

**TERMS OF MUNICIPAL ACCESS FOR PROVINCIALLY DESIGNATED BROADBAND
PROJECTS**

BETWEEN:

THE CORPORATION OF **(MUNICIPALITY NAME)**

AND:

CARRIER NAME

*[NOTE to users of this document: certain terms **highlighted in yellow** throughout this Agreement are intended to be customized in order to reflect specific elements of the relationship between the Parties.]*

Table of contents

RECITALS 3

ARTICLE 1 - SCOPE AND TERM OF THIS AGREEMENT 4

ARTICLE 2 - DEFINITIONS AND INTERPRETATION 5

ARTICLE 3 - CONSENT TO THE USE OF RIGHTS-OF-WAY BY THE COMPANY 10

ARTICLE 4 - PAYMENT OF FEES AND COSTS..... 11

ARTICLE 5 - UTILITY ALIGNMENT PERMITS 12

ARTICLE 6 - MANNER OF WORK..... 15

ARTICLE 7 - MAINTENANCE OF EQUIPMENT 17

ARTICLE 8 - TREES 18

ARTICLE 9 - RELOCATION OF EQUIPMENT 18

ARTICLE 10 - LOST PRODUCTIVITY COSTS 20

ARTICLE 11 - CHANGES IN LAND OWNERSHIP AFFECTING COMPANY EQUIPMENT 21

ARTICLE 12 - ABANDONED EQUIPMENT 22

ARTICLE 13 - EQUIPMENT VERIFICATION AND PROCEDURES FOR MUNICIPALITY CAPITAL
PROJECTS 22

ARTICLE 14 - UTILITY COORDINATION 23

ARTICLE 15 - SECURITY 23

ARTICLE 16 - INDEMNIFICATION AND LIABILITY 24

ARTICLE 17 - INSURANCE 25

ARTICLE 18 - ENVIRONMENTAL RESPONSIBILITY AND LIABILITY 26

ARTICLE 19 - WORKERS, SAFETY AND INSURANCE BOARD COVERAGE 27

ARTICLE 20 - PROCEDURES IN CASE OF EMERGENCY 27

ARTICLE 22 - NOTICES 30

ARTICLE 23 - ASSIGNMENT 30

ARTICLE 24 - SCOPE AND TERM OF THIS AGREEMENT 31

MUNICIPAL ACCESS AGREEMENT

to facilitate the deployment of

PROVINCIALY DESIGNATED BROADBAND INFRASTRUCTURE PROJECTS

BETWEEN:

THE CORPORATION OF (MUNICIPALITY NAME)

(the “Municipality”)

AND:

CARRIER NAME

(the “Company”)

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

This agreement comes into force on the Effective Date set out in this agreement.

RECITALS

- A. **WHEREAS** the Company is either a “Canadian carrier” as defined in section 2 of the *Telecommunications Act*, SC 1993, c 38, or a “distribution undertaking” as defined in subsection 2(1) of the *Broadcasting Act*, SC 1991, c 11.
- B. **AND WHEREAS** the Municipality is a municipal corporation constituted under the laws of Ontario and, as such, disposes of certain powers and must abide by certain obligations set out in various statutes and regulations, including the *Municipal Act*, 2001, SO 2001, c 25.
- C. **AND WHEREAS** access to high-speed broadband internet connections has become a crucial element to ensure the economic development of communities throughout Ontario, but the cost of deploying such infrastructure to many rural and remote communities constitutes a significant barrier.
- D. **AND WHEREAS** to facilitate and support the deployment of high-speed broadband infrastructure to underserved communities, certain statutes have been adopted by the Legislature of Ontario (such as the *Building Broadband Faster Act*, 2021, SO 2021, c 2, Sch 1), and designate broadband projects established and/or funded by the governments of Ontario and Canada (such as the *Accelerated High-Speed Internet Program* (“AHSIP”) and the *Universal Broadband Fund* (“UBF”)).

- E. **AND WHEREAS** to ensure the success of this generational public investment in broadband infrastructure, stakeholder coordination, as well as innovation in the design of business processes to ensure accelerated treatment of approvals is required.
- F. **AND WHEREAS**, pursuant to the *Telecommunications Act* and the *Building Broadband Faster Act*, the Company and the Municipality are expected to come to an agreement regarding the terms under which the Municipality's consent is granted for the construction, maintenance, and operation of the Company's wireline transmission facilities within the Municipality's rights-of-way.
- G. **AND WHEREAS** the Municipality, subject to the terms set out in this Agreement, wishes to grant the Company a non-exclusive right to access and use its rights-of-way in order to deploy high-speed broadband infrastructure.
- H. **AND WHEREAS** the Company acknowledges that, in accessing the Municipality's rights-of-way it, must not unduly interfere with the public use, enjoyment, and safety of the rights-of-way, nor with any rights or privileges conferred by the Municipality, by contract or otherwise, on other users of the same right-of-way space who are not party to this Agreement.
- I. **AND WHEREAS** the Company further acknowledges that it must share the limited space available within the rights-of-way with other users, as well as the fact that the Municipality has the responsibility of ensuring the safe placement and operation of the infrastructure owned by all rights-of-way users, which includes managing and preserving future capacity within the space for the long-term benefit of all right-of-way users.
- J. **AND WHEREAS** the Parties agree that it would be mutually beneficial to outline the general terms upon which individual approvals shall be obtained in each instance.

NOW THEREFORE, in consideration of the mutual terms, conditions and covenants set out in this Agreement, the Parties agree as follows:

ARTICLE 1 - SCOPE AND TERM OF THIS AGREEMENT

- 1.1. **Deployment of designated broadband projects.** This Agreement expresses the mutually-agreeable terms that govern the construction, maintenance, and operation of Equipment (as defined below) deployed in the context of every designate broadband project where funding, in full or in part, has been provided through the Ontario Ministry of Infrastructure for the purposes of deploying broadband and high-speed internet infrastructure in Ontario. For greater clarity, this includes projects funded through the current AHSIP and UBF programs, or similar successor programs, intended

to support the deployment of high-speed internet infrastructure to underserved communities.

- 1.2. **A distinct agreement.** This Agreement is not intended to act as a general, comprehensive Municipal Access Agreement governing all components of the Company's wireline infrastructure located within the Municipality entered into exclusively in accordance with section 43 of the *Telecommunications Act*, nor is it intended to amend or modify any such existing or future general Municipal Access Agreement. By the same token, this focused Agreement is not affected by any existing or future Municipal Access Agreement unless expressly agreed by the Parties.
- 1.3. **Council approval required.** This Agreement is subject to approval by the Municipality's elected Council.
- 1.4. **Coming into force.** Upon receiving Council approval, the Agreement shall be deemed to come into force on the date it has been signed by a representative from each Party.
- 1.5. **Term of this Agreement.** This Agreement remains in effect as between the Parties and with respect to the Equipment until such time as it has been replaced or amended by mutual consent of the Parties, by a ministerial order issued under the *Building Broadband Faster Act*, or through a decision of the Canadian Radio-television and Telecommunications Commission ("CRTC"), or has been terminated in accordance with this Agreement.

ARTICLE 2 - DEFINITIONS AND INTERPRETATION

- 2.1. In this Agreement, the following words and phrases have the following meanings:
 - (a) "**Adjustment**" means a minor physical repositioning of Equipment such as a manhole or handhole lid, a cover, or pedestal box. Adjustments may be requested in different circumstances such as to allow for road resurfacing, to address vehicular or pedestrian hazards, or to allow for temporary construction access.
 - (b) "**Administration Costs**" – A surcharge of 15% added to any invoice for directly recoverable costs. This surcharge represents additional or incremental costs incurred by the Municipality to manage telecommunications projects which are recoverable by the Municipality but which, for ease of administration, are folded together into this surcharge.

