
MUNICIPAL ACCESS AGREEMENT

BETWEEN

**THE CORPORATION OF THE COUNTY OF PRINCE EDWARD
(THE MUNICIPALITY)**

AND

THE COMPANY

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION	3
2. USE OF ROWs.....	5
3. PERMITS TO CONDUCT WORK.....	6
4. MANNER OF WORK.....	8
5. REMEDIAL WORK	9
6. LOCATING FACILITIES IN ROWs	11
7. RELOCATION OF PLANT	11
8. FEES AND OTHER CHARGES	12
9. TERM AND TERMINATION	13
10. INSURANCE.....	14
11. LIABILITY AND INDEMNIFICATION	15
12. ENVIRONMENTAL LIABILITY	18
13. FORCE MAJEURE	18
14. DISPUTE RESOLUTION	19
15. NOTICES	20
16. GENERAL.....	20

MUNICIPAL ACCESS AGREEMENT

This Municipal Access Agreement shall be effective as of the ___ day of _____, 20__ (the “**Effective Date**”).

B E T W E E N:

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD
(the “**Municipality**”)

- and -

[NAME OF COMPANY]
(the “**Company**”)

(each, a “**Party**” and, collectively, the “**Parties**”)

RECITALS

WHEREAS the Company is a “telecommunications common carrier” as defined in the *Telecommunications Act*, S.C. 1993, c.38 (“**Telecom Act**”) or “distribution undertaking” as defined in the *Broadcasting Act*, S.C. 1991, c.11 (collectively, a “**Carrier**”) and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the “**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, municipal facilities (may include parks or passive parklands), road allowances, lanes, bridges or viaducts which are under the jurisdiction of the Municipality (collectively, “**Rights-of-Way**” or “**ROWS**”) or other public places as agreed to by the Parties;

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 previously conferred or conferred after the **Effective Date** by the Municipality on Third Parties to use or access the ROWs;

AND WHEREAS the Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which the Municipality hereby provides its consent;

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.**

1.2.

- (a) **“Affiliate”** means:
 - i. in the case of the Company, “affiliate” as defined in the *Canada Business Corporations Act* that is also a Carrier.
 - ii. 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.
- (b) **“As Built Drawings”** means the revised drawing created and submitted by the proponent after completion of the project providing an exact rendering of the equipment or building or property as it appears upon completion, and detail the shape, dimensions, and precise locations of any and all elements within the scope of the project. Any modifications, whether minor or major, are to be included, along with a record of approvals for any changes from initial and subsequent drawings.
- (c) **“Director”** means the Director of Operations of the Municipality or the individual designated by him or her.
- (d) **“Emergency”** means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties.
- (e) **“Equipment”** means the transmission and distribution facilities owned by the Company and its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, maintenance structures, handholds and ancillary structures and equipment, satellite dishes, antennas, generators, server stations or other technology or equipment located as per the Agreement.
- (f) **“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).
- (g) **“Municipal Consent”** means the written consent of the Municipality, with or without conditions, to allow the Company to perform Work Within the ROWs that requires the excavation or breaking up of the ROWs (as more fully described in **Schedule B**).
- (h) **“Municipality’s Costs”** means the reasonable and verifiable costs and expenses of the Municipality, including the cost of labour and materials, plus a reasonable

overhead charge.

- (i) **“Permit”** means a Municipal Consent, Road Occupancy Permit, or other such permit.
- (j) **“Road Occupancy Permit”** means a Permit issued by the Municipality authorizing the Company to conduct Work that includes any activity that involves a deployment of its workforce, vehicles and other equipment in the ROWs when performing the Work (as more fully described in **Schedule B**).
- (k) **“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 Equipment to not more than one individual customer or building point of presence or property.
- (l) **“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.
- (m) **“Work”** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of the Equipment performed by the Company Within the ROWs, including the excavation, repair and restoration of the ROWs, facility additions or removal of technology.

