STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

STATE OF DELAWARE DEPARTMENT OF TRANSPORTATION

MASTER LIMITED USE AND OCCUPANCY AGREEMENT FOR SMALL WIRELESS FACILITIES

THIS AGREEMENT, executed this _____ day of _____, 20___, by and between _____ a Delaware corporation, with offices at _____, hereinafter referred to as "**WIRELESS PROVIDER**," and the **DEPARTMENT OF TRANSPORTATION**, a Department of the State of Delaware, hereinafter referred to as the "**DEPARTMENT**,"

WITNESSETH:

WHEREAS, the **WIRELESS PROVIDER** desires to construct and/or install **SMALL WIRELESS FACILITIES** and may desire to construct **SMALL WIRELESS SUPPORT STRUCTURES** to support such **SMALL WIRELESS FACILIIES**, as such terms are defined in ***17Del. C. §1603***, to be located at mutually agreeable locations approved by the **DEPARTMENT**. The term **SMALL WIRELESS FACILITY** as used herein shall include any **SMALL WIRELESS SUPPORT STRUCTURE** authorized hereunder by the **DEPARTMENT** to be installed by the **WIRELESS PROVIDER** in the roadway rights-of-way to support the **WIRELESS PROVIDER'S SMALL WIRELESS FACILITY**; and

WHEREAS, the **DEPARTMENT** has the authority to enter into this **AGREEMENT** pursuant to the provisions of ***17 Del. C. §132 (c) (9)***, as amended; and ***17 Del. C. §1607***, for the accommodation of wireless facilities in the right-of-way under terms that protect the safety of travelers on Delaware's roadways and minimize conflicts with the use of the rights-of-way for the primary purpose of transportation; and

WHEREAS, the location of said **SMALL WIRELESS FACILITIES** as described herein will not unreasonably interfere with the legal public uses of said rights-of-way, including but not limited to the roadway, shoulders, sidewalks, multi-use pathways, roadsides, drainage systems, stormwater management facilities, and public utilities; nor will they interfere with the future development of properties fronting the roadway or the ingress or egress to those properties, nor will they interfere with protected uses within the right-of-way preserved by duly recorded easements and environmental covenants.

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

1. Subject to the requirements herein, the **WIRELESS PROVIDER** is hereby granted an accommodation to locate, collocate, attach, construct, maintain, and continuously operate in a state of good repair and in compliance with applicable codes **SMALL WIRELESS FACILITIES** within the rights-of-way of the **STATE HIGHWAY** at mutually agreeable locations approved by the **DEPARTMENT** via the permitting process; and
2. Prior to installing any equipment at a particular location, **WIRELESS PROVIDER** shall file a permit application with the **DEPARTMENT** for review and approval. Upon approval, the permit shall function as supplement to this **AGREEMENT**.
3. No **SMALL WIRELESS FACILITY** shall be installed, constructed, or located in the right-of-way; or collocated or attached to any existing utility pole or **DEPARTMENT** pole by the **WIRELESS PROVIDER** without first obtaining permit approval from the **DEPARTMENT**. If unauthorized **SMALL WIRELESS FACILITIES** are found, the **DEPARTMENT** shall submit written notice to the **WIRELESS PROVIDER** allowing sixty (60) days for response. Should the **WIRELESS PROVIDER** not respond within the sixty (60) days, the **DEPARTMENT** may, without prejudice to its other rights or remedies under this **AGREEMENT**, or otherwise permitted by law, remove the **SMALL WIRELESS FACILITIES**. All expenses associated with the removal of the **SMALL WIRELESS FACILITIES** shall be borne by the **WIRELESS PROVIDER**.
4. **WIRELESS PROVIDER** shall not submit an application (or applications) for more than five (5) new **SMALL WIRELESS FACILITIES** without first meeting with the **DEPARTMENT** to confirm selection of safe locations for placement within the right-of-way.

5. The **WIRELESS PROVIDER** shall submit permit applications in accordance with the **DEPARTMENT's** standard permit application processes in effect at the time of the submission.

6. The **WIRELESS PROVIDER** as part of its permit application shall provide documentation that its proposed installation will not interfere with existing installations of other authorized owners collocated on **DEPARTMENT** poles.

7. In the event multiple **SMALL WIRELESS FACILITY** applicants cannot be safely accommodated on the same **DEPARTMENT** pole, the first applicant to submit a complete and approvable permit application shall be granted the accommodation by the **DEPARTMENT**.

