate in good faith to resolve such interference, provided, however, if such material interference cannot be eliminated within a reasonable period of time, not to exceed seventy-two (72) hours from Lessor's receipt of written notice from Lessee, Lessor will cease such interference, or will require that the party causing the interference, to cease such interference. In the event of any interference that continues beyond this period, notwithstanding anything to the contrary contained in this Agreement, Lessee may (i) terminate this Agreement, upon ten (10) days' prior written notice to Lessor, without further liability and/or (ii) pursue radio frequency interference remedies before the FCC against the interfering party. Lessee will also have the right, in addition to any other rights that it may have at law or in equity, to elect to seek to enjoin such interference.

(b) Lessee shall not install or permit the installation of any equipment in the Building or on the Property that would interfere with or restrict the operation of any wireline telephone, electrical, or non-wireless computer services or similar equipment or services now or hereafter located in the Premises, or any existing signals broadcasted by other antennas on the Premises or wireless communications systems existing as of the date Lessee commences construction of the Communications Facility operating in compliance with applicable law. Lessee agrees that, should any such interference be encountered by Lessor as a result of the equipment of Lessee or a Carrier in, on or about the Building or Property, Lessee will cause such interference to be eliminated in a timely manner. If such material interference cannot be eliminated within a reasonable period of time, not to exceed seventy-two (72) hours from Lessee's receipt of written notice from Lessor, Lessee will shut down the equipment causing such interference and will not use again (except for periods of intermittent testing) until the interference is eliminated.

(c) For the purposes of this Agreement, "**interference**" may include, but is not limited to, any use on the Building or surrounding areas that causes electronic, physical or obstruction interference with, or degradation of, the communications signals to or from the Communication Facility.

(d) Lessee acknowledges and agrees that Lessor may: (i) revise its current Rules, or (ii) adopt new Rules, all of which shall: (A) apply to Lessee, Lessee's Network and Lessee's use of the Premises; (B) not materially increase, diminish, impair, or extinguish Lessee's use of the Premises and the rights granted to and obligations imposed on Lessee in this Agreement; and (C) be provided in writing to Lessee by Lessor on or before the Effective Date, and any updates shall not be effective until ten (10) business days after they are received by Lessee provided in the event of a conflict between the provisions of the Rules and this Agreement, the provisions of this Agreement shall prevail.

10. **INDEMNIFICATION.**

(a) Lessee agrees to indemnify, defend and hold Lessor, Ground Lessor, Ground Lessee, Hotel Manager, HST San Diego HH LP, a Delaware limited partnership and each of their respective parents, subsidiaries, Affiliates, agents, employees, officers, directors, shareholders and partners (collectively, "**Lessor 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) to the extent arising from (i) the installation, operation, use, maintenance, repair or removal of the Communication Facility by Lessee; (ii) Lessee's breach of any provision of this Agreement; (iii) the actions or inactions of Lessee, Carriers, or any of their respective parents, subsidiaries, Affiliates, agents, independent contractors, employees, officers, directors, shareholders and partners (collectively, "**Lessee Parties**"); (iv) third party claims for infringement, misappropriation, or violation of a third party's patent, copyright, trademark or other intellectual property rights arising out of Lessee's use of the Communication Facility. Notwithstanding the foregoing, Lessee shall not be obligated to indemnify the Lessor Parties for any injury, loss, damage, or liability caused by the gross negligence or willful misconduct of the Lessor Parties.

(b) Lessor agrees to indemnify, defend and hold Lessee and its parent, subsidiary and affiliate companies, and each of their respective agents, employees, officers, directors, shareholders and partners, 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) to the extent arising from the negligence or willful misconduct of the Lessor Parties or their subcontractors and only for such amounts as are covered by Lessor's insurance available to compensate Lessee. Notwithstanding the foregoing, Lessor shall not be obligated to indemnify the Lessee Parties for any injury, loss, damage, or liability caused by the gross negligence or willful misconduct of the Lessee Parties.

(c) The provisions of this Section shall survive the termination or expiration of this Agreement.

11. WARRANTIES.

(a) Lessee and Lessor each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the officer or representative set forth as signatory for the Party below.

(b) Lessor represents, warrants and agrees that: (i) Lessor subleases the Property and the Building, and except for the Ground Lessor, Ground Lessee and Hotel Manager, no other party has approval rights to this Agreement with respect to Lessor; (ii) Intentionally Omitted; and (iii) upon Ground Lessor's approval of this Agreement; Lessor's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Lessor; and (iv) provided no default has occurred and is continuing under this Agreement, Lessor grants to Lessee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises, subject to the terms and conditions of this Agreement and the Ground Lease;

(c) LESSEE MAKES NO EXPRESS WARRANTY REGARDING THE COMMUNICATION FACILITY, OR ANY PORTION THEREOF, AND LESSEE DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS THEREFOR.

(d) LESSOR MAKES NO EXPRESS WARRANTY REGARDING THE SUITABILITY OF THE BUILDING OR THE PROPERTY OR ANY PORTION THEREOF, AND LESSOR DISCLAIMS ANY IMPLIED WARRANTY INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS THEREFOR.

12. ENVIRONMENTAL.

(a) Lessee agrees not to cause or permit any hazardous substances or hazardous materials to be brought up on, kept, used, stored, generated or disposed of on, in or about the Premises or the Building by Lessee, its Carriers, and their respective agents, employees and independent contractors, except to the extent reasonably necessary for Lessee's and its Carriers', business operations and always in accordance with applicable environmental laws and regulations. Lessee agrees to and shall indemnify, defend and hold the Lessor Parties harmless from and against any and all claims, damages, fines, judgments, settlements, penalties, costs, liabilities or losses (including, without limitation, reasonable attorneys', consultant and expert fees and expenses) arising, during or after the Term of this Agreement, from any use, storage, generation, release, discharge or disposal of hazardous substances or hazardous materials on, in or about the Premises or the Building by the Lessee Parties.

(b) The indemnifications of this Section 12 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Premises conditions or any clean-up, remediation, removal or restoration work required by any governmental authority.

(c) For purposes of this Agreement, the terms "**hazardous substances**" and "**hazardous materials**" mean any substance or material that is toxic, ignitable, reactive, corrosive or which is or may cause or spread any disease or which may constitute a threat to health or the environment or which is regulated by any applicable governmental authority including, without limitation, any and all substances or materials that are defined as "**hazardous waste**", "**hazardous material**", "**extremely hazardous waste**", "**infectious waste**", "**pollutants**" or a "**hazardous substance**" under the Resource Conservation Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including by the Superfund Amendments and Reauthorization Act), the Clean Air Act, as amended, the Clean Water Act, as amended, the Toxic Substances Control Act, as amended, the Safe Drinking Water Act, as amended, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and specifically includes asbestos, polychlorobiphenyls, radioactive materials, petroleum and petroleum products and by-products. Properly encased batteries are not "**hazardous substances**" and "**hazardous materials**" under this Section 12.

(d) The provisions of this Section 12 and all of its Subsections shall survive the expiration or sooner termination of this Agreement.

13. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Lessee, Lessor shall provide to Lessee and the Carriers, and their respective employees, agents, and subcontractors, upon reasonable prior notice (e.g. no less than 24 hours prior notice) (which shall be deemed given if provided by email or telephone) by Lessee to Lessor, escorted access to the Premises, Surrounding Space and the Building at no cost to Lessee,

for the purpose of design, construction, installation, upgrading, maintenance and repair of the Network, and testing of the radio frequency coverage of the area, except in the case of an emergency, as reasonably determined by Lessee, in which event Lessee shall have twenty-four (24) hours per day, seven (7) days per week escorted access to and in the Premises, the Surrounding Space and the Building (with such access subject to due consideration for the business being conducted at the Building and reasonable access security procedures as may be established and modified from time to time by Lessor) for the installation, maintenance, repair, use and operation of the Communication Facility and any utilities serving the Premises (collectively, the “**24/7 Access**”).

14. REMOVAL/RESTORATION.

(a) All portions of the Network brought onto the Premises by Lessee (or any equipment or improvements owned by a Carrier) will be and remain Lessee’s personal property and, at Lessee’s option, may be removed by Lessee (or its Carriers, as applicable) at any time during the Term of this Agreement, provided Lessee continues providing a distributed antenna system during the Term of this Agreement. Lessor covenants and agrees that no part of the Network constructed, erected or placed on the Premises by Lessee (or any equipment or improvements owned by a Carrier) will become, or be considered as being affixed to or a part of, the Premises, it being the specific intention of Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee or its Carriers on the Premises will be and remain the property of Lessee (or its Carriers, as applicable). Lessor waives any and all lien rights it may have, statutory or otherwise, concerning the Network or any portion thereof (including the equipment of any Carrier).

(b) Lessee shall not suffer any mechanics’ or materialmen’s lien to be filed against the Premises or the Building by reason of work, labor, services or materials performed or furnished to Lessee or anyone holding any part of the Premises under Lessee. If any such lien shall at any time be filed as aforesaid, Lessee may contest the same in good faith, but, notwithstanding such contest, Lessee shall, within ten (10) days after the filing thereof, cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction, or otherwise. In the event of Lessee’s failure to release of record any such lien within the aforesaid period, Lessor may remove said lien by paying the full amount thereof or by bonding or in any other manner Lessor deems appropriate, and irrespective of the fact that Lessee may contest the propriety or the amount thereof, and Lessee, upon demand, shall pay Lessor the amount so paid out by Lessor in connection with the discharge of said lien, together with interest thereon at the highest rate permitted by applicable law and reasonable expenses incurred in connection therewith, including reasonable attorneys’ fees, which amounts are due and payable to Lessor upon demand. Lessee’s obligation to observe and perform any of the provisions of this Section 14(b) shall survive the expiration of the Term or the earlier termination of this Sublease.

(c) Within ninety (90) days after the termination of or expiration of the Term of this Agreement, Lessee shall remove all of Lessee’s improvements, including without limitation the Network, (and cause the Carriers to so remove their equipment and improvements) and Lessee will restore the Premises to its condition as existed at the commencement of this Agreement, reasonable wear and tear and loss by insured casualty or other causes beyond Lessee’s control excepted. Notwithstanding anything to the contrary contained in this Agreement, Lessee shall not be required to remove from the Premises or the Building any structural steel, foundations or underground utilities, fiber-optic cable, coaxial cable, conduit or related equipment, and all such materials and equipment shall be deemed abandoned and shall become the property of Lessor.

15. MAINTENANCE/UTILITIES.

(a) Lessee will keep and maintain the non-structural portions of the Premises in good condition, reasonable wear and tear and damage from the elements excepted. In no event shall Lessee’s maintenance obligations be deemed to include any of Lessor’s obligations set forth herein. Lessor will maintain and repair the remainder of the Building, including without limitation, all structural components of the Building (including the Premises) and all utility lines serving the Building and Premises in good condition and repair, subject to reasonable wear and tear and damage from the elements.

(b) Lessor shall, at Lessor’s sole cost and expense, furnish all electricity and other utilities necessary to install and operate the Network and Lessee’s and Carrier’s respective equipment throughout the Term, and Lessee and the Carriers shall have the right to use and consume such utilities in connection with the Network and the operation of Lessee’s and such Carriers’ equipment installed within the Building; provided, however, Lessee shall reimburse Lessor for utilities consumed by Lessee’s and Carrier’s equipment within the Equipment Space. Notwithstanding the foregoing, no interruption or discontinuance of such electrical power will render Lessor liable to Lessee for damages or relieve Lessee of any of its obligations hereunder, except as such results from the acts or omissions of Lessor. Lessee shall install

a submeter servicing the Premises in connection with the build out of the Premises. Lessee shall pay Lessor all amounts due for such utilities annually as additional rent within sixty (60) days following Lessee's receipt of an invoice from Lessor of such amounts. If Lessee and/or any of the Carriers require additional or upgraded utility service to install and/or operate the Network or their respective equipment, then upon Lessee's request, Lessor will take such actions as may be commercially reasonable to obtain such additional or upgraded utility service, including without limitation, if possible, granting such easements over, under and across the Building under the underlying real property as may be necessary for the utility company to provide such additional or upgraded utility service to Lessee and/or the Carriers, as applicable.

(c) Notwithstanding the foregoing, Lessee and/or the Carriers shall be responsible for ordering and paying for separate T-1 service or such other telephone service connectivity that Lessee may require from time to time for the use and operation of its Communication Facility, and maintaining and paying for such separate telephone service connectivity during the Term of this Agreement at Lessee's and/or the Carriers' sole expense. Lessee and/or the Carriers shall be responsible for the cost of bringing any T-1 and/or such other telephone service from the main (or minimum) point of entry ("MPOE") at the Building to the Equipment Space or such other location comprising a portion of the Premises as Lessee shall have the right to designate for the installation and operation of Lessee's Communication Facility.

(d) Any charges payable by Lessee under this Agreement, such as utilities, shall be billed by Lessor within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Lessor, and shall not be payable by Lessee. The provisions of this Subsection shall survive the termination or expiration of this Agreement.

16. **DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Lessee and a breach of this Agreement: (i) Lessee's failure to pay any sums owed under this Sublease within ten (10) days of written notice from Lessor; or (ii) Lessee's failure to perform any other term or condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Lessor specifying the failure. No such non-monetary failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. If Lessee remains in default beyond any applicable notice and cure period, Lessor will have the right to exercise any and all rights and remedies available to it under law and in equity.

(b) The following will be deemed a default by Lessor and a breach of this Agreement: (i) Lessor's failure to provide access pursuant to Section 13 within seventy-two (72) hours after receipt of written notice of such default; or (ii) Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Lessee specifying the failure. No failure, however, under Section 16(b)(ii) will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. If Lessor remains in default beyond any applicable cure period, Lessee will have any and all rights available to it under law and in equity.