1.3. **Recitals and Schedules.** The beginning part of this Agreement entitled “Recitals” and the following schedules are annexed to this Agreement and are hereby incorporated by reference into this Agreement and form part hereof:

Schedule A - Fees and Charges Payable by the Company

Schedule B – Permits Required by the Municipality

Schedule C – Relocation Costs

2. USE OF ROWs

- 2.1. **Consent to use ROWs.** The Municipality hereby consents to the Company’s use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable municipal by-laws, rules, policies, standards and guidelines (collectively **“Municipal Guidelines”**) pertaining to the Equipment and the use of the ROWs.
- 2.2. **Proviso.** Notwithstanding **Section 2.1** and any other provisions of this Agreement, to the extent that any of the Municipal Guidelines are inconsistent with the terms of this Agreement, the Company shall not be required to comply with such Municipal Guidelines.
- 2.3. **Scope of municipal consent.** The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with the public use and enjoyment of the ROWs.

- 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 or other municipal facilities or structures; 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) Subject to **Section 3.2**, Work Within the ROWs by the Company is subject to the authorization requirements of the Municipality as set out in **Schedule B**.
- (b) For each Permit required above, the Company shall submit to the Municipality a completed application, in a form specified by the Municipality.
- (c) Subject to **Section 3.5**, the Municipality will issue the applicable Permits as agreed to between the Parties as expeditiously as possible having regard to the complexity of the Work covered by the Application and the volume of Permit Applications before the Municipality at that time.

3.2. No Permits for routine Work.¹ Notwithstanding **Section 3.1**, the Company may, with advance notice as required by the Municipality’s traffic management policies, but without first obtaining a Permit:

- (a) utilize existing ducts or similar structures of the Equipment;
- (b) carry out routine maintenance and field testing to its Equipment; and
- (c) install and repair Service Drops;

provided that in no case shall the Company break up or otherwise disturb the physical surface of the ROW without the Municipality’s prior written consent.

3.3. Expiry of Permit. In the event that the Company has not commenced construction of the approved Work associated with a particular Permit within one year of the date of issuance of the Permit, and has not sought and received an extension to the Permit from the Municipality, which extension shall not be unreasonably withheld, the Permit shall be null and void. In such circumstances, any fees paid by the Company in respect of the

¹

expired Permit shall not be refunded and the Company must obtain a new Permit for the Work.

- 3.4. **Submission of plans.** Unless otherwise agreed to by the Municipality, the Company shall, prior to undertaking any Work that requires a Municipal Consent, submit the following to the Director:
- (a) construction plans of the proposed Work, showing the locations of the proposed and existing Equipment and other facilities, and specifying the boundaries of the area within the Municipality within which the Work is proposed to take place; and
 - (b) all other relevant plans, drawings and other information as may be normally required by the Director from time to time for the purposes of issuing Permits.
- 3.5. **Refusal to issue Permits.** In case of conflict with any *bona fide* municipal purpose, including 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 3.4](#) or may choose to refuse to issue a Permit in accordance with [Section 3.1](#).
- 3.6. **Temporary Connections.** In the case of temporary connections, the Company shall, prior to undertaking any Work, consult with the Municipality in respect of the following matters:
- (a) wires and cables cross ROWs with adequate vertical clearance and do not lie on the ground;
 - (b) the temporary connection be removed within a reasonable time (e.g., the next construction season);
 - (c) the Company remedy any conditions deemed unsafe by the Municipality within a certain time; and

the Company not cause any aerial trespass of adjacent or nearby properties.

- wires and cables cross ROWs with adequate vertical clearance and do not lie on the ground;
- the temporary connection be removed within a reasonable time (e.g., the next construction season);
- the Company remedy any conditions deemed unsafe by the Municipality within a certain time; and
- the Company not cause any aerial trespass of adjacent or nearby properties.

- 3.7. **Restoration of the Company's service during Emergencies.** Notwithstanding [Section 3.1](#), in the event of an Emergency, the Company shall be permitted, provided that the Company gives notice to the Municipality as soon as reasonably practicable, 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 **Section 3.1** within five (5) business days of completing the Work.

