

**THIS IS A SAMPLE FORM LEASE. YOU SHOULD HAVE AN ATTORNEY REVIEW ANY AGREEMENT YOU ENTER INTO.**

## **AGREED MINIMUM TERMS SHEET**

**I. THE FOLLOWING TERMS, OR TERMS THAT ARE MORE FAVORABLE TO ELCA AFFILIATES, MUST BE INCLUDED IN SITE LEASES WITH ALL ELCA AFFILIATES LISTED IN THE 2001 ELCA YEARBOOK, OR IN ANY SUBSEQUENT YEARBOOK, INCLUDING WITHOUT LIMITATION ANY ELCA MEMBER CONGREGATION, SYNOD, AND EDUCATIONAL FACILITY (REFERRED TO HEREIN AS "OWNER").**

### **Caption and Recitals:**

This lease agreement (hereafter referred to as the "Agreement" or the "Lease") is entered into by and between \_\_\_\_\_ (Owner) and Signal Sites, Inc. ("SSI") for the lease of real property by Owner to SSI.

Whereas, Owner owns certain real property with improvements located at \_\_\_\_\_ (The "Premises");

Whereas, SSI, among other things, acquires, manages and leases transmission sites for the wireless communications industry; and

Whereas, SSI desires to lease a portion of the Premises, upon which it will install a Telecommunication Facility.

Now therefore, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

### **Terms:**

#### **1. Premises and Use.**

**A. The Site.** Owner leases to Signal Sites Incorporated ("SSI"), the Site described below:

i. Land consisting of approximately \_\_\_\_\_ square feet upon which SSI will construct, install, operate, maintain, repair, reconfigure, and monitor a Communications Facilities. For purposes of this Lease, Communications Facilities may include, but is not limited to radio, wireless, PCS, microwave, or satellite communications transmission and/or receiving antennas, dishes, and other equipment intended to transmit, receive, interpret, amplify, or pertain to communications data or signals. A Communications Facility may

also include any equipment reasonably necessary to the operations of a Communications Facility, including power generators. However, the only Communication Facility that may be installed and operated on the Site are those that have been approved by Owner as set forth in, and in accordance with, the architectural drawing and schematics identified as Exhibit A and incorporated herein by reference;

ii. Space required for cable runs to connect Communications Facility equipment and antennas, in the location(s) shown on Exhibit A, together with a non-exclusive easement for reasonable access to the Site and to the appropriate source of electric and telephone facilities.

Other than the Communications Facility and the equipment associated therewith, SSI maintains no personal property rights at the Premises, and other than the lease rights to the Site provided in this Agreement, SSI maintains no real property rights at the Premises. Without limiting the foregoing, all pre-existing structures, personal property and real property shall remain the property of Owner.

**B. Site Use and Communications Facility Construction.** SSI may only use the Site for purpose of installing, maintaining and operating a Communications Facility. SSI will use the Site in a manner which will not unreasonably disturb the occupancy of Owner or it's invitees, tenants and occupants. SSI shall be permitted access to the Premises in accordance with and as limited by Subsections (C) and (D) of this Section 1. At all times that SSI accesses the Premises, SSI shall not interfere with Owner's activities. SSI shall bear all costs associated with the construction, operation and maintenance of the Communications Facility, and those otherwise associated with or arising from this Agreement and SSI's right to access and use of the Site. SSI's responsibility hereunder includes, without limitation, all costs associated with constructing and installing the Communications Facility, all costs associated with operating, repairing, and maintaining the Communications Facility, and all costs incurred in connection with removing SSI's property upon the Agreement's termination or expiration and restoring Owner's property to its original condition. SSI shall pay all fees when due to contractors hired in connection with the construction, installation, maintenance or operation of the Communications Facility or hired to provide any other services on behalf of SSI at the Premises, and SSI shall immediately cure any damage or loss Owner may sustain if a contractor claims not to have been paid and asserts claims or liens against the Owner or its property.

**C. Communications Facility Construction and Access Rights.** SSI shall have access to the Site for Communications Facility construction at all times except during religious observances and the weekly time periods beginning at 5:00 p.m. on Friday afternoons and ending at 7:00 a.m. on the following Monday mornings, during which time periods SSI shall neither be present at the Premises nor cause any interruption in any utility or other services to the Premises. At no times shall SSI restrict accesses to the Owner's buildings and/or parking lot. At all times during construction of the

Communications Facility, SSI shall use its best efforts not to interfere with Owner's activities.

SSI shall complete Communications Facility installation and all associated construction within ninety (90) days of the date that it begins said construction.