17. **ASSIGNMENT/SUBLEASE.** Lessor may assign this Sublease to Ground Lessor, Ground Lessee, the Hotel Manager, or a successor owner of the Building without Lessee's consent provided Lessor notifies Lessee within ten (10) business days after such assignment. Lessee shall not sell, sublet, assign or otherwise transfer, in whole or part, its interest in this Agreement and/or in the Network to any entity without Lessor's consent, which consent may be granted or withheld in Lessor's sole and absolute discretion. Notwithstanding the foregoing, without Lessor's consent, (A) Lessee shall have the right to sublicense this Agreement to Carriers consistent with Section 3(a), and (B) Lessee may freely assign in whole or part, its interest in this Agreement, the Network or the Premises to an Affiliate (as defined in Section 23(f)) below provided, however, that any assignment to an Affiliate that is not Mobilitie Investments III, LLC or Mobilitie Investments IV, LLC shall require Ground Lessor's prior written consent consistent with Ground Lessor's policies and regulations.

18. **NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Lessee: Mobilitie Management, LLC
Attn: Legal Department
Re: Manchester Grand Hyatt San Diego
660 Newport Center Drive, Suite 200
Newport Beach, California 92660

If to Lessor: Hyatt Corporation, as agent of HST San Diego HH LP, a Delaware limited partnership, d/b/a
Manchester Grand Hyatt San Diego
Attn: General Manager
1 Market Place
San Diego, CA 92101

and

Hyatt Corporation
Attn: General Counsel
150 North Riverside Plaza
Chicago, IL 60606

and

HST SAN DIEGO HH LP
Attn: Asset Manager – Manchester Grand Hyatt San Diego
c/o Host Hotels & Resorts, L.P.
Attn: Asset Management
6903 Rockledge Dr., Suite 1500
Bethesda, MD 20817

Either Party hereto may change the place for the giving of notice to it by twenty (20) days' prior written notice to the other as provided herein.

19. **CONDEMNATION.** In the event Lessor receives notification of any condemnation proceedings affecting the Building, Lessor will provide notice of the proceeding to Lessee within ten (10) business days. If a condemning authority takes all of the Building, or a portion sufficient, in Lessee's reasonable determination, to render the Premises unsuitable for the Permitted Use, this Agreement will terminate as of the date the title vests in the condemning authority. Subject to applicable law, the Parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Lessee will include, where applicable, the value of the Network, moving expenses, the Up Front Payments and business dislocation expenses.

20. **CASUALTY.** Lessor will provide notice to Lessee of any material casualty affecting the Premises within forty-eight (48) hours of the casualty. If any part of the Building, Communication Facility or Premises is damaged by casualty or other harm as to render the Premises unsuitable for the Permitted Use, in Lessee's reasonable determination, for Lessee's Permitted Use, then Lessee may terminate this Agreement by providing written notice to Lessor, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Lessee will be entitled to collect all insurance proceeds payable to Lessee on account thereof and to be reimbursed for the Up Front Payments on a prorata basis. If this Agreement is not terminated, Lessor agrees to rebuild or restore the Building and Premises and the Lessee agrees to rebuild or restore the Communication Facility, as applicable, and Lessor agrees to permit Lessee to place temporary transmission and reception facilities elsewhere in the Building, if there is available space, at no charge until the reconstruction of the Premises and/or the Communication Facility is completed.

21. **TAXES.** Lessee shall be responsible for any taxes levied upon (a) Lessee's leasehold improvements (including Lessee's Communication Facility) on the Premises' (b) all of Lessee's property on the Premises; and (c) any income attributable to Lessee. Lessor shall provide Lessee with copies of any assessment notices on or including the Premises immediately upon receipt, along with sufficient written documentation detailing any assessments or assessment increases attributable to the leasehold improvements, but in no event later than thirty (30) days after receipt by Lessor. Lessee shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the

Premises by such proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Lessee may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Lessee with respect to the valuation of the Premises. Lessor shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Lessee and any refunds or rebates secured as a result of Lessee's action shall belong to Lessee.

22. **GROUND LEASE.** This Agreement is subject to all obligations contained in the Ground Lease. Lessee shall refrain from any action or inaction that would cause Ground Lessee to breach its obligations under the Ground Lease. In the event of any conflict or inconsistency between this Agreement and the Ground Lease, the provisions of the Ground Lease shall govern and prevail.

23. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Lessor and Lessee, with Ground Lessor's prior written consent. No provision may be waived except in a writing signed by both Parties. The failure by a Party to enforce any provision of this Agreement or to require performance by the other Party will not be construed to be a waiver, or in any way affect the right of either Party to enforce such provision thereafter.

(b) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Lessee and Lessor each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(c) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the Parties hereto and supersedes all prior offers, negotiations, letters of intent, and agreements with respect to the subject matters of this Agreement.

(d) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(e) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "**including**" will be interpreted to mean "**including, but not limited to**"; (iii) whenever a Party's consent is required under this Agreement, except as otherwise stated in this Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "**termination**" or "**expiration**" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted this Agreement; and (viii) the singular use of words includes the plural where appropriate.

(f) **Affiliates.** All references to "**Lessee**" shall be deemed to include any Affiliate of Lessee using the Premises for any Permitted Use or otherwise exercising the rights of Lessee pursuant to this Agreement. "**Affiliate**" means with respect to a Party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that Party. "**Control**" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(g) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(h) **W-9.** Each Party agrees to provide the other Party, a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested.

(i) **No Option.** The submission of this Agreement to any Party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the legal execution, acknowledgment and delivery hereof by Lessor and Lessee. Neither party will file a memorandum or similar notice of this document in the land records (or equivalent) for the jurisdiction in which the Property is located, except if such filing or similar notice is required by law or governmental authority.

(j) **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way if the overall purpose of this Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired; and (b) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out the Parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this Agreement impossible or materially impairs the original purpose, intent or consideration of this Agreement, and the Parties are, despite the good faith efforts of each, unable to amend this Agreement to retain the original purpose, intent and consideration in compliance with that court or agency determination, either Party may terminate this Agreement upon sixty (60) days' prior written notice to the other Party.

(k) **Attorneys' Fees.** The prevailing Party in any action or proceeding in court or mutually agreed upon arbitration/mediation proceeding to enforce the terms of the Agreement shall be entitled to receive its reasonable attorneys' fees, including court, consultant and expert costs, fees and expenses, from the non-prevailing Party.

(l) **Further Assurances.** From and after the date of this Agreement, and to the extent required by the terms of this Agreement, Lessor and Lessee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper to complete the transactions contemplated by this Agreement and to carry out the purposes of this Agreement, except if such filings, documents or actions are prohibited by law or governmental authority.

(m) **Estoppel.** Within ten (10) days of the request of either Party, the other Party shall execute and provide a statement to the requesting Party, (i) certifying that this Agreement is in full force and effect; and (ii) certifying any other facts as the requesting Party reasonably requests.

(n) **Counterparts.** This Agreement may be executed, whether by hand written signature or electronic signature via DocuSign, in two (2) or more counterparts, which counterparts may be delivered by facsimile or via electronic mail with the same effect as delivery of the originals, all of which shall be considered one and the same original agreement and shall become effective when one or more counterparts have been signed by each of the Parties. All Parties need not sign the same counterpart.

(o) **Waiver of Jury Trial.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(p) **Force Majeure.** Neither Party shall be liable for failure to perform its obligations under this Agreement due to acts of God, the failure of equipment or facilities not leased, owned or controlled by a Party (including, but not limited to, utility service), government order or regulation or any other circumstances beyond the reasonable control of the party with the performance obligation. Such circumstances shall include Lessor or third party denial of Lessee access to the Network or other facilities or rights-of-way essential to serving the Premises to the extent such denial of access is contrary to the terms of this Agreement.

24. This Agreement shall be subject and subordinate at all times to the Ground Lease, any mortgage, deed of trust or similar instrument encumbering the Ground Lease, the Building or the hotel, now or hereafter existing and all amendments, extensions, renewals and modifications to any such mortgage, deed of trust or similar instrument encumbering the Building, the Ground Lease or the Hotel. This subordination shall be self-operative and no further certificate or instrument of subordination need be required.

25. All work undertaken by Lessor or its contractors, subcontractors and other agents in connection with the Premises shall be undertaken and completed in a good and workmanlike manner by qualified personnel and contractors.

26. The Premises are licensed to Licensee in its As-Is, Where-Is location and condition. Lessor shall have no obligation to perform any work or maintenance with respect to the Premises or the Building, except as expressly provided in this License. Lessee acknowledges and agrees that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the Premises or the Building, or with respect to the suitability of any part of the same for the conduct of Lessee's business, except as expressly set forth in this Agreement. The beginning of use of the Premises by Lessee shall conclusively establish that the Premises and the Building were at such time in a good and sanitary order, condition and repair acceptable to Lessee, and Lessee shall be deemed to have waived all claims relating to the condition of the Premises. Lessor shall not have any obligation to construct or install any improvements or alterations or to pay for any such construction or installation in or on the Premises or any other portion of the Building, except as expressly set forth in this Agreement.

27. **CONFIDENTIALITY.** The Parties agree to keep the terms of this Agreement and all information exchanged in connection with negotiating this Agreement and regarding any dispute or controversy arising from or under this Agreement confidential. The Parties will not (except as required by any applicable securities exchange or applicable law, regulation or legal process), without prior written consent, disclose this Agreement to any third party (other than to either Party's attorneys, accountants, equity investors, debt lenders, and other advisors or, with respect to Lessor, to Lessor's affiliates, HST San Diego HH LP, or Hotel Manager). Notwithstanding the foregoing, Lessee shall have the right, (a) without Lessor's prior written consent, to: (i) disclose the non-financial terms of this Agreement to Carriers and (ii) generally reference entering into the Agreement (business terms and provisions will not be disclosed) and/or refer to the existence of the Network at the Building and/or Property on its website and marketing materials, and (b) with Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, issue press releases or other public communications in accordance with applicable law and the requirements of any applicable securities exchange relating to existence of this Agreement and/or installation of the Network at the Hotel. Lessee shall not use any intellectual property of Hotel Manager, without the prior written consent of Hotel Manager.

28. **LESSEE'S EMPLOYEES.**

(a) As the employer of all employees within the Premises, Lessee will: (i) maintain all necessary personnel and payroll records for its actual employees; (ii) withhold from its employees' compensation any taxes, charges or other payroll deductions required by law; (iii) remit such taxes and charges to the appropriate government entity; (iv) pay net wages and fringe benefits, if any, directly to employees; (v) provide for liability insurance as specified herein; and (vi) provide workers' compensation insurance coverage in amounts as required by law.

(b) The employees of Lessee or its Affiliates assigned to work at the Premises shall remain employees of Lessee (which shall not be deemed to include any persons employed by contractors or subcontractors of Lessee). Lessee's employees shall not be entitled to participate in any employee benefit plans of Ground Lessee, Lessor, or Hotel Manager, or their respective Affiliates. Lessee shall be solely responsible for all employment and personnel actions (including wrongful termination, discrimination, etc.) and all claims arising out of injuries occurring on the job regarding employees on its payroll.

(c) All of Lessee's employees will be screened prior to being hired. The screening process shall include, but not be limited to: (i) completion of Lessee's application which shall provide for references, employment history and disclosure of criminal convictions; (ii) reference checks; and (ii) drug testing and criminal background checks, where required for the position. Lessee will provide safety training to all of its employees assigned to the Building.

(d) Lessee agrees to remove any of its employees from the Building at Lessor's request. Lessee agrees to assist and cooperate with any investigation initiated by Lessor involving any employee of Lessee assigned to the Premises.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of the last date written below.

LESSOR:

LESSEE:

Hyatt Corporation, as agent of HST San Diego HH LP, a Delaware limited partnership, d/b/a Manchester Grand Hyatt San Diego

MOBILITIE MANAGEMENT, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBITS:

- 1 – A – Description of Premises – Equipment Space
- 1 – B – Description of Premises – Antenna Space and Connections
- 2 – Non-Disturbance Agreement
- 3 – Form Carrier Agreement

EXHIBIT 1**DESCRIPTION OF PREMISES -- EQUIPMENT SPACE**

The Premises are described and/or depicted as follows:

Equipment Space consists of approximately Four-Hundred Twenty-Four (424) square feet located in Mechanical Room C located on the Podium Floor 2.5 level of the Property, as further depicted in Figures 1 and 2 below.

