

LICENSE AND GROUND-TOWER LEASE AGREEMENT

THIS LICENSE AND GROUND-TOWER LEASE AGREEMENT (Lease”), is entered into as of this ____ day of _____, 2005, by and between Keller Independent School District (“KISD”), and Voicestream GSM 1 Operating Company, L.L.C., a Delaware limited liability company (“TENANT”), in consideration of the premises and of the mutual obligations and agreements in this Lease, the parties agree as follows:

0. THE LICENSE PERIOD:

A. In consideration of the payment of one thousand dollars (\$1,000.00) by TENANT to KISD (the “License Fee”) on the date set forth above, KISD hereby grants to TENANT a license to use the Leased Site (defined below) for a period of three months from the date set forth above (the “License Period”) in order for TENANT to determine if the Leased Site is suitable for TENANT’s use (as specified in Section 4 of this Lease). During the License Period, TENANT will obtain, and KISD agrees to cooperate with TENANT in obtaining, at the TENANT’s expense, all licenses and permits or authorizations required for TENANT’s use of the Leased Site from all applicable government and/or regulatory entities including, without limitation, zoning and land use authorities, and the Federal Communications Commission (“FCC”), such approvals to be collectively referred to as “Governmental Approvals.” KISD agrees to appoint TENANT as its agent for the sole purpose of securing Governmental Approvals on the Leased Site. KISD further agrees to assist TENANT, at no cost to KISD, in obtaining a title report, zoning approvals, variances and land-use permits necessary for TENANT’s use of the Leased Site, but not otherwise.

B. KISD expressly grants to TENANT a right of access to the Leased Site during the License Period to perform surveys, soil tests and other engineering procedures or environmental investigations on the Leased Site necessary to determine if TENANT’s use of the Leased Site will be compatible with TENANT’s engineering specifications, system design, operations and the Governmental Approvals. TENANT must give KISD reasonable advance notice of its intent to come on the Leased Site and TENANT’s right of access will be subject to KISD’s right to require alternative times or dates for such access if necessary to avoid conflicts with KISD’s use of the Leased Site. TENANT agrees to repair any damage to the Leased Site caused directly or indirectly by TENANT’s entry onto the Leased Site, and TENANT agrees to indemnify and hold KISD harmless from and against any and all claims, demands, actions, causes of action, damages, liabilities, costs, and expenses arising out of or in connections with the entry on the Leased Site by TENANT, its agents, employees, or contractors. Notwithstanding any provision of this Lease to the contrary, TENANT’s repair, restoration, and indemnity obligations under this Section shall survive the expiration of the License Period and the expiration or earlier termination of this Lease. Any preceding language to the contrary notwithstanding, TENANT may not change the zoning classification of the Leased Site without first obtaining KISD’s written consent. During the License Period, KISD agrees that it will not interfere with TENANT’s efforts to secure other licenses, permits or authorizations that relate to property not owned by KISD.

C. Prior to the expiration of the License Period, TENANT must notify KISD of TENANT’s election to end the License Period and begin the Initial Term of the Lease (as defined in Section 3 below). Such notice shall be pursuant to Section 12 below. If TENANT fails to so notify KISD prior to the expiration of the License Period, the License will expire, this Lease will automatically terminate and TENANT shall have no further rights of any kind or character with respect to the Leased Site.

1. THE LEASED SITE

A. KISD is the title holder of that certain real property located at 4101 Thompson Road, Fort Worth, Tarrant County, which is more particularly described on the attached Exhibit "A" ("KISD's Property").

B. TENANT is interested in leasing a portion of KISD's Property (the "Leased Site") for the construction of antenna facilities together with obtaining a right of access to install utilities to the Leased Site. The Leased Site which is the subject of this Lease is located within KISD's Property, is approximately 600 Square feet, and is situated as shown on the attached Exhibit "B". If TENANT elects to end the License Period and begin the Initial Term of the Lease, TENANT shall have the right to run cables, wires, conduits, and pipes under, over, and across KISD's Property to connect TENANT'S equipment on the Leased Site, subject to the approval of KISD as provided for in Section 4.A. of this Lease. Also in such event, it is agreed and understood that TENANT will remove the existing light standard from the Leased Site and replace it with a new standard sufficient for TENANT's purposes and sufficient to support an array of stadium lights (which TENANT will also install at its sole cost and expense) that is equal to or better than the array of stadium lights currently situated on the light standard.

