

Telecom Municipal Access Agreement

between

The Corporation of the Town of Tecumseh

-and-

Xplore Inc and Xplore Fibre L.P.

Table of Contents

Recitals:	5
1. Definitions and Interpretations	6
1.1 Definitions	6
1.2 Business Days	9
1.3 Legislation	9
1.4 Recitals and Schedules	9
2. Use of ROWs	10
2.1 Consent to use ROWs	10
2.2 Proviso	10
2.3 Scope of Municipal Consent	10
2.4 Equipment Acquired by Company	10
2.5 No Ownership Rights	10
2.6 Third Party Attachments to Equipment	11
2.7 Condition of ROWs	11
2.8 Liens	11
2.9 Crossing of Company Equipment	11
3. Permits to Conduct Work	11
3.1 Where Permits required:	11
3.2 Routine Work	12
3.3 Expiry of Permit	12
3.4 Submission of Plans	12
3.5 Refusal to Issue Permits	12
3.6 Temporary Connections	13
3.7 Restoration of the Company's service during Emergencies	13
3.8 Temporary changes by Municipality	13
3.9 Construction	13
3.10 Security	14
4. Manner of Work	14
4.1 Compliance with Applicable Laws, etc.	14
4.2 Underground Company Equipment	14
4.3 Stoppage of Work	15
4.4 Responsibility for Work	15
4.5 Coordination of Work	15
4.6 Utility Co-ordination Committee	15
4.7 Identification of Contractors	15
4.8 "As-built" Drawings	15
4.9 Where Equipment is located incorrectly	16
4.10 Street Aesthetics	16
4.11 Confidentiality	17
4.12 Removal of Graffiti	17
4.13 Replacement of Old Equipment	17
4.14 Maintenance of Above-ground Cabinets	17
5. Emergency Work	17

5.1	Emergency Temporary Relocation	17
5.2	Emergency Work by Municipality.....	17
5.3	Emergency contact personnel	18
6.	Remedial Work	18
6.1	General.....	18
6.2	Permanent Road Restoration.....	18
6.3	Temporary repair.	19
6.4	Warranty for repairs.....	19
6.5	Repairs completed by Municipality.....	19
7.	Locating Facilities in ROWs.....	20
7.1	Locates	20
7.2	Utility Locate Notification System.	20
7.3	Provision of Mark-ups.	20
7.4	Inaccurate Locates.	20
7.5	Location Conflicts.....	21
7.6	Depth.....	22
8.	Relocation of Equipment	22
8.1	General.....	22
8.2	Municipality’s efforts.....	22
8.3	Equipment affected by Municipal projects.....	22
8.4	Relocation to Private Property.....	22
8.5	Reimbursement by Municipality for the Company’s Relocation Costs.	23
8.6	Where Equipment is Located Incorrectly.....	23
8.7	Relocation Performed by Municipality.....	23
8.9	Discontinuance of ROW.....	24
9.	Fees and Other Charges	24
9.1	General.....	24
9.2	Invoices.....	24
9.3	Interest.....	24
9.4	Payment of taxes.....	25
10.	Term and Termination	25
10.1	Initial term and renewal.....	25
10.2	Termination by either Party.....	25
10.3	Termination by Municipality.....	25
10.4	Obligations and rights upon termination or expiry of Agreement.....	26
10.5	Removing abandoned Equipment.....	26
10.6	Continuing obligations.....	27
11.	Insurance and Security.....	27
11.1	General.....	27
11.2	General Liability Occurrence-based Insurance.....	27
11.3	Insurance Certificates.....	28
11.4	General Insurance Conditions.....	28
12.	Liability and Indemnification	28
12.1	Definitions.....	28
12.2	No liability, Municipality.....	29
12.3	No liability, both Parties.....	29

12.4	Indemnification by Municipality.....	29
13.	Environmental Liability.....	29
13.1	Municipality not responsible.....	29
13.2	Company to assume environmental liabilities.....	30
14.	Force Majeure.....	30
15.	Dispute Resolution.....	30
15.1	General.....	30
15.2	Resolution of Disputes.....	31
15.3	Continued performance.....	31
16.	Notices.....	31
16.1	Method of Notice.....	31
16.2	Delivery of notice.....	32
16.3	Alternative Method of Notice.....	32
17.	General.....	32
17.1	Entire agreement.....	32
17.2	Gender and number.....	33
17.3	Sections and headings.....	33
17.4	Statutory references.....	33
17.5	Including.....	33
17.6	Currency.....	33
17.7	Voluntary Agreement.....	33
17.8	Assignment.....	33
17.9	Parties to act reasonably.....	34
17.10	Amendments.....	34
17.11	Survival.....	34
17.12	Governing law.....	34
17.13	Waiver.....	34
17.14	Severability.....	34
17.15	Inurement.....	34
17.16	Equitable Relief.....	35
Schedule A	36
Schedule B	37
Schedule C	38