**D. Maintenance and Other Access Rights.** SSI shall have access to the Premises for the purpose of operating, inspecting and otherwise maintaining the Communications Facility at all times except during religious observances and the weekly time periods beginning at 5:00 p.m. on Friday afternoons and ending at 7:00 a.m. on the following Monday mornings, during which time periods SSI shall neither be present at the Premises nor cause any interruption in any utility or other services to the Premises. Notwithstanding the preceding sentence, SSI may access the premises at any time in response to any equipment failure, but in such event shall provide Owner with earliest possible notice of SSI's intent to access the premises. At all times that SSI accesses the Premises, whether for routine inspection and maintenance or to respond to an equipment failure, SSI shall not interfere with Owner's activities.

**E.** SSI shall provide Owner detailed project plans and specifications for the installation of the Communications Facility and all construction associated therewith. This Agreement is contingent upon Owner's review and approval of said project plans and specifications. In the event that the Communications Facility is not installed and constructed in accordance with the project plans and specifications and if SSI fails to cure said noncompliance within thirty (30) days of receiving notice thereof from Owner, Owner shall have the right to immediately terminate this Agreement. Owner's right to terminate the Agreement pursuant to this paragraph is in addition to all of Owner's other rights in equity and at law, and under this Agreement, which rights are in no way limited by Owner's right to terminate hereunder.

## **2. Rent.**

**A.** SSI shall pay Owner Fifty Percent (50%) of all "Revenues" which it receives from the operation of the Communications Facility on the Site (the "Owner's Rent"). For example, if within one month a third-party telecommunications provider owes SSI rent equaling Two Thousand Dollars (\$2,000.00) for Owner's Site, then SSI shall pay to Owner One Thousand Dollars (\$1,000.00) which shall constitute the Owner's Rent. Notwithstanding the above, in no event shall Owner's Rent be less than \$750.00 per month during the Initial Term (hereafter referred to as "Minimum Rent"). Owner's Minimum Rent shall be increased annually by an amount of not less than four percent (4%) of the then current Minimum Rent.

**B.** SSI shall pay Owner the Owner's Rent in accordance with the percentage provided in Section 2(A) above. SSI shall provide Owner with a statement of Revenues for the corresponding month ("Owner's Rent Statement"), in a format reasonably satisfactory

to Owner, providing sufficient detail to enable Owner to verify the accuracy of the amount of the Owner's Payment. SSI shall maintain a detailed accounting of all Revenues. Owner shall have the right to review and inspect at any time upon reasonable notice SSI's books and accounting records. SSI is responsible for the payment of the Revenue shares under this Section III regardless of whether this Agreement is terminated. Owner's right to inspect records shall survive the termination of this Agreement and continue until Owner is made certain that all amounts due Owner from SSI have been paid in full.

**C.** SSI shall date and deliver to Owner the Owner's Rent Statement and Owner's Rent not later than the fourteenth (14th) day of each month by U.S. mail or such other method as the Parties may mutually agree.

**D.** Any undisputed amounts due Owner which are not paid by the date required under this Agreement shall be subject to a late payment charge calculated at a rate that is the lesser of one and one-half percent (1.5%) per month or the maximum interest permitted under the laws of the governing state on the amount outstanding from the date such amount was due until the date paid. Notwithstanding the foregoing, in the event that Rent is not paid within sixty (60) days of the date due, Owner shall have the right, at its option, to terminate this Agreement. Owner's right to terminate the Agreement pursuant to this paragraph is in addition to all of Owner's other rights in equity and law, and under this Agreement, which rights are in no way limited by Owner's right to terminate hereunder.

**3. Lease Term.**

The term of this Agreement shall begin as of the date of this Agreement and end ten (10) years thereafter (the "Initial Term") with four (4) consecutive renewal options of five (5) years provided to SSI (Initial Term with renewal terms shall be collectively referred to as "Lease Term"). If, however, (i) Owner is not the owner of the Site, but rather is a tenant pursuant to a written lease ("Owner's Lease"); and (ii) if Owner has disclosed the fact of its leasehold status to SSI, then the Lease Term shall run concurrently with and have the same remaining duration as Owner's Lease for each such specific Site.

**4. Improvements.**

Upon termination or expiration of this Agreement, SSI shall remove its equipment, property and improvements and will restore the Site to substantially the condition existing on the Commencement Date, except for ordinary wear and tear. SSI shall complete said removal and restoration within thirty (30) days of said termination or expiration, and shall bear all costs and liability risks associated therewith.

**5. Compliance with Laws.**

SSI shall, at its sole expense, comply, and require Sublessee/assignee compliance, with all laws, orders, ordinances, regulations and directives of applicable federal, state,

county, and municipal authorities or regulatory agencies, including, without limitation, the Federal Communications Commission ("FCC"), with regard to the construction, operation and maintenance of Communications Facilities at the Site, or, as applicable, each Property, including all laws governing zoning, installation, operation, repair and removal, and shall obtain all permits and licenses that may be required in connection therewith.