2. LEASE AND EASEMENT

Provided that TENANT elects to end the License Period and begin the Initial Term of the Lease prior to the expiration of the License Period, KISD leases the Leased Site to TENANT and agrees that Tenant shall have access to the Leased Site for the purposes of operating and maintaining the communications facility, and to install, remove, replace, and maintain utility cables, conduits, and pipes, and during the continuation of this agreement, and any renewals thereof, ingress and egress is hereby granted to TENANT seven (7) days a week, twenty-four (24) hours a day, as limited by Section 7. It is agreed, however, that only authorized engineers, employees, or properly authorized contractors, subcontractors, agents of TENANT or KISD, FCC inspectors, or persons under their direct supervision, will be permitted to enter the Leased Site.

3. TERM AND RENT

A. The initial term of this Lease ("Initial Term") shall be ten years and shall commence on the date KISD receives notice of TENANT's election to end the License Period and begin the Initial Term; provided, however, that such notice must be received by KISD on or before the expiration of the License Period (the "Commencement Date"). Upon TENANT's election to end the License Period, TENANT shall pay KISD eighteen thousand dollars (\$18,000) as rental for each year of the first five years of the Initial Term (the "Annual Rent"), and the payment of the first five years' Annual Rent [ninety thousand dollars (\$90,000)] shall be payable in advance on the Commencement Date.

B. Thereafter, unless either party advises the other party in writing not less than one (1) year prior to the expiration of the Initial Term or any extension period that it does not desire additional extensions, this Lease shall automatically renew and extend for up to two (2) additional five (5) year extension periods, each beginning upon the expiration of the term then in effect.

C. The Annual Rent for the second five years of the Initial Term and for each extension period after the Initial Term shall be the Annual Rent in effect for the final year of the preceding five year period increased by either fifteen percent (15%) or the percentage increase in the Consumer Price Index ("CPI"), whichever is greater. The CPI calculation shall be determined on the basis of changes in the index number set forth in the "Consumer Price Index for Urban Wage Earners and Clerical Workers – All Items, U.S. City Average" (1982-1984 = 100) published by the Bureau of Labor Statistics, United States Department of Labor as follows: the rent payable for the second five years of the Initial Term and for each extension period following the Initial Term shall be determined by multiplying the rent payable during the preceding lease year of the preceding term by the sum of: (i) one, plus (ii) the percentage increase in the CPI during the preceding five (5) year term. The Annual Rent will then be increased by either that percentage or fifteen percent, whichever is greater. Landlord shall undertake the above-referenced Rent adjustment computation. Until such time as Landlord makes such computation and provides Tenant with documentation of any rental adjustment, Tenant shall pay to Landlord the Rent in identical amounts paid by TENANT in the last year of the preceding lease term preceding the rental adjustment. TENANT shall, within Thirty (30) days following Landlord giving notice to TENANT of the computation or of any such increase, pay to Landlord the amount of such increase. If at any time the CPI ceases to incorporate a significant number of items, if a substantial change is made in the method of establishing the CPI, or if issuance of the CPI shall be discontinued, then the Landlord and Tenant shall mutually agree upon another standard recognized cost of living index issued by the United States Government or, if none, another appropriate index as a substitute for the index so discontinued. In either case the substitute index chosen shall result in increases in the Rent similar to those that had been, or would have been, generated by the CPI. After the first five years of the Initial Term, Rent shall be paid annually in advance beginning on the commencement of the second five years of the Initial Term and continuing during any extension period. All payments due under this Lease shall be sent to KISD at the address indicated under Section 12 below.

