THIS MUNICIPAL ACCESS AGREEMENT dated _____ (the "Effective Date")

BETWEEN

XXXXXXXX

(the "Municipality")

AND

XXXXXXXXX

(the "Company")

(each, a "Party" and, collectively, the "Parties")

DRAFT

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RECITALS

WHEREAS the Company is a "telecommunications common carrier" as defined in the *Telecommunications Act* ("**Telecom Act**") or "distribution undertaking" as defined in the *Broadcasting Act* (collectively, a "**Carrier**") and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission or any successor body ("**CRTC**");

AND WHEREAS, in order to operate as a Carrier, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along ("**Within**") the highways, streets, road allowances, lanes, bridges or viaducts which are owned and under the jurisdiction of the Municipality (collectively, "**Rights-of-Way**" or "**ROWs**");

AND WHEREAS, pursuant to section 43 of the Telecom Act, the Company requires the Municipality's consent to construct its Equipment Within the ROWs and the Municipality is willing to grant the Company a non-exclusive right to access and use the ROWs provided that such use will not unduly interfere with the public use and enjoyment of the ROWs, nor any rights or privileges conferred before or after the Effective Date by the Municipality on Third Parties to use or access the ROWs;

NOW THEREFORE in consideration of the mutual terms, conditions and covenants contained herein, the Parties agree and covenant with each other as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

"**Affiliate**" means;

in the case of the Company, "affiliate" as defined in the *Canada Business Corporations Act* that is also a Carrier; and in the case of the Municipality, a local board, agency or commission of the Municipality or a corporation which is partially or solely owned by, and is controlled by, the Municipality, and which has as a primary purpose, the management and maintenance of the ROWs.

"**Agreement**" means this Municipal Access Agreement and with the Schedules attached to this Agreement, as the same may be amended from time to time in accordance with the provisions hereof.

"**Emergency**" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either Party.

"**Equipment**" means the transmission and distribution facilities owned and operated by the Company or its Affiliates, and includes:

> "**Plant**", which means any fibre optic, coaxial or other nature or form of cables, whether aerial or buried, including Service Drops, as well as fibre splices and enclosures;
>
> "**Aboveground Equipment**", which means any structure located on the surface of the ROW that is used to house or support the Plant, and includes cabinets, pedestals, poles and lamp poles; and
>
> "**Underground Equipment**" means any structure located below the surface of the ROW and includes pipes, conduits, ducts, manholes, vaults and handholes.

"**Excavation**" means the breaching or breaking up of the hard surface of the ROW, and includes activities such as day-lighting, test pitting, digging pits and directional boring, but excludes hand-digging.

"**Hazardous Substance**" means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law (including the common law).

"**Municipality's Costs**" means the reasonable and verifiable costs and expenses of the Municipality for certain activities conducted by the Municipality pursuant to this Agreement.

"**Municipal Consent**" or "**MC**" means the written consent of the Municipality allowing the Company to conduct the Work described in **Schedule A**.

"**Municipal Engineer**" means the technical staff of the Municipality or the individual designated by him or her.

"**Municipal Guidelines**" means the Municipality's rules, policies, standards and guidelines pertaining to the Company's Work in the ROWs.

"**Municipal Project**" means construction or similar work required or initiated by the Municipality for *bona fide* municipal purposes that will affect or disrupt the ROWs or the use of the ROWs.

"**Permit**" means an MC or a ROP or both.

"**Relocation Costs**" means the Company's reasonable and verifiable costs of completing any relocation of the Equipment requested by the Municipality.

"**Road Occupancy Permit**" or "**ROP**" means a Permit issued by the Municipality authorizing the Company to occupy the ROWs to conduct the Work activities described in **Schedule A**.

"Right of Way" or "ROW" means It includes the roadways, sidewalks and a section of land used for utility services (e.g. electrical equipment, water mains, gas lines and telecommunication cables). On a residential street, this usually means that the section of the front lawn closer to the roadway is publicly owned.

"**Service Drop**" means a cable that, by its design, capacity and relationship to other cables of the Company, can be reasonably considered to be for the sole purpose of connecting backbone of the Plant to not more than one individual customer or building point of presence or property.

"**Subsurface Utility Engineering**" or "**SUE**" means an engineering practice used to more accurately establish the location of buried utilities and includes both (i) non-destructive methods such as Ground Penetrating Radar and Electromagnetic tools and (ii) more invasive methods such as daylighting through test pits and vacuum excavation.

"**Third Party**" means any person that is not a party to this Agreement nor an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with the Company.