- (c) "**Affiliate**" means an affiliated body corporate, as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44, as well as any partnership or other unincorporated association in which the Company or any of its affiliates has an interest.
- (d) "**Agreement**" means this Municipal Access Agreement for Provincially Designated Projects, including recitals and schedules, as well as any written amendments executed by both parties.
- (e) "**Alignment**" means the physical location within a right-of-way ("ROW"), typically expressed in three dimensions, for which the Municipality has approved and issued a Utility Alignment Permit to the Company to install Equipment in accordance with this Agreement. An Alignment can be located below grade, at grade, above grade, or in a combination of locations.
- (f) "**Applicable Law**" means all manner of applicable law of general application from all sources – e.g. statutes, regulations, codes, standards, Municipality bylaws, and the common law – that are relevant to any aspect of this Agreement.
- (g) "**As-Constructed Drawings**" refers to drawings prepared by or for the Company that reflect the final state of an Alignment once construction or installation is complete. These drawings are sufficient to accurately establish the horizontal location and depth (measurement between the top of the utility infrastructure and the ground surface at the time of installation) of the Equipment. The "as-constructed" drawings shall be of the same quality as the plan approved as part of the Utility Alignment Permit process.
- (h) "**Business Day**" means a day that is not a Saturday, a Sunday, or a statutory or civic holiday in the province of Ontario.
- (i) "**Carrier**" can refer to either a "Canadian carrier" as defined in section 2 of the *Telecommunications Act*, SC 1993, c 38, a "distribution undertaking" as defined in subsection 2(1) of the *Broadcasting Act*, SC 1991, c 11, or both, according to the context.
- (j) "**Commissioner**" means the Municipality's Commissioner, or the individual designated by the Commissioner to stand in their place for the purposes of this Agreement.
- (k) "**Company**" refers to the Carrier that is signatory to this Agreement as well as its Affiliates and Contractors, its Employees, and other agents or representatives.

- (l) "**Contractor**" includes contractors, subcontractors, workers, suppliers, and other agents or representatives, as well as the Contractor's employees, retained by the Company or by the Municipality, as the case may be, to perform any work on its behalf in the context of this Agreement.
- (m) "**Emergency**" means an unforeseen situation where immediate action must be taken to address a pressing threat to the environment, public health, public or worker safety, or to ensure the continuation of essential services.
- (n) "**Employee**" means:
- i. with respect to the Company: any official, officer, director, employee, consultant, or authorized agent or representative of the Company;
 - ii. with respect to the Municipality: any elected member of the municipal Council, official, officer, employee, consultant, or authorized agent or representative of the Municipality.
- (o) "**Equipment**"
- i. generally means infrastructure used or capable of being used by the Carrier deployed in the context of a project contemplated in s. 1.1 of this Agreement in order to bring high-speed internet services to the Municipality;
 - ii. more specifically, the term refers to wires, cables, or any similar wireline-based system of telecommunications, including any ancillary apparatus such as power supplies, cabinets, and kiosks, required for the proper functioning of the system;
 - iii. includes any Support Structure as defined in this Agreement; and
 - iv. excludes facilities, apparatus or other things intended for, or capable of being used for radiocommunication purposes such as antennas, including small cells, which fall under the scope of the *Radiocommunication Act*, RSC 1985, c R-2 and the jurisdiction of Industry, Science and Economic Development Canada.
- (p) "**Hazardous Substance**" refers to any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination thereof resulting directly or indirectly from human activities that causes or may cause harm to a person or impair the quality of the natural environment. Without limiting the scope of these terms, Hazardous Substance includes electromagnetic or other radiation, petroleum products or bi-products, industrial waste, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any Applicable Law.

- (q) **“Municipal Purpose”** means activities the Municipality undertakes on a regular basis in the exercise of those powers, duties, and functions conferred upon the Municipality by the *Municipal Act, 2001, S.O. 2001, c 25* or other statutes and regulations, including work performed by the Municipality in respect to its ROW and other municipal infrastructure. The definition excludes work performed solely for:
- i. projects initiated to provide concessions to Third Parties; and
 - ii. projects related to development on lands other than the ROW.
- (r) **“Municipality”** means the Corporation of (*Municipality Name*) as well as any successor corporation, and shall include its elected officials, officers, employees, Contractors, agents, and other representatives.
- (s) **“Municipality’s Costs”** means the direct, reasonable, and verifiable costs incurred by the Municipality to complete an activity, based on the cost of labour and materials.
- (t) **“Relocation”** means the relocation of Equipment within the Rights-of-Way as may be requested by the Municipality for Municipal Purposes, and the term **“Relocate”** refers to the act of undertaking a Relocation.
- (u) **“Relocation Costs”** means the direct, reasonable and verifiable costs incurred by the Company to Relocate its Equipment. These costs include, but are not limited to, depreciation, betterment and salvage costs.
- (v) **“Rights-of-Way” or “ROW”** refers to the highways, streets, road allowances, lanes, pathways, bridges, viaducts, and similar structures under the jurisdiction of the Municipality, whether through ownership or other legal means.
- (w) **“Road Occupancy Permit” or “ROP”** means the consent granted by the Municipality authorizing, with or without conditions, the Company to occupy the ROW with its workforce, vehicles and other equipment when performing certain Work.
- (x) **“Service Connection”** means Equipment that, by its design, capacity, or relationship to the overall Equipment of the Company, can be reasonably considered to be for the sole purpose of connecting the Equipment to a customer.
- (y) **“Subsidy Factor (S.F.)”** means 100% minus the percentage of the total cost that was subsidized by public funds on a designated broadband project.

- (z) **“Support Structure”** means a legally constructed or installed structure, such as a pole, made of wood, concrete, metal or other material, located within the ROW, owned by the Company or another Carrier, to which wires, cables, or other similar equipment is typically attached. For greater certainty, a Support Structure, in the context of this Agreement, does not include the following
 - i. a tower or other type of structure primarily intended to support antennas and similar apparatus regulated under the *Radiocommunication Act*;
 - ii. a pole or similar structure that supports electricity transmission or distribution lines, typically owned by an electricity utility;
 - iii. street lights, traffic lights, and other structures owned by the Municipality.

- (aa) **“Taxes”** means amounts levied or charged by any municipal, regional, provincial, federal, or other governmental body, corporate authority, agency or commission (including school boards and utility commissions) having jurisdiction to levy taxes, fees, and charges in connection with the Rights-of-Way and Equipment.

- (bb) **“Third Party”** means an individual, corporation, partnership, association, joint venture, or other type of organization that is not a Party to this Agreement nor an Affiliate, a Contractor, or an Employee.

- (cc) **“Utility Alignment Permit”** or **“UAP”** means the written consent of the Municipality, with or without conditions, to access, use, and occupy the ROW in the manner and in the location specified in the consent for the purposes of constructing, repairing, or maintaining Equipment.

- (dd) **“Work”** means, but is not limited to, any activity such as excavating the ROW, breaking up or otherwise disturbing its surface, repairing or restoring the ROW related to the installation, removal, construction, maintenance, repair, replacement, Relocation, Adjustment, operation, or alteration of any Equipment by the Company within any ROW.

2.2. In interpreting the provisions of this Agreement, the following principles shall apply:

- (a) **Industry Terms.** In resolving any ambiguity, words having well-known technical or trade meanings within the context of municipal construction or the telecommunications industry shall be so construed.

- (b) **Lists.** All lists of items shall not be taken to be closed or exclusive unless the context clearly indicates this to be the case. Lists shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

(c) **Number and Gender.** Unless the context requires otherwise, words importing the singular include the plural and *vice versa* and words importing gender include all genders.