D. Should this Lease still be in effect at the conclusion of all of the extension periods provided for herein, this Lease shall continue in effect on the same terms and conditions [other than Annual Rent which shall be an amount equal to the one-twelfth ($1/12^{\text{th}}$) of the Annual Rent in effect for the preceding year, increased by fifty percent (50%)] for a further period of one (1) month, and for like monthly periods thereafter, until and unless terminated by either party by giving to the other written notice of its intention to so terminate at least thirty (30) days before the expiration of the term then in effect.

4. USE OF THE LEASED SITE

A. TENANT may use the Leased Site to construct, operate, remove, replace, service, maintain, secure, and operate a communications facility, including, without limitation, TENANT's antenna array and antenna support structures, and for any other uses incidental thereto. TENANT shall maintain a gated wall, ten feet in height, and constructed from brick and mortar of the same color and quality as the building on KISD's Property around the Leased Site, along with associated landscaping, all as depicted on Exhibit "C" and in compliance with all applicable codes and regulations. Each such antenna array or antenna support structure may be configured as requested by TENANT from time to time, provided TENANT obtains, pursuant to sub-section (8) below, all permits and approvals required by applicable jurisdictions for such requested configuration. KISD shall have the right to approve plans for any improvements, including the wall, landscaping, or any antennae and lighting array installed by TENANT on the Leased Site, such approval not to be unreasonably withheld; provided that KISD must notify TENANT of its approval or disapproval of any such plans within fifteen (15) business days after the submission of such plans by TENANT to KISD, and in the event that KISD fails to so notify TENANT, KISD shall be deemed to have approved such plans. KISD shall be notified in writing about any scheduled construction times and major repair times unless an emergency exists.

(1) TENANT covenants and agrees that Tenant's equipment, its installation, operation, and maintenance will not interfere with the operation of existing radio, wireless, or electronic frequencies and equipment at the Leased Site or elsewhere on KISD's property.

(2) During the License Period, TENANT shall conduct site inspection and testing to insure that TENANT's frequencies and antenna location will be compatible with KISD's frequencies, equipment, and existing radio or electronic equipment at the Leased Site or elsewhere on KISD's Property on the effective date of this Agreement.

(3) In the event there is harmful interference to KISD's frequencies, equipment, or existing radio or electronic equipment on KISD's Property at any time during the Initial Term or any extension period. TENANT shall promptly make all reasonable efforts to eliminate any harmful interference, if caused by TENANT's equipment, within ten (10) days after notice from KISD or such other operator to TENANT advising of the interference.

(4) If said interference cannot be eliminated within thirty (30) days, TENANT shall suspend operations (transmissions) at the site while the interference problems are studied and means is found to eliminate them.

(5) If said interference cannot be eliminated, then TENANT shall, terminate this Lease upon immediate notice to KISD and within sixty (60) days remove its equipment shelter, antenna facilities, concrete pads, cables, generators, fences, and any other TENANT-owned equipment from the Leased Site.

(6) If any interference occurs to KISD's or any public safety transmissions, whether existing or subsequent as long as KISD is operating in compliance with applicable laws, and the interference is caused by TENANT, TENANT will immediately cease all operations until the interference is eliminated.

(7) From time to time KISD may grant to other entities the right to operate communications facilities and/or the right to install antennas in connection with the operation of such facilities or other communications facilities on KISD's Property; provided, however, that the operation of such facilities and antennas by other occupants shall be required to comply with all of the requirements contained herein relative to TENANT's equipment. TENANT further agrees that it will comply with all applicable rules and regulations of the Federal Communications Commission, and electrical codes of the local or state authorities. Under this Lease, KISD assumes no responsibility for the licensing, operations, and/or maintenance of TENANT's equipment. TENANT's right to use the Leased Site shall not interfere with KISD's superior right to use the same and KISD's Property as an integral part of the District's educational system.

