

MUNICIPAL ACCESS AGREEMENT

This Municipal Access Agreement (the "Agreement") shall be effective as of the _____ day of _____, 20XX (the "Effective Date").

BETWEEN:

XXXX

a company incorporated under the laws of the Province of Ontario (the "Company")

PARTY OF THE FIRST PART

and

THE CORPORATION OF THE TOWN OF CALEDON
(the "Town")

PARTY OF THE SECOND PART

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* (collectively, a "**Carrier**") and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission or any successor body ("**CRTC**");

AND WHEREAS, in order to operate as a Carrier, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along ("**Within**") the highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the Town (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 Town's consent to construct its Equipment Within the ROWs and the Town 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, future municipal infrastructure improvements, road or ditching improvements Within the ROWs, nor any rights or privileges conferred before or after the Effective Date by the Town on Third Parties to use or access the ROWs;

AND WHEREAS the Parties have agreed that it would be mutually beneficial to set the terms and conditions pursuant to which the Town 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

- (a) **"Affiliate"** means;
- (i) in the case of the Company, "affiliate" as defined in the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 that is also a Carrier; and
 - (ii) in the case of the Town, a local board, agency or commission of the Town or a corporation which is partially or solely owned by, and is controlled by, the Town, and which has as a primary purpose, the management and maintenance of the ROWs.
- (b) **"Company Insurance"** has the meaning given to it in section 11.1 of this Agreement.
- (c) **"Emergency"** means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either Party.
- (d) **"Equipment"** means the transmission and distribution facilities owned and operated by the Company or its Affiliates, and includes:
- (i) **"Plant"**, which means any wirelines, conduits, force main sewers, ducts, pipes and any fibre optic, coaxial or other nature or form of cables, whether aerial or buried, including Service Drops, as well as fibre splices and enclosures;
 - (ii) **"Aboveground Equipment"**, which means any structure located on the surface of the ROW that is used to house or support the Plant, and includes, without limitation, cabinets, pedestals, poles, towers and lamp poles; and
 - (iii) **"Underground Equipment"** means any structure located below the surface of the ROW and includes pipes, wirelines, conduits, force main, sewers, ducts, maintenance holes, valves, chambers, vaults and handholes.
- (e) **"Excavation"** means the breaching or breaking up of the hard surface of the ROW, and includes activities such as day-lighting (vacuum and hydro vacuum excavation), test pitting, digging pits and directional boring, but excludes hand-digging.
- (f) **"Hazardous Substance"** means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances or chemicals, as defined, judicially interpreted or identified in any applicable law (including the common law).
- (g) **"Town's Costs"** means the amount exactly as stated within the invoice provided by written notice to the Company by the Town, stating the costs incurred by the Town as determined by the Town in its sole and absolute discretion, and which may include, the cost of any labour and materials, plus an overhead charge of 20%.

- (h) **“Municipal Consent”** or **“MC”** means the written consent of the Town allowing the Company to undertake certain Work only if a Road Occupancy Permit to install or relocate Plant or other Equipment associated with the aforesaid Work is also granted by the Town, as described in **Schedule A**.
 - (h) **“Director”** means the Town’s Director, Engineering Services or an individual designated by them.
 - (i) **“Municipal Project”** means construction or similar work required or initiated by the Town that will affect or disrupt the ROWs or the use of the ROWs.
 - (j) **“Relocation Costs”** means the Company’s reasonable and verifiable costs of completing any relocation of the Equipment requested by the Town.
 - (k) **“Road Occupancy Permit”** or **“ROP”** means a permit issued by the Town authorizing the Company to occupy the ROWs in order to conduct the Work activities described in **Schedule A**.
 - (l) **“Service Drop”** means a cable that, by its design, capacity and relationship to other cables of the Company, can be reasonably considered to be for the sole purpose of connecting backbone of the Plant to not more than one individual customer or building point of presence or property.
 - (m) **“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.
 - (n) **“Work”** means any installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or other alteration of the Equipment performed by the Company or its agents, contractors and subcontractors Within the ROWs, including the Excavation, repair and restoration of the ROWs.
- 1.2 **Sections and headings.** The division of this Agreement into articles, sections and subsections and the insertion of headings is for convenience of reference only and does not affect the interpretation of this Agreement.
- 1.3 **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.
- 1.4 **Industry Terms.** Words having well-known technical or trade meanings within the context of municipal construction and the communications industry shall be so construed, and all listings of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- 1.5 **Schedules.** The following schedules are annexed to this Agreement and are hereby incorporated by reference into this Agreement and form part hereof:

