

Spectrum Management Services Agreement

THIS Spectrum Management Services Agreement (this "Agreement") is made and entered this [redacted] day of [redacted] 2021 ("Effective Date") by [redacted] (the "Licensee"), and Alaska Tribal Spectrum, an Alaska non profit corporation ("Lessee"). Lessee and Licensee may be referred to herein individually as "Party" and collectively as "Parties."

WHEREAS, Licensee holds an FCC license for 2.5 GHz spectrum as specified in Schedule A attached hereto ("Licenses");

WHEREAS, Lessee is a non-profit Tribal organization;

WHEREAS, Licensee has passed a Tribal resolution approving that this Agreement be entered into between the Parties;

WHEREAS, The Licensee by this Agreement intends to appoint the Lessee as its Agent with the FCC to maintain all reporting requirements for the Licensee for the term of this agreement;

WHEREAS, the Lessee intends to use the 2.5 GHz spectrum to transmit broadband signal over ATN capable infrastructure in the Licensee Spectrum footprint;

WHEREAS, The Licensee by this agreement intends to allow the Lessee to use and manage all aspects of the Licensee spectrum on the Alaska Tribal Network (ATN) for a to be determined fee proportional to the data that actually flows over the 2.5 GHz spectrum to subscribers on the ATN.

WHEREAS, ownership of the Licenses will be retained by the Licensee;

NOW THEREFORE, in consideration of the premises and covenants hereinafter set forth, and for good and valuable consideration, the Parties agree as follows:

License Management and Operation:

- a. Licensee grants to Lessee exclusive rights to deploy, manage, and operate the License frequencies and all licensed channels listed in Schedule A, as allowed by the FCC, for use as part of the ATN communications network until the expiration of the Term listed herein. In exchange for these rights, the Licensee will be paid a fee to be determined by the operational policies of the ATN, as determined by the Alaska Tribal Spectrum Policy Board, proportional to the data that actually flows to subscribers over the Licensee owned spectrum.
- b. Lessee gives a right to Licensee to use two (2) contiguous bands of up to 20MHz each as Lessee shall designate, with a 12-month notice. This use is contingent on the availability of the spectrum, which may not be available if the retention of these bands is necessary to maintain the quality and speed of broadband and voice over the network to the community being provided by the Lessee operations.
- c. Lessee gives a right to Licensee to use 2 contiguous bands of up to 20MHz each as Lessee shall designate, with a 12-month notice. This use is contingent on the availability of the spectrum, which may not be available if the retention of these bands is necessary to maintain the quality and speed of broadband and voice over the network to the community being provided by the Lessee operations.

- d. The license management agreement is made per the provisions of 47 CFR § 1.9030 - Long-term de facto transfer leasing arrangements. Per those provisions the Licensee will retain de jure control of the license while de facto control of the leased spectrum is transferred to the Lessee for the duration of the license authorization for the licenses as listed in schedule A subject to prior FCC consent. The Lessee is granted an instrument of authorization pertaining to the de facto transfer leasing per this agreement to enable the Lessee authority as an agent of Licensee to complete its obligations per this Agreement.

Effective Date, Term

The effective date shall be the date first indicated above once this Agreement is executed by both parties below. The Term shall be for a minimum 3-year period to the Lessee which is automatically renewable on an annual basis for the life of the FCC lease indicated in Schedule A unless a request to terminate is given by Licensee with 12 month notice prior to the next renewal anniversary date. Any equipment that has been provided at reduced cost by Lessee for Licensee to provide service can only be used while the management agreement is in effect. Any equipment that has been provided at reduced cost by Lessee for Licensee to provide service can only be used while the management agreement is in effect.

Assumption of Liabilities

Neither Party is assuming or shall be responsible for any of the other's liabilities or obligations (including but not limited to site leases and customer obligations) except as required by the FCC and this Agreement. Licensee and Lessee shall each bear their own legal, accounting and brokerage expenses in connection with this Agreement. The Parties acknowledge that no brokers were used in the negotiation of this Agreement.

Rights and Responsibilities of Lessee:

Lessee is experienced with the rules of the FCC regarding a wireless service Licensee's responsibility under the Communications Act of 1934, as amended from time to time ("Communications Act"), and the FCC's rules relating to spectrum leasing.