(8) KISD acknowledges that TENANT's ability to use the Leased Site for its intended purposes is contingent upon TENANT's maintaining the Governmental Approvals. KISD shall take no action that would adversely affect TENANT's obtaining or maintaining such Governmental Approvals. Should KISD be notified or cited by any state or federal regulatory agency that KISD's Property is not in compliance with said agencies' regulations due to TENANT's installation of improvements under this Lease, KISD will immediately notify TENANT of said non-compliance and TENANT will cure the conditions of non-compliance within the time frame allowed by the citing agency.

B. Any language in this Lease to the contrary notwithstanding, the light standard which will be installed by TENANT and on which TENANT's antenna array will be situated will become the property of KISD at the expiration or earlier termination of this lease. Throughout the Initial Term and any extension period of this Lease, KISD will be solely responsible for maintaining and replacing as necessary the stadium lighting array to be installed on said standard by TENANT.

5. TERMINATION

A. In the event any Governmental Approvals will be too costly, time consuming, or there is a reasonable likelihood (in the reasonable opinion of TENANT) that said application will be rejected, or if any Governmental Approval issued to TENANT is canceled, expires, or lapses, or is otherwise withdrawn or terminated by a governmental authority, TENANT shall have the right to terminate this Lease. To do so, TENANT must provide KISD prior written notice of TENANT's intent to terminate. Any Annual Rent paid to through such termination date shall be prorated so that the portion of the previously paid Annual Rent for the period of time after the termination date will be returned by KISD to TENANT.

B. In addition, and provided that TENANT is not then in default under this Lease beyond the applicable cure period, TENANT may, during the Initial Term or any extension period, upon sixty (60) day's written notice to KISD, terminate and cancel this Lease if TENEANT determines that the Leased Site has become unsuitable for Tenant's operations. If TENANT terminates this Lease pursuant to this Section 5.B., TENANT shall pay KISD a termination fee equal to one fourth of the Annual Rent at the rate then in effect as liquidated damages for termination of this Lease, such payment being agreed upon by KISD and TENANT as a reasonable estimate of just compensation for the harm caused by TENANT's termination due to the difficulty and inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof. The payment of the termination fee shall constitute full satisfaction of TENANT's obligations under this Lease.

C. This Lease may be terminated by TENANT upon forty-five (45) days' prior written notice to KISD upon a default of any material covenant or term hereof by KISD which is not cured within forty-five (45) days of receipt of written notice of default; or, if such default is not curable within forty-five (45) days, if KISD fails to commence such cure within forty-five (45) days or fails thereafter to diligently to prosecute such cure to completion.

D. This Lease may be terminated by KISD upon an Event of Default pursuant to Section 11 of this Lease.

6. ASSIGNMENT AND SUBLETTING

A. TENANT shall not assign this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise, or sublet the Leased Site, or any part thereof, without the prior written consent of KISD. The preceding language to the contrary notwithstanding, TENANT may assign the entire Lease or sublet the entire Leased Site to: (i) any entity into which or with which TENANT is merged or consolidated so long as such successor agrees to be bound by the terms and conditions of this Lease and has a tangible net worth equal to or greater than TENANT as of the Commencement Date of this Lease; or (ii) any entity acquiring fifty-One percent (51%) of TENANT's stock or all or substantially all of TENANT's assets so long as such successor agrees to be bound by the terms and conditions of this Lease and has a tangible net worth equal to or greater than TENANT as of the Commencement Date of this Lease. TENANT agrees to give KISD written notice of any sublet or assignment within ten (10) days of the effective date of same.

B. No assignment or sublease by TENANT (including those not requiring KISD's consent) shall relieve TENANT of any obligation to be performed by TENANT under this Lease, whether arising before or after the assignment or sublease. The consent by KISD to any assignment or sublease shall not relieve TENANT from the obligation to obtain KISD's express written consent to other assignment or sublease as require by this Lease.

C. The preceding language to the contrary notwithstanding, it is specifically agreed and understood that TENANT shall at no time be permitted to sublet any portion of the Leased Site or assign any portion of this Lease to another common carrier for collocating purposes.