Schedule A - Municipal Consents and Road Occupancy Permits Required by the Town

Schedule B - Fees Payable by the Company

2. USE OF ROWs

- 2.1 **Consent to use ROWs.** The Town hereby consents to the Company's use of ROWs for which it has received a ROP, any MC required by the Town, and all other permits required by any other governmental bodies or agencies, including environmental permits, for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable municipal 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 provision of this Agreement, to the extent that any of the Municipal Guidelines are inconsistent with the terms of this Agreement or federal law, the Company shall not be required to comply with such Municipal Guidelines.
- 2.3 **Restrictions on use.** 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; and
 - (b) the Company, and not the Town, is the owner of the Equipment, and the placement of the Equipment Within the ROWs shall not create or vest in the Town any ownership or property rights to the Equipment.
- 2.5 **Condition of ROWs.** The Town 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.
- 2.6 **Equipment acquired by the Company.** The Parties agree that, where the Company acquires, directly or indirectly, facilities from a Third Party that are located Within the ROWs (the "**Acquired Facilities**"), then, effective the day of the acquisition of the new Equipment by the Company:
- (a) the Acquired Facilities shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and
 - (b) where that Third Party is a party to a valid and existing municipal access agreement with the Town (the "**Old MAA**") and the Company, directly or indirectly, acquires the rights and obligations under the Old MAA, the Old MAA shall be terminated.

3. PERMISSION TO CONDUCT WORK

- 3.1 **Where Municipal Consents and Road Occupancy Permits required.**

- (a) Before commencing any Work Within a ROW, the Company shall obtain the applicable Municipal Consent and Road Occupancy Permit from of the Town for the type of Work described in **Schedule A**.
- (b) For each Municipal Consent and Road Occupancy Permit required above, the Company shall submit to the Town a completed application in a form specified by the Town and including the applicable fee set out in **Schedule B**.

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

- (a) construction plans of the proposed Work, showing the locations of the proposed and existing Equipment, and specifying the boundaries of the area within the Town the Work is proposed to take place; and
- (b) all other relevant plans, drawings and other information as may be normally required by the Town from time to time for the purposes of issuing Municipal Consents or Road Occupancy Permits.

3.3 **Refusal to issue Road Occupancy Permit or Municipal Consent.** In case of conflict with any municipal purpose, including without limitation, reasons of public safety and health, conflicts with existing infrastructure, proposed road construction or widening, municipal capital works reconstruction, development servicing projects, or the proper functioning of public services, all as identified in writing to the Company by the Town, the Town, in its sole discretion, may request amendments to the plans referred to in **Section 3.2** or choose to refuse to issue a Road Occupancy Permit or Municipal Consent.

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

3.5 **Restoration of Company's service during Emergencies.** Notwithstanding **Section 3.1**, in the event of an Emergency, the Company shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with **Section 3.1**; provided that the Company does comply with **Section 3.1** within 24 hours of completing the Work.

4. **SECURITIES**

4.1 **Security Deposit.** The Company shall post an irrevocable letter of credit, or other form of security, in a form acceptable to the Town in the amount of twenty five thousand dollars (\$25,000) (the "Security Deposit") upon executing this Agreement. The Security Deposit, once posted by the Company, may be drawn on by the Town and the funds applied against any current, outstanding financial obligations owed by the Company to the Town under this Agreement or any MC or ROP, including against any of the Town's Costs for which the Company is obligated to remit payment, but has failed to do so within the

applicable time period set out in this Agreement. The Company shall keep the Security Deposit in full force and effect throughout the Term. In the event the Town draws on the Security Deposit, the Company shall immediately reinstate the Security Deposit to its original value in effect at the time of the draw.

- 4.2 **Additional Securities for Municipal Consent.** Further, at any time during the Term, because of continued non-performance of the Company in completing required Work to restore ROWs, in the sole discretion of the Town, additional irrevocable letters of credit or other form of security acceptable to the Town may be required to be posted for each application for Municipal Consent, in an amount equal to any and all estimated restoration costs for the project in each application as determined by the Town. Such security shall be released once the conditions of the Municipal Consent, including maintenance period requirements, applicable to that application have been fulfilled to the satisfaction of the Town. Any such security may be drawn on by the Town and the funds applied against any current, outstanding financial obligations owed by the Company to the Town for any restoration work required under the applicable application as covered by the letter of credit.

5. MANNER OF WORK

- 5.1 **Compliance with applicable laws, etc.** All Work under this Agreement shall be conducted and completed to the satisfaction of the Town 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 Municipal Consents and Road Occupancy Permits issued.