8. Nothing contained in this **AGREEMENT** shall be construed to compel the **DEPARTMENT** to maintain, rehabilitate, reconstruct, or retain any pole, conduit, or other facilities that are no longer needed for the **DEPARTMENT's** own service requirements. The **DEPARTMENT** shall notify the **SMALL WIRELESS PROVIDER** in accordance with the relocation provisions of this **AGREEMENT** prior to the planned removal of any **DEPARTMENT** pole.

9. **WIRELESS PROVIDER** proposed replacements of existing **DEPARTMENT** poles with **SMALL WIRELESS SUPPORT STRUCTURES** owned, operated, and maintained by the **WIRELESS PROVIDER** shall maintain the original function of the **DEPARMENT** pole unless otherwise agreed by the **DEPARTMENT** and so stipulated in the permit approval.

10. The installation of **SMALL WIRELESS FACILITIES** shall adhere to all applicable codes including applicable standards set forth in the Delaware Utilities Manual Regulations, the **DEPARTMENT's** Road Design Manual (RDM), and all standards, and policies related to; the safety of the traveling public, the provision of roadside safety for errant vehicles, and the implementation and preservation of an established (or effective) clear zone such as is defined in the latest edition of the **DEPARTMENT** Road Design Manual (RDM)). An installation that cannot be placed outside the effective clear zone shall be designed with breakaway characteristics as established by The American Association of State Highway Transportation Officials (AASHTO) Manual for Assessing Safety Hardware (MASH) testing (or as established by The National Cooperative Highway Research Program (NCHRP) Report 350 testing), and as demonstrated by an accompanying Eligibility Letter, from the Federal Highway Administration (FHWA), confirming the crashworthiness and breakaway characteristics of the specific equipment and installation parameters that are intended to be used. (https://safety.fhwa.dot.gov/roadway_dept/countermeasures/reduce_crash_severity/). Non-

standard designs (i.e. those deviating from the specifics of an FHWA eligibility letter) shall be independently tested with requirements equivalent to or exceeding those of the **DEPARTMENT's** RDM, and Standard Specifications; and

11. If the holder of this **AGREEMENT** fails to comply with any of the conditions, restrictions or regulations prescribed by the **DEPARTMENT**, the **DEPARTMENT** will exercise all reasonable actions available at law or equity to gain compliance; and

12. Abandonment of the **SMALL WIRELESS FACILITY** for a period of six (6) months or more by the **WIRELESS PROVIDER** is grounds for termination of this **AGREEMENT** by the **DEPARTMENT**; and

13. After initial construction of the **SMALL WIRELESS FACILITY**, approval by the **DEPARTMENT**, and closeout of the construction permit, future maintenance of the **SMALL WIRELESS FACILITY** by the **WIRELESS PROVIDER** shall require a safety permit from the **DEPARTMENT** prior to commencing any activities that will impact the traveling public and require temporary traffic devices to be installed; and

14. Nothing in this **AGREEMENT** shall abridge the **DEPARTMENT's** primary role to protect the public safety, health and welfare including actions to control emergency situations including issuing stop work orders on active construction, or taking possession and removing from the right-of-way the **WIRELESS PROVIDER's SMALL WIRELESS FACILITY**, or other reasonable actions as such emergency conditions warrant. The costs to the **DEPARTMENT** for the removal of any **SMALL WIRELESS FACILITIES** due to immediate public safety concerns shall be borne exclusively by the **WIRELESS PROVIDER.** The **DEPARTMENT** will invoice the **WIRELESS PROVIDER** to recover its actual costs of removal and the **WIRELESS PROVIDER** shall pay within sixty (60) days of receipt of invoice from the **DEPARTMENT**; and

15. The **WIRELESS PROVIDER** shall indemnify and save harmless the State of Delaware and its agencies including, but not limited to, the **DEPARTMENT**, its officer, agents, employees, assigns, servants and the like from all suits, actions or claims of any character, whatsoever, brought because of any injuries or damage received or sustained by any persons or property on account of the work of the **WIRELESS PROVIDER**, its officers, agents, employees, assigns, independent contractors, or the like undertaken within the scope of this **AGREEMENT,** except that the **WIRELESS PROVIDER** shall have no obligation to indemnify the **DEPARTMENT** for any claims arising out of the **DEPARTMENT'S** sole negligence or willful misconduct; and