Municipal Access Agreement

This Municipal Access Agreement shall be effective as of the 13th day of November 2024 (the “Effective Date”)

Between:

The Corporation of the Town of Tecumseh
(hereinafter the “Municipality”)

-and-

Xplore Inc. and Xplore Fibre L.P.
(hereinafter each a “Company”)

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

Recitals:

Whereas the Company is a “telecommunications common carrier” as defined in *the Telecommunications Act*, S.C. 1993, c.38 (“**Telecom Act**”) or “distribution undertaking” as defined in the *Broadcasting Act*, S.C. 1991, c.11 (collectively a “**Carrier**”) and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”);

And Whereas in order to operate as a Carrier, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along (“**Within**”) the highways, streets, road allowances, lanes, bridges or viaducts tunnels, pedestrian overpasses or underpasses, and general public utility easements which are under the jurisdiction of the Municipality (collectively “**Rights-of-Way**” or “**ROWS**”) or other public places as agreed to by the Parties;

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

And Whereas the Agreement is to govern the terms and conditions of the normal course of Work carried out on the ROWs under the responsibility of the Municipality and excludes Major Projects subsidized by Third Parties (including governmental authorities) that the Parties agree will be subject to specific agreements;

And Whereas 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;

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

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

1. Definitions and Interpretations

1.1 Definitions

In this Agreement, in addition to any terms defined within the body of this Agreement, the following words and phrases shall have the meanings assigned to each of them below, namely:

- (a) **“Above-ground Equipment”** means, in all cases at or above, any structure located on the surface of the ROW used to house or support the Equipment, and includes cabinets, pedestals, poles and lamp poles but excludes aerial Equipment.
- (b) **“Affiliate”** means:
 - (i) in the case of the Company, “affiliate” as defined in the *Canada Business Corporations Act* that is also a Carrier.
 - (ii) in the case of the Municipality, a local board, agency or commission of the Municipality or a corporation which is partially or solely owned by, and is controlled by, the Municipality, and which has as a primary purpose, the management and maintenance of the ROWs.
- (c) **“Agreement”** means this Municipal Access Agreement, complete with the Schedules attached hereto;
- (d) **“Applicable Laws”** means:
 - (i) applicable federal, provincial or municipal statutes, regulations, laws, orders-in-council, by-laws, codes and policies;
 - (ii) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, governmental authority (including the CRTC) or other Person having jurisdiction; and
 - (iii) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a governmental authority.
- (e) **“Business Day”** means a day that is not Saturday, Sunday or a statutory or civic holiday;

- (f) “**Claims**” shall mean any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind;
- (g) “**Company**” shall mean each of Xplore Inc., and Xplore fibre L.P. and its affiliates and shall include the companies’ officers, employees and agents;
- (h) “**CRTC**” means the Canadian Radio-television and Telecommunications Commission or any successor governmental authority;
- (i) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties.
- (j) “**Environmental Laws**” mean all Applicable Laws, existing now or in the future, relating to the environment, health and safety matters or conditions, Hazardous Substances, pollution or protection of the environment, including laws relating to:
 - (i) on-site or off-site contamination;
 - (ii) occupational health and safety;
 - (iii) chemical substances or products;
 - (iv) releases of pollutants, contaminants, chemicals or other industrial, toxic or radioactive substances or Hazardous Substances into the environment; and
 - (v) the use, storage or handling of Hazardous Substances;
- (k) “**Hazardous Substance**” means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law (including the common law).
- (l) “**Equipment**” means the transmission and distribution facilities owned by the Company and its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and equipment located Within the ROWs.
- (m) “**Municipal Consent**” means the written consent of the Municipality, with or without conditions, to allow the Company to perform Work within the ROWs that requires the excavation or breaking up of the ROWs (as more fully described in **Schedule B**).
- (n) “**Municipal Engineer**” means the most senior individual employed by the Municipality with responsibilities for ROWs within the Municipality, the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Municipality.