- 5.2 **Stoppage of Work.** The Town may order the Company to cease any Work for any municipal purpose or cause relating to public health and safety, or any other circumstances, which, in the sole and absolute discretion of the Town, necessitate that the Work be stopped. In such circumstances, the Town shall provide the Company with a verbal direction to stop the Work and the Company shall cease the Work immediately. Within 2 business days of the verbal direction, the Town shall provide the Company with a written direction to stop the Work. When the cause of the stoppage of the Work have been resolved, the Town shall immediately advise the Company that it can commence the Work.

- 5.3 **Coordination of Work with others.**

- (a) The Company shall minimize the necessity for road cuts, construction and the placement of new Equipment Within the ROW by coordinating its Work and sharing the use of aboveground and underground support structures with other existing and new occupants of the ROWs.
- (b) Where commercially reasonable and technically practicable, the Company will participate in joint initiatives with the Town, developers and other occupants of

the ROWs for the purpose of improving street, landscape and community aesthetics, including installing Plant into units, pedestals or cabinets designed to accommodate the facilities of multiple occupants or, where permitted, clustering units, pedestals or cabinets together.

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

- 5.4 **Emergency measures by Town.** In the event of an Emergency, the Town shall as soon as reasonably practicable contact the Company and, at such time as the Town deems it to be appropriate, having regard to the particular circumstances of the Emergency, allow the Company an opportunity to remove, relocate, protect or otherwise deal with the Equipment. The Town may at any time, and without notice, take such action and perform such work it deems necessary to rectify any Emergency. Where the Emergency is caused by the Equipment, upon receipt of an invoice setting out Town's Costs to rectify the Emergency, the Company shall have seven (7) days to remit payment. Where the Emergency situation is caused by the negligence of the Town, the Town will be responsible for all costs directly attributable to its negligence.
- 5.5 **Emergency contact personnel.** The Company and the Town shall provide to each other a list of 24-hour emergency contact personnel available at all times and shall ensure that the list is kept current.
- 5.6 **As-built drawings.** Where requested by the Town, the Company shall, no later than 60 days after completion of any Work authorized by an MC, provide accurate "as-built" drawings, prepared in accordance with the Municipal Standards, sufficient, for planning purposes, to accurately establish the location of the Equipment installed Within the ROWs. The Town shall use the as-built drawing for the sole purpose of ROW planning and the issuance of MCs. The Town shall protect the "as-built" drawings through reasonable measures and shall not share them beyond those who require it for the purposes described above, nor use them for any other purpose or combine them with any other information without the Company's express written consent.
- 5.7 **GIS Information.** As soon as practicable after the first anniversary of the date of signing this agreement and every 12 months thereafter, the Company shall provide accurate Geographic Information System ("GIS") records containing the location and year of installation of all Equipment present in the Town of Caledon in a digital format with the below-noted specifications. The Town shall protect the GIS records through reasonable measures and shall not share them beyond those who require it for planning purposes.

GIS Specifications:

- 5.8 **Agents, contractors and subcontractors.**
 - (a) Each Party agrees to work with the other Party directly to resolve any issues arising from any acts, omissions or performance of its agents, contractors and subcontractors.
 - (b) At all times throughout the term of this Agreement, the Company shall ensure that it has provided to the Town, according to the provisions for providing notice under this

Agreement, the names of all of the Company's agents, contractors and subcontractors who are currently authorized and insured under the Company Insurance to perform Work within any ROWs. The Town shall have the right, without any duty to provide prior notice to the Company, to refuse or deny access to a ROW to any of the Company's agents, contractors or subcontractors if the Company has not previously notified the Town that such agent, contractor or subcontractor is authorized and insured under the Company Insurance to perform Work within the aforementioned ROW.

6. REMEDIAL WORK

6.1 **General.** Following the completion of any Work, the Company shall leave the ROW in a neat, clean, and safe condition and free from nuisance, and reinstated to as good or better condition as it was in before the Work was undertaken, all to the satisfaction of the Town. Subject to **Section 6.4**, where the Work causes Excavation, the Company shall immediately apply to the Town for a ROP to undertake remedial work to repair and restore the surface of the ROW to the same or better condition it was in before the Work was undertaken ("Remedial Work"), all in accordance with the Municipal Guidelines and to the satisfaction of the Town. The Company shall not undertake any Remedial Work without first having obtained a ROP from the Town which sets out the start and end date of the Remedial Work and applicable traffic management requirements.

6.2 **Temporary repair.** Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete Remedial Work which would include a final repair to the ROW, the Town, at its discretion, may permit the Company to apply for a ROP to complete Remedial Work which includes a temporary repair, provided the Company agrees to replace the temporary repair with a final repair within a period of time set by the Town.