"**Work**" means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or other alteration of the Equipment performed by the Company or its agents, contractors and subcontractors Within the ROWs, including the Excavation, repair and restoration of the ROWs.

Sections and headings. The division of this Agreement into articles, sections and subsections and the insertion of headings is for convenience of reference only and does not affect the interpretation of this Agreement.

Statutory references. A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes the statute or the regulation.

Industry Terms. Words having well-known technical or trade meanings within the context of municipal construction and the communications industry shall be so construed, and all listings of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

Schedules. The following schedules are annexed to this Agreement and are hereby incorporated by reference into this Agreement and form part hereof:

Schedule A - Permits Required by the Municipality
Schedule B - Fees Payable by the Company

2. USE OF ROWs

2.1 **Consent to use ROWs.** Subject to the terms and conditions hereinafter set forth, and in accordance with the Municipal Standards, the Municipality hereby consents to the Company's use of the ROW on a non-exclusive basis for the placement of the Company's Equipment.

2.2 The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with the public use and enjoyment of the ROW.

2.3 **Proviso.** Notwithstanding **Section 2.1** and any other provision of this Agreement, to the extent that any of the Municipal Standards are inconsistent with the terms of this Agreement or federal law, the Company shall not be required to comply with such Municipal Standards.

2.4 **No ownership rights.** The Parties acknowledge and agree that:

(a) the use of the ROWs under this Agreement shall not create nor vest in the Company any ownership or property rights in the ROWs; and

(b) the placement of the Equipment Within the ROWs shall not create or vest in the Municipality any ownership or property rights to the Equipment.

2.5 **Condition of ROWs.** The Municipality makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the ROWs on an "as is" basis.

3. PERMITS TO CONDUCT WORK

3.1 **Where Permits required.**

(a) Before commencing any Work Within a ROW, the Company shall obtain the applicable Permit from the Municipality in writing as required for the type of Work described in **Schedule A**.

(b) For each Permit required, the Company shall submit to the Municipality a completed application in a form specified by the Municipality and including the applicable fee.

3.2 **Company to submit plans.** Unless otherwise agreed to by the Municipality, the Company shall, prior to undertaking any Work in the ROW that requires an MC, submit the following to the Municipality for approval:

(a) construction plans and drawings of the proposed Work showing the locations of the proposed and existing Equipment, and specifying the boundaries of the area within the Municipality the Work is proposed to take place; and

(b) all other relevant plans, drawings and other information as may be normally required by the Municipal Engineer from time to time for the purposes of issuing Permits.

3.3 **Refusal to issue Permits.** In case of conflict with any municipal purpose, including but not limited to reasons of public safety and health, conflicts with existing infrastructure, proposed road construction or the proper functioning of public services, all as identified in writing to the Company by the Municipality, the Municipality may request amendments to the plans referred to in **Section 3.2** or choose to refuse to issue a Permit..

3.4 **Expiry of Permit.** In the event that the Company has not commenced the approved Work within one (1) year of the date of issuance of the applicable Permit and has not sought and received an extension to the Permit from the Municipality, the Permit shall be null and void. In such circumstances, any fees paid by the Company in respect of the expired Permit shall not be refunded and the Company must apply for and obtain a new Permit for the Work.

3.5 **Restoration of Company's service during Emergencies.** Notwithstanding **Section 3.1**, in the event of an Emergency, the Company shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with **Section 3.1**; provided that the Company does comply with same within five (5) business days of completing the Work.

3.6 **Where only notification is required.** Where a particular Work activity described in **Schedule A** does not require a Permit and only requires that the Company notify the Municipality, such notification shall be provided in a manner and format as directed by the Municipality and delivered in accordance with the Notice provisions contained herein.

4. MANNER OF WORK

4.1 **Compliance with applicable laws, *etc*.** All Work under this Agreement shall be conducted and completed to the satisfaction of the Municipality and in accordance with:

(a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety), to the extent that such laws are not inconsistent or conflict with federal laws;

(b) the Municipal Standards; or Town or Township Development Standards;

(c) this Agreement; and

(d) the applicable Permits issued under **Section 3.1**.

4.2 **Stoppage of Work.**

(a) The Municipality may order the Company to cease any Work for any municipal purpose or cause relating to public health and safety or any

circumstances beyond its control, having regard in all circumstances to the public interest in maintaining access to communications services, including emergency 911 services. In such circumstances, the Municipality shall provide the Company with a verbal order and reasons to stop the Work and the Company shall cease the Work immediately.