- (o) **“Municipality’s Costs”** means the reasonable and verifiable costs and expenses of the Municipality, including the cost of labour and materials, plus a reasonable overhead charge of [15 percent (15%)].
- (p) **“Municipal Guidelines”** means all applicable municipal by-laws, rules, policies, standards and guidelines.
- (q) **“Municipal Project”** means construction or similar work required or initiated by the Municipality for bona fide municipal purposes (including, without limitation, work needed to accommodate land development within the municipality) that will affect or disrupt the ROWs or the use of the ROWs and as applicable, lead to relocation.;
- (r) **“Permit”** means a Municipal Consent or a Road Occupancy Permit or both.
- (s) **“Person”** means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof;
- (t) **“Prime Rate”** means the rate of interest per annum quoted by the Bank of Canada from time to time as its reference rate for Canadian Dollar demand loans made to its Canadian customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time;
- (u) **“Relocation”** means the relocation of the Equipment as required or requested by the Municipality, including:
 - (i) the excavation of the area occupied by the Equipment and the removal of the Equipment therefrom;
 - (ii) the filling up the area of the ROWs previously occupied by the Company Equipment with earth or other material satisfactory to the Municipal Engineer;
 - (iii) the replacement and restoration to their former condition and location of any drains, conduits, wires, pipes and their appurtenances which may have been removed or displaced for the purpose of relocating the Equipment;
 - (iv) restoration of the boulevard and/or pavement to their former condition; and
 - (v) the installation and construction of the Equipment in its new location in a manner satisfactory to the Municipal Engineer.
- (v) **“Road Occupancy Permit”** or **“ROP”** means a Permit issued by the Municipality authorizing the Company to conduct Work that includes any activity that involves a deployment of its workforce, vehicles and other equipment in the

ROWs and which may materially interfere with the public use and enjoyment of the ROWs for the duration of the Work (as more fully described in **Schedule B**).

- (w) “**Service Drop**” means a cable that, by its design, capacity and relationship to other cables of the Company, can be reasonably considered to be for the sole purpose of connecting backbone of the Equipment to not more than one individual customer or building point of presence or property.
- (x) “**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.
- (y) “**Undisputed Amount**” means an amount owing by the Company to the Municipality for which there is no outstanding notice of dispute, or which dispute has been settled before the CRTC, binding arbitration, or a court of competent jurisdiction.
- (z) “**Work**” means, but is not limited to, any survey, installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of the Equipment performed by the Company (including without limitation that work performed on behalf of the Company by any contractor) within the ROWs, including the excavation, repair and restoration of the ROWs.

1.2 **Business Days**

If any 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.

1.3 **Legislation**

All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.

1.4 **Recitals and Schedules**

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

Schedule A – Fees and Charges Payable by the Company

Schedule B – Permits Required by the Municipality

Schedule C – Relocation Costs

2. Use of ROWs

2.1 Consent to use ROWs

The Municipality hereby consents to the Company's use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all Municipal Guidelines pertaining to the Equipment and the use of the ROWs.

2.2 Proviso

Notwithstanding **Section 2.1** and any other provisions of this Agreement, to the extent that any of the applicable Municipal Guidelines are inconsistent with the terms of this Agreement, the Company shall not be required to comply with such Municipal Guidelines.

2.3 Scope of Municipal Consent

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

2.4 Equipment Acquired by Company

The Parties agree that, where the Company acquires, directly or indirectly, facilities from a Third Party that are located Within the ROWs (the "**New Equipment**"), and that Third Party is a party to a valid and existing municipal access agreement with the Municipality (the "**Old MAA**"), then, effective the date of the acquisition of the New Equipment by the Company:

- (a) the New Equipment shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and
- (b) where the Company has been assigned, or has acquired the rights and obligations under, the Old MAA, the Old MAA shall be terminated.

2.5 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 or legal interest in the ROWs other than those contemplated by the *Telecommunications Act*, if any; and
- (b) the placement of the Equipment Within the ROWs shall not create or vest in the Municipality any ownership or property rights to the Equipment.

2.6 **Third Party Attachments to Equipment**

The Company shall be permitted to allow any Third Party to attach or install its facilities in, on and to the Equipment.

2.7 **Condition of ROWs**

The Municipality makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the ROWs on an “as is” basis. The Company acknowledges having been advised of Excess Soil Regulation (Excess Soil Reg 406/19). To the extent that such regulation (as amended or replaced) applies to any activities carried out by the Company pursuant to this agreement, the Company acknowledges that it (not the Municipality) shall be responsible for taking such actions as may be required to comply with such regulation.

2.8 **Liens**

The Company shall not register or permit to be registered any instrument claiming an estate, interest or property right in the ROW or other property in the Municipality in any real or personal property registry by virtue of the Company’s occupancy or use of the ROW or this Agreement. The Company shall not suffer or permit any lien to be filed or registered against any ROW.