16. Should the **WIRELESS PROVIDER** choose to hire a contractor to complete the work, the **WIRELESS PROVIDER** shall cause to have its contractors indemnify and save harmless the State of Delaware and its agencies including, but not limited to, the **DEPARTMENT**, its officer, agents, employees, assigns, servants and the like from all suits, actions or claims of any character, whatsoever, brought because of any injuries or damage received or sustained by any persons or property on account of the work of the **WIRELESS PROVIDER's** contractor, its officers, agents, employees, assigns, independent contractors, or the like undertaken within the scope of this **AGREEMENT**; and

17. During installation, construction, and maintenance of said **SMALL WIRELESS FACILITIES**, the **WIRELESS PROVIDER** shall maintain traffic controls and operations and protect the safety of the traveling public on all adjacent roadways, pathways and sidewalks impacted or affected by the **WIRELESS PROVIDER's** work, operations, and maintenance. Placement of temporary traffic control devices shall adhere to the standards as set forth in the latest edition of the *Delaware Manual on Uniform Traffic Control Devices (DE MUTCD), Title 2, Section 2402 Delaware Administrative Code,* as established by ***17 Del. C. § 147***; and

18. When the construction of the **SMALL WIRELESS FACILITY** has been completed, all existing roadway, shoulder, roadside areas, drainage devices, guardrails, and all other facilities disturbed by construction shall be repaired at the **WIRELESS PROVIDER's** sole cost and expense to original condition to the satisfaction of the **DEPARTMENT**. Where current applicable codes prohibit repair or replacement to original condition, the **WIRELESS PROVIDER** shall affect repairs or replacement to current codes and standards at its sole cost and expense; and

19. The **WIRELESS PROVIDER** agrees to place and permanently maintain in place, a sign showing the current owner of the small wireless support structure, the current owner(s) of (or parties responsible for) the equipment attached to the structure at this location, and twenty-four (24) hour emergency contact information for all parties; with the sign being mounted parallel to the direction of traffic, legible from a location on the ground at the edge of the paved roadway or shoulder surface, and meeting the established minimum retro-reflectivity levels contained in the *DE MUTCD*. This sign shall be provided in addition to any signage required by other authorities having jurisdiction; and

20. The **WIRELESS PROVIDER's** twenty-four (24) hour emergency contact information is required to be kept current and posted on the **SMALL WIRELESS FACILITY** as listed below:

Name: _____

Phone: _____

Email: _____

Secondary Phone: _____

Secondary Email: _____; and

21. Nothing in this **AGREEMENT** shall relieve the **WIRELESS PROVIDER** from the responsibility for complying with all applicable laws, rules, and regulations or from the responsibility for the acquisition of permits and approvals from any and all regulatory bodies having jurisdiction; and

22. The **DEPARTMENT**, or its representative, shall have the authority to enter the area where the **SMALL WIRELESS FACILITY** is or will be placed at any time before, during, or after installation, to inspect the facilities for compliance with applicable codes, to determine potential interference with protected and preserved uses, legal public uses, or the ingress and egress to and from adjacent properties, or their development; and

23. Pursuant to ***17 Del. C. §1605***, the **WIRELESS PROVIDER** agrees to pay a $100.00 fee for each **SMALL WIRELESS FACILITY**, at the time of submitting a permit application, and to provide reimbursement to the **DEPARTMENT** for the actual, direct and reasonable costs incurred by the **DEPARTMENT**, for the inspection of new installations or construction where it exceeds the permit fee collected, as billed to the **WIRELESS PROVIDER** no less than quarterly for accumulated costs accrued to date; and

24. Pursuant to ***17 Del. C. §1608***, the **WIRELESS PROVIDER** shall be responsible for all relocation costs of **SMALL WIRELESS FACILITIES** accommodated in the rights of way of the **STATE HIGHWAYS** under this **AGREEMENT**, whenever such relocation is deemed necessary by the **DEPARTMENT** for any modification, enlargement, expansion or alteration of the transportation system, or for creating or modifying ingress and egress to adjacent properties or their development, or for reasons deemed in the public interest by the **DEPARTMENT**; and