Figure 1. Equipment Space in relation to Property (outlined in red below)

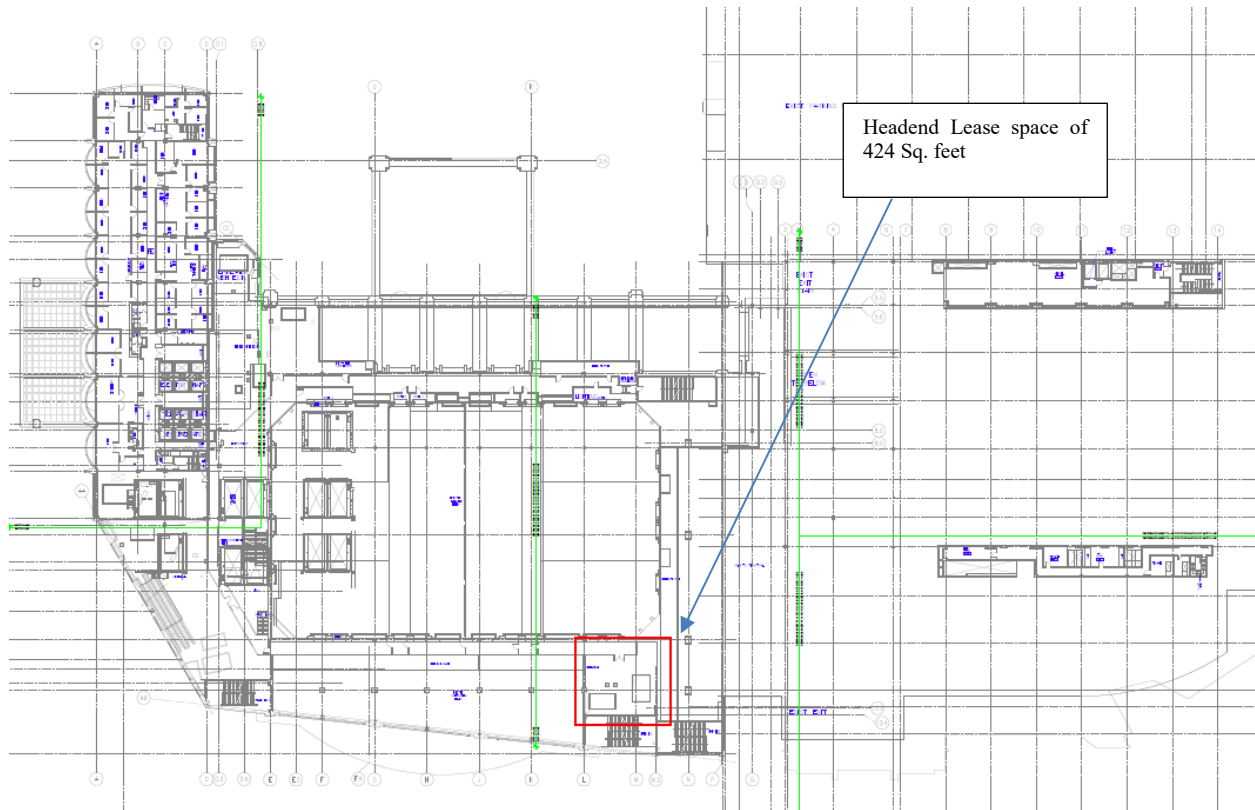
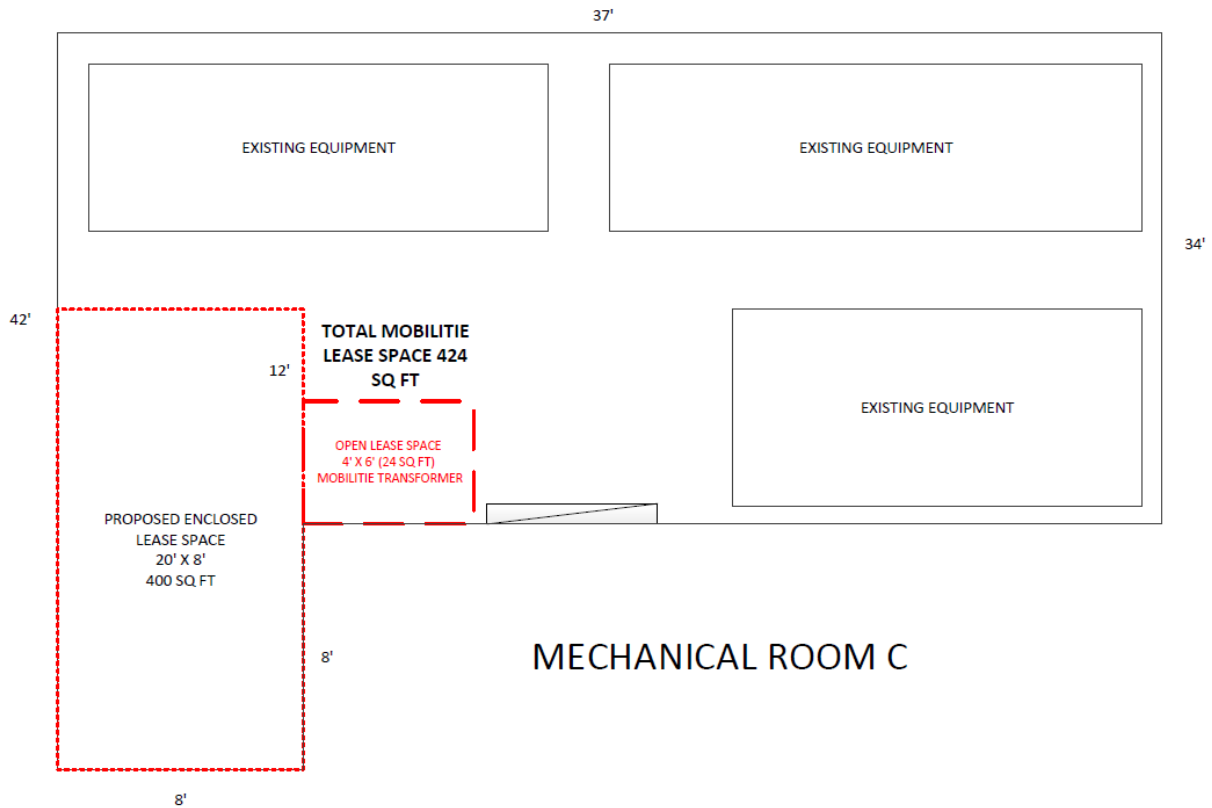


Figure 2. Equipment Space.



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY CONSTRUCTION OR OTHER DRAWINGS OF THE PREMISES ONCE RECEIVED BY LESSEE.

EXHIBIT 1-A

DESCRIPTION OF PREMISES – ANTENNA SPACE AND CONNECTIONS

The Premises are described and/or depicted as follows:

Notes:

1. THIS EXHIBIT MAY BE REPLACED BY CONSTRUCTION OR OTHER DRAWINGS OF THE PREMISES ONCE RECEIVED BY LESSEE.
2. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE UPON MUTUAL AGREEMENT OF LESSOR AND LESSEE.

Exhibit 2

NON-DISTURBANCE AGREEMENT
(Manchester Grand Hyatt, San Diego, CA)

THIS NON-DISTURBANCE AGREEMENT (this “**Agreement**”), dated and effective as of the latter of the signature dates below (the “**Effective Date**”), is made and entered into by and between **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation (“**Prime Landlord**”), having a mailing address of _____, and **MOBILITIE MANAGEMENT, LLC**, a Delaware limited liability company (“**Sublessee**”), having a mailing address of 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660. The following recitals form the basis for this Agreement and are a material part hereof:

A. Pursuant to that certain San Diego Unified Port District Amended and Restated Lease to Manchester Resorts, L.P. of Property Located at Southeast Corner of Harbor Drive and Kettner Boulevard, San Diego, California for Sixty-Six (66) Years, Commencing June 1, 2001 and Ending May 31, 2067 by and between **MANCHESTER GRAND RESORTS, L.P.** (“**Ground Lessee**”) and Prime Landlord (the “**Master Lease**”), Prime Landlord leases to Sublessor the property located at 1 Market Pl, San Diego, CA 92101 (“**Property**”);

B. Ground Lessee owns the hotel building commonly known as Manchester Grand Hyatt San Diego (the “**Building**”) located at the Property, and **HST SAN DIEGO HH LP**, a Delaware limited partnership (“**Sublessor**”) leases the Building and subleases the Property from Ground Lessee,

C. Sublessor subleases a portion of the Property (“**Premises**”) to Sublessee pursuant to that certain Sublease Agreement dated as of _____ by and between the Sublessor and the Sublessee, attached hereto as Exhibit A and incorporated by reference (“**Sublease**”);

D. The parties hereto desire to set forth their respective nondisturbance and recognition obligations, as applicable, with respect to the Premises and their respective interests therein, as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Consent. Prime Landlord hereby grants its consent to the Sublease as required pursuant to Article _____ of the Master Lease. Prime Landlord acknowledges that the parties will rely upon Prime Landlord’s consent and agreement as stated above in executing and delivering the Sublease.

2. Nondisturbance Agreement.

2.1 In the event the Master Lease shall terminate before the expiration of the Term (as defined in the Sublease), for any reason other than condemnation, fire or other damage, the Sublease, if then in existence, shall continue as a lease between Prime Landlord, as lessor, and Sublessee, as lessee with the same force and effect as if Prime Landlord, as lessor, and Sublessee, as lessee, had entered into a lease as of the date of the termination of the Master Lease, containing the same terms, covenants and conditions as those contained in the Sublease.

2.2 Notwithstanding anything in this Agreement to the contrary, in the event the Sublease continues as a lease between Prime Landlord and Sublessee prior to the expiration of the Term as provided herein, the term of the Sublease shall not extend beyond the end of the Term and any extension provided in the Sublease or otherwise shall be of no force or effect, unless otherwise agreed to in writing by and between Prime Landlord and Sublessee.

3. Attornment. Sublessee covenants and agrees, subject to the provisions of Section 2 above, to make full and complete attornment, without the necessity of any other or further attornment than contained in this paragraph (and this paragraph shall be considered a self-operative attornment), to Prime Landlord, upon the termination of the Sublease. Such attornment shall be for the balance of the Term of the Sublease, and shall be upon the same terms, covenants and conditions as provided in the Sublease so as to establish direct privity of estate and contract between

Sublessee and Prime Landlord, with the same force and effect as though the Sublease was made directly between Sublessee and such Prime Landlord; provided, however, that Prime Landlord shall not be: (a) liable for any act or omission of any prior lessor (including Sublessor) in connection with the Sublease (except that Sublessee may exercise its rights under the Sublease against Prime Landlord if any default by the landlord under the Sublease continues or occurs after Prime Landlord has the rights of the landlord under the Sublease); (b) subject to any offsets or defenses which Sublessee might have against any prior lessor (including Sublessor) except for Sublessee's offset rights as provided in the Sublease; (c) except for the Up Front Payments that have been prepaid in full pursuant to the Sublease, bound by any rent or additional rent which Sublessee might have paid to any prior lessor (including Sublessor) more than thirty (30) days in advance of the due dates thereof for any period after the occurrence of the event that gave rise to attornment by Sublessee; or (d) liable for any representation, warranty or indemnity given by any prior landlord (including Sublessor) except those set forth in the Sublease.

4. Remedies. Prime Landlord will have the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the Sublease which Sublessor had or would have had if the Master Lease had not been terminated.

5. Notice. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Prime Landlord:

If to Sublessee:

Mobilitie Management, LLC
Attn: Legal Department
Re: Manchester Grand Hyatt San Diego
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660

If to Sublessor:

HST SAN DIEGO HH LP
c/o Host Hotels & Resorts, L.P.
Attn: Asset Management
6903 Rockledge Dr., Suite 1500
Bethesda, MD 20817

and

HST SAN DIEGO HH LP
c/o Manchester Grand Hyatt
Attn: General Manager
1 Market Place
San Diego, CA 92101

Any party hereto may change the place for the giving of notice to it by twenty (20) days' prior written notice to the others as provided herein.

6. Ownership. Prime Landlord hereby confirms and agrees that (i) the Communication Facility (as defined in the Sublease) is and shall remain the personal property of Sublessee, regardless of whether or not such items are considered fixtures and attachments to real property under applicable laws, and (ii) Sublessee shall have the right to remove and/or abandon said Communication Facility (or any portion thereof) as set forth in the Agreement.

7. Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date written below.

PRIME LANDLORD:

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Name: _____
Title: _____

SUBLESSEE:

MOBILITIE MANAGEMENT, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

CONSENT FOR NON-DISTURBANCE AGREEMENT

The undersigned hereby consents to the execution and delivery of the foregoing instrument and agrees that neither the execution of the same nor anything done pursuant to the provisions thereof shall be deemed or taken to modify the Master Lease therein referred to.

SUBLESSOR:

HST SAN DIEGO HH LP,
a Delaware limited partnership

By: _____
Name: _____
Title: _____

EXHIBIT A

Copy of Sublease Attached

EXHIBIT 3

FORM CARRIER AGREEMENT

FORM CARRIER AGREEMENT

([Venue Name, Venue City])

THIS CARRIER LICENSE AGREEMENT (this "**Agreement**") is made as of the last signature date hereof ("**Effective Date**"), by and between _____, a _____, for its own benefit and for the benefit of its Affiliates and its permitted successors and assigns (collectively, "**Mobilitie**"), and _____ for its own benefit and for the benefit of their Affiliates and their permitted successors and assigns (collectively, "**Carrier**").

RECITALS

A. **WHEREAS**, Mobilitie and _____ (the "**Lessor**") are parties to that certain Venue Agreement dated _____ (the "**Venue Agreement**") attached hereto as Exhibit A; and

B. **WHEREAS**, Pursuant to the terms and conditions of the Venue Agreement, Mobilitie shall, among other things, (i) lease from Lessor the Premises, comprising a portion of the Property; and (ii) design, construct, install, operate, and maintain the Network for the benefit of Lessor and the Property;

C. **WHEREAS**, Carrier hereby desires to obtain a license from Mobilitie to provide wireless communications services on the Network; and

D. **WHEREAS**, capitalized terms not defined herein shall have the meanings ascribed to them in the Venue Agreement.

E. **WHEREAS**, Lessor's right to make use of the building and property located at 1 Market Place, San Diego, California 92101 (the "**Hotel Property**") is pursuant to a sublease agreement between Lessor and Hyatt Corporation (the "**Sublease Agreement**").

F. **WHEREAS**, the Hotel Property is owned by the San Diego Unified Port District (the "**District**") and ground leased to Manchester Grand Resorts, L.P. (the "**Ground Lessee**") pursuant to that certain ground lease entitled San Diego Unified Port District Amended and Restated Lease to Manchester Resorts, L.P. of Property Located at Southeast Corner of Harbor Drive and Kettner Boulevard, San Diego, California for Sixty-Six (66) Years, Commencing June 1, 2011 and Ending May 31, 2067 (the "**Ground Lease**").

