



SIRN 20/20 ASSET-SHARING TEMPLATE

11.7 FINAL REPORT SUPPLEMENTAL DOCUMENT

Contract Deliverable #: 5.2.1



Law, policy and governance for technology interoperability

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**NORTH DAKOTA
STATEWIDE INTEROPERABLE RADIO NETWORK**

ASSET-SHARING AGREEMENT

THIS AGREEMENT (“Agreement”) is made by and between

_____ (“Operator”), a _____
of North Dakota and _____ (“Host”), a
_____ of North Dakota.

WHEREAS, both the Operator and Host wish to make interoperable, reliable, resilient, secure mobile communications services available to public safety personnel throughout North Dakota consistent with [NEW SIRN STATUTE] (“Act”); and

WHEREAS, the Operator has identified one or more asset(s) (“Asset(s)”), such as real property, a tower structure, a shelter, a piece of equipment, or other infrastructure controlled by Host, as well-suited for use in the [SIRN] network; and

WHEREAS, the Operator desires to obtain and Host desires to provide Operator access to and use of Host’s Asset(s) to increase the public safety benefits both will realize from the [SIRN] network, subject to the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, the Operator and Host agree as follows:

1. Scope and Duration of Agreement

1.1. Authorization to Use

Host authorizes Operator to use the Asset(s) described in the attached Asset-Specific Addendum as an element of the [SIRN] network for the “Permissible Purpose” also described in the Addendum.

1.2. Asset-Specific Addendum

This Agreement describes the general terms and conditions governing the use by Operator of one or more of Host’s Assets. Provisions specific to an Asset or group of Assets, including a description of the Asset(s), are provided in an Asset-Specific Addendum (“Addendum” or “Addenda”) to this

Agreement. Multiple Addenda may be attached to this Agreement to reflect differing terms specific to various Assets; Addenda may be added at any time during the term of this Agreement. Where a provision in the body of this Agreement conflicts with a provision in an attached Addendum, the provision in the Addendum controls.

1.3. Term

This Agreement is effective on the later of the dates it is signed by either Host or Operator (“Effective Date”) and remains effective until terminated by either party.

1.4. Termination

This Agreement is terminated when both parties agree in writing to terminate, or:

- (a) unilaterally by either party upon 30 days’ written notice, or
- (b) by Host upon written notice if Host is unable to meet its obligations under this Agreement because of shortage of funds, change in law, or Operator’s failure to obtain a required license or certificate, or
- (c) by Host upon written notice if Operator continues to violate a material provision of this Agreement for thirty days after Host provides written notice of the violation, or
- (d) by Operator upon written notice if Operator lacks sufficient funds to perform under this Agreement.

Termination of one or more Addenda to this Agreement does not serve to terminate this Agreement; unless otherwise terminated, the Agreement remains effective without an Addendum in order that an Addendum may be added at a later time.

1.5. Effect of Termination

When this Agreement is terminated, Operator must remove its equipment and surrender the Asset(s) in good order. Host may charge Operator rental fees specified in the Addendum from the date of termination until Operator has properly surrendered the Asset(s). Any “improvements” (permanent

changes) the Operator made to the Asset(s) become Host's property upon termination of this Agreement. The terms of this Section 1.4 apply despite termination of this Agreement.

2. Access to Asset(s)

Operator will access the Asset(s) only with Host's prior approval, in the manner described in the Addendum.

3. Protection of Asset(s)

3.1. Host Rights and Obligations

3.1.1. Right to Non-Interfering Use

Host may use the Asset(s) in a manner that does not interfere with Operator's use of the Asset(s) for the Permissible Purpose authorized in this Agreement.

3.1.2. Right to Inspect Work

Host may inspect Operator's work at Host-controlled premises to ensure compliance with Host's policies.

3.1.3. Duty to Prevent Interference

Host is responsible to prevent harmful interference to Operator equipment and services from future installations utilizing site(s), infrastructure, or equipment under Host's control at the Asset site(s).

3.1.4. Duty to Maintain Asset(s)

Host will maintain the Asset(s) and its premises in good repair and ensure Host's facilities meet any regulatory requirements (Federal Aviation Administration ("FAA")-required lights on tower, for example).