6.3 Warranty for repairs.

(a) The Company warrants, to the satisfaction of the Town, all Remedial Work which includes a temporary repair, until such time as further Remedial work including a final repair is completed by the Company, or, where the Town is performing such Remedial Work, for a period of two (2) years, or until such time as Remedial Work including the final repair is completed by the Town, whichever is earlier.

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

6.4 Remedial Work completed by Town. Where:

(a) the Company fails to complete any Remedial Work to the satisfaction of the Town within three (3) business days of receiving a ROP to complete such Remedial Work, or such other period as provided for in this Agreement or the ROP, or otherwise agreed to by the Parties; or

(b) the Company and the Town agree that the Town should perform the Remedial Work,

then the Town may effect such work necessary to perform the Remedial Work and, upon

receipt of an invoice setting out the Town's Costs of performing the repair or restoration, the Company shall have seven (7) days to remit payment.

- 6.5 **Removal of graffiti.** The Company shall use its best efforts to clean, remove or conceal graffiti or other unauthorized markings located and visible on the Aboveground Equipment in a timely manner and to the satisfaction of the Town. Without limiting the generality of the foregoing, the Company will, within 48 hours' written notice from the Town, remove or conceal all offensive graffiti from its Aboveground Equipment. In the event that the Company does not remove or conceal the graffiti in accordance with this section, the Town may take such steps as it deems reasonable and necessary to remove or conceal the graffiti, and upon receipt of an invoice setting out the Town's Costs of such removal or concealment, the Company shall have seven (7) days to remit payment.
- 6.6 **Maintenance of Aboveground Equipment.** The Company shall:
- (a) maintain a regular maintenance program to clean, straighten, paint and repair its Aboveground Equipment; and
 - (b) within 10 business days of written notice from the Town, complete any such maintenance requested by the Town.
- 6.7 **Removing abandoned Equipment.** Where the Company advises the Town in writing that it no longer requires the use of any Equipment, the Company shall, at the Town's request and within a period of time as agreed to by the Parties, act as follows at the Company's sole cost and expense:
- (a) The Company shall remove all abandoned Aboveground Equipment.
 - (b) Subject to **paragraph (c)** below, the Company shall make safe any abandoned Underground Equipment that is not occupied or used by a Third Party, including through arranging for such Underground Equipment to be filled with unshrinkable fill.
 - (c) Where, in the opinion of the Director, the abandoned Underground Equipment will interfere with a Municipal Project that will require Excavation of the ROW, then the Company shall, prior to such Excavation, remove the abandoned Underground Equipment from the ROW.
 - (d) Upon the removal of or making safe of any abandoned Equipment, the Company shall repair any resulting damage and restore the affected ROWs to the condition in which they existed prior to the removal or making safe.
 - (e) If the Company fails to remove or make safe the abandoned Equipment and restore the ROWs within the time specified above and to the satisfaction of the Director, the Town may complete such removal and restoration and upon receipt of an invoice setting out the associated Town's Costs the Company shall have seven (7) days to remit payment.

7. LOCATING FACILITIES IN ROWS

- 7.1 **Company's records.** The Company agrees that, throughout the Term, it shall, at its own cost, record and maintain adequate records of the locations of its Equipment.

- 7.2 **Provision of Locates.** Each Party shall, at its own cost and at the request of the other Party (or its contractors, subcontractors or authorized agents), physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method ("**Locates**") under the following circumstances:
- (a) in the event of an Emergency, within 2 hours of receiving the request or as soon as practicably possible, following which the requesting Party will ensure that it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified; and
 - (b) in all other circumstances, within a time agreed upon by the Parties or as mandated by applicable provincial legislation, whichever is more stringent.
- 7.3 **Provision of Mark-ups.** The Parties agree to respond within 20 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.
- 7.4 **Location conflicts during Municipal Project.** During the planning and design stage of a Municipal Project, the Town shall work with the Company to identify and verify the location of existing and affected Equipment using the following steps:
- (a) The Company shall meet with the Town to review the Municipal Project and identify any potential conflicts between the existing Equipment and where construction under the Municipal Project may occur.
 - (b) Where a potential conflict is identified, the Town may, in its sole discretion, decide to amend the design or route of the Municipal Project so as to avoid or minimize the conflict.
 - (c) The Company shall, if requested by the Town, perform pre-engineering Locates in the affected areas under the Municipal Project in order to verify the location of the existing Equipment, and shall share equally with the Town the cost of performing such work.
- 7.5 **Where Equipment is located incorrectly.** Where the location of any portion of the Equipment in a ROW is not located in the location approved in the applicable MC and ROP or as shown on the as-built drawings (as accepted by the Town) and, as a result, the Town is unable to install its facilities Within the affected ROWs in the manner it expected based on the applicable MC and ROP or as-built drawings (the "**Conflict**"), the following shall apply:
- (a) The Town will notify the Company of the Conflict, following which the Company shall, in consultation with the Town, attempt to resolve the Conflict.
 - (b) If, in the opinion of the Town, the Company is unable to resolve the Conflict within a reasonable period of time, the Company shall choose to do one of the following:

- (i) Remit payment to the Town in the amount of an invoice setting out the Town's Costs directly resulting from the Conflict, within seven (7) days of receiving the invoice; or
- (ii) remove or relocate the Equipment or the portion of the Equipment that is incorrectly located at its own costs.