NOW THEREFORE, incorporating the foregoing recitals of fact, and in consideration of the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 LICENSE

Section 1.1 License. Mobilitie hereby grants Carrier a non-exclusive license to provide wireless communications services on the Network pursuant to the terms and provisions of this Agreement.

Section 1.2 Permitted Use.

- (a) *Use.* Carrier shall be permitted the exclusive right to install, maintain, operate, service, modify, replace and/or remove Carrier's Network Equipment within

Carrier's Network Space for the transmission and reception of any communications signals which it is lawfully authorized to transmit and/or receive. Carrier shall not occupy any additional space within the Premises or on the Network, except as otherwise agreed upon in writing by the Parties.

- (b) *Spectrum.* Carrier shall be permitted to operate within any spectrum which it is now or in the future licensed or otherwise authorized to operate at by the Federal Communications Commission, or other successor governmental entity ("**FCC**"), subject to the additions/modifications provision as more particularly set forth in Section 7.3(c) below and the interference provision as more particularly set forth in Article 9 below. Notwithstanding the foregoing, Mobilitie is under no obligation to ensure that the Network can support any future licensed or otherwise authorized spectrum of Carrier, however, Mobilitie will provide reasonable cooperation to Carrier in the event Carrier requests changes to the Network.
- (c) *Users.* No person or entity other than Carrier, Carrier's financing entity or assignee pursuant to Article 16 below shall have the right to install, maintain or operate Carrier's Network Equipment or otherwise use, any portion of the Network, except pursuant to a separate written agreement with Mobilitie.
- (d) *Ground Lease.* This Agreement is subject to all obligations contained in the Ground Lease. Carrier shall refrain from any action or inaction that would cause Ground Lessee to breach its obligations under the Ground Lease. In the event of any conflict or inconsistency between this Agreement and the Ground Lease, the provisions of the Ground Lease shall govern and prevail.

Section 1.3 Non-exclusive Use. The license granted to Carrier under this Agreement is non-exclusive and Mobilitie retains and reserves the exclusive right to license any other portion of the Premises and the Network (other than Carrier's Network Space and Carrier's Network Equipment) to any third party (each, a "**Third Party Licensee**") as permitted in the Venue Agreement, including but not limited to any other companies operating or providing wireless communications services. Each Third Party Licensee shall have the right to install its equipment within any other portion of the Premises and the Network (other than Carrier's Network Space and Carrier's Network Equipment), subject to the terms and provisions of the Third Party Licensee Agreement.

ARTICLE 2 TERM

Section 2.1 Agreement Term. This Agreement shall be effective as of the Effective Date; provided, however, the Network Term (defined below) shall be approximately ten (10) years, commencing on the earlier of: (i) the first day of the month following installation of Carrier's Network Equipment; or (ii) thirty (30) days from the issuance of the Notice to Proceed (as defined below) (the "**Base Fee Commencement Date**"), and terminating at the expiration of the "**Initial Term**" as defined in the Venue Agreement (the "**Network Term**"). Notwithstanding anything to the contrary contained in this Agreement, in the event of a termination of the Venue Agreement, this Agreement shall likewise concurrently terminate. Upon the termination or expiration of the Venue Agreement, Mobilitie and Carrier shall have no further liability to each other, except for those provisions in this Agreement which expressly survive the termination of this Agreement.

Section 2.2 Holdover. If Carrier has not removed the Carrier Network Equipment upon the expiration of the Network Term or earlier termination thereof, Carrier's continued occupancy shall be from month-to-month only, and in such case the Base Fee shall be payable at a monthly rate equal to one hundred ten percent (110%) of the Base Fee payable during the last License Year of the Network Term. Carrier shall also be responsible for any and all charges or payments payable by Carrier pursuant to the terms of this Agreement, if applicable, incurred during such holdover period. Such month-to-month occupancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Section 2.2 shall be

construed as consent by Mobilitie to any holding over by Carrier, and Mobilitie expressly reserves the right to require Carrier to surrender possession of the Network to Mobilitie in accordance with applicable Laws and as provided in this Agreement upon the expiration or earlier termination of this Agreement. If Carrier fails to surrender possession of Carrier's Network Space to Mobilitie in

accordance with applicable Laws and as provided in this Agreement upon the expiration or other termination of this Agreement, Carrier shall indemnify and hold Mobilitie harmless from all loss or liability, including without limitation, any claims made by Lessor and/or any succeeding Third Party Licensee relating to such failure to surrender Carrier's Network Space. The provisions of this Section 2.2: (i) shall not be deemed to limit or constitute a waiver of any other rights or remedies of Mobilitie provided herein or at law or in equity, and (ii) shall survive the expiration or earlier termination of this Agreement.

ARTICLE 3 PAYMENTS

[TO BE INSERTED]

ARTICLE 4 TAXES

Section 4.1 Personal Property Taxes. Carrier is responsible for the reporting and payment of any personal property taxes and assessments ("**Personal Property Taxes**") assessed against Carrier's Network Equipment. Mobilitie is responsible for the reporting and payment of any Personal Property Taxes assessed against the Network, excluding the equipment of any Third Party Licensees. All Personal Property Taxes paid by Mobilitie shall be a Pass-Through Expense.

Section 4.2 Real Property Taxes. Mobilitie is responsible for the reporting and payment of all Real Property Taxes assessed against the Network, if any, to the extent Mobilitie is required to pay such Real Property Taxes, including any such taxes that may be imposed on any capital improvements made to any portion of the Network to accommodate the Network, Carrier's Network Equipment or attributable to any structural improvements made to any portion of the Network to accommodate the same. All such Real Property Taxes paid by Mobilitie shall be a Pass-Through Expense.

Section 4.3 Sales or Use Taxes on Fees. Mobilitie is responsible for billing, collecting, reporting, and remitting sales or use taxes directly related to any Base Fee or Additional Fee received pursuant to this Agreement ("**Sales or Use Taxes**"). In the event that Mobilitie is assessed any Sales or Use Taxes directly related to the Base Fee, Carrier shall be responsible for reimbursement to Mobilitie of such Sales or Use Taxes within thirty (30) days after receipt of invoice and reasonable supporting documentation from Mobilitie.

ARTICLE 5 GENERAL PAYMENT PROVISIONS

Section 5.1 Late Payments. Any payment not paid within ten (10) business days of written notice of non-payment from either Party shall, at the option of the Party to whom such late payment is owed, bear interest until paid at the lesser of (i) the rate of ten percent (10%) per annum; or (ii) the maximum rate allowed under the laws of the jurisdiction in which the Network is located (the "Applicable Interest Rate"). This late charge is not a waiver of either Party's right to declare this Agreement in default if any payments due hereunder are not made when due.

Section 5.2 Electronic Payments. Carrier and Mobilitie shall work diligently upon execution of this Agreement to identify a mutually beneficial means of payment if possible, specifically electronic funds transfer for all Base Fee and any other payments payable under this Agreement, which may be modified from time to time upon mutual agreement of Carrier and Mobilitie. Mobilitie agrees to provide to Carrier bank routing information for such purpose upon request of Carrier.

Section 5.3 Right to Audit. Mobilitie and Carrier each have the right, not to be exercised more than once in any License Year, to review and reconcile the Additional Fees, including specifically the Pass-Through Expenses, and other payments due and owing under this Agreement during the current and immediately preceding License Year upon the following terms and conditions:

- (a) The requesting Party shall provide the other Party with written notice of the requesting Party's intent to audit, and the audit shall take place within a reasonable time at the other Party's offices or other designated location where such records are maintained at a time mutually convenient to Mobilitie and Carrier and shall be completed within fifteen (15) consecutive business days. Copying of books or records and removal of same shall be allowed only with the prior written consent of the other Party, which consent shall not be unreasonably withheld, but may be conditioned upon the requesting Party's execution of a non-disclosure agreement with terms and conditions reasonable to both Parties. The audit shall be conducted in a manner that does not unreasonably interfere with the other Party's operations.
- (b) The audit must be performed by a recognized public accounting firm. Any audit review shall not postpone or alter the liability and obligation of either Party to pay any amounts due under the terms of this Agreement.
- (c) The requesting Party shall provide the other Party with a summary of the requesting Party's findings and conclusions of each audit. If the other Party does not agree with the summary of findings and conclusions of such audit, that Party shall be permitted, at its expense, to have a recognized public accounting firm of its choice perform a second audit. If the findings and conclusions of the second audit differ from the findings and conclusions of the first audit, the Parties agree that the two accounting firms will work together to resolve the disputes between the two audits and come to mutually agreeable findings and conclusions, which shall be binding on the Parties. In the event that the audit indicates any overpayment or underpayment of Additional Fees or other amounts due during the audited License Year, such amounts shall be paid (or credited) to the appropriate Party within sixty (60) days after the completion of the audit or, in the event any findings in the audit are disputed, within sixty (60) days of the resolution of such dispute.

The provisions of this Section 5.3 shall survive the termination or expiration of this Agreement.

ARTICLE 6 OWNERSHIP AND CONSTRUCTION OF NETWORK

Section 6.1 Ownership. From and after the Effective Date, as between Mobilitie and Carrier, Mobilitie shall be the sole owner of the Network and any expansion thereof.

Section 6.2 Mobilitie Construction Responsibilities. Mobilitie shall manage the Network Acquisition Work and the Construction Work in accordance with the Venue Agreement and the Approved Plans and Specifications included in Exhibit E, attached hereto. Mobilitie's construction responsibilities shall include obtaining all labor, materials, tools and other related and necessary equipment and services to manage the Network Acquisition Work and the Construction Work as required hereunder. Mobilitie shall, in a good and workmanlike manner, supervise and direct all aspects of the Network Acquisition Work and Construction Work. Mobilitie shall have control over

means, methods, techniques, sequences and procedures used to perform, and for coordinating all portions of the Network Acquisition Work and Construction Work under this Agreement. Mobilitie shall keep the Premises and the Network and surrounding areas free from accumulation of waste materials or rubbish caused by Construction Work. At completion of the Construction Work, Mobilitie shall remove from and about the Network waste materials, rubbish, tools, construction equipment, machinery and surplus materials.

Section 6.3 Permits and Approvals. Mobilitie shall apply for, obtain and keep in full force and effect all Network Approvals required for the installation, operation and maintenance of the Network during the Network Term. Carrier shall coordinate and manage all professional and technical services required in connection with the preparation and timely filing of applications for and obtaining all Carrier's Approvals.

Section 6.4 Construction Period. Mobilitie shall commence Construction Work upon obtaining all necessary Network Approvals, including any approvals required under the Venue Agreement. Mobilitie shall manage the Construction Work in accordance with the Venue Agreement and Approved Plans and Specifications for the Network, and such construction shall be completed as quickly as reasonably possible, subject to extension for any delay caused by a Force Majeure Event.

Section 6.5 Standards for Performance of the Network Construction. All Construction Work provided hereunder shall be performed in a good and workmanlike manner and at a minimum (i) with a grade, nature and quality commensurate with that which is customary in the telecommunications industry; (ii) in compliance with all applicable Laws; (iii) in compliance with the Approved Plans and Specifications for the Network; and (iv) in compliance with the Venue Agreement.

Section 6.6 Safety and Compliance. Each Party shall comply, and shall require its contractors, subcontractors, employees and agents to comply with all applicable Laws, including, without limitation, laws and regulations under the Occupational Safety & Health Act ("**OSHA**") and FCC rules and regulations pertaining to the safety and protection of personnel operating, maintaining and repairing the Network.

Section 6.7 Payment. Mobilitie shall timely pay all vendors, contractors, subcontractors and suppliers (collectively "**Vendors**") directly for all materials, services, and all sales, consumer, use and all other associated taxes (whether federal, state or local) related to the Network Acquisition Work and the Construction Work.

Section 6.8 Personnel. Both Parties shall employ only competent and able personnel for the performance of their obligations under this Agreement, including, without limitation, contractors and subcontractors that are properly licensed in the State in which the Construction Work will be performed and legally qualified to construct the Network and complete the Network Acquisition and Construction Work on the Network, as required.

ARTICLE 7 MANAGEMENT AND MAINTENANCE OF THE NETWORK

Section 7.1 Responsibilities of Carrier.

- (a) *Repairs and Maintenance of Carrier's Network Equipment.* Carrier shall be responsible for complying with the provisions of Article 8 with respect to Carrier's Network Equipment.

- (b) *Compliance with Laws.* Carrier shall install, operate, maintain, repair, modify, replace and remove Carrier's Network Equipment in compliance with all applicable Laws that pertain to the ownership and operation thereof including, but not limited to, FCC and FAA regulations.
- (c) *Carrier Network Records.* Carrier, at Carrier's sole cost and expense, shall provide Mobilitie with a true, accurate, and current set of documents describing Carrier's Network Equipment installed at the Network, or thereafter materially modified, as required by this Agreement, including but not limited to, "**As-Built**" engineering drawings, and copies of all government licenses (excluding FCC licenses), permits and approvals required by Carrier for the installation, operation and maintenance of Carrier's Network Equipment (including any material amendments pertaining thereto).

Section 7.2 Responsibilities of Mobilitie.

- (a) *Operations, Repairs, and Maintenance of Network.* If the Network is a DAS (and not a DRAN), Mobilitie shall operate the Network in accordance with the Service Level Agreement attached hereto as Exhibit D, in conformance with then-prevailing industry standards and as otherwise required under the Venue Agreement, and shall perform all repairs, maintenance and monitoring necessary to keep the Network in safe and sound condition and in good repair.
- (b) *Compliance with Laws.* Mobilitie shall operate the Network in compliance with all applicable Laws that pertain to the installation, operation, maintenance and ownership of the Network.

Section 7.3 Network Changes.