2.3. **Schedules.** The following schedules are annexed to this Agreement and are hereby incorporated into this Agreement and form an integral part of the whole:

Schedule A – Permits Required to Perform Work

Schedule B – Fees Payable by the Company

ARTICLE 3 - CONSENT TO THE USE OF RIGHTS-OF-WAY BY THE COMPANY

3.1. **Municipality's general consent to use ROWs.** The Municipality hereby consents to the Company's use of its ROW for the purpose of performing its Work, subject to:

- (a) the terms of this Agreement,
- (b) any site-specific conditions attached to an individual Utility Alignment Permit granted to the Company, and
- (c) any Applicable Law.

3.2. **Company's general acknowledgment of the terms of consent.** The Company acknowledges that, in using the ROW, it is bound by this Agreement, the conditions of individual Utility Alignment Permits, and Applicable Law.

3.3. **Uses by the Company.** The Company affirms that it shall not use any ROW in whole or in part for any purpose other than those permitted under this Agreement or as otherwise mutually agreed upon in writing.

3.4. **Municipality's use of ROWs.** The Company acknowledges that the Municipality may use the ROW for any Municipal Purpose, including by placing its own infrastructure or improvements above, below, next to or across the Company's Equipment.

3.5. **Use of ROW by other ROW Users.**

- (a) The Company acknowledges that, from time to time, the Municipality, in its sole discretion, allows other users – such as utilities – to place their own infrastructure or improvements above, below, next to, or across the Company's Equipment.
- (b) Nothing in this Agreement shall be construed as affecting any rights or interests of others, including other ROW users, who are not a party to this Agreement.

(c) When granting permission to other ROW users to use its ROW, the Municipality must impose such conditions, wherever possible, that reasonably protect the Equipment of the Company.

- 3.6. **Mark-Up Requests.** The Parties agree to identify planned and existing Equipment in response to a mark-up request related to maintenance or new construction projects. Such response shall be returned to the other Party or its consultant no later than 15 business days after receipt of the request. In the event, the Company does not provide a response to a mark-up request in the prescribed timeframe identified, then it will be presumed the Company does not have any comments to share. The Company acknowledges and agrees that the Municipality shall approve a maintenance or new construction project from another party without the Company's mark-up response.
- 3.7. **Locating.** Each Party shall adhere to the *Ontario Underground Infrastructure Notification System Act* for locate requests.

ARTICLE 4 - PAYMENT OF FEES AND COSTS

- 4.1. **Company to pay applicable fees.** The Company agrees to pay to the Municipality applicable fees calculated in accordance with **Schedule B** of this Agreement.
- 4.2. **Company to pay other general fees and charges.** The Company acknowledges that the fees payable pursuant to this Agreement do not include any other fees or charges that may be payable to the Municipality with respect to any other permits or services pursuant to bylaws of general application that are applicable to the Company's Work.
- 4.3. **Pavement Degradation Fees.** When applying for a Utility Alignment Permit, the Company shall pay to the Municipality the flat rate Pavement Degradation fees set out in **Schedule B** of this Agreement based on the linear distance of ROW to be disturbed, damaged, or broken by the Company, as determined by the Municipality. Once the Work has been completed, the Parties shall determine the actual surface area of pavement that was disturbed, damaged, or broken by the Company and the final amount owed by or to the Company shall be calculated accordingly.
- 4.4. **Invoicing.** The Municipality shall invoice the Company for all costs and fees payable pursuant to this Agreement. The invoice shall contain sufficient detail to explain the costs and fees and the Company shall pay the invoice within 60 days of its issuance.
- 4.5. **Interest charges.** Accounts that have not been paid by the Company within 60 days of the issuance of the invoice are subject to interest charges at the rate prescribed in **Schedule B** and such charges shall be due and payable forthwith.

- 4.6. **Payment of Taxes.** The Company shall be responsible for the payment of all Taxes attributable to the Company, including any Taxes attributable to the Company's use of the ROW.
- 4.7. **Payment of services consumed.** The Company shall be responsible for the payment of the full cost of all services and utilities consumed by or provided to the Company with respect to the Company's operations and Equipment.

ARTICLE 5 - UTILITY ALIGNMENT PERMITS

- 5.1. **Company to obtain a Utility Alignment Permit for each project.** The Company shall not undertake any Work, nor shall it enter upon, use, or otherwise occupy any ROW, without first:
- (a) obtaining the applicable Utility Alignment Permit from the Commissioner and/or Road Occupancy Permit prior to commencing any Work within a ROW;
 - (b) providing detailed construction plans and all supporting documentation to the Commissioner's satisfaction to establish the location of the Equipment within the relevant ROW and how the Work is to be carried out;
 - (c) paying all applicable fees to the Municipality; and
 - (d) obtaining all applicable permits from any other regulatory agencies having jurisdiction prior to commencing any Work;
- 5.2. **Municipality to provide available mapping.** Upon request from the Company, and subject to any licensing restrictions relating to the release of information, any available licensing digital ortho-imagery and/or mapping shall be provided by the Municipality to the Company at the Company's expense for the Company's use as a base map on which to submit permits to the Municipality.
- 5.3. **Company to provide complete and accurate information.** When complying with Section 5.1(b) above, the Company agrees to provide all required information and documentation to support an expedient review, by the Municipality, of its Utility Alignment Permit application. The Company acknowledges that, from time to time, the Municipality may require additional information to assess the application. These requirements might include:

- (a) providing drawings that show all existing and proposed infrastructure for all Other ROW Users; and
 - (b) showing the layout of the Company's existing Equipment on drawings.
- 5.4. **Confirming location of existing infrastructure.** If the Company is uncertain of the location of the Company's existing infrastructure or the infrastructure of other ROW users, the Company must verify those locations by using locates or other verification procedures at the Company's expense.
- 5.5. **Requests for an alternative offset.** Where the Company requests an alternative offset from the infrastructure of another ROW user – an offset not in conformity with applicable standards – the variance from the applicable standard must be outlined in the Company's application. The concurrence of the other ROW user affected shall be included in the Company's application. The Municipality will review all technical considerations associated with the variance and, if acceptable to the Commissioner, may, but is not obligated to, include conditions in the Utility Alignment Permit to that effect. The Commissioner has sole discretion to grant or refuse an alternative offset.
- 5.6. **Approving location of infrastructure alignment.** The Commissioner has sole discretion, acting reasonably, to approve any Work and the Alignment of the Company's Equipment. The approval of Works and Alignments will generally be subject to the following considerations:
- (a) The Alignment will typically be at a location that will minimize the Municipality's liability for future costs associated with the presence of the Company's Equipment within the ROW.
 - (b) There is no single installation method for new fibre optic cable installations that will address all of the Municipality's usual technical requirements in light of the scale and range of topologies in a municipality. The installation method employed should meet minimum depth requirements to protect the fibre optic cables from accidental damage.
 - (c) Works and Alignments can be based on approaches set out in Section 3.3 of Infrastructure Ontario's *Rural Optimization for Accelerated Deployment (ROAD)* supporting guidelines document for the deployment of provincially funded broadband projects.
- 5.7. **Notice by the Municipality of planned works at time of UAP approval.** The Municipality shall, at the time of approving the UAP, provide the Company with written

notice if the Municipality will require Relocation of the Equipment within three years of the issuance of the Permit in order to carry out planned Municipal Purpose work. The Company can then choose to proceed with the UAP or re-submit an application with a new proposed Alignment.