These obligations apply only in circumstances where the as-built or as-recorded drawings or MCs and ROPs showing the authorized location can be consulted. Additionally, the Parties recognize that over time, the location of the Equipment may have changed as a result of activities beyond the Company's control (such as work performed by the Town or a Third Party) and the Company should not be responsible for the Conflict. The Parties agree to work together to determine whether the current location of the Equipment has been impacted by factors outside the Company's control.

8. RELOCATION OF EQUIPMENT

8.1 General.

- (a) Where the Town requests the Company to relocate or permanently move its Equipment (including a Municipal Project where, after applying the steps in **Section 7.5**, the Town has not decided to redesign the Municipal Project to avoid a conflict), the Town shall notify the Company in writing.
- (b) Subject to the provisions of this **Article 8**, the Company shall, within 90 days of receiving the notice from the Town (or such other time as agreed to by the Parties, having regard to the schedules of the Parties, the nature of the relocation required and the need for the Company to obtain MCs and ROPs from the Town and consents from Third Parties), relocate such Equipment and perform any other required and associated Work.
- (c) If the Company fails to complete the relocation in accordance with **paragraph (b)** above, the Town may, at its option, complete such relocation and the Company, upon receipt of an invoice setting out the Town's Costs of the relocation, shall have seven (7) days to remit payment.

8.2 **Relocation to private property.** Where the Company is required to relocate the Equipment on property other than a ROW or other Municipal property, then the Town shall provide the Company with a reasonable period of time to procure an easement from the Third Party land owner. The Town shall be under no financial responsibility for costs incurred by the Company to obtain an easement from a Third Party land owner.

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

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

prior to the discontinuance or conveyance of the ROW, conduct the relocation of the Equipment in accordance with **Section 8.1 and 8.2.**

- 8.4 **Reimbursement by Town for Relocation Costs.** For any relocation required by the Town and subject to the other provisions of this Agreement, the Town shall reimburse the Company in accordance with the following terms:

Number of year(s) after the installation of the Equipment	Proportion of relocation costs to be paid by the Town
1	100%
2	100%
3	100%
4	90%
5	80%
6	70%
7	65%
8	60%
9	55%
10	45%
11	40%
12	35%
13	30%
14	20%
15	10%
16	5%
17	0%

- (a) Notwithstanding the provisions of subsections (a) and (b), the following exceptions may apply:

1. Special circumstances may arise with respect to a specific relocation whereby the parties may mutually agree to negotiate alternative cost sharing arrangements. Such alternative arrangements shall be agreed upon in writing by both parties prior to approval of a new location;
2. Irrespective of when the Equipment was installed by the Company, the Company shall be solely responsible for any costs and expenses associated with the relocation of its Equipment where such relocation is required solely by the Company;

- 8.4.1 **Determination of Relocation Costs.** In determining the Relocation Costs, the following procedures will be used:

- (a) Within 30 days of receiving the request from the Town to relocate the Equipment, the Company shall provide the Town with a written estimate of the Relocation Costs for such relocation, including the portion of the Town's reimbursement.
- (b) Within 60 days of completing the relocation, the Company may provide the Town with a written invoice for the actual Relocation Costs in a format that clearly

identifies the Town's reimbursement.

8.5 **Relocation Costs not to include Equipment upgrades.** Unless otherwise agreed to by the Parties, the Town is not responsible for any Relocation Costs associated with Equipment that can be used to provide a new or upgraded service. For greater certainty, the Parties agree that the Town is only responsible for Relocation Costs for Equipment of equivalent type, quantity, quality and manner of construction as was used for the original, subject to any reasonable adjustments required due to:

- (a) the installation of Equipment of a different nature required to accommodate technological change or industry construction methods; or
- (b) the installation of a greater length of Equipment or other modifications required to accommodate, for example, space constraints or the presence of other facilities in the ROW.