7. EQUIPMENT AVAILABILITY

A. TENANT will not be provided unattended access to the leased site. KISD will provide TENANT with a contact person to ensure that TENANT has access to the Leased Site twenty-four hours per day, seven days per week. KISD retains the ability to require TENANT to temporarily remove any equipment or facilities in order to maintain the area on the Leased Site. If KISD requires TENANT to remove any equipment or facilities, the reasonable cost to remove and reattach same shall be borne by KISD. TENANT shall perform removal of TENANT's equipment or facilities on ninety (90) days' prior written notice from KISD.

B. During any period of KISD's maintenance that requires the removal of TENANT's equipment or facilities, KISD shall allow TENANT to place a portable mounted antenna, a.k.a., "Cell On Wheels" (COW), on KISD's Property in order for TENANT to provide continuous wireless telecommunications service. There shall be no additional fee or rental due KISD for this temporary placement. A Special Use Permit may be required to place this temporary equipment on this site.

C. Only officials with the FCC and qualified and adequately insured agents, contractors, or persons under TENANT's direct supervision will be permitted to install or remove TENANT's equipment or facilities. KISD retains the right to permit their own employees and agents, and employees and agents of subsequent users, access to the Leased Site for all purposes that do not interfere with TENANT's use of the Leased Site.

8. INDEMNIFICATION AND INSURANCE

A. TENANT hereby agrees to indemnify, defend, and hold KISD, its officials, employees, and agents harmless from and against any and all claims of liability for personal injury, bodily injury, death, or property damage, including attorney's fees, to the extent that they result from or arise out of (i) the acts or omissions of TENANT, its agents and employees in, on, or about the Tower and/or the Leased Site, (ii) TENANT's breach of any term or condition of this Lease on TENANT's part to be observed or performed and/or (iii) TENANT's action or inaction relative to this Lease.

B. TENANT shall provide KISD with a certificate of insurance issued by an insurance company licensed to do business in Texas indicating that TENANT carries commercial general liability insurance with limits of liability thereunder of not less than \$2 million combined single limit for personal injury, bodily injury, or property damage together with an endorsement for contractual liability. Such shall name KISD as an additional insured with respect to the Leased Site. TENANT will provide KISD with a renewal certificate within ten (10) business days of each renewal. Any insurance required to be provided by TENANT under this Paragraph 8 may be provided by a blanket insurance policy covering the Leased Site and other locations of TENANT, provided such blanket insurance policy complies with all of the other requirements of this Lease with respect to the type and amount of insurance required.

C. TENANT shall carry comprehensive auto insurance covering Tenant and naming KISD as an additional insured against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the Leased Site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability coverage shall not be less than \$1 million combined single limit for bodily injury and property damage.

9. UTILITIES

TENANT shall be responsible directly to the serving entities for all utilities required by TENANT's use of the Leased Site. TENANT will install an electric meter for its utility services and TENANT shall pay all costs related to said electric service.

10. RIGHTS TO EQUIPMENT; CONDITION ON SURRENDER

Subject to the statutory lien of KISD for TENANT's failure to pay rent and except for the light standard on which TENANT's antennas and equipment are situated, TENANT's antennas and equipment shall remain personal to and be the property of TENANT. At the expiration or earlier termination of this Lease, TENANT shall remove its antennas and/or equipment. TENANT shall also repair any damage caused by such removal and shall otherwise surrender the Leased Site in good condition and, at a minimum, as nearly as is reasonably possible to its condition at the time of the execution of this Lease, ordinary wear and tear excepted. Tenant's repair and restoration obligations under this Section shall survive the expiration or earlier termination of this Lease.

11. TENANT DEFAULTS

A. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by TENANT:

(1) The failure by TENANT to make any payment of rent or any other payment required to be made by TENANT hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof is received by TENANT from KISD.