- 3.8. **Temporary changes by Municipality.** Notwithstanding any other provision in this Agreement, the Municipality reserves the right to set, adjust or change the approved schedule of Work by the Company for the purpose of coordinating or managing any major events or activities, including the restriction of any Work during those restricted time periods; provided however, that any such adjustment or change shall be conducted so as minimize interruption to the Company's operations. The Municipality shall use its commercially reasonable efforts to provide to the Company forty-eight (48) hours advance written notice of any change to the approved schedule of Work, except that, in the case of any Emergency, the Municipality shall provide such advance notice as is reasonably possible in the circumstances.

4. MANNER OF WORK

- 4.1. **Compliance with Applicable Laws, etc.** All Work 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);
 - (b) the Municipal Guidelines;
 - (c) this Agreement; and
 - (d) the applicable Permits issued under **Section 3.1**.
- 4.2. **Stoppage of Work.** The Municipality may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health and safety or any circumstances beyond its control. 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. Within two (2) business days of the verbal order, the Municipality shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise the Company immediately that it can commence the Work.
- 4.3. **Coordination of Work.** The Company shall use its reasonable efforts to 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 support structures with other existing and new occupants of the ROWs.
- 4.4. **Utility co-ordination committee.** The Company shall participate in a utility co-ordination committee established by the Municipality as may be required.
- 4.5. **Emergency contact personnel.** The Company and the Municipality shall provide to each other a list of 24-hour emergency contact personnel, available at all times, including contact particulars, and shall ensure that the list is kept current.

- 4.6. **Emergency work by Municipality.** 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, protect or otherwise deal with the Equipment, having regard to the nature of the Emergency. Notwithstanding the foregoing, the Municipality may take all such measures it deems necessary to address the Emergency and otherwise re-establish a safe environment, and the Company shall pay the Municipality's Costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.
- 4.7. **"As-built" drawings.** Where required by the Municipality, the Company shall, no later than ninety (90) days after completion of any Work provide the Director with accurate "as-built" drawings, prepared in accordance with such standards as may be required by the Director, sufficient to accurately establish the plan, profile and dimensions of the Equipment installed Within the ROWs. Such drawings shall only be used for the purposes of facilitating the Municipal Director's conduct of planning and issuance of Work permits. The "as-constructed" drawings must be protected through reasonable measures and must not be shared beyond those who require it for the purposes described above, nor must they be used for any other purpose or combined with other information.
- 4.8. **Where Equipment is located incorrectly.** Where the location of any portion of the Equipment in a ROW is located outside a distance of 0.3 m horizontally (centre-line to centre-line) from the location approved in the Permit or as shown on the as-built drawings (as accepted by the Municipality) and, as a result, the Municipality is unable to install its facilities Within the affected ROWs in the manner it expected based on the Permit or as-built drawings (the "**Conflict**"), the Company is required to relocate that equipment or portion of that equipment within fifteen (15) business days.
- 4.9. **Agents and Sub-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 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, all to the satisfaction of the Municipality. Subject to **Section 5.5**, where the Company is required to break or otherwise disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to substantially the same condition it was in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the Director.
- 5.2. **Permanent Road Restoration.** If the Company has excavated, broken up or otherwise disturbed the surface of a ROW, the requirements for the Company completing the road restoration work will vary depending on if and when pavement has been recently repaved or overlaid, as follows:

- (a) if pavement has been repaved or overlaid during the five-year period immediately prior to the date of issuance of the Permit, then the Municipality may require that the Company grind and overlay the full lane width of pavement in the ROW;
- (b) if pavement has been repaved or overlaid during the two-year period immediately prior to the date of issuance, then the Municipality may require that the Company grind and overlay the full width of the pavement in the ROW;
- (c) in either **subsections (a)** or **(b)** above, if Third Parties, including the Municipality as a provider of services to the public, has excavated, broken up or otherwise disturbed the pavement to be ground and overlaid, the costs of that grind and overlay will be apportioned between the Company and the Third Parties on the basis of the area of their respective cuts;
- (d) the Municipality will not require grind and overlay under **subsections (a)** or **(b)** above for road restoration work involving:
 - i. service connections to buildings where no other reasonable means of providing service exists and the Company had no requirement to provide service before the new pavement was placed;
 - ii. Emergencies; and
 - iii. other situations deemed by the Director to be in the public interest; and
- (e) if the Municipality has required the Company to grind and overlay under either **subsections (a)** or **(b)** above, the Company will have no obligation to pay Pavement Degradation fees under **Schedule A** in relation to that pavement.