3.1.5. Duty to Prevent Unauthorized Access

Host will use reasonable efforts to prevent unauthorized access to Operator's facilities/property at locations controlled by Host.

3.2. Operator Rights and Obligations

3.2.1. Duty to Remedy Interference

Operator will avoid and remedy at its own cost any harmful interference caused by Operator's use of the Asset(s) to equipment or services of Host or others currently using the Asset site(s);

3.2.2. Duty Related to Performance of Work

In using Asset(s), Operator will adhere to Host policies and procedures. Personnel performing work for Operator must be qualified and are considered Operator's employees or contractors, not Host's. Operator is solely responsible for costs associated with work performed for Operator.

3.2.3. Duty Regarding Certified Equipment

Any equipment to be installed by Operator on the Asset site must possess any federal certifications required for such equipment (for example, radio transmitters must be Federal Communications Commission ("FCC")-approved).

3.2.4. Duty to Provide Permits and Licenses

Before beginning to use the Asset(s), Operator will provide Host copies of all FAA and FCC permits and licenses necessary for Operator's use of the Asset(s).

4. Liability, Indemnification, and Insurance

4.1. No Indemnification

Host and Operator each assumes its own liability for any claim arising out of this Agreement.

4.2. Force Majeure

Neither party is responsible for breach of this Agreement caused by fire, riot, act of God, or war if the event is beyond the party's reasonable control and the other party receives notice of such breach or expected breach immediately upon occurrence of the event.

4.3. Insurance

Host and Operator each will maintain throughout the term of this Agreement commercial general liability and automobile liability insurance with minimum coverage of \$250,000 per person and \$1,000,000 per occurrence. The insurance coverage must be from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota and must provide coverage for any claims which may arise out of this Agreement. Each party reserves the right to obtain from the other party complete, certified copies of all required insurance documents at any time.

4.4. Contractors

Neither Host nor Operator will permit any non-public contractor ("Contractor") to perform work under this Agreement, including access to the Asset(s) or Asset site(s), unless Contractor has indemnified both Host and Operator from claims resulting from Contractor's performance, regardless of the insurance liability limits described here. Contractor will maintain throughout the term of this Agreement commercial general liability and automobile liability insurance with minimum coverage of \$250,000 per person and \$1,000,000 per occurrence, as well as workers' compensation coverage within the statutory limits. The insurance coverage must be placed with insurers rated "A-" or better by A.M. Best Company, Inc. and must provide coverage for any claims which may arise out this Agreement. The commercial general liability policy and the automobile liability policy must list both Host and Operator as additional insureds and contain a "Waiver of Subrogation" waiving any right of recovery by the insurance company against Host or Operator, as well as provisions that the coverage may not be canceled or modified without thirty (30) days prior written notice to both Host and Operator. Contractor's insurance coverage must be primary (*i.e.*, pay first) as respects any coverage maintained by Host or Operator which will be excess of the Contractor's insurance. Contractor must provide certified

copies of all required insurance documents upon request from either Host or Operator. Host and Operator each must ensure that their own contractors comply with this Agreement.

5. General Terms

5.1. Governing Law

This Agreement is subject to and will be enforced under the laws of the state of North Dakota.

5.2. Whole Agreement

This Agreement constitutes the entire agreement between the parties on this subject.

5.3. Amendments

Any change to the terms of this Agreement must be in writing signed by both Host and Operator.

5.4. Assignment

Operator may assign its rights and obligations under this Agreement only with Host’s written consent.

5.5. Successors and Assigns

The parties’ successors and assigns are bound by the terms of this Agreement.

5.6. Notices

The parties will send any notices under this Agreement to the following contacts:

Notices to Operator

Name: _____
Title: _____
Entity: _____
Address: _____
Phone: _____
Email: _____

Notices to Host

Name: _____
Title: _____
Entity: _____
Address: _____
Phone: _____
Email: _____

5.7. Authority

Each person signing this Agreement asserts that he or she has authority to sign and commit the Host or Operator to the obligations of this Agreement.