8.6 **Equipment affected by Town's Capital Works Plan.**

- (a) Prior to the issuance of an MC, the Town will advise the Company in writing whether the Company's proposed location for new Equipment will be affected by the Town's 5-year capital works plan.
- (b) If the Town advises that the new Equipment will be so affected and the Company, despite being advised of such, requests the Town to issue the MC, then the Town may issue a conditional MC stating that, if the Town requires, pursuant to any project identified in the capital works plan as of the date of approval, the Company to relocate the Equipment within two (2) years of the date of the MC, the Company will be required to relocate the Equipment at its own cost, notwithstanding **Section 8.5**.

8.7 **Beautification.** Notwithstanding anything else in this Agreement, the Town will be solely responsible for and will pay to the Company all Relocation Costs that are attributable to the aspect of a relocation that is required for a beautification or aesthetic purpose, including for example, where the Town requires the Company to bury aerial Equipment located on Third Party structures.

8.8 **Town not responsible for Third Party relocation costs.** Unless otherwise agreed to between the Town and the Third Party, in no event shall the Town be responsible under this Agreement for:

- (a) the costs of the Company to relocate Equipment to meet the requirements of a Third Party; or
- (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment.

8.9 **Neither Company nor Town responsible for Third Party relocation costs.** Unless otherwise agreed to between the Company or the Town and the Third Party, neither the Company nor the Town shall be responsible under this Agreement for:

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

or

- (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment.

8.10 **Relocation required by developer on behalf of Town.** Where a developer, on behalf of the Town, is required to complete any construction or other work on a ROW that requires the Company to relocate its Equipment, the Town shall advise the Company in writing of such and the Town shall reimburse the Company for its Relocation Costs in accordance with this Agreement.

8.11 **Adjustments to Equipment.** The Parties agree that any request by the Town for the Company to adjust its Equipment located in the ROW to accommodate re-grading, elevation adjustment or resurfacing activity is considered a relocation and the provisions of this **Article 8** shall apply.

8.12 **Relocation Costs for transit and infrastructure projects.**

- (a) The Parties acknowledge that there may be construction projects that are of a significantly greater scope and scale than Municipal Projects and other typical activities undertaken by the Town on its ROWs, including mass or rapid transit projects and other infrastructure projects, which may be funded, in whole or in part, by parties other than the Town ("**Infrastructure Projects**").
- (b) The Parties agree that, for the relocation of Equipment that is affected, directly or indirectly, by an Infrastructure Project, the Company shall be permitted to either (i) seek recovery of its Relocation Costs in accordance with this Agreement or (ii) request that the Parties negotiate alternative arrangements for Relocation Costs outside the terms of this Agreement.
- (c) Within 60 days of this request, the Company shall provide an inventory of the affected Equipment based on the design documents made available by the Town at that time, including its age and location and a rough estimate of the applicable Relocation Costs.

9. PAYMENT OF FEES AND OTHER CHARGES

9.1 **General.** The Company covenants and agrees to pay to the Town all fees, charges and Town's Costs in accordance with this Agreement, including the fees and charges set out in **Schedule B**.

9.2 **Payment of taxes.** The Company shall pay, and shall expressly indemnify and hold the Town harmless from, all taxes lawfully imposed now or in the future by the Town 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 Town, that are attributable to the Company's use of the ROW.

9.3 **Agreement Fee.** Upon execution of this Agreement, the Company shall pay to the Town

the fee for preparing the Agreement pursuant to the Town's Fees By-law in the amount of **five thousand dollars (\$5,000)**, plus HST.

10. TERM AND TERMINATION

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

- (a) this Agreement is terminated by either Party in accordance with its terms;
- (b) a Party delivers initial notice of non-renewal to the other Party at least 180 days prior to the expiration of the then current term; or
- (c) this Agreement is replaced by a New Agreement (as defined below) between the Parties.

10.2 **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least five (5) business days' written notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within 60 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 60-day period, then the breaching Party shall commence to remedy or cure the breach within such 60-day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching Party.

10.3 **Termination by Town.** The Town may terminate this Agreement by providing the Company with at least 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*, R.S.C., 1985, c. C-36 or the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;
- (b) the Company assigns or transfers this Agreement or any part thereof other than in accordance with this Agreement; or
- (c) the Company ceases to be eligible to operate as a Carrier.

10.4 **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 10.2** or **10.3**) 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 Town 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 good faith negotiations to execute a New Agreement.

- 10.5 **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.