5.3. **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 within the expected period of time, the Company may complete a temporary repair to the ROW; provided that, subject to **Section 5.5**, the Company replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by the Company shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the Municipality.

If a temporary repair gives rise to an unsafe condition, then this shall be deemed to constitute an Emergency and the provisions of **Section 4.6** shall apply.

5.4. **Warranty for repairs.** 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 two (2) years or until such time as the final repair is completed by the Municipality, whichever is earlier. The Company shall warrant its final repairs for a period of two (2) years from the date of their completion.

5.5. **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 effect such work necessary to perform the repair and the Company shall pay the Municipality's Costs of performing the repair.

6. LOCATING FACILITIES IN ROWs

- 6.1. **Locates.** The Parties shall, at its own cost and at the request of the other Party (or its contractors or authorized agents), physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method (“**Locates**”), in accordance with the required Ontario legislation administered by Ontario One Call.
- 6.2. **Provision of Mark-ups.** The Parties agree to respond at no cost to each other and within fifteen (15) days to any request from the other Party for a mark-up of municipal infrastructure or Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment, as the case may be, located within the portion of the ROWs shown on the plans (the “**Mark-ups**”), and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.

Inaccurate Locates. Where the Company's Locates do not accurately correspond with either the Mark-ups or physical location of the Equipment, and as a result, the Municipality is unable to install its facilities Within the affected ROWs in the manner it expected based on the Locates provided by the Company (the “**Error**”), **the Municipality will notify the Company of the error within twenty-four (24) hours, following which the Company shall attempt to resolve the conflict created by the error. If the Company is unable to resolve the conflict created by the Error in a reasonable period of time commensurate with the situation and to the Municipality's satisfaction, the Company will pay the Municipality for its reasonable and verifiable costs incurred as a direct result of the conflict.**

7. RELOCATION OF PLANT

- 7.1. **General.** Where the Municipality requires and requests the Company to relocate its Equipment for bona fide municipal purposes, the Municipality shall notify the Company in writing and, subject to **Section 7.3**, the Company shall, within one hundred and twenty (120) days thereafter or such other time as agreed to by the Parties having regard to the schedules of the Parties and the nature of the relocation required, perform the relocation and any other required and associated Work.
- 7.2. **Municipality's efforts.** The Municipality 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. Once the Company has provided the Municipality

with all information the Municipality requires to enable it to process a Permit application, the Municipality shall provide, on a timely basis, all Permits required to allow the Company to relocate the Equipment.

- 7.3. **Reimbursement by Municipality for the Company's Relocation Costs.** The Municipality shall reimburse the Company for all or part of its reasonable and verifiable costs of completing a relocation requested by the Municipality (the "**Relocation Costs**") based upon the principles, methodologies and procedures set out in **Schedule C**.

8. FEES AND OTHER CHARGES

- 8.1. **General.** The Company covenants and agrees to pay to the Municipality the fees, charges and Municipality's Costs in accordance with this Agreement, including the fees and charges set out in **Schedule A**.
- 8.2. **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 all payments shall be made in full by no later than forty-five (**45**) days after the date of the invoice was received.
- 8.3. **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.

9. TERM AND TERMINATION

- 9.1. **Initial term and renewal.** This Agreement shall have an initial term of five (5) years commencing on the Effective Date and shall be renewed automatically for three (3) successive five (5) year terms unless:
- (a) this Agreement is terminated by either Party in accordance with this Agreement;
 - (b) a Party delivers initial notice of non-renewal to the other Party at least ninety (90) 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.
- 9.2. **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours' 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. If, however, in the view of the non-breaching Party, it is not possible to remedy or cure the breach within such thirty (30) day period, then the breaching Party shall commence to remedy or cure the breach within such thirty (30) day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching Party.
- 9.3. **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 16.7](#); or
 - (c) the Company ceases to be eligible to operate as a Carrier.
- 9.4. **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](#) and [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.