- 5.8. **Locations not preferred by the Municipality.** If the Company requests an Alignment in a location that is not the Municipality's preferred location – for example, in the soft shoulder of a road or front slope of ditch - approvals may be granted on a case-by-case basis. For any such exceptions, and contrary to the relocation cost-sharing provisions set out in Article 9 of this Agreement, the Company shall be responsible for 100% of any relocation costs should such a relocation become necessary in the future.
- 5.9. **Amendments to approved Utility Alignment Permits.** If the Company requires a change in Alignment after the UAP has been approved by the Municipality, the Company shall revise the approved UAP design and resubmit its application to the Municipality, along with a Re-submission fee as set out in **Schedule B**.
- 5.10. **Work not requiring a Utility Alignment Permit.** Notwithstanding Section 5.1, the Company may carry out the following activities without obtaining a Utility Alignment Permit: field testing, test pitting, routine maintenance and repair, short duration work, repairing aerial or buried service wires, installing temporary Service Connections, and removing graffiti without physical disruption of the ROW. However, the Company must still obtain a Road Occupancy Permit and other permits where applicable.
- 5.11. **Timeline to receive Utility Alignment Permit.** Once a Utility Alignment Permit application is deemed complete by the Municipality, the Municipality shall provide comments and/or approval to the Company:
- (a) within 10 business days where the proponent requires access to 30 kilometres or less of the ROW;
 - (b) within 15 business days where the proponent requires access to more than 30 kilometres of the ROW.
- 5.12. **Application deemed complete.** The application for a Utility Alignment permit is not deemed complete until all requested information and documentation is provided to the Municipality.
- 5.13. **Extension of timeline if alternative offset is requested.** If the Company has requested an alternative offset from the infrastructure of another ROW user and concurrence from the user is not obtained and verified for the Municipality, the Parties agree that

the timelines for approval of the Utility Alignment Permit may be extended to deal with the variance sought.

- 5.14. **Withholding of authorizations by the Municipality.** The Municipality may, at its sole discretion, withhold its approval for any Work for any reasonable cause relating to public safety, an emergency, special events, or public health, as identified by the Municipality or where the Company has failed to rectify a significant default under the terms of this Agreement.

ARTICLE 6 - MANNER OF WORK

- 6.1. **Condition of ROW.** When undertaking Work, the Company acknowledges that it accepts and uses the ROW on an "as is" basis. The Municipality makes no representation or warranty as to the state of repair of the ROW, the presence or absence of Hazardous Substances, or the suitability of the ROW for any business activity or purpose whatsoever.
- 6.2. **Execution of Work by the Company.** The Company agrees that, in all instances, and unless otherwise provided in an individual Utility Alignment Permit or otherwise agreed in writing by the Parties, the execution of its Work shall be subject to the following general conditions:
- (a) **Quality of execution by the Company.** All Work shall be executed and completed in such a way as to meet the following quality standards:
 - i. to the satisfaction of the Commissioner, at the Commissioner's sole discretion;
 - ii. in accordance with all applicable industry standards;
 - iii. in compliance with all Applicable Law; and
 - iv. in conformity with this Agreement, including the conditions set out in the Utility Alignment Permit.
 - (b) **Municipality's authority to stop Work.** If the Municipality requires Work undertaken by the Company to be stopped for any reasonable cause relating to public safety, an emergency, special events, or public health, as identified by the Municipality, or for the failure of the Company to obtain the requisite permits or as a result of any circumstances beyond the control of the Municipality as expressed by the Commissioner:
 - i. The Municipality may issue a verbal notice to the Company or its representative at the site of the Work to stop Work immediately. This notice shall include the reason for such notice to stop Work. Upon the Municipality issuing such a notice, all Work shall cease immediately, and the Company shall

leave the site and all adjoining ROW space in a safe and clean condition without delay.

- ii. Within 2 Business Days of providing such verbal notice to stop Work under this subsection, the Commissioner will provide written reasons for such notice to the Company.
- iii. Once the reasons for the Work stoppage have been resolved to the satisfaction of the Commissioner, the Municipality shall provide the Company with written authorization to resume its Work.

- (c) **Permits to be available on site.** All Contractors engaged in Work for the Company shall have all applicable permits – including a copy of the Utility Alignment Permit and Road Occupancy Permit if applicable – available on site.
- (d) **Identification of Contractors.** All Contractors shall have proper identification visible on the Work site displaying the name of the Company they are working for.
- (e) **Damages to the infrastructure of Other ROW Users.** The Company shall notify the owner of the infrastructure owned by Other ROW Users of any damage caused by the Company to any such facility resulting from its Work or as a result of the presence of its Equipment in the ROW.

6.3. **Post-construction notification.** Upon completion of the Work, including the restoration of the site, the Company shall notify the Municipality that the Work approved under the UAP is completed. The Municipality may elect to perform a post-construction inspection of the site.

6.4. **Completion of Work by the Company.** The Company agrees that, in all instances, and unless otherwise provided in an individual Utility Alignment Permit or otherwise agreed in writing by the Parties, the following general conditions shall apply to the completion of its work:

- (a) **Leaving the Work site in clean condition.** After completion of the required restoration of the ROW and leaving the Work site, the Company shall leave the ROW and the surrounding area used by the Company in a neat, clean, and safe condition as well as free from any nuisance, all to the satisfaction of the Commissioner.
- (b) **ROW restoration requirements.** If the Company breaks up or disturbs the surface of the ROW, it shall repair and restore the surface to substantially the same or better condition the surface was in before such Work was undertaken by the

Company. Such restoration shall be in accordance with any applicable Municipality policy or standard, and to the satisfaction of the Commissioner.

- (c) **Temporary restoration.** Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete the full restoration of the ROW within the expected period, the Company may complete a temporary repair to the ROW. In such instances, the Company replaces the temporary repair with a final repair as soon as possible.
- (d) **Timing of ROW restoration.** If the Company breaks or disturbs the surface of a Right-of-Way, it shall fully repair and restore the surface of the Right-of-Way **within 6 months** or, if due to weather conditions (mostly winter conditions), within 2 months at the start of the next construction season.
- (e) **Warranty of Restoration.** The Company warrants its completed restoration Work to the satisfaction of the Municipality, **for a period of 3 years** from the date of completion. During this warranty period, the Company remains responsible for any further restoration work that might be required by the Commissioner.
- (f) **Final notice of failure by the Company to restore the ROW.** If the Company fails to repair and restore the ROW after completion of its Work, or to repair, within the warranty period, a restoration it had previously completed, to the satisfaction of the Commissioner, the Municipality may proceed with such repairs 48 hours after notifying the Company in writing of the need to execute such repairs.
- (g) **Restoration of ROW by Municipality.** If the Municipality chooses, at its sole discretion, to exercise its right to proceed with the restoration of the ROW surface, the Municipality shall invoice the Company, and the Company shall pay forthwith, the cost of undertaking or completing such restoration. An invoice for Municipality-performed ROW restoration work shall include all reasonable and verifiable direct costs of performing the restoration, Administration Costs, as per this Agreement and as set out in **Schedule B**.

6.5. **As-Constructed Drawings.** The Company shall provide to the Municipality, at its own expense and within two months of completing the construction or installation of any of the Equipment, As-Constructed Drawings in an electronic and/or hard copy format as mutually agreed upon between the Parties.

ARTICLE 7 - MAINTENANCE OF EQUIPMENT

- 7.1. **Company to properly maintain its Equipment.** The Company agrees, at its sole cost and expense, to maintain the Equipment in good and substantial repair, in a safe condition – particularly for the public and other ROW users, and, with respect to Equipment located at or above grade, in a clean and aesthetically appropriate condition, all to the satisfaction of the Municipality.
- 7.2. **Company’s obligation to repair equipment in a timely fashion.** Where an inspection or a complaint received by the Municipality indicates that repair or maintenance may be necessary on certain Equipment, the Municipality may give the Company notice and the Company shall promptly inspect such Equipment and, if repair is needed, commence or cause the repair to be commenced and complete the repair within a reasonable period of time.