25. The **WIRELESS PROVIDER** agrees to relocate its **SMALL WIRELESS FACILITY** and associated appurtenances to an alternative location agreed upon by the **DEPARTMENT** within

ninety (90) days of the **DEPARTMENT** issuing official notice due to: (i) construction, expansion, repair, rehabilitation, relocation, or maintenance of a right-of-way or other public improvement project; or (ii) maintenance, rehabilitation, upgrade, expansion, replacement, or relocation of **DEPARTMENT** infrastructure; or (iii) permanent closure of a right-of-way. The **DEPARTMENT** shall require relocation only if necessary. If **WIRELESS PROVIDER** fails to remove or relocate its equipment within ninety (90) days, the **DEPARTMENT** shall be entitled to undertake removal at **WIRELESS PROVIDER'S** expense. The Parties shall cooperate to the extent possible to assure continuity of service during any relocation. The **DEPARTMENT** shall use best efforts to provide a reasonably equivalent location that allows **WIRELESS PROVIDER** to meet substantially similar engineering objectives while adhering to applicable codes.

26. The **WIRELESS PROVIDER** shall respond to situations deemed by the **DEPARTMENT** to be an emergency as quickly as possible and shall have a response team present on-site within three (3) hours of being notified by the **DEPARTMENT** via the **WIRELESS PROVIDER's** emergency contact as posted on the **SMALL WIRELESS FACILITY**, with all personnel, equipment and materials necessary to remediate the situation and otherwise make it safe to first responders and the traveling public. To the extent that the **WIRELESS PROVIDER** is unable to cause a response team to be present on-site within such three (3) hour period, then the **DEPARTMENT** may take all reasonable action in connection with the **WIRELESS PROVIDER's SMALL WIRELESS FACILITY** necessary to remediate the situation and make it safe to first responders and the traveling public. In the event of non-response by the **WIRELESS PROVIDER**, the **DEPARTMENT**, at its sole discretion, has the right to bill for actual expenses incurred to keep the traveled way safe until such time that the **WIRELESS PROVIDER** resolves; and

27. Should the **DEPARTMENT** determine that a **SMALL WIRELESS FACILITY** interferes with the maintenance of **DEPARTMENT** owned equipment and facilities or maintenance or construction of other facilities and improvements deemed to be in the public interest by the **DEPARTMENT**, the **WIRELESS PROVIDER** shall de-energize, deactivate, or otherwise turn off the **SMALL WIRELESS FACILITY** within seventy-two (72) hours of being notified, until necessary work is complete and positive notice of completion is provided to the **WIRELESS PROVIDER.** To the extent that the **WIRELESS PROVIDER** is unable to de-energize, deactivate, or otherwise turn off the **SMALL WIRELESS FACILITY** within such seventy-two (72) hour period, then the **DEPARTMENT** may de-energize, deactivate, or otherwise turn off the

WIRELESS PROVIDER's SMALL WIRELESS FACILITY. In the event of non-response by the **WIRELESS PROVIDER**, the **DEPARTMENT**, at its sole discretion, has the right to bill for actual expenses incurred to keep workers and the traveling public safe and traveled way clear of obstructions until such time that the **WIRELESS PROVIDER** resolves; and

28. The **WIRELESS PROVIDER** shall make no other use of the right-of-way except as provided herein by this **AGREEMENT**; and

29. The **WIRELESS PROVIDER** agrees not to attach advertising in any form to the small wireless support structure or **SMALL WIRELESS FACILITY**, and understands and acknowledges that this **AGREEMENT** does not authorize the use of any portion of the **SMALL WIRELESS FACILITY** for outdoor advertising purposes; and

30. The **WIRELESS PROVIDER** shall be adequately insured with policies written to include Commercial General Liability coverage to protect against claims arising from the performance of the **WIRELESS PROVIDER** under this **AGREEMENT**, with requirements outlined below and to protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this **AGREEMENT. WIRELESS PROVIDER** shall require all contractors and subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required of **WIRELESS PROVIDER**

    a. Commercial General Liability – $1,000,000 per occurrence for bodily injury and property damage/$3,000,000 general aggregate including products/completed operations and
    b. Telecommunications, Media & Technology Errors and Omissions –$3,000,000 per claim and aggregate.