9.5. **Removing abandoned Equipment.** Where the Company advises the Municipality in writing that it no longer requires the use of any Equipment, the Company shall, at the Municipality’s request and within a reasonable period of time as agreed to by the Parties, act as follows at the Company’s sole cost and expense:

- (a) Remove the abandoned Equipment that is above ground;
- (b) Subject to (c) immediately below, make safe any underground vaults, maintenance access structures and any other underground structures that are not occupied or used by a Third Party, (collectively “**Abandoned Underground Structures**”);
- (c) Where, in the reasonable opinion of the Director, the Abandoned Underground Structures will interfere with any municipally-approved project that will require excavation or otherwise disturb the portions of the ROWs in which the Abandoned Underground Structures are located, then the Company shall, at or about the time the excavation of such portions of the ROWs for said project commences, remove the Abandoned Underground Structures therein.

Upon removal of the abandoned Equipment or upon the removal or making safe of Underground Structures, the Company shall repair any damage resulting from such removal or making safe 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 such Equipment and restore the ROWs within the time specified above and to the satisfaction of the Director, the Municipality may complete such removal and restoration and the Company shall pay the associated Municipality’s Costs.

9.6. **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.

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 from claims for damages, 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 Company Plant Within the ROWs or any act or omission of the Company and its employees, contractors and agents while engaged in the Work. The Company Insurance shall include all costs, charges and expenses reasonably incurred with any injury or damage.

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 liability for personal injury, bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000.00) per claim (exclusive of interest and costs);
- b) extends to cover the contractual obligations of the Company as stated within this Agreement;
- c) names the Municipality as an additional insured; and
- d) contains cross liability and severability of interest clauses.

10.3 Insurance Certificates. As soon as possible after the execution of this Agreement, the Company shall provide, in a form acceptable to the Municipality, the Municipality with certificates of insurance in respect of the Company Insurance. Thereafter, the Company shall provide the Municipality with evidence of all renewals of the Company 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;
 - ii) a waiver for severability of interest; and
 - iii) that the Company Insurance shall not be cancelled, lapsed or materially changed to the detriment of the Municipality without at least thirty (30) Business Days notice to the Municipality by registered mail.
- d) The Company will immediately notify the Municipality of any changes to or cancellation of the Company insurance if they will directly affect or reduce the coverage made available to the Municipality.

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) “**Losses**” means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs and expenses; and
 - (e) “**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.
- 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; 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 the 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 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 Company Plant 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.

The Company's obligation to indemnify, defend and save harmless the Municipality shall survive the termination or expiry of this Agreement.

11.5. **Method of Indemnification.** The Company shall, upon demand by the Municipality and at its own sole risk and expense:

- a) defend any and all charges, offences, prosecutions, suits, actions or other legal proceedings ("Proceedings") which may be brought or instituted against the Municipality under a Claim;
- b) pay and satisfy any judgement or decree rendered against the Municipality in the Proceeding; and
- c) reimburse the Municipality all of its reasonable legal expenses (on a solicitor-client basis) incurred in the Proceeding.

11.6. **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); and
- b) or injury to individuals (including injury resulting in death), including the Company's employees, servants, agents, licensees and invitees, caused by, resulting from or attributable to the act or omission of the Municipality and its employees, servants or agents in the performance or exercise of its rights under this Agreement.

11.7. **Notification of Claim.** Each Party shall, within seven (7) Business Days of becoming aware of a Claim that may invoke an indemnification obligations hereunder, provide the other Party with written notice of becoming aware of the Claim, including its understanding of the factual basis for and amount of the Claim.

11.8. **Failure to Act.** If the Indemnifying Party does not assume and continue control of the defence of any Claim within fifteen (15) Business Days of the initial written request from

the Indemnified Party, then the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed, and shall have the right to recover all amounts in full from the other Indemnifying Party.

- 11.9 **Settlement.** The Indemnifying Party may defend the Claim with counsel of its own choosing provided that it does not:
- a) enter into a settlement or compromise without the prior consent of the Indemnified Party (which consent shall not unreasonably be withheld or delayed); or
 - b) without the Indemnified Party's prior written consent, agree to any settlement terms and conditions that would involve the admission of liability, or the imposition of any liability on, the Indemnified Party

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 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.