As the FCC Agent for the Licensee per this Agreement, the Lessee:

- a. understands this Agreement is not an assignment, sale, or transfer of the Licenses however Lessee will assume primary responsibility for complying with the Communications Act and applicable FCC policies and rules set forth in 47 CFR § 90.1 et seq., § 1.901 et. seq. and §24.1 et. seq. This responsibility may be revoked if Lessee fails to comply with the applicable laws and regulations.
- b. is responsible for interacting with the FCC regarding the leased spectrum and for making all related filings and notifications, submissions of any materials required to support a required Environmental Assessment, any reports required by FCC rules and applicable to the Lessee, and any information necessary to facilitate international or Interdepartment Radio Advisory Committee (IRAC) coordination.
- c. shall interact with the FCC on matters regarding the Licenses and Channels and cause the preparation and submission to the FCC or any other relevant authority all reports, applications (except for applications for renewal of the Licenses, which must be filed by Licensee), filings or other documents requested from Lessee by the FCC or are otherwise required of a Spectrum Lessee for the term of this agreement. Lessee will report to the FCC the completion of any construction or build out requirements with respect to the Licenses. The Lessee will not have the ability to make any amendments to the License.

- d. will manage the License for use over the ATN, if the ATN infrastructure is funded by any means. However, Lessee makes no representation that it will be used. The Lessee makes no representation that it will provide any infrastructure for constructing the ATN in the license area on the Licensee Tribal Lands. However, if funding to construct ATN compatible systems is provided, either by the Lessee or another party, then the Lessee will manage the Spectrum license for use on the ATN network to generate revenue for the Licensee as a Spectrum Asset Owner (SAO) on the ATN per ATN policies.
- e. will work to assist Licensee to satisfy buildout requirements for the Licensee however Lessee makes no warranty or guarantee that any FCC provisions related to buildout requirement percentages and timelines will be met by the Licensee.
- f. shall maintain on file all information relating to the Licenses and Channels that must be maintained by Lessee under FCC rules.
- g. shall be subject to the same license use and frequency operation restrictions and rules under the Licenses as Licensee would be, including, but not limited to restrictions and rules pertaining to operation, interference, and safety.
- h. shall have no continuing authority or right to use and shall vacate the leased spectrum unless otherwise authorized by the FCC, if any of the Licenses is revoked or cancelled, terminated, or otherwise ceases to be in effect.
- i. shall have the exclusive right to sublease spectrum usage for the Licensee benefit.
- j. will cooperate with and aid Licensee with whatever actions Licensee is required to take, if any, in order to obtain the approvals or consents of any governmental authority to this Agreement.
- k. will operate ATN system(s) that will use the Spectrum consistent with the Communications Laws, FAA laws, the laws of any other governmental body, this Agreement, and the terms and conditions of the applicable FCC License(s) (including eligibility, basic and character qualifications requirements, foreign ownership, use restrictions, and regulations intended to prevent harmful interference to any other licensed spectrum user entitled to interference protection under the Communications Laws).
- l. will satisfy the eligibility, qualification and all other requirements imposed on a spectrum Lessee under this Agreement pursuant to 47 C.F.R. § 1.9030.
- m. will comply with any and all applicable requirements of the applicable FCC License(s) arising under the Communications Laws, including, but not limited to, those relating to: radiofrequency (RF) safety rules for human exposure; the Communications Assistance for Law Enforcement Act (CALEA), 47 U. S.C. §§ 229, 1001 et seq., 47 C.F.R. Part 64, Subparts V and W; Equal Employment Opportunity (EEO), 47 C.F.R. §§ 1.8 15, 22.32 1; Telecommunications Relay Service (TRS), 47 U. S.C. § 225, 47 C.F. R. Part 64, Subpart F; North American Numbering Plan (NANP), 47 U. S.C. § 251(e), 47 C.F.R. Part 52; and universal service funds, 47 U. S.C. § 254, 47 C.F.R. §§ 54.706, 54.709.
- n. will satisfy the FCC's E-911 requirements set forth in 47 C.F.R. § 20. 18 to the extent that they may be applicable to Lessee's operation of its System(s).

- o. will take whatever actions are reasonably necessary to not cause, and any interference-related matters arising from operation of its System(s) it may construct and operate on the Leased Spectrum, including, but not limited to, any conflicts between Lessee and any other licensed spectrum user. In the event that interference by Lessee results in harmful interference to Licensee's operations, Lessee shall as soon as possible eliminate the interference to Licensee's reasonable satisfaction or, if such resolution cannot be achieved within four (24) hours of receipt of an oral or written request from Licensee, immediately thereafter cease the interfering operations, Lessee will provide Licensee with a 24/7 contact person or persons responsible for the network operations.
- p. will make payments to the Licensee in the role of SAO on the ATN less any annual regulatory fees from the FCC associated with operating on the Licensee Channels.
- q. will retain a copy of this Agreement and make it available upon request by the FCC.