- (a) *Mobilitie or Other Parties.* Mobilitie, Lessor or any Third Party Licensee shall have the right, at its sole cost and expense, to propose any alteration, upgrade or expansion of the Network (collectively, a "**Network Change**") from time to time during the Network Term. Mobilitie agrees that it will not undertake any Network Change which could in any way, in Carrier's reasonable judgment, materially and adversely affect or interfere with (i) Carrier's Network Equipment, or the operations of Carrier, (ii) rights or costs of Carrier under this Agreement, or (iii) the Coverage Area. If a Network Change will not materially and adversely affect or interfere with Carrier in any way as described above, then Mobilitie may undertake the Network Change, at Mobilitie's sole expense; provided, however, Mobilitie's expenses for such Network Change shall be included in Carrier's Prorata Share of Pass-Through Expense only if the proposed Network Change benefits Carrier and only to the extent Carrier agrees in writing to the increased Pass-Through Expenses. Prior to undertaking any allowed Network Change, Mobilitie shall provide at least thirty (30) days prior written notice to Carrier and all other Third Party Licensees utilizing the Network prior to implementation of the proposed Network Change, and Mobilitie shall make personnel available to discuss the proposed Network Change with the Third Party Licensees, including Carrier, and otherwise undertake the Network Change in strict accordance with this Agreement. Implementation of the Network Change shall not materially and adversely affect or interfere with use of Carrier's Network Equipment.

- (b) *Carrier Requested Network Change.* At any time during the Network Term at the written request of Carrier, Mobilitie will make personnel available to discuss with Carrier, at no additional cost to Carrier, any suggested Network Change which Carrier deems desirable to ensure the current, or improve the future capacity, coverage or performance needs of Carrier's Network Equipment or communications services, or otherwise benefit the operations of Carrier (a "**Carrier Requested Network Change**"). Mobilitie will promptly implement any Carrier Requested Network Change, within a reasonable time of Mobilitie's receipt of Carrier's written request, if all the following conditions are met: (i) the Carrier Requested Network Change will not interfere with the existing equipment installed on the Network by other Third Party Licensees, or other equipment at the Property at the time of Carrier's request; (ii) the Carrier Requested Network Change is technically and physically possible, legally permissible and permitted under the terms and conditions of the Venue Agreement ; and (iii) the Carrier Requested Network Change will not increase the Pass-Through Expenses to any other existing Third Party Licensees, and/or the Property except to the extent such Pass-Through Expenses are agreed in writing to be borne by any one or more of such affected parties.
- (c) *Increases to Fees and/or Additional Capital Contributions.* Notwithstanding the foregoing, any Network Change (including a Carrier Requested Network Change), or Carrier Network Equipment Change (as defined below) that requires (i) additional space to Carrier's Network Space; (ii) an expanded coverage area for the Network; (iii) a change in frequency(ies) or technology from what is specifically included in Exhibit E; (iv) changes to sector count; (v) changes to channel count; or (vi) any changes to the Approved Plans and Specifications included in Exhibit E, will be subject to an increase in the Base Fee, or an additional capital contribution fee, or both, as may be reasonably determined by Mobilitie. Any such increase to the Base Fee and/or additional capital contribution fee shall be mutually approved in writing by the Parties (including, as necessary, by an amendment to this Agreement) prior to performing the Network Change or Carrier Network Equipment Change. Additionally, any Network Change or Carrier Network Equipment Change may also prompt a review of the limits of the insurance policies required by this Agreement. Policy limits shall be adjusted to proper and reasonable limits as mutually agreed to in writing by the Parties (including, as necessary, by an amendment to this Agreement), which agreement shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, policy limits shall not be reduced below those stated in Article 14.

ARTICLE 8 CARRIER'S NETWORK EQUIPMENT

Section 8.1 Carrier's Network Equipment. Carrier shall provide all materials and shall pay for all labor for the construction, installation, operation, maintenance, repair, replacement and removal of Carrier's Network Equipment. Carrier shall be permitted to install, repair, modify, or remove, at any time, Carrier's Network Equipment, subject to the terms and conditions of this Agreement and the Venue Agreement. Carrier's Network Equipment shall be located solely within Carrier's Network Space.

Section 8.2 Initial Installation of Carrier's Network Equipment. Upon substantial completion of the Construction Work, Mobilitie will issue a notice to proceed substantially in the form of Exhibit

B (“Notice to Proceed”), notifying Carrier that it may install Carrier's Network Equipment, to the extent not already installed as a part of the Construction Work, subject to the terms and conditions of this Article 8. The installation of Carrier's Network Equipment shall be performed in accordance with (i) plans and specifications approved by Mobilitie, and (ii) the requirements, if any, of the Venue Agreement applicable to such installation. Additionally, Carrier's contractor installing Carrier's Network Equipment shall maintain commercial general liability insurance and worker's compensation insurance in amounts reasonably acceptable to Mobilitie, certificates of which insurance must be delivered to and approved by Mobilitie prior to the performance of any work at the Property by such contractor. Notwithstanding anything to the contrary contained herein, the interconnection of Carrier's Network Equipment to the Network shall be performed by Mobilitie at no cost to Carrier, so long as Carrier's Network Equipment is available for interconnection within thirty (30) days of the date on the Notice to Proceed; otherwise, such interconnection will be at Carrier's sole cost and expense.

Section 8.3 Acceptance of the Network. The Network as installed on the Property shall be deemed fully compliant with this Agreement after completion of the “**Network Testing**” and “**Network Acceptance Testing**” procedures, as set forth in Exhibit G attached hereto and incorporated herein by reference, and upon successful fulfillment of the requirements for Network Acceptance as set forth in Exhibit G.

Section 8.4 Additions or Modifications to Carrier's Network Equipment.

- (a) At least ten (10) business days prior to making any material additions, modifications, or replacements to, or removal of (collectively, “**Carrier Network Equipment Changes**”) Carrier's Network Equipment at the Network, Carrier shall provide Mobilitie with written notice of such change; provided, however, all such proposed Carrier Network Equipment Changes shall be subject to the terms and conditions of the Venue Agreement regarding the same and Section 7.3(c) above. Any reasonable costs incurred by Mobilitie in connection with any Carrier Network Equipment Changes at the Network shall be reimbursed by Carrier within thirty (30) days of Carrier's receipt of Mobilitie's written invoice therefor.
- (b) To the extent any Carrier Network Equipment Changes require an interconnection and/or disconnection of Carrier's Network Equipment to or from the Network, such interconnection and/or disconnection, as applicable, shall be performed by Mobilitie. Any reasonable costs incurred by Mobilitie in connection with any such interconnection and/or disconnection shall be reimbursed by Carrier within thirty (30) days of Carrier's receipt of Mobilitie's written invoice therefor.

Section 8.5 Repairs and Maintenance; Compliance with Laws. Carrier hereby covenants that it shall, at all times during the Network Term, operate and maintain Carrier's Network Equipment in accordance and in compliance with FCC rules and regulations and all applicable Laws. Carrier, at Carrier's sole cost and expense, shall make all necessary repairs and perform all necessary maintenance to Carrier's Network Equipment to assure that Carrier's Network Equipment is in a structurally safe and sound condition and in good repair, reasonable wear and tear excepted, and otherwise operated and maintained in accordance with then-prevailing industry standards.

Section 8.6 Access.

- (a) *Access to Network.* Carrier shall have access to Carrier's Network Space on a twenty-four (24) hours per day, seven (7) days per week basis, at no charge, but subject to any limitations contained in the Venue Agreement. The rights of Carrier under this Section 8.6 shall be limited to authorized employees, agents, contractors or subcontractors of Carrier. When accessing Carrier's Network Space, Carrier, its employees, agents, contractors, and subcontractors shall act in a professional and courteous manner and upon leaving Carrier's Network Space shall close and lock all gates and doors and, if applicable, restore Carrier's Network Space to as close to its previous condition as practicable. Carrier shall not unreasonably interfere with or obstruct access to any part of the Network by Mobilitie, any Third Party Licensee, or any authorized employees, agents, contractors or subcontractors of Mobilitie or any Third Party Licensee. Mobilitie shall take reasonable precautions to ensure that Third Party Licensee's and Mobilitie's employees, contractors, agents and subcontractors do not unreasonably interfere with Carrier's access to, or operations at, the Network.

- (b) *Compliance with Laws.* Notwithstanding the above, Carrier shall require that any employee, contractor, subcontractor or agent of Carrier working on the Network comply with all applicable Laws.

- (c) *Access to Carrier's Network Equipment.* Neither Mobilitie, Lessor, any Third Party Licensee, nor any other third party shall have any right of access to Carrier's Network Space, Carrier's Network Equipment, or Carrier's equipment shelter or cabinets located within Carrier's Network Space, without in each instance the prior written consent of Carrier.

Section 8.7 Utilities. Carrier is responsible for all costs associated with (i) the consumption of utilities at the Network by Carrier's Network Equipment, and (ii) the cost of purchasing and installing separate meters (or sub-meters) to measure such consumption, which meters (or sub-meters) and all electrical hook-ups required for Carrier's Network Equipment shall be installed by Mobilitie prior to the Base Fee Commencement Date as part of construction of the Network. In the event a separate meter is installed, Carrier shall pay the utility directly for its power consumption. If a separate meter is not able to be installed, then Mobilitie, if permitted, shall install a sub-meter at Carrier's expense and shall include with Carrier's estimated monthly payment of Pass-Through Expenses an estimate of Carrier's monthly power consumption based upon the usage indicated on Carrier's sub-meter; or, in the event a sub-meter is not able to be installed, based upon the average kilowatt rate paid by Mobilitie and Carrier's equitable or proportionate share thereof based upon the electricity consumed by Carrier's Network Equipment in comparison to the electricity consumed by the equipment of other Third Party Licensees, as reasonably determined by Mobilitie. The costs of Carrier's monthly power consumption shall be subject to the reconciliation and audit provisions set forth herein. Carrier shall be permitted at any time during the Network Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within Carrier's Network Space, or elsewhere on the Premises in such locations as reasonably approved by Mobilitie and upon prior written consent of Lessor. Carrier shall have the right to install conduits connecting the temporary power source and related appurtenances to Carrier's Network Equipment subject to the prior written consent of Lessor. All temporary power utilized by Carrier shall be terminated upon the resolution of any power interruption at the Premises.

Section 8.8 Approvals for Carrier's Network Equipment. Carrier is responsible, at Carrier's sole cost and expense, to apply for, obtain and keep in full force and effect throughout the Network Term any and all local, municipal, county, state and federal licenses, permits and approvals necessary or required for the installation, operation, repair, maintenance, replacement and removal of the Carrier's Network Equipment on the Network.

Section 8.9 Removal of Carrier's Network Equipment. Subject to the terms and conditions of the Venue Agreement, upon the expiration or within thirty (30) days after the earlier termination of the Venue Agreement, Carrier shall remove Carrier's Network Equipment and any other personal property from the Premises and shall repair any damage to the Network or Premises caused by such removal. If Carrier's Network Equipment is not removed pursuant to this Section 8.9, it shall be deemed abandoned and upon ten (10) days prior written notice to Carrier, Mobilitie shall have the right to retain or discard such property in Mobilitie's sole and absolute discretion without any liability to Carrier.

Section 8.10 Personal Property; Waiver of Liens.

- (a) All of Carrier's Network Equipment shall remain Carrier's exclusive personal property throughout the Network Term. Mobilitie hereby waives any lien rights it may have concerning Carrier's Network Equipment, all of which are deemed Carrier's personal property and not fixtures.
- (b) Mobilitie further acknowledges that Carrier has entered, or may enter into a financing arrangement including promissory notes and financial and security agreements for the financing of Carrier's Network Equipment with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities); provided that in no event shall Carrier be permitted to record anything against the Property without the prior written approval of Lessor, which may be withheld in Lessor's sole discretion. In connection therewith, Mobilitie disclaims any interest in Carrier's Network Equipment, as fixtures or otherwise; and agrees that Carrier's Network Equipment shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Base Fees due or to become due and that Carrier's Network Equipment may, subject to the terms and conditions of the Venue Agreement, be removed at any time without recourse to legal proceedings.

Section 8.11 FCC Radio Frequency Emissions. If Carrier's installation or material modification of Carrier's Network Equipment at the Network would put any then-existing equipment of the Network into non-compliance with the FCC's (or in the future any other applicable governmental authority) exposure limits for radio frequency emissions, then: (i) in the event that such non-compliance can be cured by limiting the general public's access to the Network, Carrier shall pay all costs associated with limiting access to the Network prior to making such installation and/or modification; (ii) in the event such non-compliance can be cured by modifying the equipment of the then-existing equipment on the Network, and the owners of such equipment consent to such modifications, Mobilitie shall undertake such modifications and charge all affected users, including Carrier, on a pro rata basis to recoup the costs associated with making such modifications; or (iii) in the event the non-compliance cannot be cured by 8.11(i) or (ii) above, Carrier will undertake such modifications of Carrier's Network Equipment to cure the non-compliance at its sole cost and expense. In the event that there is any change to applicable rules, regulations and procedures governing radio frequency emissions which put the Network into non-compliance with the FCC's (or in the future any other applicable governmental authority) exposure limits for radio frequency emissions, Carrier shall reasonably cooperate with the other users of the Network to

modify or adjust their equipment to bring the Network into compliance. Mobilitie shall include materially the same obligations contained in this Section 8.11 in all of its Third Party Licensee agreements.