13. 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 two (2) months, either Party may terminate this Agreement without liability upon delivery of notice to the other Party.

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 it 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 under this **Article 14**.

14.2. **Resolution of Disputes.** 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. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the Dispute 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. If the Parties fail to resolve the Dispute within thirty (30) days of the non-disputing Party’s receipt of written 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. NOTICES

15.1. **Method of Notice.** Any notice required may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to either Party at the following addresses:

If to the Municipality:

With a copy to:

If to the Company

With a copy to:

15.2. **Delivery of notice.** Any notice given pursuant to **Section 15.1** shall be deemed to have been received on the date on which it was delivered in person, or, if transmitted by facsimile during the regular business hours of the Party receiving the notice, on the date it was transmitted, or, if transmitted by facsimile 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 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.

16. GENERAL

16.1. **Entire agreement.** This Agreement, together with the Schedules attached hereto, constitutes 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.

16.2. **Gender and number.** In this Agreement, words importing the singular include the plural and vice versa, words importing gender, include all genders.

16.3. **Sections and headings.** The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and do not affect the interpretation of this Agreement. Unless otherwise indicated, references in this Agreement to an article, section, subsection or schedule are to the specified article, section or subsection of or schedule to this Agreement.

16.4. **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.

- 16.5. **Including.** Where the word “including” or “includes” is used in this Agreement it means “including (or includes) without limitation as to the generality of the foregoing”.
- 16.6. **Currency.** Unless otherwise indicated, references in this Agreement to money amounts are to the lawful currency of Canada.
- 16.7. **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: i) it is not in material breach of this Agreement; ii) it has given prompt written notice to the other Party; iii) any assignee agrees to be bound by the terms and conditions of this Agreement; and iv) the assignee is not in direct competition with the other Party, in which case, prior written consent would be required.
- 16.8. **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.
- 16.9. **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.
- 16.10. **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.
- 16.11. **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.
- 16.12. **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.
- 16.13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction 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
- 16.14. **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.

16.15. **Equitable Relief.** Either Party may, in addition to any other remedies it may have at law or equity, seek equitable relief, including without limitation, injunctive relief, and specific performance to enforce its rights or the other party's obligations under this Agreement.

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

MUNICIPALITY

COMPANY

Authorized Signatory, [name & title]

Authorized Signatory, [name & title]

Authorized Signatory, [name & title]

Authorized Signatory, [name & title]

SCHEDULE A
FEES AND CHARGES PAYABLE BY THE COMPANY

1. Fees for ROPs

The table below sets out the annual non-cumulative fee payable by the Company and based on the number of applications for ROPs submitted by the Company in the prior calendar year. The annual ROP Fee will be billed in January based on the number of ROP applications made by the Company in the previous year.

Number of ROP Applications	Annual ROP Fee
0-1000	\$1,000.00
1,000-2,000	\$2,000.00
Over 2,000	\$3,000.00

2. MCP Fee

May be waived.

3. Pavement Degradation Schedule of Fees

These fees shall be paid at the time the ROP application is made, and adjusted based on area of pavement actually cut during the trenching.

Age of Pavement	Fee per Square Meter of Pavement Cut
2 years or less	\$24.00
2 to 4 years	\$20.00
4 to 7 years	\$16.00
7 to 10 years	\$10.00
10 or more years	\$4.00

4. Inspection Fees - nothing included here.

SCHEDULE B
PERMITS REQUIRED BY THE MUNICIPALITY

WORK ACTIVITY	MC	ROP	Notifica- tion only	No Permit or Notification
Any installation of Plant that requires Excavation in the ROW, including: <ul style="list-style-type: none"> - the installation of buried Plant crossing a road; - the installation of new Above-ground Equipment; - the relocation of buried Plant or Above-ground Equipment; - the replacement of existing Above-ground Equipment with equipment that is significantly larger; and - the installation of buried Service Drops that cross a road or a break a hard surface of the ROW. 	X	X		
The installation of aerial Plant (excluding aerial Service Drops)		X		
Tree trimming on ROWs		X		
The replacement of existing Above-ground Equipment without adding more Plant or significantly increasing its size (pole replacements excluded)			X	
The installation of buried Service Drops that do not cross a road or break the hard surface of a ROW			X	
Pulling cable through existing underground duct			X	
The installation of or repair to aerial Service Drops				X
The maintenance, testing and repair of Plant where there is minimal physical disturbance or changes to the ROW				X
Any other Work activity agreed to by the Municipality				X