11. INSURANCE

- 11.1 **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 Town solely to the extent of the Town’s rights as additional insured, from claims for damages for bodily injury (including death) and property damage which may arise from the Company’s operations under this Agreement, including the use or maintenance of the Equipment within the ROWs or any act or omission of the Company and its employees, contractors and agents while engaged in the Work.
- 11.2 **Comprehensive general liability occurrence-based insurance.** Without limiting the generality of the foregoing, the Company shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:
- (a) covers claims and expenses for legal liability for personal injury, bodily injury and broad form property damage, contractual liability, owners’ and contractor’s protective, completion operations, contingent employer’s liability, non-owned automobile, cross liability and severability of interest clauses in an amount not less than Five Million Dollars (\$5,000,000) per claim (exclusive of interest and costs). Excess or umbrella insurance may be used to achieve the required insured limits;
 - (b) extends to cover the legal liability arising from the contractual obligations of the Company as stated within this Agreement;
 - (c) includes the Town as an additional insured; and
 - (d) contains cross liability and severability of interest clauses.
 - (e) The Company shall provide Automobile liability insurance on all owned/leased vehicles if any vehicles are being used in the proposed Work.
 - (f) If any aircraft will be used, aviation liability insurance in the amount of less than Five Million Dollars (\$5,000,000.00) each occurrence with the Town added as additional insured.
- 11.3 **Insurance certificates.** As soon as possible after the execution of this Agreement, the Company shall provide the Town with certificates of insurance in respect of the Company required comprehensive general liability insurance evidencing the cross liability and severability clauses and recording the Town as an “additional insured”. Thereafter, the Company shall provide the Town with evidence of all renewals of the Company Insurance in a certificate of insurance form reasonably acceptable to the Town.
- 11.4 **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 Town 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 Town except to the extent of claims arising from the negligence of the Town and those for whom the Town are responsible in law;
 - (ii) that the Company Insurance shall not be cancelled, without the insurer endeavouring to provide at least 30 business days' notice to the Town by registered mail.

12. LIABILITY AND INDEMNIFICATION

12.1 **Definitions.** For the purposes of this **Article 12**, the following definitions shall apply:

- (a) **"Town"** means the Town and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns.
- (b) **"Company"** means the Company and its directors, officers, employees, contractors, agents, successors and assigns.
- (c) **"Claims"** means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind.
- (d) **"Costs"** means those costs (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.
- (e) **"Losses"** means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs and expenses.

12.2 **No liability, Town.** Except for Claims or Losses arising, in whole or in part, from the negligence or willful misconduct of the Town, the Town shall not:

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

on account of any actions or omissions of the Town under this Agreement.

12.3 **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 nonperformance of its obligations hereunder.

- 12.4 **Indemnification by Company.** Except for Claims or Losses arising, in whole or in part, from the negligence or willful misconduct of the Town, the Company covenants and agrees to indemnify, defend and save harmless the Town from and against any and all Third Party Claims or Losses that the Town may suffer or incur arising from:
- (a) the Company's exercise of any of its rights under this Agreement;
 - (b) the Company's performance of any Work Within the ROWs and the operation or use of the Equipment by the Company or any other person;
 - (c) the Company undertaking any activity Within the ROWs which is ancillary to the Company's exercise of its rights under this Agreement; and
 - (d) any breach of this Agreement by the Company, caused by, resulting from or attributable to the negligence or willful misconduct of the Company.
- 12.5 **Indemnification by Town.** Except for Claims or Losses arising, in whole or in part from the negligence or willful misconduct of the Company, the Town shall indemnify, defend and save harmless the Company from and against all Claims and Losses that the Company may suffer or incur arising from:
- (a) any damage to property (including property of the Company); or
 - (b) any injury to individuals (including injury resulting in death), including the Company's employees, servants, agents, licensees and invitees; and
 - (c) any breach of this Agreement by the Town, caused by, resulting from or attributable to the act or omission of the Town.
- 12.6 **Survival.** The obligation of a Party to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

13. ENVIRONMENTAL LIABILITY

- 13.1 **Town not responsible.** The Town 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 willful misconduct of the Town or those for which it is responsible in law.
- 13.2 **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 willful misconduct on the part of the Town or those for which it is responsible in law.

14. CONFIDENTIALITY

14.1 Protection of the Company's Confidential Information.

- (a) The Town agrees not to use confidential information provided by the Company, including but not limited to information relating to the Equipment and the Work, the "as-built" or "as-recorded" drawings or such other information as the Company considers to be of a competitive nature respecting the Company's customers, Equipment, network, material and business operations ("**Confidential Information**") for any purposes other than performance of this Agreement.
- (b) The Town shall protect the confidentiality of the Confidential Information to the same degree or greater as the Town protects the confidentiality of its own confidential information which, in any event, shall not be less than a reasonable degree of care.
- (c) The Town shall not disclose any Confidential Information to any Third Party unless such disclosure is consented to in writing by the Company or otherwise required by law and then only after the Town has provided written notice of such requirement to the Company.