(b) Within two (2) business days of the verbal order, the Municipality shall provide the Company with a written Stop Work order with reasons. The Municipality shall advise the Company as soon as practicable once reasons for the Work stoppage have been resolved. The Municipality, acting reasonably, may impose additional conditions when allowing the Company to re-commence the Work.

4.3 **Coordination of Work with others.**

(a) The Company shall minimize the necessity for road cuts, construction and the placement of new Equipment Within the ROW by coordinating its Work and sharing the use of aboveground and underground support structures with other existing and new occupants of the ROWs.

(b) The Company shall participate in any utility co-ordination committee established by the Municipality and pay its equitable share of the reasonable costs of the operation and administration of the committee.

4.4 **Emergency measures by Municipality.**

(a) In the event of an Emergency, the Municipality shall, as soon as reasonably practicable, contact the Company and, as circumstances permit, allow the Company a reasonable opportunity to remove, relocate, or protect the Equipment, having due regard to the nature of the Emergency.

(b) Notwithstanding the foregoing, the Municipality may take such measures it deems necessary to re-establish a safe environment, and, where the Emergency is caused by the Equipment, the Company shall pay the Municipality's Costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.

(c) Where the Emergency situation is caused by an act or negligence of the Municipality, the Municipality will be responsible for all costs, including those that are directly attributable to the Work or the presence of the Equipment in the ROW.

4.5 **Emergency contact personnel.** The Company and the Municipality shall provide to each other a list of 24-hour emergency contact available at all times and shall update the other of any changes to the emergency contact personnel.

4.6 **As-built drawings**.

(a) The Company shall, no later than ninety (90) days after completion of any Work authorized by an MC given through the ROP, provide accurate "as-

built" drawings, prepared in accordance with the Municipal Standards, sufficient, for planning purposes, to accurately establish the location of the Equipment installed Within the ROWs.

(b) The Municipality shall use the as-built drawing for the sole purpose of ROW planning and the issuance of Permits. The Municipality shall protect the "as-built" drawings through reasonable measures and shall not share them beyond those who require it for the purposes described above, nor use them for any other purpose or combine them with any other information without the Company's express written consent.

4.7 **Agents and contractors**. Each Party agrees to work with the other Party directly to resolve any issues arising from any the acts, omissions or performance of its agents, contractors and sub-contractors.

5. REMEDIAL WORK

5.1 **General.** Following the completion of any Work, the Company shall leave the ROW in a neat, clean, and safe condition and free from nuisance, to the extent it was in before the Work was undertaken and to the satisfaction of the Municipality. Subject to **Section 5.2**, where the Work causes Excavation, the Company shall repair and restore the surface of the ROW to the same or better condition it was in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the Municipal Engineer.

5.2 **Temporary repair.** Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete a final repair to the ROW at the time of completion of the Work, the Company may complete a temporary repair; provided it replaces the temporary repair with a final repair within a reasonable period of time but in any event within ninety (90) days unless otherwise agreed to by the Municipality.

5.3 **Warranty for repairs.**

(a) The Company warrants its temporary repair, to the satisfaction of the Municipality, until such time as the final repair is completed by the Company, or, where the Municipality is performing the final repair, for a period of one (1) year or until such time as the final repair is completed by the Municipality, whichever is earlier.

(b) The Company warrants its final repairs for a period of two (2) years from the date of their completion.

5.4 **Repairs completed by Municipality.** Where:

(a) the Company fails to complete a temporary repair to the satisfaction of the Municipality within twenty four (24) hours of being notified in writing by the Municipality or such other period as may be agreed to by the Parties; or

(b) the Company and the Municipality agree that the Municipality should perform the repair, then the Municipality may affect such work necessary to perform the repair and the Company shall pay the Municipality's Costs of performing the repair.

5.5 **Removal of graffiti.**

(a) The Company shall use its commercially reasonable efforts to clean, remove or conceal graffiti or other unauthorized markings located and visible on the Aboveground Equipment in a timely manner and to the satisfaction of the Municipality.

(b) Without limiting the generality of the foregoing, the Company will, within forty-eight (48) hours' written notice from the Municipality, remove or conceal all offensive graffiti from its Aboveground Equipment.

(c) In the event that the Company does not remove or conceal the graffiti in accordance with this section, the Municipality may take such steps as it deems reasonable and necessary to remove or conceal the graffiti and charge its Municipal Costs of doing so to the Company.

5.6 **Maintenance of Aboveground Equipment.** The Company shall have a maintenance program to clean, straighten, paint and repair Above Ground Equipment on a regular basis. If the Company receives written notice from the Municipality requesting that the Company carry out a specific repair as specified in the notice, the Company shall do so within five (5) business days after receiving the notice, or such longer period that the Parties may agree given the nature of the repair.

