

FIRST AMENDMENT TO AGREEMENT

**BETWEEN THE TOWNS OF CHILMARK AND AQUINNAH
AND
ATC OUTDOOR DAS, LLC**

**REGARDING THE INSTALLATION OF AN UP ISLAND DISTRIBUTED ANTENNA SYSTEM
AND RIGHT OF WAY LICENSE**

THIS FIRST AMENDMENT TO AGREEMENT REGARDING INSTALLATION OF AN UP ISLAND DISTRIBUTED ANTENNA SYSTEM AND RIGHT OF WAY LICENSE ("*First Amendment*") is made as of the latter of the two signature dates below ("*Effective Date*"), between the towns of Chilmark and Aquinnah by and through their respective ~~Select Boards of Selectmen~~ and ~~when duly authorized, their respective Executive Secretaries~~ Town Administrators, each a Massachusetts municipal corporation (collectively, the "*Towns*"), and ATC OUTDOOR DAS, LLC, a Delaware limited liability company ("*Provider*"). As used herein, the Towns and Provider are individually referred to as "*Party*" and collectively referred to as the "*Parties*."

RECITALS

- A. The Towns and Provider are parties to that certain Agreement Regarding the Installation of an Up Island Distributed Antenna System and Right of Way License dated April 28, 2010 ("*License*") regarding the installation and operation of a distributed antenna system across, above, over and under public rights of way and other public property within the Towns and provide the Towns for their shared use of dark optical fiber system network; and
- B. The Parties desire to amend the License under the terms and conditions as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Recitals.** The forgoing recitals are incorporated herewith as if fully set forth in this First Amendment.
2. **Term.** Pursuant to Section A, Paragraphs 2(xi) and 5, the Initial Term of the License expired on May 31, 2022, however the Parties have continued to operate under the agreement through the date of this First Amendment as the terms of this First Amendment have been negotiated. Towns acknowledge renewal of the term of the License, and the first Renewal Term will expire on May 31, 2027. Pursuant to Paragraph 5, Provider has the option to renew the Term for a second five-year Renewal Term, which if automatically exercised pursuant to Paragraph 5, will commence immediately after the expiration of the first Renewal Term.
3. **Special Permits.** Towns acknowledges issuance of special permits, annexed hereto as Exhibit E-1, which deletes and replaces the existing Exhibit E to the License. -References in the License to Exhibit E shall hereinafter be deemed to be references to Exhibit E-1.

4. **Battery Replacements.** Provider will replace the back-up batteries installed at each of the thirty-one (31) DAS nodes, with an estimated installation date of twelve months from the Effective Date (“**Target Completion Date**”). Provider’s battery installation schedule shall be updated from time to time and shall be adjusted to accommodate delays caused by reasons that are outside of Provider’s control. –For purposes of clarification and not limitation, in addition to Force Majeure events, reasonable delays caused due to Covid-19 restrictions, delays caused by Provider’s inability to obtain any required approval despite timely application for such required approval, delays caused by restricted access to the DAS, and delays due to equipment and battery unavailability, manufacturing delays or shipping delays of equipment and batteries (provided Provider has ordered such equipment in a timely manner) and other supply chain issues are examples of delays caused by events outside of Provider’s control that may affect the Target Completion Date. Provider also owns five portable generators that it may deploy during power outages to bring power to specific node locations on an as-needed basis. –Subject to the same conditions above, Provider will replace the batteries associated with the five generators by the Target Completion Date.
5. **Fiber Installation.** Pursuant to Section B, Paragraph 1 of the License, Provider installed dedicated dark optical fiber for the Towns as part of the Municipal Fiber Network. At two locations as depicted on the attached Exhibit A, and subject to the same conditions in the above Paragraph 4, and further subject to Section B of the License, Provider will install twelve strands of dark optical fiber for the Towns’ use from a Demarcation Box to (1) the public safety tower on Peaked Hill Road and (2) the boathouse located on Boathouse Road. Provider’s estimated installation of the fiber is the Target Completion Date.
6. **Future Fiber Installation.** If Provider is expanding or extending the DAS to the locations in the Towns listed below, Provider will also install twelve strands of dark optical fiber for the Towns’ use subject to the same conditions in the above Paragraph 4, and further subject to Section B of the License (“**Additional Fiber Locations**”). At a location to be mutually agreed, a Demarcation Box location will be located within [X] feet of any future node locations of the [DAS]. Nothing in this paragraph shall be interpreted to mean that Provider will install strands of dark optical fiber unless a Permitted TC Provider has agreed to pay for an extension or expansion of the DAS to the Additional Fiber Locations. [The “Additional Fiber Locations” are: (1) Public Works Building; (2) Beach Shack #1; (3) Beach Shack #2; (4) Middle Road or South Road to West Tisbury; (5) Moshup Trail; and (6) Lighthouse Business District.
7. **Annual Review and Provider Contact Information.** The Parties will meet annually each September, either in person or through teleconference, to discuss any service issues, outages, and/or upcoming projects. Provider will update its list of contacts pursuant to Section 3, Paragraph 7 of the License on an annual basis.
8. **Contact Person; Network Operating Center.** Pursuant to Section D, Paragraph 7 of the License, Provider’s Network Operation Center (“NOC”) can be reached 24/7 at 888-773-4122. Towns will notify Provider of any interference or necessary maintenance or repair issues at 888-773-4122.