14.2 **Survival.** The Parties agree that the obligations in this **Article 14** shall survive termination or expiry of this Agreement.

15. DISPUTE RESOLUTION

15.1 **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 15.2**) 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 15**.

- 15.2 **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 officers or staff who have the authority to settle the Dispute. All negotiations conducted by such officers or staff shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve the Dispute within 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.
- 15.3 **Continued performance.** Except where clearly prevented by the nature of the Dispute, the Town and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this **Article 15**.

16. GENERAL

- 16.1 **Entire agreement.** This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.
- 16.2 **Force Majeure.** Except for the Parties’ obligations to make payments to each other under this Agreement, neither Party shall be liable for a delay in its performance or its failure to perform hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, or other catastrophes; government, legal or statutory restrictions on forms of commercial activity; or order of any civil or military authority; national emergencies, insurrections, riots or wars or strikes, lock-outs or work stoppages (“**Force Majeure**”). In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues. Should the suspension of obligations due to Force Majeure exceed 2 months, either Party may terminate this Agreement without liability upon delivery of notice to the other Party.
- 16.3 **Notices.** Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the Town at the following address:

if to the Company, to:

XXX

Attn: XX
E-mail: XX

if to the Town, to:

The Corporation of the Town of Caledon
6311 Old Church Road
Caledon, ON L7C 1J6

Attn: Director, Engineering Services

Any notice given pursuant to **Section 16.3** 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 10 days' prior written notice of such change to the other Party in the manner described above.

- 16.4 **Alternative method of notice.** Any notice may also be given to the Company by e-mail at the e-mail address for the Company set out in **Section 16.3**, and to the Town at such e-mail address or addresses which the Town may provide to the Company in writing from time to time for the purpose of receiving notices under this Agreement. Each e-mail notice shall be effective on the date of its delivery.
- 16.5 **Assignment.** This Agreement may not be assigned, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party shall have the right to assign this Agreement to an Affiliate without the consent of the other Party, provided that:
- (a) it is not in material breach of this Agreement;
 - (b) it has given prompt written notice to the other Party;
 - (c) any assignee agrees to be bound by the terms and conditions of this Agreement; and
 - (d) the assignee is not in direct competition with the other Party, in which case, prior written consent would be required.
- 16.6 **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.
- 16.7 **Amendments.** Except as expressly provided in this Agreement, no modification or amendment to this Agreement shall be effective unless agreed to in writing by the Town and the Company.
- 16.9 **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.
- 16.10 **No waiver.** No waiver of any part of this Agreement shall be effective unless in writing and no such waiver shall be deemed a waiver of any other provision in this Agreement or a continuing waiver unless agreed to in writing by the Parties.
- 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 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 **Enurement.** This Agreement is and shall be binding upon and enure 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 **Council Discretion.** Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that none of the provisions of this Agreement is intended to operate, nor shall have the effect of operating, in any way to fetter the Council of the Town in the exercise of any of its discretionary powers.

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16.16 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or electronic form and the parties adopt any signatures received electronically as original signatures of the parties.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

XXXX

Name:
Position:

Name:
Position:

I/We have authority to bind the corporation.

THE CORPORATION OF THE TOWN OF CALEDON

**AUTHORIZATION BY-LAW
NUMBER BL-2016-106, as amended**
Passed by the Town of Caledon
Council on the 20th day of December, 2016

Mayor

Town Clerk

We have authority to bind the Corporation.

SCHEDULE A
Municipal Consents and Road Occupancy Permits Required by the Town

WORK ACTIVITY	MC	ROP
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 Aboveground Equipment; - the relocation of buried Plant or Aboveground Equipment; - the replacement of existing Aboveground 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	X
Tree trimming on ROWs		X
The replacement of existing Aboveground 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, where work is performed on a collector road		X
Pulling cable through existing underground duct, where work is performed on a local road		X
The installation of or repair to aerial Service Drops, where vehicle or pedestrian traffic is impeded or blocked, or parking on a maintained boulevard is required during installation		X
The installation of or repair to aerial Service Drops, where the installation or repair is minor, and vehicle or pedestrian traffic is not impeded or blocked, and parking on a maintained boulevard is not required during installation		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 Town		X

SCHEDULE B
Fees Payable by the Company

1. Permit Application and Permit Charges

The Company shall pay applicable permit fees for the Municipal Consent or Road Occupancy Permits in accordance with the prevailing rates set out in the Town of Caledon User Fees By-Law 2021-87 in effect at the time of the application; as amended or re-enacted from time to time.

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