5.7 **Removing abandoned Equipment.** Where the Company provides Notice to the Municipality that it no longer requires the use of any Equipment, the Company shall, at the Municipality's request, within 90 days or other period of time as agreed to by the Parties, and at the Company's sole cost and expense:

(a) remove all abandoned Aboveground Equipment;

(b) subject to **paragraph (c)** below, make safe any abandoned Underground Equipment that is not occupied or used by a Third Party;

(c) where the Municipal Engineer determines that the abandoned Underground Equipment will interfere with a Municipal Project that will require Excavation of the ROW, remove the abandoned Underground Equipment from the ROW prior to such Excavation; and

(d) upon the removal of or making safe of any abandoned Equipment, repair any resulting damage and restore the affected ROWs to the condition in which they existed prior to the removal or making safe.

If the Company fails to remove or make safe the abandoned Equipment and restore the ROWs within the time specified above and to the satisfaction of the Municipal Engineer, the Municipality may complete such removal and restoration and the Company shall pay the associated Municipality's Costs.

6. LOCATING FACIILTIES IN ROWS

6.1 **Locates.** The Company shall, at its own cost and at the request of the Municipality physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method ("**Locates**") under the following circumstances:

(a) in the event of an Emergency, within two (2) hours of receiving the request or as soon as practicably possible, following which the Company will ensure that it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified; and

(b) in all other circumstances, within a time reasonably agreed upon by the Parties or as mandated by applicable provincial legislation, whichever is more stringent.

Locates will not be required for any Company infrastructure located within 4.0 m of the travelled portion of the roadway. The Company accepts full risk for locating its plant within the clear zone and the road authority will not be responsible for any damages to the Companys plant howsoever caused.

6.2 **Mark-ups.** The Company agrees to, upon request from the Municipality for the purpose of a new construction project, identify, verify and validate its existing facilities by marking up plans provided by the Municipality or providing other acceptable information (the "**Mark-up**") and returning the Mark-up to the Municipality by no later than twenty (20) business days after it has received the plan.

7. RELOCATION OF EQUIPMENT

7.1 **General.**

(a) Where the Municipality requires the Company to relocate, temporarily or permanently, its Equipment for *bona fide* municipal purposes, the Municipality shall notify the Company in writing.

(b) The Company shall, within ninety (90) days of receiving the Notice from the Municipality (or such other time as may be agreed to by the Parties, relocate such Equipment and perform any other required and associated Work.

(c) If the Company fails to complete the relocation within the timeline as set out in **paragraph (b)** above, the Municipality may, at its option, complete such relocation and the Company shall pay the Municipality's Costs of the relocation.

7.2 **Municipality's efforts.** The Municipality will, to the best of its ability, avoid any unnecessary relocations, and will make good faith efforts to provide alternative

routes for the Equipment affected by the relocation to ensure uninterrupted service to the Company's customers.

7.3 **Relocation to private property.** Where the Company is required to relocate the Equipment on property other than a ROW or other Municipal property, then the Municipality may provide the Company an extension to allow time to procure an easement from a Third Party landowner.

7.4 **Discontinuance of ROW.** Where the Municipality decides in its sole discretion to discontinue or convey any portion of a ROW that contains Equipment and:

(a) the Municipality does not require the Company to relocate the Equipment, it will, prior to the discontinuance or conveyance of the ROW, cause an easement to be registered against the subject property in favour of the Company; or

(b) the Municipality does require the Company to relocate the Equipment, the Parties will, prior to the discontinuance or conveyance of the ROW, conduct the relocation of the Equipment in accordance with **Sections 7.1** and **7.3**.

8. PAYMENT OF FEES AND OTHER CHARGES

General.

(a) The Company covenants and agrees to pay to the Municipality all fees, charges and Municipality's Costs in accordance with this Agreement and the Municipality's by-laws as amended from time to time.

(b) The Parties acknowledge and agree that the fees are intended to reimburse the Municipality for its causal costs related to the Work within the ROWs.

8.1 **Invoices.** Unless expressly provided elsewhere in this Agreement, where there are any payments to be made under this Agreement, the Party requesting payment shall first send a written invoice to the other Party, setting out in detail all amounts owing, including any applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that, subject to **Section8.3**, all payments shall be made in full by no later than sixty (60) days after the date of the invoice was received.