ARTICLE 8 - TREES

- 8.1. **Tree rehabilitation, replacement, or compensation.** The Company is responsible for the costs of any remedial work required to rehabilitate any tree damaged in the performance of its Work or, in the event a tree suffers irreparable damage as a result of the Work, the Company shall replace the tree with ones of an equivalent or better quality or shall compensate the Municipality for the value of the tree, as determined by the Municipality.

ARTICLE 9 - RELOCATION OF EQUIPMENT

- 9.1. **General obligation of the Company to Relocate Equipment.** The Company acknowledges that certain work undertaken by the Municipality for a Municipal Purpose will require the Relocation of some of its Equipment. As a result, the Company has a general obligation, subject to the provisions of this Agreement, to proceed with the Relocation in such a way as to facilitate the carrying out of the Municipality’s Municipal Purpose work.
- 9.2. **Reasonable notice to be given to the Company.** The Municipality shall provide written notice to the Company when Relocation of Company Equipment is required for a Municipal Purpose. The length of the notice shall be reasonable having consideration for the complexity and nature of the Work required to complete the Relocation. In all cases, the Municipality shall provide a minimum of 60 days’ notice to the Company.
- 9.3. **Collaboration to minimize effects on Company’s operations.** In planning and carrying out its Municipal Purpose work, the Municipality shall work in collaboration with the Company and shall make good faith efforts to avoid damage to the Equipment affected

by the Relocation and to assist the Company in efforts to minimize the potential for service interruptions that could affect the Company’s customers. However, the Municipality cannot guarantee uninterrupted service to the Company or the Company’s customers during Relocation work, nor is the Municipality responsible in any way for the service offered by the Company to its customers during Relocation.

9.4. **Design plans to be provided by the Municipality for Relocation or Adjustment of Equipment.** Detailed design plans will be submitted to the Company by the Municipality within a reasonable period of time prior to commencement of the Municipal Purpose work that requires the Relocation or Adjustment of Equipment.

9.5. **Relocation cost sharing.** Unless

- (a) the Municipality provided written notice to the Company when it issued the UAP that the Municipality might require Relocation of the Equipment in the context of a Municipality-initiated requirement to Relocate Equipment within three years of its installation, or
- (b) the Equipment was deployed in a location not preferred by the Municipality, as provided in s. 5.8 of this Agreement,

the following schedule is to be used to allocate Relocation Costs between the Parties:

Year(s) After Installation of Equipment	Percentage of Relocation Costs Paid by the Municipality
1	100% of the S.F.
2	100% of the S.F.
3	100% of the S.F.
4	90% of the S.F.
5	80% of the S.F.
6	70% of the S.F.
7	65% of the S.F.
8	60% of the S.F.
9	55% of the S.F.

10	45% of the S.F.
11	40% of the S.F.
12	35% of the S.F.
13	30% of the S.F.
14	20% of the S.F.
15	10% of the S.F.
16	5% of the S.F.
17 onwards	0%

9.6 **No liability for anticipated Relocations.** If the Municipality provided written notice that Relocation could be required within the first three years, the Municipality shall not be responsible for any relocation costs incurred by the Company.

9.7 **Computing time for Relocation purposes.** For the purpose of this Article, the start date to be used for calculating the Relocation Costs shall be the date of the issuance of the Utility Alignment Permit. For Equipment installed in or attached to the Company's Support Structures, the date of the issuance of the Utility Alignment Permit for the Support Structure shall be used for calculating the Relocation Costs.

9.8 **Relocation Cost Estimate by Company.** For planning purposes, the Company will provide the Municipality with an estimate of the Relocation Costs for the Equipment and a proposed schedule of the Relocation Work within 60 days of the Municipality's request, or such longer period of time as agreed upon by the Parties having regard to the schedules of the Parties and the nature and complexity of the proposed Relocation. The written estimate will provide sufficient detail of what the Company estimates as its total Relocation Costs and shall show as a minimum the following information:

- Labour Cost;
- Equipment Cost;
- Material Cost;
- Betterment Cost (if applicable); and
- Municipality's Cost-Sharing Percentage on the above items.

ARTICLE 10 - LOST PRODUCTIVITY COSTS

10.1. **Lost Productivity Costs** refers those reasonable and verifiable causal costs incurred by the Municipality when it experiences losses in productivity in carrying out any activity the Municipality undertakes on a regular basis (including capital construction, roadway

alterations or widenings, rehabilitation or repair work, or the construction, installation, repair, replacement, extension or maintenance of water or sewage lines, conduits, ducts and pipes or any other equipment, materials or any other services owned or provided by the Municipality) that are identifiable, documented, and directly attributable to the presence of the Company's Equipment within the ROW.

- 10.2. **Recovery of Lost Productivity Costs.** Where the Municipality has incurred Lost Productivity Costs in undertaking Municipal Purpose work, the Company agrees to pay these Lost Productivity Costs, to which Administration Costs are added, on the condition that the Municipality has provided reasonably clear and complete documentation describing the reasons for which these costs were incurred, including:
- i. the location of the Municipal Purpose work;
 - ii. a description of the Municipal Purpose work, including any municipal infrastructure affected;
 - iii. an explanation of the nature of the interference caused by the Company's Equipment;
 - iv. an itemized breakdown of the Lost Productivity Costs such as labour, supplies, equipment needed, and applicable loading factors; and
 - v. an explanation of the methodology and data sources used by the Municipality to determine the various lost productivity elements attributable to the Company's Equipment and their associated cost.

ARTICLE 11 - CHANGES IN LAND OWNERSHIP AFFECTING COMPANY EQUIPMENT

- 11.1. **Discontinuance of a ROW.** Where, in the opinion of the Municipality, a ROW in which Equipment is located is no longer required for Municipal Purposes, the Municipality may cause such ROW to be legally closed, declared surplus to the Municipality's needs, and disposed of in accordance with the applicable process at the time provided that:
- (a) If there is no technical or operational reason for the Equipment to be Relocated, other than the Municipality's intention to dispose of the ROW, the Municipality shall, prior to the discontinuance or conveyance of the ROW, cause an easement to be registered against the property in favour of the Company corresponding to the Alignment occupied by the Company at the time.
 - (b) If the Municipality does require the Company to Relocate its Equipment as a result of the Municipality's decision to dispose of the ROW, the Parties shall, prior to the discontinuance or conveyance of the ROW, effect the Relocation of the Equipment in accordance with the Relocation provisions of this Agreement.

ARTICLE 12 - ABANDONED EQUIPMENT

- 12.1. **Notice of abandoned equipment.** When the Company determines that any Equipment is no longer in use and will not be used in the future, the Company shall notify the Municipality in writing of the location and nature of the Equipment that has been abandoned.
- 12.2. **Removal of abandoned equipment.** The Company shall ensure that any abandoned Equipment is left in such a way that it can be removed by the Municipality or another ROW user, should the need arise, without affecting any of the Company's other Equipment.