(2) The failure by TENANT to observe or perform any of the covenants or provisions of this Lease to be observed or performed by TENANT, other than as specified in Paragraph 11.A. (1), where such failure shall continue for a period of forty-five (45) days after written notice thereof is received by TENANT from KISD; provided, however, that it shall not be deemed an Event of Default by TENANT if TENANT shall commence to cure such failure within said forty-five (45) day period and thereafter diligently prosecutes such cure to completion.

B. If there occurs an Event of Default by TENANT, in addition to any other remedies available to KISD at law or in equity, KISD shall have the option to terminate this Lease and all rights of TENANT hereunder.

12. NOTICES

All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice) or as otherwise provided under applicable state law. Notice by any other method (whether by hand-delivery, overnight delivery service, or otherwise) shall only be deemed effective upon receipt by the intended recipient. Should KISD or TENANT have a change of address, the other party shall immediately be notified as provided in this Paragraph of such change. Unless KISD otherwise specifies in writing, rent checks from TENANT shall be sent to the person listed below to whom notices are sent.

TENANT:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administrator and
Legal Dept.

With a copy to:

Voicestream GSM I Operating Company
11830 Webb Chapel Suite 5000
Dallas, TX 75234
Attn: Lease Administration Manager

KISD

Keller ISD
350 Keller Parkway
Keller, TX 76248
Attention: Chief Financial Officer

13. SALE OR TRANSFER BY KISD

A. Should KISD, at any time during the term of this Lease, sell, lease, transfer, or otherwise convey all or any part of KISD's Property to any transferee other than TENANT, then such transfer shall be under and subject to this Lease and all of TENANT's rights hereunder.

14. HAZARDOUS SUBSTANCES

A. KISD warrants that to the best of its knowledge, no Hazardous Material (as defined in Paragraph 14.B.) has been stored, used, or disposed of on, under, about, or within KISD's Property in violation of any law or regulation. TENANT agrees that it will not use, generate, store, or dispose of any Hazardous Material on, under, about, or within KISD's Property in violation of any applicable law or regulation. TENANT agrees that it will conduct all of its operations and activities on the Leased Site in compliance with all applicable environmental laws.

B. TENANT agrees to defend and indemnify KISD, its elected officials, officers, partners, affiliates, agents, and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any warranty or agreement by TENANT contained in Paragraph 14.A. As used in Paragraph 14.A., "Hazardous Material" shall mean any substance, chemical or waste identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation (including petroleum and asbestos).

15. CONDEMNATION

A. In the event the whole of KISD's Property, including without limitation the Leased Site and the Tower, shall be taken or condemned, either temporarily or permanently, for public purposes, or sold to a condemning authority under threat of condemnation to prevent taking, then this Lease shall forthwith automatically cease and terminate.

B. KISD shall receive the entire condemnation award for land, all other improvements that were paid for by KISD, and TENANT hereby expressly assigns to KISD any and all right, title, and interest of TENANT now or hereafter arising in and to any such award. TENANT shall have the right to recover from such authority, but not from KISD, any compensation as may be awarded to TENANT on account of the leasehold interest, moving, and relocation expenses, and depreciation to and removal of the personal property and fixtures of TENANT.

16. TAXES

A. TENANT shall be liable for and shall pay to the applicable taxing authority if billed directly to TENANT, or to KISD if billed to KISD, upon thirty (30) days prior written notice from KISD, any and all taxes and assessments levied against any personal property or trade or other fixtures placed by TENANT in or about the Leased Site.

B. TENANT shall pay as additional rent any increases in real property taxes levied against KISD's Property, as a result of the improvements constructed by TENANT on the Leased Site. As a condition of TENANT's obligation to pay such tax increases, KISD shall provide TENANT with documentation from the taxing authority representing the amount owed.

17. QUIET ENJOYMENT AND NON-INTERFERENCE

KISD warrants and agrees that TENANT, upon paying the rent and performing the covenants herein provided, shall peaceably and quietly have and enjoy the Leased Site.