Commented [KS1]: We are checking internally with our operations team regarding where Demarcation Boxes are currently placed in comparison to node locations and what distance makes the most sense to include in this amendment. ATC is not not agreeing to bring fiber to specific building locations, but we will agree to bring additional fiber for the Towns' use to the node and then demarc the fiber at the node location.

Commented [KS2]: Are you able to provide addresses for the first 3 locations on this list? What is the Lighthouse Business District area?

Towns will also prepare and send written summary of the issue via email to DAS_SUPPORT@americantower.com, it being understood that Provider monitors the email address during standard workday hours and does not monitor the email address on a 24/7 basis.

9. **Tree Trimming Management Plan.** Subject to Section A, Paragraph 15 of the License, in order to reduce potential interference issues, Provider will maintain height of trees surrounding each node location and provide trimming service as necessary to prevent any potential interference.
10. **Continued Effect.** Except as specifically modified by this First Amendment, all the terms and conditions of the License shall remain in full force and effect and are hereby ratified and confirmed. In the event of a conflict between any term and provision of the License and this First Amendment, the terms and provisions of this First Amendment shall control. Except as otherwise stated in this First Amendment, all initially capitalized terms will have the same respective defined meaning stated in the License. All captions are for reference purposes only and shall not be used in the construction or interpretation of this First Amendment.
11. **Counterparts.** This First Amendment may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original, and all of which together shall constitute one and the same document.
12. **Merger.** The License, as modified by this First Amendment, embodies the entire agreement between the parties with respect to the matters hereof, and may not be amended, modified, or terminated except by a writing duly signed by the party to be charged. There are no representations or understandings existing prior to the date hereof between the Parties which are not stated in this First Amendment.
13. **Authority.** Each Party hereto represents and warrants to the other that all necessary authorizations required for the execution and performance of this First Amendment have been given and that the undersigned officer of a Party is duly authorized to execute this First Amendment and bind the Party for which it signs.
14. **Electronically Reproduced Counterparts.** The Parties agree that (i) a digital or electronic signature on this First Amendment and/or (ii) a fully executed scanned or electronically reproduced copy or image of this First Amendment shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, manually executed counterpart of this First Amendment and without the requirement that the unavailability of such original, manually executed counterpart of this First Amendment first be proven.

[signatures appear on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the Effective Date.

Town of Chilmark
By its Select Board ~~of Selectman~~:

By: _____
Name: _____
Title: _____
Date: _____

Town of Aquinnah
By its Select Board ~~of Selectman~~:

By: _____
Name: _____
Title: _____
Date: _____

ATC OUTDOOR DAS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Site Name: Martha's Vineyard
ATC Site # 345226

Exhibit E-1

[insert special permits for Town of Aquinnah and Chilmark]

Exhibit A

Boathouse Road Location



Peaked Hill Location