ARTICLE 13 - EQUIPMENT VERIFICATION AND PROCEDURES FOR MUNICIPALITY CAPITAL PROJECTS

- 13.1. **Company to verify and validate Equipment location.** The Company agrees to verify and validate Equipment location whenever requested by the Municipality for Municipality capital projects using the following steps:
- (a) in the design stage, meet with the Municipality or its representatives upon request to discuss and work to resolve potential design and construction conflicts;
 - (b) if, after such discussions, construction conflicts cannot be resolved because the Municipality believes that the Equipment is not installed in the approved location and it is determined by the Municipality that its proposed design may be susceptible to a risk based on the Municipality's assessment of the actual location of the existing Equipment, the Company shall, at the Municipality's request, complete pre-engineering locates of its Equipment;
 - (c) where, upon completion of pre-engineering locates, the Municipality still believes that its proposed project design may still be susceptible to a risk based on the Municipality's determination that the actual location of existing Equipment is either not verifiable or is not in the approved location, the Company shall, at the request of the Municipality undertake a field investigation using a locating method(s) agreeable to both Parties, to verify horizontal and vertical location of buried Equipment. Where such method(s) of locating confirm the Equipment to reasonably be where the Company has represented it to be, the actual cost of such investigations shall be shared equally by the Company and the Municipality; and

(d) if the results obtained from the pre-engineering locates or the field investigations under determine that the Equipment is not in the Municipality-approved location and because of the confirmed location of the Equipment the Municipality is required to redesign its work, the Company will bear the associated full cost for the re-design so required and the field investigations.

13.2. **Equipment not in approved Alignment during municipal capital projects.** Where, during construction of municipal capital projects, the Company's Equipment is found not to reasonably be in the approved location or in the staked-out location, and the Municipality determines it may or it does incur any direct or indirect costs as a result of the actual location of the Company's Equipment, the Municipality shall notify the Company of such and provide a report of its estimated costs that could result from the situation, within 24 hours. If the Company is unable to address the discrepancy between the approved location and the actual location of its Equipment or to rectify the problem in a reasonable manner or does not come to other arrangements with the Municipality, both in a reasonable time commensurate with the situation, in addition to the Municipality's remedies herein, the Company agrees to compensate the Municipality for any reasonable and verifiable additional costs which the Municipality incurs in completing its work as a result of the actual location of the Company's Equipment or if the Municipality requires the Company to Relocate its Equipment in order to complete its work because the Equipment is not in the approved location, the Company may Relocate its Equipment at its own cost to a new location approved by the Municipality within a time frame agreed to by both Parties and pay to the Municipality any reasonable and verifiable costs for any construction delays experienced by the Municipality as a result of the Company's Relocation Work.

ARTICLE 14 - UTILITY COORDINATION

14.1. **Project workplans and schedules.** The Company shall make its best efforts to provide the Municipality with project workplans and schedules for deployment of its Equipment well in advance of permitting as this allows for optimal resource allocation, and minimizing conflicts between ROW users.

14.2. **Utility coordination.** For further utility coordination commentary on provincially funded broadband projects see Section 3.5 of Infrastructure Ontario's supporting guidelines entitled *Rural Optimization for Accelerated Deployment (ROAD)*.

ARTICLE 15 - SECURITY

15.1. **Company letter of credit.** In the event that the Company fails to make payment in accordance with this Agreement, or if the Company has not satisfactorily reinstated a

site where it carried out Work, at the sole discretion and request of the Municipality, the Company agrees to post an irrevocable blanket letter of credit in a form satisfactory to the Municipality's Treasurer (or the person so designated by the Treasurer) in the minimum amount of \$25,000, or other form of security acceptable to the Municipality.

- 15.2. **Drawing on letter of credit.** Such blanket security, once posted by the Company, may be drawn on by the municipality and the funds applied against any current, outstanding financial obligations owed by the Company to the Municipality under the terms of this Agreement. Should the Municipality require that it draw on the blanket securities, the Company shall immediately reinstate the blanket securities to the value in effect at the time of drawing.
- 15.3. **Duration of the Company's security.** Such blanket letter of credit shall be posted for as long as the Company plans to undertake Work within the Municipality, or until such a time that, at the sole discretion of the Municipality, a satisfactory business relationship has again been established between the Parties.

ARTICLE 16 - INDEMNIFICATION AND LIABILITY

- 16.1. **Indemnification by Company.** The Company shall indemnify and save harmless the Municipality, from any claim brought against the Municipality, and from any losses or costs suffered or incurred by the Municipality, resulting from or attributable to a negligent act or omission, or willful misconduct of the Company in the performance of this Agreement.
- 16.2. **Indemnification by Municipality.** The Municipality shall indemnify and save harmless the Company from any claim brought against the Company, and from any losses and costs suffered or incurred by the Company, resulting from or attributable to the gross negligence or willful misconduct of the Municipality in the performance of this Agreement.
- 16.3. **Obligation to survive this Agreement.** The Parties' obligation to indemnify each other and save each other harmless shall survive the termination of this Agreement.
- 16.4. **Notice of claims.** The Parties agree to provide each other with written notice within seven Business Days of becoming aware of a claim which may result in an indemnification obligation.
- 16.5. **Cooperation in addressing claims.** The Parties shall cooperate to determine the best course of action to be followed in defending a claim from a third party should one arise. However, no settlement can take place without the prior written consent of the Party

against whom the claim was brought. This consent shall not unreasonably be withheld or delayed.

- 16.6. **Absence of mutual liability between the Parties.** The Municipality and the Company shall not be liable to each other in any way for indirect, special, punitive, or consequential losses or damages, or damages for pure economic loss, arising directly or indirectly from this Agreement or any breach thereof.

ARTICLE 17 - INSURANCE

- 17.1. **General insurance requirement for the Company.** The Company shall maintain insurance coverage, to the satisfaction of the Municipality, that will protect the Company, along with the Municipality as an additional insured, from claims for damages, personal injury including death, and for claims from property damage that may arise from the Company's Work under this Agreement, including without limitation, the Company's use or maintenance of its Equipment within the ROW, or any act or omission by the Company while engaged in its Work. Such coverage shall include all costs, charges, and expenses reasonably incurred with respect to claims relating to any bodily injury or physical damage to property.
- 17.2. **Types of occurrence-based Insurance.** Without limiting the general nature of the Company's obligation to maintain satisfactory insurance coverage, the Company may be required to show proof to the Municipality of the following types of insurance:
- (a) comprehensive general liability occurrence-based insurance coverage
 - (b) Environmental Impairment Insurance for site clean-up, third party bodily injury, and property damage arising from any one accident or occurrence;
 - (c) automobile liability insurance in respect of licensed vehicles used by or for the Company.
- 17.3. **Policy requirements.** The Municipality may require that all policies provide:
- (a) that they are primary insurance which will not call into contribution any other insurance available to the Municipality to the extent of the Company's negligence or omissions;
 - (b) a waiver for severability of interest; and

- (c) that such insurance shall not be cancelled, lapsed or materially changed to the detriment of the Municipality, acting reasonably, without at least 30 Business Days' notice to the Municipality by the insurer through registered mail;

17.4. **Obligation to notify Municipality.** The Company will immediately notify the Municipality of any change to or cancellation of the Company's insurance coverage if it will directly affect or reduce the coverage required to be made available to the Municipality under this Agreement.

ARTICLE 18 - ENVIRONMENTAL RESPONSIBILITY AND LIABILITY

18.1. **Municipality not responsible.** The Municipality is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death arising from the escape, discharge, spill or release of any Hazardous Substance resulting from the Company's use of the ROW.

18.2. **No obligation for the Company to remediate existing conditions.** Notwithstanding the preceding provision, in no circumstance shall the Company be liable for the remediation or clean-up of any Hazardous Substances existing or present within the ROW prior to the term of this Agreement.

18.3. **Company to assume environmental liabilities.** The Company agrees to assume all environmental liabilities relating to its use of the ROW including, but not limited to, any liability for investigation, clean-up of, and damage caused by a Hazardous Substance within the ROW which comes from:

- (a) the Company's operations, activities, or Work within the ROW; or
- (b) any Equipment brought within the ROW by the Company or by any person with the express or implied consent of the Company.