Rights and responsibilities of the Licensee:

- a. While ultimately responsible, the Licensee is relieved of primary and direct responsibility for ensuring that the Lessee's operations comply with the Communications Act and FCC policies and rules.
- b. Licensee shall take such commercially reasonable actions as are necessary to maintain its License(s) in full force and effect throughout the Term, including the filing and prosecution of application(s) for FCC renewal of the License(s) if any License(s) are due to expire before the end of the Term. Licensee shall satisfy all of the requirements imposed on Licensee by 47 C.F.R. § 1.9030.
- c. During the Term, Licensee: (i) shall not permit any liens, encumbrances whatsoever, or short space agreements to attach to the Licenses or the Channels; and (ii) shall take no action contrary to those permitted or fail to take any action which would jeopardize the rights of Lessee under this Agreement.
- d. Licensee shall not be responsible for any equipment or costs for equipment operations on the ATN unless it desires to be a Network Asset Owner (NAO) on the network by a separate agreement. Licensee shall have no access to any subscriber information or relationships, unless the Licensee chooses to provide services as a Virtual Service Provider (VSP) on the ATN by separate agreement.
- e. During the Term, Licensee has no responsibility for any expenses and costs of the deployment and operation of the Channels on the ATN, including, but not limited to, any and all federal, state and local taxes related to the equipment it uses to operate the Channels, any sales taxes associated with providing service on the Channels, site rental, maintenance, utilities, and all other recurring and nonrecurring costs and expenses. Unless the Licensee agrees, under separate agreement to become a NAO or VSP on the ATN, the Licensee will only receive revenue for use of the Spectrum as a Spectrum Asset Owner (SAO) per ATN policies during the term of this agreement.
- f. Licensee shall promptly notify Lessee of the occurrence of any event or the initiation of any litigation, investigation, proceeding or inquiry by the FCC or any governmental authority which could reasonably be expected to have a material impact or result in a material change in its ownership of the License(s) or Lessee's operations under this Agreement. In the event that the FCC or any other governmental authority initiates an

investigation or inquiry concerning Licensee or Lessee in connection with this Agreement or any of the performances rendered hereunder, Licensee and Lessee agree to cooperate with the other Party, the FCC, or other governmental authority.

- g. While the Lessee will work to assist the Licensee to meet its buildout requirements per the license requirements, the Licensee is responsible for the completion of any construction or build out requirements with respect to the Licenses required to maintain the license.
- h. Licensee shall make available any technical or logistical information necessary to complete the construction, of ATN compatible infrastructure that will use the Licensee spectrum provided that such disclosure does not violate any other agreement Licensee may have with a third party.
- i. The Licensee will retain a copy of this Agreement and make it available upon request by the FCC.
- j. Licensee shall not consent to an assignment of this agreement.

Representations and Warranties of Licensee

Licensee hereby represents and warrants as follows: (i) this Agreement constitutes the valid and binding obligation of Licensee entered into freely and in accordance with Licensee's business judgment as the result of arm's-length bargaining and is enforceable in accordance with its terms; (ii) neither the execution nor the delivery of this Agreement, nor the completion of the transactions contemplated hereby will conflict with or result in any violation of or constitute a default under any material agreement, mortgage, indenture, license, permit, lease or other instrument, judgment, decree, order, law or regulation by which Licensee is bound; (iii) Licensee is the lawful, beneficial and exclusive Licensee of the Licenses; (iv) neither the Licenses nor the Channels are subject to any agreement or understanding whatsoever with any third party; (v) the Licenses are valid and in good standing with the FCC: and (vi) there is no pending or, to the best of Licensee's knowledge, threatened action by the FCC or any other governmental agency or third party to suspend, revoke, terminate or challenge any of the Licenses. Each of Licensee's representations and warranties shall survive the expiration of the Term for a period of three (3) years.

Representations and Warranties of Lessee

Lessee hereby represents and warrants to Licensee as follows: (i) this Agreement constitutes the valid and binding obligation of Lessee entered into freely and in accordance with Lessee's business judgment as the result of arm's-length bargaining and enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights or equitable principles generally; (ii) neither the execution nor the delivery of this Agreement, nor the completion of the transactions contemplated hereby will conflict with or result in any material violation of or constitute a material default under any term of the articles of incorporation or by-laws of Lessee or any agreement, mortgage, indenture, license, permit, lease or other instrument, judgment, decree, order, law or regulation by which Lessee is bound; and (iii) Lessee has the requisite financial resources to accomplish the obligations set forth in this Agreement. Each of Lessee's representations and warranties shall survive the expiration of the Term for a period of three (3) years.