ARTICLE 9 INTERFERENCE

Section 9.1 Interference Generally. Carrier shall operate Carrier's Network Equipment within any spectrum which it is licensed or authorized to operate by the FCC (or in the future any other applicable governmental authority), provided such operation does not interfere with the operations of any existing equipment at the Property and Network (including Third Party Licensee equipment) as of the date of the Carrier's installation of the Carrier Network Equipment or otherwise violate the requirements set forth in the Venue Agreement. In the event: (i) Carrier's Network Equipment causes interference to any installations lawfully operating at the Network as of the date of installation of the Carrier Network Equipment, or (ii) modifications to Carrier's Network Equipment cause interference to any installation lawfully operating at the Network as of the date of modification of Carrier's Network Equipment, then Carrier shall take all steps reasonably necessary to correct and eliminate the interference within forty-eight (48) hours after receiving verbal or written notice from Mobilitie. Verbal notice to Carrier as provided in this Section 9.1 may be satisfied by contacting _____ (which may be updated by Carrier from time to time by providing Mobilitie with ten (10) business days' prior written notice). If Carrier does not correct and eliminate the interference as specified herein, Mobilitie shall have the right to immediately power down Carrier's Network Equipment until such time as the interference is eliminated. After termination of power, Carrier may transmit for periods of intermittent testing in order to permanently remedy the interference and resume service; provided, however, such intermittent testing shall not cause further interference incidents. Nothing in this Article 9 shall be deemed or interpreted to authorize Carrier to illegally transmit on any frequency or channel, to operate at variance from the specifications in its license with the FCC or applicable Laws governing Carrier's operation of Carrier's Network Equipment, or to provide any protection to Carrier from interference from parties who are not users of the Network. Notwithstanding anything to the contrary contained in this Agreement, Carrier's operations of Carrier's Network Equipment are subject to the interference provisions in the Venue Agreement (including but not limited to Section 9 thereof) and Mobilitie's obligations thereunder.

Section 9.2 Required Covenant of Future Third Party Licensees. Mobilitie agrees to require any future Third Party Licensee who connect to the Network after the Effective Date to install transmitting and receiving equipment of the type and frequency that will not cause interference to Carrier's Network Equipment then-installed at the Network. If the equipment of any future Third Party Licensee causes interference to Carrier's Network Equipment then-installed at the Network, such Third Party Licensee shall take all steps necessary to correct and eliminate the interference within forty-eight (48) hours after receiving notice from Mobilitie. If such Third Party Licensee does not resolve such interference within such forty-eight (48) hour period, Mobilitie shall require it to power down or eliminate the use of the interfering equipment to the extent necessary to avoid any continuing interference (except for intermittent operation for the purpose of testing following reasonable remedial measures) until the interference is resolved. Any interference disputes shall be resolved on a first in use, first in priority basis.

Section 9.3 Future Changes. In the event there are any changes in the spectrum within which Carrier is licensed or authorized to operate by the FCC, Carrier shall comply with the terms and conditions of this Agreement. Carrier shall also provide Mobilitie with a copy of Carrier's FCC license authorizing the change in spectrum.

Section 9.4 For the purposes of this Agreement, “interference” may include, but is not limited to, any use at the Property that causes electronic, physical or obstruction interference with, or degradation of, the communications signals to or from the Communications Facility or Carrier’s Network Equipment.

ARTICLE 10 VENUE AGREEMENT

Section 10.1 Venue Agreement. A redacted copy of the fully executed Venue Agreement is attached as Exhibit A. This Agreement, and Carrier’s rights hereunder, shall be subject and subordinate to all of the terms and conditions of the Venue Agreement.

Section 10.2 Compliance with Venue Agreement. Carrier and Mobilitie each covenants that it shall not knowingly commit or cause any act or omission which would result in a default or breach by Mobilitie of any of the terms of the Venue Agreement. In the event of a default of the Venue Agreement by Mobilitie, Mobilitie agrees that it shall cure such default pursuant to the terms and conditions of the Venue Agreement provided, however, that if a default under the Venue Agreement by Mobilitie is caused by a default by Carrier under this Agreement, Carrier agrees that it shall cure such default pursuant to the terms and conditions of this Agreement, but within the timeframes required by the Venue Agreement.

Section 10.3 No Termination of Venue Agreement. Except as otherwise expressly permitted in this Agreement, Mobilitie shall not voluntarily terminate or otherwise exercise any right of termination that Mobilitie may have under the Venue Agreement without Carrier’s prior written consent which consent shall not be unreasonably withheld, conditioned or delayed.

Section 10.4 Enforcement of Venue Agreement. Mobilitie hereby grants to Carrier the right to receive all of the services and benefits with respect to the Network which are to be provided by the Lessor to Mobilitie under the Venue Agreement. Mobilitie shall have no duty to perform any obligations of the Lessor which the Lessor is required to provide under the Venue Agreement. Notwithstanding the foregoing, in the event of default by the Lessor, Mobilitie shall take appropriate legal action to enforce the Venue Agreement upon notice from Carrier and Mobilitie shall use diligent and good faith efforts to prosecute the enforcement of the Venue Agreement in a prompt and timely manner.

Section 10.5 Consent of Lessor. Mobilitie and Carrier acknowledge and agree that, to the extent this Agreement and/or the terms and conditions thereof, are subject to the written approval of Lessor pursuant to the Venue Agreement, this Agreement and that the validity, enforceability and effectiveness of this Agreement shall be contingent upon the receipt of such Lessor approval.

ARTICLE 11 TERMINATION

This Agreement shall not be terminated prior to its expiration as provided for in Section 2.1 above, except (a) by mutual written consent of the Parties, (b) by a termination of the Venue Agreement by the Lessor, (c) by a termination of the Venue Agreement by Mobilitie with the prior written consent of Carrier, (d) if (i) any of Carrier’s applications for governmental approvals should be finally rejected, is deemed by Carrier to be unreasonably conditioned, or cannot be obtained in a timely manner; or (ii) any governmental approval issued to Carrier is canceled, expires, lapses, or is otherwise withdrawn or terminated by a governmental authority and, after Carrier employs its best efforts, a new government approval cannot be obtained, (e) by Mobilitie for an uncured Lessor default under the Venue Agreement, (f) by Mobilitie in the event Mobilitie is unable

to obtain any Network Approvals, (g) by a termination pursuant to Article 12 below, or (h) pursuant to a termination of this Agreement resulting from an uncured default as provided for in Article 13 below.

ARTICLE 12 CASUALTY OR CONDEMNATION

Section 12.1 Casualty.

- (a) *The Network.* If there is a casualty to the Network, upon notification, Mobilitie shall, subject to receipt of insurance proceeds, be obligated to repair or restore the Network as provided herein. Mobilitie shall have (i) one hundred twenty (120) days from the later to occur of (a) the date of damage, if the damage is less than total destruction of the Network and (b) the date Mobilitie is allowed to repair the Network under the Venue Agreement following such casualty, in which to make repairs, and (ii) one hundred eighty (180) days from the later to occur of (a) the date of destruction, if the Network is destroyed, and (b) the date Mobilitie is allowed to replace the Network under the Venue Agreement following such casualty, in which to replace the destroyed portion of the Network; provided, however, in no event shall Mobilitie have any obligation to repair or restore Carrier's Network Equipment. Failure by Mobilitie to repair damage to the Network within the applicable time periods described above, as such time periods may be extended due to Force Majeure Events, shall be deemed an Event of Default pursuant to Section 13.3 below. Carrier's obligation to make Base Fee and Additional Fee payments shall be abated in proportion to the extent that Carrier's Network Equipment is not usable by Carrier for the uses permitted by this Agreement from the day of the casualty until the first day of the first month after Mobilitie has substantially completed repairs or replacement of the Network reasonably necessary for Carrier to resume operation of Carrier's Network Equipment. In no event however, shall Carrier's obligation to make Base Fee or Additional Fee payments be abated if the casualty is a result of the acts or omission of Carrier, its contractors, vendors or agents.
- (b) *Temporary Facilities.* In the event that Carrier is unable to use the Network temporarily by reason of casualty, Carrier may, at its sole option and expense, and without paying any additional Base Fee or Additional Fee payments by reason of such use, utilize either Mobilitie's temporary network facilities within the Premises or Carrier's own temporary facility during such period of loss of use (i) to the extent permitted under the Venue Agreement, (ii) to the extent that space is reasonably available at the Property and approved by the Landor for such use; and (iii) to the extent that the use of such temporary facility does not create any unreasonable interference with the operations of any Third Party Licensee that did not exist prior to such casualty, or with the restoration of the Network.

Section 12.2 Condemnation. In the event Mobilitie receives notification of any condemnation proceedings affecting the Premises, Mobilitie will provide reasonable notice of the proceedings to Carrier. If there is a final and non-appealable condemnation of the entire Network, then this Agreement shall terminate upon transfer of title to the condemning authority, without further action by, or liability to, either Party under this Agreement. There shall be no reduction of Base Fee or Additional Fee for a condemnation until the earlier of (i) the date that the Network is no longer

operational or (ii) transfer of title to the condemning authority at which time the obligation to pay

Base Fee or Additional Fee for the Network shall terminate. All condemnation proceeds attributable to the Network and the value of the rights created by this Agreement shall belong solely to Mobilitie. Carrier shall be entitled to and shall receive and retain that part of (and may on its own behalf make a claim for) any condemnation award involving the Network for losses related to the Carrier's Network Equipment, its relocation costs and its damages and losses (but not for the loss of its interest under this Agreement). If, as a result of a partial condemnation of the Network, Carrier, in Carrier's sole discretion, is unable to use the Carrier's Network Space for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Carrier's operations at the Network for more than forty-five (45) days, Carrier may, at Carrier's option, to be exercised in writing within thirty (30) days after Mobilitie shall have given Carrier written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession), terminate this Agreement as of the date the condemning authority takes such possession.

ARTICLE 13 DEFAULT AND REMEDIES

Section 13.1 Carrier's Default. The occurrence of any one or more of the following events constitutes an "**Event of Default**" by Carrier under this Agreement:

- (a) If Carrier fails with respect to the Network to pay any Base Fee or Additional Fee due and payable by Carrier within fifteen (15) business days of Carrier's receipt of Mobilitie's written notice that any such payment is late.
- (b) If Carrier fails to perform or observe any other term this Agreement, and such failure continues for more than thirty (30) days after Carrier's receipt of written notice from Mobilitie, except such thirty (30) day cure period shall be extended as reasonably necessary to permit Carrier to complete any cure so long as the nature of such cure is that it reasonably requires more than thirty (30) days and Carrier commences such cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure; or
- (c) Any proceeding, case or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, or an assignment for the benefit of creditors is instituted against Carrier, and is not withdrawn or dismissed within ninety (90) days.

Section 13.2 Mobilitie's Remedies. If an Event of Default occurs by Carrier, Mobilitie (without notice or demand except as expressly required above) may at its option, exercise any one or more of the following remedies:

- (a) Terminate this Agreement; and/or
- (b) Incur reasonable expenses necessary to perform the obligation of Carrier specified in such notice and not yet performed, and invoice Carrier for the actual expenses which must be paid by Carrier within thirty (30) days of receipt of the invoice; and/or
- (c) Exercise any rights and remedies available to Mobilitie at law or in equity, including injunctive relief.

Upon an Event of Default by Carrier resulting in a termination of this Agreement, Carrier will become liable for damages equal to the total of:

- (i) Mobilitie's actual and reasonable costs of recovering the Carrier's Network Space including, but not limited to, the removal of Carrier's Network Equipment, the repair of any damage to the Property caused by the installation and removal of Carrier's Network Equipment, and reasonable attorneys' fees;
- (ii) Any unpaid Base Fee and Additional Fee accrued as of the date of the Event of Default, plus interest thereon at the Applicable Interest Rate from the date due until paid; and
- (iii) A payment equal to the sum of the Base Fee and other payments and benefits that Mobilitie would have received under this Agreement for the remainder of the then current term.

Section 13.3 Mobilitie's Default. The occurrence of any one or more of the following events constitutes an "**Event of Default**" by Mobilitie under this Agreement:

- (a) A default by Mobilitie under this Agreement that is not cured within thirty (30) days of Mobilitie's receipt of Carrier's written notice of default from Carrier, except such thirty (30) day cure period shall be extended as reasonably necessary to permit Mobilitie to complete any non-monetary cure so long as the nature of such cure is that it reasonably requires more than thirty (30) days and Mobilitie commences such cure within such thirty (30) day period and thereafter continuously and diligently pursues and completes such cure; or
- (b) Any proceeding, case or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, or an assignment for the benefit of creditors is instituted against Mobilitie or Carrier, and is not withdrawn or dismissed within ninety (90) days.

Section 13.4 Carrier's Remedies Upon Mobilitie's Default. If an Event of Default occurs by Mobilitie, Carrier may, at Carrier's option, exercise any one or more of the following options:

- (a) Terminate this Agreement; and/or
- (b) Incur reasonable expenses necessary to perform the obligation of Mobilitie specified in such notice and not yet performed and invoice Mobilitie for the actual expenses, which must be paid by Mobilitie within thirty (30) days of receipt of the invoice and reasonable supporting documentation as may be requested by Mobilitie; and/or
- (c) Exercise any rights and remedies available to Carrier at law or in equity, including injunctive relief.

Section 13.5 Survival. The provisions of this Article 13 shall survive the termination or expiration of this Agreement.

ARTICLE 14 INSURANCE

Section 14.1 Carrier's Insurance. During the Network Term, Carrier shall, at Carrier's sole expense, obtain and keep in force, the following insurance:

- (a) "All Risk" property insurance, including coverage for fire, extended coverage, vandalism and malicious mischief in an amount of one hundred percent (100%) of the full replacement cost of Carrier's Network Equipment;
- (b) Commercial General Liability insuring operations hazard, independent contractor, contractual liability, and products and completed operations liability, in limits of \$3,000,000 per occurrence and \$3,000,000 aggregate for bodily injury(including death), and damage or destruction to property, including naming Mobilitie as an additional insured as its interest may appear under this Agreement;
- (c) Workers' Compensation as required by statute and Employer's Liability with limits of \$500,000; and
- (d) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a limit of \$3,000,000 each accident.