8.2 **Payment of taxes.** The Company shall pay, and shall expressly indemnify and hold the Municipality harmless from, all taxes lawfully imposed now or in the future by the Municipality or all taxes, rates, duties, levies or fees lawfully imposed now or in future by any regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions) but excluding the Municipality, that are attributable to the Company's use of the ROW.

8.3 **Disputed Charges.**

(a) Subject to **paragraph (b)** below, neither Party shall be required to pay any charges which it disputes ("**Disputed Charges**") until such time as the Disputed Charges have been resolved to the satisfaction of both Parties.

(b) A Party shall bring all Disputed Charges to the other Party's attention within sixty (60) days of the applicable invoice date. Failure to do so shall constitute acceptance of the accuracy of the entire contents of the invoice, and that Party shall have no further right to challenge the accuracy of any portion of such invoice.

(c) The Parties agree and acknowledge that the undisputed portion of any invoice containing Disputed Charges and all subsequent invoices shall be paid in accordance with the terms and conditions of this Agreement.

(d) A Party shall not be required to pay any late payment charges that may be attributable to any Disputed Charges.

9. TERM AND TERMINATION

9.1 **Initial term and renewal.** This Agreement shall have an initial term of ten (10) years commencing on the Effective Date and shall be renewed automatically for successive 5-year terms unless:

(a) this Agreement is terminated by either Party in accordance with its terms;

(b) a Party delivers Notice of non-renewal to the other Party at least one hundred eighty (180) days prior to the expiration of the then current term; or

(c) this Agreement is replaced by a New Agreement (as defined below) between the Parties.

Termination by either Party.

(a) Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours' written notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice.

(b) If, however, in the view of the non-breaching Party, it is possible to remedy or cure the breach within such 30-day period, then the breaching Party shall commence to remedy or cure the breach within such 30-day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching Party.

9.2 **Termination by Municipality.** The Municipality may terminate this Agreement by providing the Company with at least twenty-four (24) hours' written notice in the event that:

(a) the Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*;

(b) the Company assigns or transfers this Agreement or any part thereof other than in accordance with **Section 15.4**; or

(c) the Company ceases to be eligible to operate as a Carrier.

9.3 **Obligations and rights upon termination or expiry of Agreement.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with **Sections 9.2** or **9.3**) or expires without renewal, then, subject to the Company's rights to use the ROWs pursuant to the Telecom Act and unless the Company advises the Municipality in writing that it no longer requires the use of the Equipment:

(a) the terms and conditions of this Agreement shall remain in full force and effect until a new municipal access agreement (a "**New Agreement**") is executed by the Parties; and

(b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months following the expiry of this Agreement, the parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.

9.4 **Continuing obligations.** Notwithstanding the expiry or earlier termination of this Agreement, each Party shall continue to be liable to the other Party for all payments due and obligations incurred hereunder prior to the date of such expiry or termination.

9.5 **Regulatory changes.**

(a) If, at any time subsequent to the Effective Date of this Agreement, the provincial or federal governments or a regulatory authority acting within its jurisdiction (including the CRTC) enacts or repeals any legislation or regulation, or orders, directs or mandates anything which affects the subject matter of this Agreement (the "**Regulatory Change**"), then either Party may notify the other of its intention to renegotiate the terms of this Agreement based on the Regulatory Change and, within thirty (30) days thereafter, the Parties shall enter into good faith negotiations to amend this Agreement or enter into a new agreement to reflect the Regulatory Change.

(b) If the Parties are unable to amend this Agreement or enter into a new agreement, then either Party may, within thirty (30) days prior written notice to the other Party refer the matter to the CRTC for resolution.

(c) Subject to this right to refer the matter, if the Parties are unable to amend this Agreement or enter into a new agreement within ninety (90) days from the date of the original notice, either Party may terminate this Agreement without further notice and the provisions of **Section 9.4** shall apply.

10. INSURANCE

10.1 **General.** Throughout the term of this Agreement and any renewals or extension thereto, the Company shall maintain, at its sole expense, insurance (the "**Company Insurance**") in an amount and description as described below to protect the Company, and the Municipality solely to the extent of the Municipality's rights as additional insured, from claims for damages for bodily injury (including death) and property damage which may arise from the Company's operations under this Agreement, including the use or maintenance of the Equipment within the ROWs or any act or omission of the Company and its employees, contractors and agents while engaged in the Work.

10.2 **Comprehensive general liability occurrence-based insurance.** Without limiting the generality of the foregoing, the Company shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:

(a) covers claims and expenses for legal liability for personal injury, bodily injury and property damage in an amount not less than five million dollars ($5,000,000) per claim (exclusive of interest and costs). Excess or umbrella insurance may be used to achieve the required insured limits;

(b) extends to cover the legal liability arising from the contractual obligations of the Company as stated within this Agreement;

(c) includes prior to the commencement of work and execution of the agreement the Municipality as an additional insured; and

(d) contains cross liability and severability of interest clauses.