Confidentiality and Non-Disclosure

Confidentiality of the Terms of this Agreement: The terms of this Agreement that are not otherwise required to be disclosed to the FCC in support of the lease applications shall be kept strictly confidential by the Parties and their agents, which confidentiality shall survive the termination or expiration of this Agreement for a period of three (3) years. The Parties may make disclosures as required by law and to employees, shareholders, agents, attorneys and accountants (collectively, "Agents") as required to perform obligations hereunder, provided, however, that the Parties shall cause all Agents to honor the provisions of this Section. The Parties shall cooperate to submit a confidentiality request with the FCC in the event the FCC seeks from the Parties a copy this Agreement or any information regarding the terms thereof.

Non-Disclosure of Shared Information: It is contemplated that, during the Term, the Parties may be supplying and/or disclosing to each other information ("Information"). The Information will, during the Term of this Agreement and for a period of three (3) years subsequent to the termination or expiration of the Agreement, be kept confidential by the Parties hereto, not be used by the receiving Party in any way detrimental to the disclosing Party and not used for any purpose other than implementing the terms of this Agreement. The receiving Party shall be responsible for any improper use of the Information by it or any of its employees, representatives, or agents. Without the prior written consent of the disclosing Party, the receiving Party shall not disclose to any entity or person, the Information, that the Information has been made available to it, or any other facts with respect to any conversations and/or discussions between Parties hereto. Each person to whom such Information is properly disclosed must be advised of its confidential nature and must agree to abide by such terms of this Paragraph.

Exclusions

The Information shall not include any Information which becomes published or is in the public domain by other than an unauthorized disclosure by the Parties hereto, their employees, representatives, or agents or other than an unauthorized disclosure by a third party.

Remedy for Breach

As a violation by the receiving Party of the provisions of this Section could cause irreparable injury to disclosing Party and there may be no adequate remedy at law for such violation, the disclosing Party shall have the right, in addition to any other remedies available to it at law or in equity, to enjoin the receiving Party in a court of equity from further violating such provisions.

Indemnification

Licensee Indemnification: Licensee shall indemnify, defend and hold Lessee, its officers, directors, employees, and agents harmless from and against all demands, claims, actions, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, asserted against, imposed upon or incurred by Lessee resulting from: (i) any material breach of any covenant, agreement, representation or warranty of Licensee contained in, or made pursuant to, this Agreement; (ii) any claims brought against Lessee, or its affiliates or subsidiaries, by customers, employees, or agents of Licensee, or any other person or entity, arising from dealings between Licensee and such entities or persons, or otherwise relating to Licensee (that are not related to Lessee's obligations under this Agreement) or Licensee's business; and (iii) any and all costs and expenses incident to any of the

foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof. Licensee's obligations under this Paragraph shall survive the Term for a period of three (3) years.

Lessee Indemnification: Lessee shall indemnify, defend and hold Licensee, its officers, directors, employees, and agents harmless from and against all demands, claims, actions, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, asserted against, imposed upon or incurred by Licensee, resulting from: (i) any material breach of any covenant, agreement, representation or warranty of Lessee contained in, or made pursuant to, this Agreement; (ii) any claims brought against Licensee by customers, employees, or agents of Lessee, or any other person or entity, arising from dealings between Lessee and such entities (that are not related to Licensee's obligations under this Agreement) or otherwise relating to the use or operation of the Channels by Lessee or Lessee's communications system; and (iii) any and all costs and expenses incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof. Lessee's obligations under this Paragraph shall survive the Term for a period of three (3) years.

Termination

This Agreement shall automatically terminate with respect to an affected license or frequency (of the Licenses or Channels) upon the earlier of the loss or expiration without renewal of such license; an FCC Final Order revoking, terminating, or canceling such license; or the completion of the Term (without renewal). For purposes of this Paragraph, "Final Order" means an order that can no longer be appealed.

This Agreement may be terminated upon material breach of the other party, following a one hundred twenty (120) day period for cure by the breaching party following written notice of the breach, provided, however, that termination of the Agreement due to breach shall not occur until the earlier of the expiration of the Term, or not more than one hundred twenty (120) days following notice to the breaching party of the breach.