18.4. **Reporting Hazardous Substance occurrences.** The Company must immediately report the occurrence of an incident involving a Hazardous Substance, or the discovery of the pre-existing presence of a Hazardous Substance, while it is carrying out Work within the ROW to all of the following:

- (a) the Municipality immediately at XXX-XXX-XXXX, during regular business hours;
- (b) 9-1-1 in an emergency;
- (c) Spills Action Centre by telephone at 1-800-268-6060; and
- (d) any other regulatory authority with jurisdiction over the occurrence.

ARTICLE 19 - WORKERS, SAFETY AND INSURANCE BOARD COVERAGE

- 19.1. **Company to pay all assessments for provincial workers' compensation coverage.** The Company shall pay to the provincial Workers' Safety and Insurance Board all assessments and levies owing to the Board by the Company and any unpaid assessment or levy shall be the sole responsibility of the Company.
- 19.2. **Company to provide proof of workers' compensation insurance.** Prior to commencing Work, the Company shall provide, to the Commissioner, evidence of compliance with the requirements of the Government of Ontario with respect to workers' compensation insurance.
- 19.3. **Compliance with applicable legislation.** The Company shall, at all times, comply with Applicable Law in relation to workplace safety and worker compensation in force in Ontario, including the *Workplace Safety and Insurance Act, 1997*, the *Occupational Health and Safety Act*, the *Canada Labour Code*, as it applies to the Company, and when applicable, all bylaws of general application and any other regulations and rules applicable to the performance of Work within the ROW or on private property.
- 19.4. **Out-of-province Contractors are not exempt.** The Company acknowledges that out-of-province Contractors are not exempt from having to register and comply with the Government of Ontario's requirements with respect to workplace safety and workers' compensation insurance. Prior to commencing the Work, the Company shall ensure that all out-of--province Contractors provide the Municipality with:
- (a) written confirmation from the Workers' Safety and Insurance Board of Ontario stating that the Contractor is not required to be registered in Ontario; and
 - (b) evidence of compliance with the requirements of the province or territory or place of business of the Contractor with respect to workers' compensation insurance.
- 19.5. **Company to provide proof of compliance on demand.** At any time during the term of this Agreement, when requested to do so by the Municipality, the Company shall provide proof of compliance by itself and its Contractors with Applicable Law regarding workplace safety and workers' compensation insurance. Failure to provide satisfactory proof shall result in future permits being denied by the Municipality until satisfactory proof of compliance has been provided to the Commissioner.

ARTICLE 20 - PROCEDURES IN CASE OF EMERGENCY

- 20.1. **Emergency Locates.** In the event of an Emergency, each Party shall, at no cost to the other Party and using reasonable best efforts, provide locates of its Equipment or

facilities in the affected area within two hours of receiving a request from the other Party.

- 20.2. **Locate Requesting Party.** The Party requesting a locate will either have a representative on-site or provide a contact number for a representative to ensure that the locate can be completed in the affected area. If the area is clear of the Company's Equipment and it is not necessary for the Company to perform locates, the Company will provide a verbal "all clear" response and within 3 days must provide written confirmation of same to the Municipality upon request.
- 20.3. **Restoring Company service in an Emergency.** In the event of an Emergency, the Company shall be permitted to carry out, without the need to obtain permits from the Municipality, such remedial Work as is reasonably necessary to re-establish service where such service is determined by the Company to be an essential service. Within five Business Days of completing its remedial Work to restore its essential service, the Company shall apply to the Municipality for the required permits, if required, in order to ensure, among other things, that the Municipality's records are complete with respect to the location and type of Equipment within its ROW.
- 20.4. **Emergency Relocation.** In cases of Emergency, both Parties agree to work cooperatively and apply commercially reasonable best efforts to Relocate Equipment immediately as directed by the Commissioner. It is understood by both Parties that in cases of Emergency, the Municipality may take any measure deemed necessary to safeguard public health and safety, including any measure with respect to the Company's Equipment that may be required in the circumstances.
- 20.5. **Emergency work performed by the Municipality.** Notwithstanding Article 7, in the event of an Emergency, the Municipality will take appropriate measures determined necessary by the Commissioner to re-establish a safe environment, taking reasonable precautions to protect the public and the Equipment of the Company. Where any costs incurred by the Municipality in re-establishing a safe environment are attributable to the Work of the Company or as a result of the presence of the Company's Equipment these costs shall be charged back to the Company in accordance with Article 4.0 of this Agreement.

ARTICLE 21 - DISPUTE RESOLUTION

- 21.1. **Operational dispute resolution.** The Parties will attempt to resolve any dispute, claim, or alleged breach arising out of or in connection with this Agreement promptly through discussions at the operational level.

- 21.2. **Written notice and senior level discussions.** In the event a resolution is not achieved, the Party raising the issue 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 a dispute of this nature. All negotiations conducted by such officers shall be confidential and without prejudice.
- 21.3. **Failure to Resolve –Building Broadband Faster Act Guideline.** If the Parties fail to resolve the dispute within 30 days of the written notice the Parties agree to rely on the applicable dispute resolution processes provided in the Guideline published by the Ontario Ministry of Infrastructure to resolve disputes covered by the Guideline.
- 21.4. **Failure to Resolve – CRTC Adjudication.** For disputes involving matters not covered by the Ministry of Infrastructure Guidelines, or where matters of federal jurisdiction, including post-deployment matters, are at play, either Party may refer the matter to the CRTC for adjudication through a Part 1 Application.
- 21.5. **Deadline to dispute charges.**
- (a) A Party shall bring all disputed charges to the other Party's attention within 90 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.
 - (b) Where any portion of an invoice is not disputed, the Parties agree and acknowledge that the undisputed portion of any invoice containing disputed charges, and of all subsequent invoices, shall be paid in accordance with the terms and conditions of this Agreement.
 - (c) A Party shall not be required to pay any interest or late payment charges attributable to disputed charges.
- 21.6. **Material failure by the other Party.** If either Party materially fails to carry out any of its obligations under this Agreement, the non-defaulting Party can put the defaulting Party on notice of the deficiencies it wishes the defaulting Party to correct, failing which the non-defaulting Party will be entitled to terminate this Agreement 30 days after providing the written notice.

ARTICLE 22 - NOTICES

22.1. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given if personally delivered, sent by prepaid registered mail addressed as follows, transmitted by fax to the number of the party to whom it is intended, or delivered by email addressed to the Municipality at the following address:

Municipality:

(Municipality Name)
(Address)

Attention: **Municipal Clerk**
Tel: XXX-XXX-XXXX
Email: xxxxxxxxxxxxxx

and to the Company at the following address:

Company Name
Address
Address
Attention:
Tel:
Fax:
Email:

With a copy to:

Attention:
Email:

22.2. Any notice made by mail will be deemed to have been given or served on the 5th day after it is deposited in any post office in Canada. Any notice given by fax, personal delivery, or email will be deemed to have been given on the 1st day following the day it is sent or delivered. A Party may change its address for service at any time by notice in writing to the other Party.

ARTICLE 23 - ASSIGNMENT

23.1. **This Agreement follows the Equipment.** The Municipality acknowledges that the Equipment installed by the Company can be sold or otherwise transferred, at the Company's sole discretion, to entities not a party to this Agreement. However, as the terms of this Agreement as specifically designed to facilitate the deployment of telecommunications infrastructure captured by s 1.1 of this Agreement, the Parties

agree that the terms of this Agreement shall continue to govern the Equipment, even in the event that it is sold or otherwise transferred to a third party. It is incumbent on the Company to ensure that this obligation is reflected in any transaction affecting the Equipment.