EXECUTED:

For Host

Signature: _____

Date: _____

Name: _____

Title: _____

Entity: _____

For Operator

Signature: _____

Date: _____

Name: _____

Title: _____

Entity: _____

ASSET-SPECIFIC ADDENDUM

(Addendum No. __)

This Asset-specific Addendum is incorporated into the Agreement (“Agreement”) executed on _____ between _____ (“Host”) and _____ (“Operator”) to share the asset(s) (“Asset(s)”) described below for use in the [SIRN] network.

1. Description of Asset(s)

[EXAMPLE: Space XXX on Host communications tower and sufficient space in Host’s equipment shelter at the same location to accommodate an enclosed rack with dimensions H x W x D.]

2. Location of Shared Asset(s)

Address: _____

Geographic coordinates: _____

Ground elevation: _____

3. Permissible Purpose

Operator may use Asset(s) only for the purpose of [EXAMPLE: affixing radio antennae for transmitting and receiving communications over the [SIRN] network and housing equipment associated with and used for facilitating such communications] (“Permissible Purpose”).

4. Access to Asset(s)

Host authorizes Operator to access the site of the Asset(s) under the following terms:

[SPECIFIC TERMS PERMITTING AND LIMITING OPERATOR ACCESS (HOURS, NOTICE, PERSONNEL, ETC.), INCLUDING EMERGENCY ACCESS PROVISION IF APPROPRIATE]

5. Utilities and Other Services

Host will provide [DESCRIBE UTILITIES AND SERVICES (AIR CONDITIONING, SPECIAL SECURITY, ETC) HOST WILL PROVIDE]. Operator will provide all other utilities and services Operator requires to facilitate the Permissible Purpose.

6. Operator Equipment

[DESCRIPTION OF OPERATOR EQUIPMENT TO BE INSTALLED AT HOST SITE (OWNERSHIP RETAINED BY OPERATOR), IF ANY]

7. Site Improvements

[DESCRIPTION OF IMPROVEMENTS OPERATOR WILL CONSTRUCT AT HOST SITE (BECOMES HOST PROPERTY), IF ANY]

8. Compensation

[SPECIFY ANY COMPENSATION (WHETHER CASH OR IN-KIND CONTRIBUTION) TO HOST FROM OPERATOR FOR USE OF ASSET(S), INCLUDING UTILITIES AND INCIDENTALS, ANY ANNUAL INCREASES, AND ANY APPLICABLE TAXES/FEEES]

9. Effective Date and Termination of Addendum

This Addendum is effective on the date of the later of the two signatures below and remains effective until termination of this Addendum or the Agreement to which it is attached. Termination of the Addendum does not cause termination of the Agreement to which the Addendum is attached. The Addendum is terminated:

- (a) when the Agreement is terminated; or
- (b) upon Operator’s written notice to Host if the Asset(s) itself or conditions at the Asset(s) site(s) are such that Operator cannot reasonably use the Asset(s) for the Permissible Purpose; or

(c) [SPECIFY TERMINATION PROVISIONS FOR ADDENDUM ONLY, MAY DUPLICATE AGREEMENT TERMINATION PROVISIONS]

10. Surrender

When this Addendum is terminated, Operator must remove its equipment and surrender the Asset(s) in good order. Host may charge Operator post-termination fees from the date of termination until Operator has properly surrendered the Asset(s). The post-termination fee will not exceed [DESCRIBE AMOUNT (CASH OR IN-KIND) OF POST-TERMINATION FEE, IF ANY.] This provision shall survive termination of the Addendum or Agreement.

11. Flow-down Provisions

In cases where Host controls the Asset(s) pursuant to an agreement between Host and the owner of the Asset(s) ("Owner's Lease"), Host may be required to impose upon Operator certain provisions imposed on Host in the Owner's Lease. Such provisions, which are incorporated into this Addendum, are as follows:

(a) [DESCRIBE ANY FLOW-DOWN REQUIREMENTS, IF ANY]

Host asserts that Host possesses the authority under Owner's Lease to share the Asset(s) with Operator as contemplated in this Addendum.

12. Other Terms and Conditions Specific to the Asset(s)

[DESCRIBE ANY ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THE ASSET THAT IS THE SUBJECT OF THIS ADDENDUM]

ADDENDUM EXECUTED:

For Host

Signature: _____

Date: _____

For Operator

Signature: _____

Date: _____

Name: _____

Title: _____

Entity: _____

Name: _____

Title: _____

Entity: _____