SCHEDULE C
RELOCATION COSTS

Relocation of Plant with Actual Age less than 5 Years. The amount to be reimbursed to the Company by the Municipality for recovery of relocation costs shall be calculated on a project by project basis in accordance with the formula found in the CRTC Telecom Decision 2008-91.

The Municipality's share of the costs to relocate the Company's telecommunications facilities is to be calculated as follows:

- i) the remaining life of the Company asset calculated as one minus the ratio of the actual age of each asset to the estimated service life of each asset where such service life is set out in CRTC Telecom Decision 2008-14.
- ii) the Municipality's percentage of responsibility for the costs to relocate the Company's facilities associated with each asset is determined by multiplying the result of i) above by the ratio of the replacement cost of each asset to the total replacement cost of all the assets.
- iii) The sum of the percentages calculated in ii) above yields the extent to which the Municipality is responsible for the costs to relocate the Company's facilities. **Relocation of Plant with Actual Age greater or equal to 5 Years.** The Amount to be reimbursed to the Company by the Municipality for recovery of relocation costs shall be calculated on a project by project basis in accordance with Public Service Works on Highways Act, not to exceed 50% of labour and labour saving devices.

Reimbursement for Relocation Costs

1. Equipment affected by Municipality's Capital Works Plan. Prior to the issuance of a Permit, the Municipality will advise the Company in writing whether the Company's proposed location for new Equipment will be affected by the Municipality's [●]-year capital works plan (the "**Capital Works Plan**"). If the Municipality advises that the new Equipment will be so affected and the Company, despite being advised of such, requests the Municipality to issue the Permit, then the Municipality may issue a conditional Permit stating that, if the Municipality requires, pursuant to any project identified in the Capital Works Plan as of the date of approval, the Company to relocate the Equipment within [●] years of the date of the Permit, the Company will be required to relocate the Equipment at its own cost, notwithstanding Section 1.

2. Municipality not responsible for Third Party Relocation Costs.

Unless otherwise agreed to between the Municipality and the Third Party, in no event shall the Municipality be responsible under this Agreement for:

- (a) the costs of the Company to relocate Equipment at the request of a Third Party; or

- (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment.
- 3. **Where Equipment is located incorrectly.** Where the location of any portion of the Equipment in a ROW is located outside a distance of [●] horizontally (centre-line to centre-line) from the location approved in the Permit or as shown on the as-built drawings (as accepted by the Municipality), then the Municipality shall not be responsible for the costs of relocating such Equipment or portion thereof. Notwithstanding the foregoing, in circumstances where records of the approved location of the Equipment are non-existent or unavailable, or where the conditions of the applicable ROW have changed materially from what was described in the Permit, the Parties agree to act reasonably when sharing or allocating the associated Relocation Costs.
- 4. **Equipment Upgrades.** Unless otherwise agreed to by the Parties, Relocation Costs shall not include the installation of any Equipment by the Company for the purpose of providing an up-graded service, which shall be at the sole cost of the Company. The Parties agree that the Relocation Costs to be allocated between the parties shall be based on the use of the same approximate quantity, quality and type of Equipment and manner of construction for the new installation as was used for the original, subject to any adjustments required due to:
 - (a) technological change or industry construction methods;
 - (b) the need for an installation of greater length or other modifications due to, for example, space constraints or the presence of third party equipment; or
 - (c) the undergrounding of aerial Equipment where required as part of the relocation where cost sharing is permitted under this Agreement.
- 5. **Relocation performed by Municipality.** If the Company fails to complete the relocation in accordance with **Section 7.1** of the Agreement, the Municipality may, at its option, upon reasonable final notice to the Company, complete such relocation and the Company shall pay the Municipality's Costs of the relocation.