- 23.2. **This Agreement follows the ROW.** In the event that ownership or control of the ROW is transferred from the Municipality to another municipal corporation or entity, the Parties agree that the terms of this Agreement shall continue to govern the Equipment, and that is incumbent on the Municipality to ensure that this obligation is reflected in any transaction affecting the ROW.

ARTICLE 24 - SCOPE AND TERM OF THIS AGREEMENT

- 24.1. **Entire Agreement.** This Agreement constitutes the entire agreement between the Municipality and the Company with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions, and understandings, whether written or oral between the Parties. Except as provided in this Agreement, there are no conditions, covenants, agreements, representations, warranties, acknowledgments, or other provisions, express or implied, collateral, statutory or otherwise, that form part of or affect this Agreement. The execution of this Agreement has not been induced by, nor do any of the Parties rely upon or regard as material, any conditions, covenants, agreements, representations, warranties, acknowledgments, or other provisions not expressly made in this Agreement.
- 24.2. **Company's Good Legal Standing.** The Company represents and warrants to the Municipality that it is in good standing under Applicable Law.
- 24.3. **ROW Use Shall Not Create Ownership Rights.** No use of the ROW under this Agreement shall create or vest in the Company any ownership or property rights in the ROW whatsoever, and the Company shall be and remain a non-exclusive occupant of the ROW. Placement of the Equipment in the ROW shall not create or vest in the Municipality any ownership or property rights to the Equipment except as provided in this Agreement. The Parties agree that this Agreement creates contractual rights only between the Parties for the use of the ROW.
- 24.4. **Currency.** Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian funds.
- 24.5. **Severability.** If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from this Agreement and this Agreement remains in force unaffected by that finding or by the severance of that term.
- 24.6. **Statutes and Amendments.** All references to statutes in this Agreement shall include

amendments thereto, regulations thereof, and successor legislation thereafter.

- 24.7. **Payments Due on Non-Business Day.** If a payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
- 24.8. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada.
- 24.9. **Parties to Act Reasonably.** Each Party agrees that it shall at all times act reasonably in the performance of its obligations and the exercise of its rights under this Agreement.
- 24.10. **Authority of the Commissioner.** Where the Municipality is required to make any decisions or exercise its discretion pursuant to this Agreement, then the Commissioner may make such decisions or exercise such discretion on behalf of the Municipality.
- 24.11. **Negotiations between Municipality and Company.** 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 draftsman, or similar doctrine.
- 24.12. **No confidential information.**
- (a) The Company shall not include confidential information it considers to be of a competitive nature respecting the Company's customers, Equipment, material or business ("**Confidential Information**") in any information it submits to the Municipality pursuant to this Agreement, whether such submission of information is by way of notice, plans, drawings, forms, applications, letters or any other form or medium; and
 - (b) the Company acknowledges that the Municipality shall not treat any information received from the Company pursuant to this Agreement as Confidential Information.
- 24.13. **Agreement may be executed in counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which such counterparts, together, shall constitute one and the same agreement. Counterparts may be executed in original, facsimile, or electronic form, and the parties shall accept any signatures received by facsimile or in electronic form as if they were original signatures of the parties.

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

(MUNICIPALITY NAME)

Per: _____

Per: _____

(CARRIER NAME)

Per: _____

Per: _____

SCHEDULE "A" - Permits Required to Perform Work

Road Occupancy Permit = ROP, Utility Alignment Permit = UAP, Right of Way = ROW

WORK ACTIVITY	No Permit or Notification Required	Notification Only Required	ROP Required	UAP Required
<ul style="list-style-type: none"> • Maintenance, testing and repair to cabinets, pedestals, poles, and other above ground Equipment, including replacement (except pole replacement), but with no significant increase in the size or depth. 	√			
<ul style="list-style-type: none"> • Routine maintenance and repair where there will be minimal physical disturbance or changes to the ROW or its use, including: <ul style="list-style-type: none"> - field testing and test-pitting; - installing single Service Connections; or - replacing "like for like" structures (without adding more Equipment) 			√	
<ul style="list-style-type: none"> • Aerial Service Connections 		√		
<ul style="list-style-type: none"> • Buried Service Connections 			√	
<ul style="list-style-type: none"> • Pulling or placing cabling through or on existing Support Structures (with or without pits) • Tree trimming 			√	√
<ul style="list-style-type: none"> • Excavations (including day-lighting) within the ROW to investigate subsurface conditions, infrastructure location or to perform maintenance No additional Equipment installed 			√	
<ul style="list-style-type: none"> • Cable pulling and placing through incidental duct where there will be excavation 			√	√
<ul style="list-style-type: none"> • All new direct buried and aerial installations (excluding Service Connections) 			√	√
<ul style="list-style-type: none"> • Directional boring and associated pits for Work of installing new Equipment 			√	√
<ul style="list-style-type: none"> • New installation of cabinets, pedestals, poles and other above-ground Equipment, or significant increase in size of any of the above 			√	√
<ul style="list-style-type: none"> • Road crossings, including buried Service Connections crossing the road 			√	√
<ul style="list-style-type: none"> • Relocation of underground or surface Equipment 			√	√

*"Like for like" means having the same form, appearance, kind, and character.

SCHEDULE “B” - Fees Payable by the Company

If the Company does not pay the fees in full within the prescribed time period all amounts payable to the Municipality under this Agreement, and such non-payment continues for more than 15 days after the date payment is due, the Company shall pay to the Municipality interest at the rate of 1.5% per month (19.56% per annum) until paid. All such interest shall be payable on the last Business Day of each calendar month.

The fees payable under this Agreement are set out in the table below:

Option 1 – Fixed Permit Fees

Item	Details	Fee*
Utility Alignment Permit (UAP)	Approval valid for six months.	\$1,000 per 2 km underground or \$1,000 per 5 km aerial (including a 20 m wrap-around)
UAP Re-submission	In the event an application must be resubmitted as a result of an error in a locate provided by the Municipality for services owned by the Municipality or as a result of a conflict with future Municipality plans, the re-submission fee will not be payable.	\$300 per original 2 km underground application or \$300 per original 5 km aerial application
UAP Extension	Extension of previously approved UAP (expired within 6 months)	\$50 per extension
Road Occupancy Permit (ROP)	Cost per application.	\$150 per application
ROP Revision or Extension		\$50 per application
Re-Inspections	Inspections required when deficiencies are noted after construction.	\$175 per re-inspection visit
Pavement Degradation **		\$1.25 per linear metre

Option 2 – Vancouver Casual Cost Permit Fee Calculation Methodology

Item	Details	Fee*
Small Project Fee	UAP applications that are less than 20m	Calculation Required
Large Project Fee	UAP applications that are greater than 20m	Calculation Required
Rate per linear metre	Large projects only	Calculation Required
ROP Fee	Applicable with no UAP is required	Calculation Required

* **FEE:** The fees listed in this Fee Schedule B, excluding Pavement Degradation Fees, are valid for the 2024 calendar year and will increase every year by an amount equal to the increase in the Consumer Price Increase (CPI) published by Statistics Canada (Toronto All-Items September to September), or another similar index should that index become unavailable.

** **Pavement Degradation Fee:** The Pavement Degradation Fee is levied on a one-time per project basis calculated on the total length of the Alignment within the ROW on a per linear metre rate.

Pavement Degradation Fees are valid for the 2024 calendar year and will increase every year by an amount equal to the increase in the Non-residential Construction Price Index published by Statistics Canada (Toronto All-Items September to September), or another similar index should that index become unavailable.