(e) **Insurance certificates.** Prior to the execution of this Agreement, the Company shall provide the Municipality with certificates of insurance in respect of the Company required comprehensive general liability insurance evidencing the cross liability and severability clauses and recording the Municipality as an "additional insured". Thereafter, the Company shall provide the Municipality with evidence of all renewals of the Company Insurance in a certificate of insurance form reasonably acceptable to the Municipality.

10.3 **Workplace Safety and Insurance.** Upon execution and delivery of this Agreement, and prior to commencing the Work under this Agreement, the Company shall provide a valid and current WSIB Clearance Certificate stating that the Company is in good standing with the Workplace Safety and Insurance Board ("**WSIB**") and that all assessments have been paid by the Company to the date of the certificate. The Company shall be responsible for and shall pay any

assessment or compensation required to be paid with respect to workplace safety and insurance. The Company acknowledges that out-of-province contractors are not exempt from having to register and comply with the requirements of the Workers' Safety and Insurance Board of Ontario. Prior to commencing the Work, out-of-province contractors not required to be registered in Ontario shall provide: (i) written confirmation from the Workers' Safety and Insurance Board of Ontario stating that the contractor is not required to be registered in Ontario; and (ii) evidence of compliance with the requirements of the province or territory or place of business with respect to workers' compensation insurance.

10.4 **General insurance conditions.**

(a) The Company Insurance shall not be construed to, and shall in no manner, limit or restrict the Company's liability or obligations under this Agreement.

(b) The Municipality shall not be liable for any premiums relating to policies under the Company Insurance.

(c) The policies under the Company Insurance shall provide:

(i) that they are primary insurance which will not call into contribution any other insurance available to the Municipality except to the extent of claims arising from the negligence of the Municipality and those for whom the Municipality are responsible in law;

(ii) that the Company Insurance shall not be cancelled, without the insurer endeavouring to provide at least 30 business days' notice to the Municipality by registered mail.

11. LIABILITY AND INDEMNIFICATION

11.1 **Definitions.** For the purposes of this **Article 11**, the following definitions shall apply:

(a) "**Municipality**" means the Municipality and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns.

(b) "**Company**" means the Company and its directors, officers, employees, contractors, agents, successors and assigns.

(c) *"***Claims**" means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind.

(d) "**Costs**" means those costs (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction,

the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

(e) "**Losses**" means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs and expenses.

11.2 **No liability, Municipality.** Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the Municipality, the Municipality shall not:

(a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused that may occur as a result of any Work by the Company; and

(b) be liable to the Company for any Losses whatsoever suffered or incurred by the Company, on account of any actions or omissions of the Municipality under this Agreement.

11.3 **No liability, both Parties.** Notwithstanding anything else in this Agreement, neither Party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary or punitive damages, including damages for pure economic loss or for failure to realize expected profits, howsoever caused or contributed to, in connection with this Agreement and the performance or non-performance of its obligations hereunder.

11.4 **Indemnification by Company.** Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the Municipality, the Company covenants and agrees to indemnify, defend and save harmless the Municipality from and against any and all Third Party Claims or Losses that the Municipality may suffer or incur arising from:

(a) the Company's exercise of any of its rights under this Agreement;

(b) the Company's performance of any Work Within the ROWs and the operation or use of the Equipment by the Company or any other person;

(c) the Company undertaking any activity Within the ROWs which is ancillary to the Company's exercise of its rights under this Agreement; and

(d) any breach of this Agreement by the Company, caused by, resulting from or attributable to the negligence or wilful misconduct of the Company.

11.5 **Indemnification by Municipality.** Except for Claims or Losses arising, in whole or in part from the negligence or wilful misconduct of the Company, the Municipality shall indemnify, defend and save harmless the Company from and against all Claims and Losses that the Company may suffer or incur arising from:

(a) any damage to property (including property of the Company); or

(b) any injury to individuals (including injury resulting in death), including the Company's employees, servants, agents, licensees and invitees; and

(c) any breach of this Agreement by the Municipality, caused by, resulting from or attributable to the act or omission of the Municipality.