Section 14.2 Mobilitie's Insurance. During the Network Term, Mobilitie shall, obtain and keep in force, not less than the following insurance:

- (a) Property insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon the Network in an amount not less than ninety percent (90%) of the full replacement cost of the Network;
- (b) Commercial general liability insuring operations hazard, independent contractor hazard, contractual liability, and products and completed operations liability, in limits not less than \$3,000,000 per occurrence; \$3,000,000 aggregate for bodily injury, personal injury and property damage liability, naming Carrier as an additional insured;
- (c) Workers' Compensation as required by statute and Employer's Liability with minimum limits of \$500,000;
- (d) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$3,000,000 per accident;
- (e) Umbrella policy providing excess limits over the primary policies in an amount not less than \$5,000,000; and
- (f) Such insurance as is required to be carried under the Venue Agreement.

Section 14.3 Additional Insureds and Primary Coverage. Each Party under this Agreement shall include the other Party as an additional insured as their interest may appear under this Agreement on the Party's Commercial General Liability policies relating to the Network, and the

Lessor shall also be included as an additional insured as its interest may appear under this Agreement. All of Carrier's insurance coverage provided shall be endorsed as primary coverage as it relates to Carrier's operations.

Section 14.4 Insurance Qualifications and Certificates of Insurance. Each required insurance policy shall be obtained from reputable national insurers that are licensed to do business in the jurisdiction where the Network is located. Within thirty (30) days following the full execution of this Agreement, Carrier shall provide Mobilitie with a certificate of insurance ("**COI**") evidencing the coverage required by this Article 14 in order for Mobilitie to review the coverage required by this Article 14. All policies required under this Article 14 shall be written by an insurer with an AM Best Rating of no less than A-VII.

Section 14.5 Compliance with Insurance Provisions. Except as expressly permitted in this Agreement, Carrier shall not do or permit to be done in or about the Network, nor bring or keep or permit to be brought to the Network, anything that is reasonably prohibited by any insurance policy carried by Mobilitie or the Lessor covering the Network, any improvements thereon, or the Premises.

Section 14.6 Waiver of Subrogation. Mobilitie and Carrier each mutually release each other and their successors and assigns from liability and waive all right of recovery against the other for any loss or damage covered by its own property insurance policy or policies actually carried or required to be carried under this Agreement, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties or either of them and in the event of such loss, it is agreed that neither Party's insurance company shall have a subrogation claim against the other. Each Party shall obtain special endorsements required by its insurer to allow such waiver of rights of subrogation, but the failure to obtain same shall not impair the effectiveness of this waiver and/or release between the Parties.

ARTICLE 15 LIMITATION OF LIABILITY AND INDEMNIFICATION

Section 15.1 Limited Liability. Except in the event of fraud or criminal misrepresentation, in no event shall any member, shareholder, partner, officer, director or employee of either Party, its Affiliates or any other person or entity be held to have any personal liability for satisfaction of any claims or judgments that one Party may have against the other Party hereunder.

Section 15.2 Indemnification by Carrier. Carrier agrees to indemnify, defend and hold Lessor, Mobilitie and Mobilitie's Affiliates, members, shareholders, directors, officers, employees, contractors, subcontractors, independent contractors, and agents (collectively, "**Mobilitie Indemnitees**") harmless from and against any and all liabilities, damages, losses, costs, expenses (including without limitation reasonable attorneys' fees, consultant and expert fees, and court costs), suits, obligations, claims, demands or causes of action (collectively, "**Liabilities**") to the extent arising out of or in connection with (a) any breach by Carrier of this Agreement or any act or omission by Carrier that causes Mobilitie to be in breach of the Venue Agreement; and/or (b) the negligence (whether active or passive) or willful misconduct or act or omission of Carrier or Carrier's independent contractors, subcontractors, agents, and representatives with respect to Carrier's obligations, use, activities or operations at the Network or the Property, except to the extent attributable to the negligent or intentional act or omission of the Mobilitie Indemnitees. Carrier shall not be liable for (and Mobilitie shall make no claim against Carrier) for any property damage or bodily injury that may be sustained by Mobilitie or by any other person to the extent resulting from the carelessness, negligence, willful misconduct or improper conduct, act or

omission on the part of a Third Party Licensee(s)' agents, employees, guests, licensees or invitees.

Section 15.3 Indemnification by Mobilitie. Mobilitie agrees to defend, indemnify and hold Carrier and its Affiliates, members, shareholders, directors, officers, employees, contractors, and agents (collectively, "**Carrier Indemnitees**") harmless from and against any and all Liabilities (as defined in Section 15.2 above), to the extent arising out of or in connection with (a) any breach by Mobilitie of this Agreement or the Venue Agreement; and/or (b) the negligence or willful misconduct or act or omission of Mobilitie or Mobilitie's agents, and representatives with respect to Mobilitie's obligations, use or operations at the Network, except to the extent attributable to the negligent or intentional act or omission of Carrier Indemnitees. Mobilitie shall not be liable for (and Carrier shall make no claim against Mobilitie) any property damage or bodily injury that may be sustained by Carrier or by any other person resulting from the carelessness, negligence, willful misconduct or improper conduct, act or omission on the part of a Third Party Licensee's agents, employees, guests, licensees or invitees.

Section 15.4 Waiver of Incidental and Consequential Damages. NEITHER PARTY SHALL ASSERT ANY CLAIM WHATSOEVER AGAINST THE OTHER FOR LOSS OF ANTICIPATORY PROFITS OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCURRED AS A RESULT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN, WHETHER DUE TO THE OTHER PARTY'S NEGLIGENCE OR OTHERWISE. FOR THE AVOIDANCE OF DOUBT, THE DAMAGES PAID BY AN INDEMNIFIED PARTY TO A THIRD PARTY ARISING OUT OF SUCH THIRD PARTY'S CLAIM (FOR WHICH THE INDEMNIFYING PARTY IS OBLIGATED TO INDEMNIFY THE INDEMNIFIED PARTY UNDER THIS AGREEMENT) SHALL BE DEEMED ACTUAL, DIRECT DAMAGES FOR PURPOSES OF THIS SECTION 15.4.

Section 15.5 Survival. The provisions of this Article 15 shall survive the termination or expiration of this Agreement.

ARTICLE 16 ASSIGNMENT AND SUBLEASING

Section 16.1 Assignment by Carrier. This Agreement may not be sold, assigned or transferred, in whole or in part, by Carrier without prior written approval or consent of Mobilitie, such consent not to be unreasonably withheld, conditioned or delayed. It is understood that any assignment or transfer shall not relieve Carrier of its obligations for performance of this Agreement. Any assignment or transfer in violation of this provision shall be void and shall constitute an Event of Default by Carrier under this Agreement. Notwithstanding the foregoing to the contrary, this Agreement may be sold, assigned or transferred by Carrier, with notice to Mobilitie, to Carrier's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Carrier's assets in the market defined by the FCC in which the Network is located by reason of a merger, acquisition or other business reorganization so long as the Party to which they are sold, the assignee or the transferee agrees in writing to be bound hereby. With respect to such assignment, Carrier shall provide prompt written notice to Mobilitie of such assignment. No change of stock ownership, partnership interest or control of Carrier or transfer upon partnership or corporate dissolution of Carrier shall constitute an assignment hereunder.

Section 16.2 Subleasing/Sublicensing. Carrier may not sublease or sublicense its interest in this Agreement or the Network without Mobilitie's prior written consent, which such consent may be withheld at Mobilitie's sole discretion.

Section 16.3 Assignment by Mobilitie. Mobilitie may assign, transfer or sell this Agreement, and its interest in the Network, in whole or in part, at any time and from time to time at its sole discretion upon written notice to Carrier of any such assignment, transfer or sale.

Section 16.4 Successor and Assigns. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and thereto and their respective successors and assigns.

ARTICLE 17 ENVIRONMENTAL MATTERS

Section 17.1 Environmental Compliance. Mobilitie and Carrier agree that each will be responsible for compliance with any and all Environmental Laws that are related to their respective activities on the Property and Premises.

Section 17.2 Indemnification for Environmental Matters. Mobilitie and Carrier agree to indemnify, defend and hold harmless the other, its members, shareholders, directors, officers, managers, agents, employees, and contractors, and to assume all duties, responsibilities and liabilities, at the indemnifying party's sole cost and expense, for payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citations, directive, litigation, investigation or proceeding, which is related to the indemnifying party's failure to comply with any Environmental Laws, or any environmental, industrial hygiene or occupational safety conditions that arise out of or are in any way related to any activities conducted by the indemnifying party on the Property or Premises, except to the extent due to or caused by the party to be indemnified, its members, shareholders, directors, officers, managers, agents, employees, or contractors.

Section 17.3 Survival. The provisions of this Article 17 shall survive the termination or expiration of this Agreement.

ARTICLE 18 SUBORDINATION AND ATTORNMENT

Section 18.1 Subordination. Carrier's rights under to this Agreement are and shall remain subject and subordinate to the operation and effect of: (i) the Venue Agreement; and, (ii) any mortgage, deed of trust or other security instrument constituting a lien upon any portion of the Premises; any such lease, mortgage, deed of trust or other security instrument being referred to herein as a "**mortgage**," and the Party or parties having the benefit of the same, whether as lessor, mortgagee, trustee or noteholder, being referred to herein as a "**mortgagee**." Carrier shall execute such further assurances thereof as shall be required or as may reasonably be requested from time-to-time by Mobilitie or a mortgagee within thirty (30) days of Carrier's receipt of any such written request.

Section 18.2 Attornment. If any person shall succeed to all or part of Mobilitie's interest in the Premises, or any portion thereof, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or license, or otherwise, and if so requested or required by such successor-in-interest, Carrier shall attorn to such successor-in-interest and shall execute an agreement in confirmation of the attornment as the successor-in-interest shall reasonably request within thirty (30) days after Carrier's receipt of any such written request, provided, that as long as Carrier is not in default (after notice and opportunity to cure) under this Agreement, Carrier's rights hereunder shall not be terminated and the peaceable possession of Carrier shall not be disturbed in the event any mortgagee succeeds to Mobilitie's interest in the Premises.

ARTICLE 19 MISCELLANEOUS TERMS

Section 19.1 No Liens. Each Party shall keep the Property free and clear of all mechanic's and materialmen's liens and claims ("**Liens**") arising out of or related to the performance of any work procured by that Party at the Property pursuant to this Agreement, including without limitation, all Liens of any contractor, subcontractor, or other person providing labor or materials to the procuring Party. In the event any Lien is recorded against any portion of the Property, the procuring Party shall, within thirty (30) days after its receipt of notice that a Lien has been recorded, either (a) have such Lien released of record, or (b) obtain and deliver to the other Party a bond, in form, content and amount, and issued by a surety, reasonably satisfactory to the other Party, indemnifying that Party against all liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees, expert and consultant fees, and court costs) relating thereto. The procuring Party agrees to indemnify, defend and hold the other Party and its Affiliates, members, shareholders, directors, officers, employees, and agents harmless from and against any and all liabilities, damages, losses, costs, expenses (including without limitation, reasonable attorneys' fees, expert and consultant fees, and costs), suits, obligations, claims, demands or causes of action, to the extent arising out of or in connection with any Lien recorded against any portion of the Network. The indemnities set forth in this Section 19.1 shall survive the expiration or earlier termination of this Agreement.

Section 19.2 Notices. All notices, demands and other communications among the Parties shall be in writing and shall be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight commercial courier, postage prepaid, which notices shall be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the Parties as follows:

Notices to Mobilitie shall be addressed as follows:

Mobilitie
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Attn: Vice President – Network Operations

Notices to Carrier shall be addressed as follows:

The Parties shall have the right from time to time to change their respective address for notices by providing the other Party thirty (30) days prior written notice in the manner set forth above.

Section 19.3 Construction of Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located without regard to conflicts of law. This Agreement, together with the attached schedules and exhibits embodies the entire agreement and understanding between Mobilitie and Carrier with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings between Mobilitie, or its Affiliates, and Carrier, oral or written, relative to the subject matter of this Agreement.

Section 19.4 Waivers; Modifications. This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of each Party. No waiver of any

provisions of this Agreement shall be effective against a Party hereto unless it is set forth in a writing signed by such Party. No waiver of any breach of any provision of this Agreement shall be deemed a waiver of any other breach of the same provision or of any other provision hereof, unless expressly so stated in the writing setting forth such waiver.

Section 19.5 Interpretation. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. Whenever the context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine or neuter gender. As used herein, the term "business days" means any calendar days other than Saturday, Sunday, any federal legal holiday, or any day on which banks in the State of California are required by law to be closed.

Section 19.6 Intentionally Omitted.