18. LIENS

TENANT shall keep the Leased Site and KISD's Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Tenant and shall indemnify, defend, and hold KISD harmless from all claims, costs, and liabilities, including attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. TENANT shall cause any such lien imposed on the Leased Site and KISD's Property to be released of record by payment or posting of a proper bond within thirty (30) days after written request by KISD.

19. BROKERS

TENANT represents that it has not negotiated with any real estate broker in connection with this Lease. TENANT agrees that should any claim be made against KISD for a real estate broker's commission, finder's fee or the like by reason of the acts of TENANT, it shall indemnify and hold KISD free and harmless from all losses, costs, damages, claims, liabilities, and expenses in connection therewith (including, but not limited to, reasonable attorney's fees) and shall defend such action by legal counsel reasonably acceptable to KISD.

20. ESTOPPEL CERTIFICATES

- A. TENANT, at the request of KISD, shall provide KISD with a certificate stating: (i) that this Lease is unmodified and in full force and effect (or, if there has been any modification, that the same is in full force and effect as modified and stating the modification); (ii) whether or not, to TENANT's knowledge, there are then existing any set-offs, or defenses against the enforcement by KISD of any of TENANT's agreements, terms, covenants, or conditions hereof (and, if so specifying the same); and (iii) the dates, if any, to which the rent has been paid in advance.
- B. KISD, at the request of TENANT, shall provide TENANT with a certificate stating whether KISD has any claim against TENANT and if so, stating the nature of such claim.

21. MISCELLANEOUS PROVISIONS

- A. KISD warrants and agrees that KISD is seized of good and sufficient title to and interest in the Leased Site and have full authority to enter into and execute this Lease and that there are no undisclosed liens, judgments, or impediments of title on KISD's Property that would affect this Lease.
- B. This Lease, including attached exhibits which are hereby incorporated by reference, incorporates all agreements and understandings between KISD and TENANT, and no verbal agreements or understandings shall be binding upon either KISD or TENANT, and any addition variation or modification to this Lease shall be ineffective unless made in writing and signed by the parties.
- C. This Lease and the performance hereof shall be governed, interpreted, construed, and regulated by the laws of the State of Texas.
- D. This Lease, and each and every covenant and condition herein, is intended to benefit the Leased Site and shall extend to and bind the heirs, personal representatives, successors, and assigns of the parties.
- E. The parties agree that all of the provisions hereof shall be construed as both covenants and conditions, the same as if the words importing such covenants and conditions had been used in each separate paragraph.
- F. The parties acknowledge that each has had an opportunity to review and negotiate this Lease and have executed this Lease only after such review and negotiation. The language of each part of this Lease shall be construed simply and according to its fair meaning, and this Lease shall not be construed more strictly in favor or against either party.
- G. At KISD's option, this Lease shall be subordinate to any mortgage by KISD which from time to time may encumber all or any part of the Leased Site, provided that every such mortgagee shall recognize (in writing and in form reasonably acceptable to TENANT) the validity of this Lease in the event of a foreclosure of KISD's interest and also TENANT's right to remain in occupancy and have access to the Leased Site as long as TENANT is not in default of this Lease. TENANT shall execute whatever instruments may reasonably be required to evidence this subordination. If, as of the date of execution of this Lease, there is any deed of trust, ground lease or other similar encumbrance affecting KISD's Property, KISD agrees to use reasonable efforts in cooperating with TENANT to obtain from the holder of such encumbrance an agreement that TENANT shall not be disturbed in its possession, use, and enjoyment of the Leased Site.

H. If any portion of this Lease is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in such court's opinion to render such portion enforceable and, as so modified, such portion and the balance of this Lease shall continue in full force and effect.

I. If a dispute arises between the parties relating to this Lease, the parties agree to meet to try to resolve the dispute. Such meeting shall be attended by individuals with decision-making authority to attempt, in good faith, to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, either party may request that such dispute be resolved through non-binding mediation. The mediator shall be an individual or firm with expertise in wireless telecommunications, as well as in the subject matter of the dispute. If either party institutes any action or proceeding in court to enforce any provision hereof, or any action for damages for any alleged breach of any provision hereof, then the prevailing party in such action or proceeding shall be entitled to receive from the non-prevailing party such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party, together with its other reasonable litigation expenses. Venue for any legal action shall be in Tarrant County, Texas.