The Parties shall notify the FCC of the termination of this Agreement with respect to any of the Licenses or the Channels within ten (10) calendar days following such termination.

Effect of Termination

Upon the termination of this Agreement, each Party shall pay all of its own fees and expenses related to this Agreement and the transactions contemplated herein, and the Parties shall have no further liability hereunder except by reason of any breach of this Agreement or of any representation, warranty, or covenant contained herein occurring prior to the date of such termination. Any termination of this Agreement, however effected, shall not release either Licensee or Lessee from any liability or other consequences arising from any breach or violation by any such Party of the terms of this Agreement prior to the effective time of such termination, and such other general or procedural provisions, which may be relevant to any attempt to enforce such obligations or duties, shall survive any such termination of this Agreement until such obligations or duties shall have been performed or discharged in full.

Attorney's Fees and Costs

Should either Party be required to retain the services of an attorney to file an action to enforce any of its rights hereunder, or under any other document executed and delivered

pursuant to this Agreement, the Party prevailing in such action shall be entitled to recover reasonable attorney's fees and court costs in connection therewith in an amount to be fixed by the court hearing the action.

Notices

All notices and other communications hereunder shall be in writing and shall be deemed given the same day if delivered personally or sent by facsimile or the next business day if sent by express mail (overnight delivery), or five (5) business days if sent by registered or certified mail, return receipt requested, postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice provided that notice of change of address shall be effective only upon receipt thereof).

If to Licensee, to:

If to Lessee, to:
Alaska Tribal Spectrum
721 Depot Drive
Suite 155
Anchorage, AK 99501

Waivers

Licensee and Lessee, by written notice to the other, may (a) extend the time for performance of any of the obligations or other actions of the other under this Agreement, (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement, (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement, or (d) waive or modify performance of any of the obligations of the other under this Agreement; provided that neither party may without the prior written consent of the other make or grant such extension of time, waiver of inaccuracies or compliance, or waiver or modification of performance, with respect to its own obligations, representations, warranties, conditions, or covenants hereunder. Except as otherwise expressly provided herein, no action taken pursuant to this Agreement shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant, or agreement made by the Parties hereto. No delay or omission to exercise any right, power or remedy accruing to any Party hereunder shall be construed to be a waiver of any such breach or default, or any acquiescence therein, or a waiver of any similar breach or default.

Amendment

This Agreement, together with the Schedules hereto, constitutes the entire understanding and agreement between the Parties concerning the subject matter hereof and the use by Lessee of the Channels, superseding in their entirety all prior oral or written agreements or understandings. This Agreement may not be changed, modified, or altered except by written agreement of the Parties.

Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, representatives, successors, and permissible assigns. Lessee may not sublease this agreement. Lessee may not assign its rights or delegate its duties under this Agreement without the prior written consent of the Licensee, which consent shall not be unreasonably withheld nor denied.

Governing Law; Severability

This Agreement shall be governed by the laws of the State of Alaska without giving effect to conflict of laws and the provisions thereof. In the event that any covenant, condition, or other provision contained in this Agreement is held to be invalid, void, or unlawful by any administrative agency or court of competent jurisdiction, that provision shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair, or invalidate any other covenant, condition or other provision contained herein, provided the original intent of the Parties is preserved, and the Parties shall use their reasonable best efforts to make the covenant, condition, or other provision valid and lawful if possible so as to preserve original intent of the Parties insofar as practical.

Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Original signatures transmitted by facsimile shall be effective to create such counterparts. Each of the Parties shall maintain a fully executed original of the Agreement, a copy of which shall be made available to the FCC upon request.

Interpretation

All headings used in this Agreement are for convenience of reference only and shall not be deemed to have any substantive effect. This Agreement has been prepared and negotiations in connection herewith have been carried on by the joint efforts of the Parties hereto. Notwithstanding any law or rule of contract interpretation to the contrary, this Agreement shall not be interpreted strictly for or against any party hereto. Each of the Parties certifies to the other that it has reviewed this Agreement with, and is relying solely upon the advice of, its independent counsel and tax advisor, as to the negotiation, preparation, execution, and delivery of this Agreement and as to the legal and tax implications hereunder.

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

LICENSEE:		LESSEE:	Alaska Tribal Spectrum
By:		By:	
Name:		Name	
Title:		Title	

Schedule A

Tribal Name: 

FCC File Number 

Call Sign: 

FRN: 

Frequency: 2.5GHz band, all available channels per license