**6. Interference.**

SSI represents and warrants that the Communications Facility installed at the Site shall not interfere with any electronic equipment, including but not limited to equipment on the Premises or in the surrounding areas. In addition, SSI agrees that it will immediately resolve any interference problems caused by the Communications Facility at the Site. SSI shall shut down its Communications Facility until such interference problem is resolved.

**7. Utilities.**

SSI will pay for all utilities used by it at the Site, and shall install at its expense a separate electric meter dedicated to measuring the electricity consumed by the Communications Facility. Owner will cooperate with SSI in SSI's efforts to obtain utilities from any location provided by Owner or the servicing utility, including signing any easement or other instrument reasonably required by the utility company.

**8. Indemnity.**

SSI shall indemnify, defend and hold harmless Owner, the ELCA, Synods, Congregations, and all other ELCA affiliated entities, and their officers, directors, agents, employees, members and affiliates, against all claims, demands, causes of action, losses, damages, costs, fees and expenses, including but not limited to any legal fees and costs incurred in defending such claims, demands, and causes of action resulting from, arising out of, or in anyway connected with this Agreement and/or SSI's construction, operation, maintenance, and/or removal of the Communications Facility or any other use of the Premises. For purposes of this Lease, the term ELCA affiliated entity shall mean any entity listed in the Yearbook of the Evangelical Lutheran Church, which is published on an annual basis and which is incorporated herein by reference.

Without limiting the foregoing, SSI hereby agrees to indemnify, defend and hold harmless Owner the ELCA, Synods, Congregations, and all other ELCA affiliated entities from (i) personal injury claims of bodily injury, increased risk, and emotional distress brought by any third parties including, but not limited to parishioners, SSI's employees, contractor or contractor's employees, neighbors, Owner's employees, and anyone else that may use the premises; (ii) claims of property damage to the Owner's property, and all property belonging to SSI, contractors, parishioners, neighbors, or other third party; (iii) claims for failure to comply with relevant laws and regulations, including, but not limited to, zoning ordinances, construction permit requirements, and regulations promulgated by the

Federal Communications Commissions; (iv) liens on the Premises and/or claims by contractors claiming not to have been paid; and (v) claims associated with any failures or shutdowns of SSI's Communications Facility or other equipment for any reason, as well as for any other casualty loss, such as those that may be caused by frequency interference or power outages allegedly attributable to the operation of the Communications Facility.

**9. Hazardous Substances.**

SSI shall not introduce or use on the Site any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation and shall be solely responsible and liable for any violation of this prohibition.

**10. Subordination of Lien/Mortgage.**

**A.** This Agreement and SSI's rights with respect to the Site shall be subject and subordinate to the lien of any present or future mortgage, deed of trust, security agreement, lease assignment or any other encumbrance, and any renewal, extension or replacement thereof, and to all advances made or hereafter to be made upon the security thereof (herein collectively referred to as a "Mortgage") encumbering Owner's fee interest in the Property, without regard to the time of execution or the time of recording of the Mortgage, and without the necessity of the execution and delivery of any further instruments on the part of SSI to effectuate such subordination. However, notwithstanding anything to the contrary contained in or inferable from the foregoing, in the event Owner hereafter incurs any Mortgage to secure any obligation, SSI covenants and agrees to execute and deliver, in recordable form, within twenty (20) business days of demand by Owner, such further instruments as Owner may request to (i) confirm in writing and in recordable form that this Agreement is so subordinate to the lien of any such Mortgage, and/or (ii) subordinate this Agreement to the lien of such Mortgage, which confirmation and/or subordination shall be in such form as may be reasonably required by any holder of such Mortgage. Owner shall procure from the holder of any such Mortgage a covenant that SSI's right to quiet possession will not be disturbed so long as SSI agrees to attorn to such holder and pays and performs all obligations set forth in this Agreement. Further, SSI agrees to execute and deliver, from time to time, within twenty (20) business days of demand by Owner, such documents as may be reasonably requested by Owner to evidence or effectuate such priority.

**B.** Each Party shall, at any time and from time to time, within fifteen (15) days after written request from the other Party to do so, certify by written instrument duly executed and acknowledged to any actual or proposed holder of a Mortgage or any other person specified in such request (i) as to whether this Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, (ii) as to the validity and force and effect of this Agreement, (iii) as to existence of any default hereunder, (iv) as to existence of any offsets, counterclaims or defenses hereto, (v) as to the commencement and expiration dates of the term of this Agreement, and (vi) as to any

other matters as may reasonably so requested. Any such certificate may be relied upon by any other person specified therein, and the contents of such certificate shall be binding on each Party.