31. The **WIRELESS PROVIDER** acknowledges and accepts full responsibility for securing and maintaining all licenses and permits, including the Delaware business license, as applicable and required by law, to engage in business and provide the goods and/or services to be acquired under the terms of this **AGREEMENT**; and

32. The **WIRELESS PROVIDER** acknowledges and is aware that Delaware law provides for significant penalties associated with the conduct of business without the appropriate license; and

33. When duly executed, this **AGREEMENT** shall be binding upon the parties hereto and their successors and assigns; and

34. This **AGREEMENT** is non-assignable and non-transferable without the express written consent of the **DEPARTMENT**, which consent shall be promptly given and withheld only if a proposed assignee or transferee cannot reasonably demonstrate the financial, technical, organizational, and managerial resources needed to operate in the rights of way of the **STATE HIGHWAYS** at all times to protect the public health, safety and welfare; and

35. This **AGREEMENT** is valid for a period of ten (10) years from the effective date of the **AGREEMENT** (the "Term"). Unless either Party provides written notice to the other Party at least ninety (90) days prior to expiration of the Term that such Party will not renew the Term, the Term will automatically renew for three (3) consecutive five (5) year periods. After the expiration or earlier termination of this **AGREEMENT**, it shall apply to all permits entered hereunder until the expiration or termination of such Permits; and

36. Should the **WIRELESS PROVIDER** abandon the use of any **SMALL WIRELESS FACILITIES** authorized by this **AGREEMENT** or fail to renew this **AGREEMENT,** or if this **AGREEMENT** is otherwise terminated, the **WIRELESS PROVIDER** shall be required to remove the abandoned **SMALL WIRELESS FACILITY** or all **SMALL WIRELESS FACILITIES**, whichever is applicable, and associated appurtenances outlined herein within six (6) months of the date of termination of the **AGREEMENT**. The **WIRELESS PROVIDER** may terminate this **AGREEMENT** or any permit issued hereunder at any time for convenience by removing its **SMALL WIRELESS FACILITIES** and **WIRELESS SUPPORT STRUCTURE(S)** from the right-of-way, which the **WIRELESS PROVIDER** may do in its discretion upon a minimum of thirty (30) days written notice (provided to the DelDOT Utility Engineer) and subject to any applicable permitting requirements; and

37. The **DEPARTMENT** may revoke this **AGREEMENT** after sixty (60) days written notice to the **WIRELESS PROVIDER** of material non-compliance with this **AGREEMENT** and if the **WIRELESS PROVIDER** fails to cure such non-compliance within such sixty (60) day period, provided in the event such cure requires more than sixty (60) days to complete, this **AGREEMENT** shall remain valid so long as the **WIRELESS PROVIDER** promptly begins to effectuate such cure and diligently prosecutes such cure until completion. In the event of revocation of this **AGREEMENT**, the **DEPARTMENT** may take any action authorized by law, including but not limited to, removal of the assets or legal action to force the removal of the **WIRELESS PROVIDER's** assets with the **DEPARTMENT** bearing no cost for removal of the **SMALL WIRELESS FACILITY** and associated appurtenances. The cost shall be borne by the

WIRELESS PROVIDER, and this section is not to be construed as placing any limitation upon the **DEPARTMENT's** right to pursue any other legal or equitable remedy available to it for breach of conditions of this **AGREEMENT**; and

38. Any written notice under this **AGREEMENT** shall be directed to:

WIRELESS PROVIDER

Name:

Address:

Email:

COPY TO

Name:

Address:

Email:

DEPARTMENT

Department of Transportation
Attention: Utilities Engineer
P.O. Box 778
Dover, DE 19903; and

39. This **AGREEMENT** may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument, and that facsimile or pdf signatures shall be deemed original signatures; and

40. Each person executing this **AGREEMENT** in a representative capacity represents and warrants that he or she is empowered to do so; and

41. This **AGREEMENT** embodies and constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any prior oral or written agreements between the Parties with respect to the transaction contemplated hereby; and

42. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions herein set forth and that no modification of this

AGREEMENT and no waiver of any of its terms and/or conditions shall be effective unless made in writing and duly executed by the parties hereto; and

43. This **AGREEMENT** may not be altered, changed, or amended except by an instrument in writing, executed by the Parties; and

44. This **AGREEMENT** shall be governed and construed in accordance with the laws of the State of Delaware and the **WIRELESS PROVIDER** agrees to the jurisdiction and venue of a competent court within the State of Delaware.

********** *Signature pages follow* **********

FOR WIRELESS PROVIDER:

_____ Date: _____

Signature and Title

Sworn to and subscribed before me this _____ day of _____, 20____.

My commission expires: _____

Notary Public

FOR DEPARTMENT OF TRANSPORTATION

_____ Date: _____

Utilities Engineer

_____ Date: _____

Chief, Right-of-Way

Sworn to and subscribed before me this _____ day of _____, 20____.

My commission expires: _____

Notary Public