J. In addition to the other remedies provided for in this Lease, KISD and TENANT shall be entitled to immediate restraint by injunction of any violation of any of the covenants, conditions, or provisions of this Lease.

K. The captions of the paragraphs of this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

L. The following restrictions shall in all things be observed, followed, and complied with:

(1) The Leased Site, or any part thereof, shall not be used in operation or in conjunction with, any school nor other institution of learning, study, or instruction which discriminates against any person because of his race, color, or national origin, regardless of whether such discrimination be effected by design or otherwise.

(2) The Leased Site, or any part thereof, shall not be used in the operation of, or in conjunction with, any school nor other institution of learning, study, or instruction which creates, maintains, reinforces, renews, or encourages, or which tends to create, maintain, reinforce, renew, or encourage a dual school system.

(3) These restrictions and conditions shall be binding upon TENANT, its successors and assigns for so long as TENANT leases and/or occupies the Leased Site.

(4) The forgoing restrictions and other covenants thereafter set out are covenants running with the land, and each and every parcel thereof, and shall be fully binding upon any person, firm, partnership, corporation, trust, church, club, governmental body, or other organizations or entity whatever (whether private or governmental in nature), without limitation, hereafter acquiring any estate, title, interest, or property in the Leased Site, whether by descent, devise, purchase, or otherwise; and no act or omission upon the part of the District or any purchaser, their successors and assigns, shall be a waiver of the operation or enforcement of such restrictions; but neither restriction shall be constructed to be a condition subsequent or special limitation on the estate thereby conveyed.

(5) It is further covenanted, that third party beneficiaries of the restrictions set forth above shall be as follows:

(a) As to the restrictions set out in (1) above, any person prejudiced by its violation;

(b) As to the restriction set out in (2) above, any public school district or any person prejudiced by its violation; and

(c) As to either or both of the restrictions set out in (1) and (2) above, the United States of America, as plaintiff, and the American G.I. Forum, the Leagues of United Latin American Citizens (LULAC), and the National Association for the Advancement of Colored People (NAACP), as intervenors, in U.S. v. Texas, Civil Action No. 5281, Tyler Division, U.S. District Court, Eastern District of Texas; reported in U.S. v Texas, 321 F. Supp. 1043 (E.D. Tex. 1971); U.S. v Texas, 330F. Supp. 235 (E.D. Tex. 1971; aff'd with modifications sub nom, U.S. v State of Texas and J.W. Edgar, et al, 447 F.2d441 (5th Cir. 1971); stay den. Sub nom, Edgar v. U.S., 404 U.S. 1206 (1971); cert den. 404 U.S. 1016 (1972).

(6) It is further covenanted, that in case of a violation of either or both of the above restrictions, any of the third party beneficiaries above alluded to is authorized and empowered to prosecute proceedings at law or in equity against any person, firm, partnership, corporation, trust, church, club, governmental body, or other organization or entity whatever (whether private or governmental in nature), without limitation:

(i) To enforce either or both of such restrictions relating to the use of the above described property;

(ii) To abate or prevent violations of either or both or such restrictions; and

(iii) To recover damages for a breach of either or both of such restrictions.

(7) It is further covenanted, that if any third party beneficiary referred to above shall prosecute proceedings at law or in equity for the aforesaid purposes, such third party beneficiary may recover reasonable attorney's fees from the violator or violators of either or both of such restrictions, if the Court finds that the proceedings were necessary to bring about compliance therewith.

IN WITNESS WHEREOF, KISD and TENANT have duly executed this Lease as of the date first above written.

TENANT:

Voicestream GSM 1 Operating Company, L.L.C.

By: _____
Jeff Hooper
Director of Engineering and Operations

KISD:

Keller Independent School District

By: _____,
_____, President
Board of Trustees