11.6 **Security.** The Company agrees to post an irrevocable blanket letter of credit or other form of security that is acceptable to the Municipality at a value agreed upon by the Municipality and the Company. The letter of credit shall: (i) name the Municipality as beneficiary, (ii) be in a form satisfactory to the Municipality's Finance Department, (iii) be provided within the thirty (30) day period after the Municipality's request, and (iv) remain in place for the duration of the term of this Agreement. Notwithstanding the above, the Municipality reserves the right to: (a) request that the Company post additional irrevocable letters of credit for significant projects beyond the scope of the original letter of credit, and (b) request that the Company post an irrevocable letters of credit for one or more applications for Municipal Consent in an amount equal to any and all restoration costs as determined by the Finance Department. The letter of credit shall: (i) name the Municipality as beneficiary, (ii) be in a form satisfactory to the Municipality's Department of Finance, (iii) be provided prior or contemporaneously with the effective date of the applicable Municipal Consent, and (iv) remain in place until the conditions of the Municipal Consent have been fulfilled to the satisfaction of the Finance Department.

11.7 **Survival.** The obligation of a Party to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

12. ENVIRONMENTAL LIABILITY

12.1 **Municipality not responsible.** The Municipality is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with the Company's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or wilful misconduct of the Municipality or those for which it is responsible in law.

12.2 **Company to assume environmental liabilities.** The Company agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal or remediation of any Hazardous Substance on or under the ROWs that result directly from:

(a) the occupation, operations or activities of the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company Within the ROWs; or

(b) any Equipment brought or placed Within the ROWs by the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company, unless such damage was caused

directly or indirectly in whole or in part by the negligence or wilful misconduct on the part of the Municipality or those for which it is responsible in law.

The Municipality agrees to provide notice to the Company of any liability arising under this provision in a reasonable period of time after the occurrence. For clarity, the Company shall not be liable in any manner for any events that occurred before the Equipment occupied the ROWs.

12.3 **Trees.** Save and except where the Municipality has the obligation to reimburse the Company under and pursuant to the terms and provisions of this Agreement, the Company shall be responsible for the costs of any remedial work required to rehabilitate any trees damaged in the performance of the Work or, in the event any trees suffer irreparable damage as a result of the Work, the Company shall replace the trees to the satisfaction of the Municipality or compensate the Municipality for the value of the trees as determined by the Municipality.

13. CONFIDENTIALITY

13.1 **Protection of the Company's Confidential Information..**

(a) The Municipality agrees not to use confidential information provided by the Company, including but not limited to information relating to the Equipment and the Work, the "as-built" drawings or such other information as the Company considers to be of a competitive nature respecting the Company's customers, Equipment, network, material and business operations ("**Confidential Information**") for any purposes other than performance of this Agreement.

(b) The Municipality shall protect the confidentiality of the Confidential Information to the same degree or greater as the Municipality protects the confidentiality of its own confidential information which, in any event, shall not be less than a reasonable degree of care.

(c) The Municipality shall not disclose any Confidential Information to any Third Party unless such disclosure is consented to in writing by the Company or otherwise required by law and then only after the Municipality has provided written notice of such requirement to the Company.

13.2 **Company's rights and remedies.** The Municipality acknowledges and agrees that any breach of this provision by the Municipality may cause serious damage or injury to the Company which may not be fully or adequately compensated in damages. The Parties accordingly agree that, in addition to claiming damages, the Company may seek interim and permanent equitable relief, including without limitation interim, interlocutory or permanent injunctive relief, in the event of breach of this provision. All such rights and remedies shall be cumulative and in addition to all other rights and remedies whatsoever to which the Company may be entitled.

13.3 **Survival.** The Parties agree that the obligations in this **Article 13** shall survive termination or expiry of this Agreement.

14. DISPUTE RESOLUTION

14.1 **General.** The Parties hereby acknowledge and agree that:

(a) this Agreement has been entered into voluntarily by the Parties with the intention that is shall be final and binding on the Parties until it is terminated or expires in accordance with its terms;

(b) it is the intention of the Parties that all Disputes (as defined in **Section 14.2**) be resolved in a fair, efficient, and timely manner without incurring undue expense and, wherever possible, without the intervention of the CRTC; and

(c) the CRTC shall be requested by the Parties to consider and provide a decision only with respect to those matters which form the basis of the original Dispute as set out in the Dispute Notice issued pursuant to **Section 14.2**.

14.2 **Resolution of Disputes.**

(a) The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement ("**Dispute**") promptly through discussions at the operational level.

(b) In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the Dispute (the "**Dispute Notice**") and the Parties shall attempt to resolve such Dispute between senior officers who have the authority to settle the Dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations.