Section 19.7 Confidentiality. Unless the Parties specifically and expressly otherwise agree in writing, each Party shall hold in strict confidence and not disclose any terms and conditions of this Agreement (collectively, the "**Transaction Information**"), except (i) as such disclosure may be required by any applicable statute, law, regulation, governmental authority or valid legal process, including, without limitation, court orders and governmental regulatory tax and reporting requirements; or (ii) as such disclosure may be necessary for a Party's lenders, financial partners, investors, accountants, attorneys, consultants or potential buyers or assignees and their lenders, financial partners, investors, accountants, attorneys or consultants, who specifically and expressly agree in writing to hold in strict confidence and not disclose any terms and conditions of this Agreement; or (iii) as necessary to record Mobilitie's interest in the Premises in the real property records in the county where the Property is located. Notwithstanding the foregoing, it shall not be a breach of this Agreement to disclose any of Transaction Information to the extent such information is already in the public domain. Notwithstanding anything to the contrary contained in this Section, Mobilitie has the right to provide a redacted copy of this Agreement to Lessor. In the event either Party is required by law to disclose any term of this Agreement, it shall notify the other Party and the parties shall cooperate to obtain (to the extent practicable) confidential treatment for the matters to be disclosed. The expense of such cooperation shall be borne by the Party seeking to obtain confidential treatment of the information. All written press releases or other written communications of any nature whatsoever relating to the transactions contemplated by this Agreement, and the method of the release for publication thereof, shall be subject to the mutual prior approval of Mobilitie and Carrier, which approval shall be in each Party's sole discretion, and such approval or rejection shall be made within five (5) business days of the receipt thereof or the communication shall be deemed disapproved. The provisions of this Section shall survive the expiration or termination of this Agreement.

Section 19.8 Venue; Attorney's Fees. The Parties agree that the state and federal courts located in the County of Orange, State of California, shall be deemed a court of competent jurisdiction and hereby waive any claim that such courts are an inconvenient forum or an improper forum based upon lack of jurisdiction or venue. The prevailing Party in any litigation shall be entitled to reasonable attorney's fees, costs and expenses in addition to any other relief to which such prevailing Party may be entitled.

Section 19.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.10 Relationship of Parties. The Parties agree to reasonably cooperate with each other in the performance of this Agreement. Mobilitie and Carrier, in the performance of this Agreement, shall be acting in their individual capacities and not as employees, partners, joint ventures, agents or associates of one another. In the performance of this Agreement, Carrier is, and shall at all times be, an independent contractor. Nothing contained in this Agreement creates the relationship of a joint venture, partnership, association or agency between the Parties. No Party shall have any authority to bind or otherwise obligate the other. Persons retained by either Party as employees or agents shall not be deemed to be employees or agents of the other Party. Each Party shall operate an independent business and each Party agrees to be responsible for its respective federal and state and local taxes, withholding, social security, insurance, and other benefits.

Section 19.11 Representation and Warranties Regarding the Network. Carrier understands and agrees that, except as expressly provided herein, Mobilitie and its Affiliates disclaim and make no, warranty representation, warranty, guarantee or any other covenant of any kind, including any implied warranty of merchantability or fitness for a particular purpose or use, with respect to the condition of the Network or any portion thereof, and Carrier accepts the Network and the rights conveyed to Carrier under this Agreement on a "WHERE IS, AS IS" basis. Carrier has conducted or will conduct such inspections, investigations, and other independent examinations of the Property and Network as Carrier deems necessary including but not limited the physical and environmental conditions thereof and shall rely upon same and not upon any statements of Mobilitie, its Affiliates, nor of any officer, member, director, employee, contractor, agent or attorney of Mobilitie or documents provided to Mobilitie by Carrier or any Third Party Licensee.

Section 19.12 Representations and Warranties of Carrier. Carrier represents and warrants to Mobilitie that:

- (a) *Corporate Status; Qualification.* It has been duly formed and is validly existing and in good standing under the laws of its formation jurisdiction. It is duly qualified to do business under the laws of California.
- (b) *Authority; Binding Obligation; Authorized.* It has all necessary power and authority to enter into this Agreement and to perform the obligations to be performed by it hereunder. This Agreement constitutes a valid and legally binding obligation of the signing Party and is enforceable against it in accordance with its terms and this Agreement and the consummation hereof have been duly authorized and approved by Carrier by all requisite company action.
- (c) *No Breach.* The execution, delivery, and performance of this Agreement and by Carrier shall not (i) conflict with any provision of the articles of incorporation or by-laws or organizational documents of Carrier; (ii) violate, conflict with, or result in the breach of any of the terms of, result in a material modification of the effect of, otherwise give any other contracting Party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under, any material contract or other agreement to which it is a Party or by or to which it or any of its assets or properties may be bound or subject; or (iii) conflict with or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Carrier.

Section 19.13 Representations and Warranties of Mobilitie. Mobilitie represents and warrants to Carrier that:

- (a) *Status; Qualification.* It has been duly formed and is validly existing and in good standing under the laws of its formation jurisdiction. It is duly qualified to do business under the laws of California.
- (b) *Authority; Binding Obligation; Authorized.* It has good and sufficient title to and/or interest in the Property and the right to receive fee payments and other benefits hereunder. It has all necessary power and authority to enter into this Agreement, as the case may be and to perform the obligations to be performed by it hereunder. This Agreement constitutes a valid and legally binding obligation of such signing Party and is enforceable against Mobilitie in accordance with its terms, and this Agreement and the consummation hereof have been duly authorized and approved by Mobilitie by all requisite company actions.
- (c) *No Breach.* The execution, delivery, and performance of this Agreement by Mobilitie shall not (i) conflict with any provision of the certificate of formation or operating agreement of such Party; (ii) violate, conflict with, or result in the breach of any of the terms of, result in a material modification of the effect of, otherwise give any other contracting Party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under, any material contract or other agreement to which such Party is a Party or by or to which it or any of its assets or properties may be bound or subject; or (iii) conflict with or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Mobilitie.

Section 19.14 Attorneys' Fees. In the event of any action between Mobilitie and Carrier seeking enforcement of any of the terms and conditions under the SLA, or otherwise in connection with the Site, the prevailing party in such action, whether by fixed judgment or settlement, shall be entitled to recover, in addition to damages, injunctive or other relief, its costs and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expert witness fees.

Section 19.15 Force Majeure Events. Neither party shall be liable for failure to perform its obligations under this Agreement due to a Force Majeure Event.

ARTICLE 20 DEFINITIONS

Section 20.1 Definitions. The following terms as used in this Agreement shall have their respective meanings indicated below:

- (a) **"Affiliate"** means any entity which the Party in question (or an Affiliate of the Party in question) directly or indirectly controls, is controlled by, or is under common control with the Party. The term **"control"** (including the correlative terms **"controlling," "controlled by"** and **"under common control with"**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.
- (b) **"Approved Plans and Specifications"** shall mean and refer to those certain preliminary plans and specifications identified on Exhibit E attached hereto, which preliminary plans and specifications shall be replaced with **"as-built"** plans following the completion of the Construction Work.

- (c) **"Carrier's Approvals"** means any and all permits and approvals, including, but not limited to, building and FAA permits, zoning approvals, any approvals required by the District, and FCC approvals (if any), required by the applicable governmental authorities having jurisdiction in such matters required to be obtained for the installation, operation, maintenance and use of Carrier's Network Equipment at the Network.
- (d) **"Carrier's Network Equipment"** means its communications facility and associated equipment including, but not limited to BTS (radios), GPS antennas, CCI DAS interface trays and all required RF cabling and connections to the Network, installed within the Carrier's Network Space and/or connecting to the Network in Carrier's reasonable determination, subject to Mobilitie's prior written approval, not to be unreasonably withheld, conditioned or delayed and Lessor's prior written approval to the extent required. *[Update if DRAN Network.]*
- (e) **"Carrier's Network Space"** means that portion of the Premises reserved for the exclusive use of Carrier as more specifically described in, and/or depicted on, Exhibit F attached hereto.
- (f) **"Completion," "Complete" or "Completed"** means, with respect to the Network: (i) the receipt of all FAA and zoning approvals and other approvals in accordance in all material respects with all applicable Laws, (ii) the Network is ready in all material respects for the installation of Carrier's Network Equipment; (iii) receipt of a certificate of occupancy or any other final governmental approval allowing communications operations to commence at the Network, from the applicable governmental authority; (iv) compliance with all applicable covenants, conditions and restrictions affecting the Network, and (v) the issuance of a Notice of Construction Complete/Acceptance in the form of Exhibit C attached hereto.
- (g) **"Construction Work"** means taking all actions necessary (provided directly or through third parties) to complete the construction of the Network in substantial compliance with the Approved Plans and Specifications, in compliance with all applicable Laws, paying all costs associated therewith, and including but not limited to the following actions: (i) updating the geotechnical exploration report which provides information about the Network, and its subsurface conditions, and provides general foundation recommendations for the proposed Network, as necessary; (ii) updating the network design for the Network to be stamped by a professional engineer, as necessary; (iii) providing construction inspection and materials testing services during construction of the Network; (iv) providing field testing and laboratory reports of documented electrical resistance to ground for use by the electrical engineer in designing the electrical grounding system; (v) updating all necessary construction plans and drawings, as necessary; (vi) providing field inspection services; (vii) providing all additional design and construction services necessary for the construction of the Network, utilities and access to the Network; (viii) updating the structural analysis certified by a professional engineer documenting compliance with this Agreement, as necessary; and (ix) providing **"as-built"** drawings stamped and signed by a licensed engineer.
- (h) **"Environmental Laws"** means any and all applicable environmental, industrial hygiene and occupational safety laws, including any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing

standards of liability or standards of conduct with regard to any environmental,

industrial hygiene or occupational safety condition or other matters as may now or at any time hereafter be in effect, each as amended and each as now or hereafter in effect.

- (i) **"FAA"** means the United States Federal Aviation Administration or any successor organization.
- (j) **"Force Majeure Event"** means natural disasters, acts of God, actions, inactions or decrees of governmental bodies, shortages or delays in delivery of labor or materials, strike or labor unrest, acts of terrorism, or any other event or occurrence which is beyond the reasonable control of a Party and delays or renders the performance by such Party impossible.
- (k) **"Laws"** means all federal, state and local laws, rules, regulations and ordinances.
- (l) **"License Year"** means each consecutive twelve (12) month period during the term of this Agreement, with the first such twelve (12) month period commencing on the Base Fee Commencement Date.
- (m) **"Network"** means a neutral open platform cellular/wireless communications system that will be designed, built, installed, owned, operated and maintained by Mobilitie, and that will provide cellular/wireless coverage as provided for in the Approved Plans and Specifications identified on Exhibit E attached hereto. *[Definition to be updated if Network is a DRAN.]* The Network does not include the Carrier's Network Equipment.
- (n) **"Network Acceptance Date"** shall have the meaning set forth in Exhibit G to this Agreement.
- (o) **"Network Acquisition Work"** means taking all of the following actions for the Network: (i) obtaining the legal right to use, locate, occupy and construct each and every component of the Network, (ii) obtaining any necessary utility and access easements and all necessary consents from Lessor and/or pursuant to the Venue Agreement, (iii) obtaining all FAA and FCC approvals, if any, needed to construct the Network, (iv) preparing all zoning drawings and obtaining all zoning approvals or designations, if any, necessary to construct and operate the Network, including participation in all hearings and meetings necessary to accomplish same, (v) performing all environmental due diligence as reasonably determined by Mobilitie, which may include obtaining National Environmental Policy Act ("**NEPA**") transaction screening of the Network location and a related report, a Phase I environmental site assessment, or any follow up tests that may be deemed reasonably necessary or recommended, (vi) as reasonably determined by Mobilitie, obtaining a title commitment or abstract for the Property and curing any title defects or objections pertaining to the location of the Network in the Property, (vii) as reasonably determined by Mobilitie, recording documents as required to evidence ownership, leasehold, easement or license rights in and to all real property necessary to construct the Network and ensure that the required terms are contained in each license/lease, (viii) preparing all documents and instruments necessary for the design and construction of the Network; and (ix) to the extent necessary, providing structural analysis certified by a professional engineer documenting compliance with this Agreement.

- (p) **"Network Approvals"** means (i) any and all permits and approvals, including, but not limited to, building and FAA permits, zoning approvals, and FCC approvals (if any), required by the applicable governmental authorities having jurisdiction in such matters required to be obtained for the construction and use of the Network; and (ii) any and all approvals required by Lessor, including but not limited to approval over the Premises' locations (i.e. location of head end, connections and antennas), Network plans and the Approved Plans and Specifications, and the consent of Lessor's landlord(s) under the Venue Agreement and/or installation of the Network.
- (q) **"Party"** shall mean Carrier or Mobilitie and **"Parties"** shall refer collectively to Carrier and Mobilitie.
- (r) **"Premises"** means the space leased by Mobilitie from Lessor as defined in the Venue Agreement.
- (s) **"Property"** refers to the location commonly known as _____, located at _____.
- (a) **"Prorata Share"** means the Carrier's or Third Party Licensee's, as applicable, share based upon the total number of users of the Network at any given time. For purposes of illustration only, if the Network is being used by Carrier and three (3) other Third Party Licensees, the Carrier's Prorata Share, and that of each other Third Party Licensee, would be twenty-five percent (25%).
- (b) **"Real Property Taxes"** means all real property taxes and assessments, if any, now or hereafter imposed upon the Premises. If, due to a change in the method of taxation or assessment, any franchise, income, profit or other tax, however designated, shall be substituted by the applicable taxing authority, in whole or in part, for the Real Property Taxes now or hereafter imposed on the Premises or Network, the improvements, or Covered Areas, such franchise, income, profit, or other tax shall be deemed to be included in the term **"Real Property Taxes."** Real Property Taxes shall not include any inheritance, estate, succession, transfer, gift, franchise, net income, capital stock tax, corporate, capital levy, stamp, or transfer tax (except to the extent that, as provided for above, such tax is substituted for and in lieu of Real Property Taxes now or hereafter imposed).
- (c) **"Third Party Licensee"** shall have the meaning set forth in Section 1.3 above.
- (d) **"Third Party Licensee Agreement"** means any agreement giving a third party the right to install, operate and maintain wireless communications equipment on the Network. Property

Terms may be defined above in either their singular or plural form, but may also be used in this Agreement in their other form not expressly defined above.

IN WITNESS WHEREOF, the Parties through their respective authorized representatives have caused this Agreement to be duly executed as of the Effective Date.

MOBILITIE:

CARRIER:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____