**11. Taxes.**

SSI is solely responsible for payment of all taxes, whether assessed against or imposed upon SSI, or Owner, or the Site, or the Premises (including but not limited to all personal property taxes, sales taxes, ad valorem taxes, real property taxes, increases in real property taxes, or assessment of real property taxes) and all fees or other charges which arise out of, relate to or are caused by this Lease, SSI's use of the Site, any Communications Facility located at and/or appurtenant to the site, and any revenues generated by the Site. This provision shall be understood to mean that Owner shall not have to pay any taxes, governmental assessments or fees, or increases therein, as a result of this Agreement with SSI and that SSI shall be exclusively responsible for the same. In addition to any other remedies that Owner may have under this Lease in equity or at law, and without limiting SSI's obligations under this paragraph, SSI's failure to fulfill its obligations under this paragraph shall allow Owner to immediately terminate this Agreement.

**12. Insurance.**

SSI shall bear all of the risks associated with the construction, operation, maintenance, and use of the Communications Facility on the Owner's Premises. SSI shall obtain and maintain all of the necessary insurance for these purposes and name Owner as an additional insured on each policy. Without limiting the foregoing, SSI will procure and maintain occurrence based commercial general liability insurance, with limits of not less than Five Million Dollars (\$5,000,000) during the term of this Agreement or any extension thereof, which insurance shall include personal injury, property damage liability, workers compensation, operations hazards and contractual liability in an amount not less than Three Million Dollars (\$3,000,000) per occurrence. All insurance maintained by SSI shall be primary in respect to any claims, losses or liabilities arising out of SSI's construction, operation, maintenance, and use of the Communications Facility and the Premises, and any insurance carried by Owner shall be excess and non-contributing. SSI, its employees, agents and assigns, and their respective insurers shall waive any subrogation right that may be granted to their insurers against Owner and its agents and assigns. SSI shall provide copies of all certificates and other evidence of such insurance within twenty (20) days of the date of the execution of this Agreement and, thereafter, provide Owner with a certificate of renewal for each policy for the upcoming period. Such policies shall provide that cancellation will not occur without at least fifteen (15) days prior notice to Owner. Owner shall be named as additional insured on all insurance policies obtained by SSI relating to its lease of the Site.

**13. Assignment/Subletting.**

Without Owner's consent and upon fourteen (14) days written notice, SSI shall have the limited right to sublease or assign its rights under this Agreement to telecommunications companies that utilize the Telecommunications Facility located on the Site and guarantee the payment of rents, commissions, and other costs, expenses and fees hereunder.

**14. Maintenance.**

SSI will be responsible for repairing and maintaining the Communications Facility system and any other improvements installed by SSI at the Site in a proper operating, sightly, and safe condition.

In the event that the Site, the Communications Facility or any other SSI property is in need of repair, becomes unsightly to a reasonable person, or otherwise interferes with Owner's use of the Premises, Owner shall notify SSI of the same and SSI shall, within fourteen (14) days of said notice initiate all necessary repairs or modifications to the Site, the Communications Facility or other SSI property identified in said notice. SSI shall commence said repairs or modifications within fourteen (14) days and proceed with due diligence until they are complete. In the event that SSI does not comply with the

requirements of this section, Owner may at its option terminate this Agreement upon written notice to SSI. Owner's right to terminate the Agreement pursuant to this paragraph is in addition to all of Owner's other rights in equity and law, and under this Agreement, which rights are in no way limited by Owner's right to terminate hereunder.

Notwithstanding the aforementioned, Owner may access the premises if necessary in response to any emergency.

**15. Miscellaneous Provisions.**

**A.** This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement;

**B.** This Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties;

**C.** The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party;

**D.** All obligations of the parties under this Agreement shall cease upon expiration or earlier termination of this agreement provided that the provisions of Sections 8, 11, and 15 will survive termination or expiration.

**E.** The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof; and

**F.** The undersigned have read and understand each of the terms of this Agreement, have had an opportunity to review this Agreement with an attorney, and represent that they are duly authorized to execute this Agreement on behalf of the named parties.

**II. SITE LEASES WITH ALL ELCA MEMBER CONGREGATIONS, SYNODS, EDUCATIONAL FACILITIES, AND AFFILIATES SHALL ALSO INCLUDE PROVISIONS WHICH PROVIDE THE FOLLOWING.**

**1. Guarantee.**

All Leases, and the payment of all rents, commissions, any other costs, expenses, and fees thereunder, shall be guaranteed by the third party telecommunications companies who utilize Owner's Site.

**2. Representative Commission.**

Any commission that Owner is required to pay to any SSI independent representative who facilitates the Agreement between Owner and SSI ("Representative Commission") shall not exceed four percent (4%) of Owner's monthly rent. Representative Commissions shall be automatically deducted from monthly rent and paid to said representative on a monthly basis by SSI. SSI shall be solely responsible for any failure to pay the representative his or her commission when due. Any obligation of Owner regarding Representative Commissions arises only upon the payment of Owner's monthly rent and terminates upon any termination of Owner's monthly rent.