(c) If the Parties fail to resolve the Dispute within thirty (30) days of receipt of the Dispute Notice, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

14.3 **Continued performance.** Except where clearly prevented by the nature of the Dispute, the Municipality and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this **Article 14.**

15. GENERAL

15.1 **Entire agreement.** This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.

15.2 **Force Majeure.** Except for the Parties' obligations to make payments to each other under this Agreement, neither Party shall be liable for a delay in its performance or its failure to perform hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, or other catastrophes; government, legal or statutory restrictions on forms of commercial activity; or order of any civil or military authority; national emergencies, insurrections, riots or wars or strikes, lock-outs or work stoppages ("**Force Majeure**"). In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues. Should the suspension of obligations due to Force Majeure exceed 2 months, either Party may terminate this Agreement without liability upon delivery of notice to the other Party.

15.3 **Notices.** Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile or email transmission as follows:

If to the Municipality:	**If to the Company:**
NAME	NAME
TITLE	TITLE
ADRESS	ADRESS

Any notice given pursuant to **Section 3** shall be deemed to have been received on the date on which it was delivered in person, or, if transmitted by facsimile or email during the regular business hours of the Party receiving the notice, on the date it was transmitted, or, if transmitted by facsimile or email outside regular business hours of the Party receiving the notice, on the next regular business day of the Party receiving the notice; provided, however, that either Party may change its address and/or facsimile number or email for purposes of receipt of any such communication by giving ten (10) days' prior written notice of such change to the other Party in the manner described above.

15.4 **Assignment.** This Agreement may not be assigned, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party shall have the right to assign this Agreement to an Affiliate without the consent of the other Party, provided that:

(a) it is not in material breach of this Agreement;

(b) it has given prompt written notice to the other Party

(c) any assignee agrees to be bound by the terms and conditions of this Agreement; and

(d) the assignee is not in direct competition with the other Party, in which case, prior written consent would be required.

15.5 **Parties to act reasonably.** Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.

15.6 **Authority of Municipal Engineer.** Where the Municipality is required to make any decisions or exercise its discretion pursuant to this Agreement, then the Municipal Engineer may make such decisions or exercise such discretion on behalf of the Municipality; provided that the Municipal Engineer is acting within his or her authority.

15.7 **Amendments.** Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the Municipality and the Company.

15.8 **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.

15.9 **No waiver.** No waiver of any part of this Agreement shall be effective unless in writing and no such waiver shall be deemed a waiver of any other provision in this Agreement or a continuing waiver unless agreed to in writing by the Parties.

15.10 **Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.

15.11 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

15.12 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

15.13 **Inurement.** This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns, and may not be changed or modified except in writing, duly signed by the Parties hereto.

15.14 ***Contra proferentem*.** This Agreement is the product of negotiations between the Municipality and the Company and their respective legal counsel, and no provisions shall be construed for or against any Party by reason of ambiguity in language, rules of construction against the draftsperson, or similar doctrine.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by their duly authorized representatives.

MUNICIPALITY	**COMPANY**
_____	_____
Name:	Name:
Title:	**Title:**

SCHEDULE A
Permits Required by the Municipality

WORK ACTIVITY	MC	ROP	Notifica-tion only	No Permit or Notificatio n
Any Work that requires Excavation in the ROW, including: – installing Underground Equipment crossing a road – installing new Aboveground Equipment – relocating Underground Equipment or Aboveground Equipment – replacing existing Aboveground Equipment with Equipment that is significantly larger – installing buried Service Drops that cross a ROW or break a hard surface of a ROW	X	X		
Install aerial Equipment (excluding aerial Service Drops)		X		
Perform tree-trimming		X		
Any other Work that requires the temporary closure of a vehicle travel or parking lane		X		
Replace existing Aboveground Equipment without adding more Equipment or significantly increasing its size (pole replacements excluded)			X	
Install buried Equipment (including Service Drops) that does not cross nor break the hard surface of a ROW (but may require hand-digging or saw cutting of the driveway aprons)			X	
Pull Equipment (i.e., cable) through existing underground duct			X	
Perform Emergency Work (with no excavation)				X
Install or repair aerial Service Drops				X
Maintain, test or repair Equipment where there is minimal physical disturbance or changes to the ROW				X
Any other Work that does not disrupt traffic or pedestrian flow				X

SCHEDULE B
Fees Payable by the Company

Activity or Service 10.5 Road Occupancy Permit - Telecommunications	2026 Applicable Fees and Charges	Additional Specifications	HST Extra
10.5.1 Application Fee (less than 30km)	$222.00	n/a	Yes
10.5.2 Application Fee (greater than 30km)	$840.00	n/a	Yes