2.9 **Crossing of Company Equipment**

The Municipality may cross the Company’s Equipment with its own improvements or otherwise, and may use the ROW for any purpose, and may allow other parties to cross the Company’s Equipment with their improvements or otherwise and to use the ROW.

3. **Permits to Conduct Work**

3.1 **Where Permits required:**

- (a) Work within the ROWs by the Company is subject to the authorization requirements of the Municipality as set out in **Schedule B** and the terms and conditions for obtaining authorization set out therein.
- (b) For each Permit required above, the Company shall submit to the Municipality a completed application, in a form specified by the Municipality. Applicable fee(s), set out in **Schedule A** shall be paid within 90 days of invoice following review and prior to commencing construction.
- (c) Subject to **Section 3.4**, the Municipality will issue the applicable Permits within 20 days of receiving a complete Application and will issue the applicable ROP within five (5) days of receiving a complete Application, or such other time as agreed to by the Parties having regard to the complexity of the Work covered by the Application and the volume of Permit Applications before the Municipality at that time.

3.2 **Routine Work**

Notwithstanding **Section 3.1**, the Company may, without first obtaining a Permit:

- (a) utilize existing ducts or similar structures of the Equipment or a Third Party's equipment;
- (b) carry out routine maintenance and field testing to its Equipment;
- (c) install and repair Service Drops; and
- (d) repair, replace or upgrade Equipment attached to municipal structures;

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

3.3 **Expiry of Permit**

In the event that the Company has not commenced construction of the approved Work associated with a particular Permit within one (1) year of the date of issuance of the Permit and has not sought and received an extension to the Permit from the Municipality, which extension shall not be unreasonably withheld, the Permit shall be null and void. In such circumstances, any fees paid by the Company in respect of the expired Permit shall not be refunded and the Company must obtain a new Permit for the Work. All requests for an extension of a Permit must be made at least thirty (30) days prior to its expiration.

3.4 **Submission of Plans**

Unless otherwise agreed to by the Municipality, the Company shall, prior to undertaking any Work that requires a Municipal Consent, submit the following to the Municipal Engineer:

- (a) construction plans of the proposed Work, showing the locations of the proposed and existing Equipment and other facilities, and specifying the boundaries of the area within the Municipality within which the Work is proposed to take place; and
- (b) all other relevant plans, drawings and other information required under **Schedule B** to this Agreement or as may be normally required by the Municipal Engineer from time to time for the purposes of issuing Permits.

3.5 **Refusal to Issue Permits**

In case of conflict with any bona fide municipal purpose, including reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing to the Company by the Municipality, the Municipality may request amendments to the plans referred to in **Section 3.3** or may choose to refuse to issue a Permit in accordance with **Section 3.1**.

3.6 Temporary Connections

In the case of any temporary connections or Service Drops, the Company shall ensure:

- (a) All aerial wires, cables or other Equipment crossing an ROW do not lie on the ground and have a vertical clearance of at least 2.4 metres.
- (b) Any temporary connection shall be on the condition that said temporary connection is removed within one hundred and twenty (120) days following the day on which it was placed, or such other period as may be agreed in writing to by the Parties, acting reasonably.
- (c) The Company must not cause any aerial trespass of adjacent or nearby properties.
- (d) If a temporary connection or Service Drop creates a situation which the Municipality, acting reasonably, deems to be an unsafe condition, then this shall be deemed to constitute an Emergency, and the provisions of **Section 5** shall apply.

3.7 Restoration of the Company's service during Emergencies

Notwithstanding **Section 3.1**, in the event of an Emergency, the Company shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with **Section 3.1**; provided that the Company provides notification to the Municipality within two (2) business days of completing the Work.

3.8 Temporary changes by Municipality

Notwithstanding any other provision in this Agreement, the Municipality reserves the right to set, adjust or change the approved schedule of Work by the Company for the purpose of coordinating or managing any major events or activities, including the restriction of any Work during those restricted time periods; provided however, that any such adjustment or change shall be conducted so as minimize interruption to the Company's operations. The Municipality shall use its commercially reasonable efforts to provide to the Company seven (7) days or any other mutually negotiated time, advance written notice of any change to the approved schedule of Work, except that, in the case of any Emergency, the Municipality shall provide such advance notice as is reasonably possible in the circumstances.

3.9 Construction

The Company shall not deviate more than 1 metre from the approved description and location of any part of the underground Company Equipment without the prior consent of the Municipal Engineer, which shall not be unreasonably withheld or delayed.

3.10 Security

- (a) Every time the Company fails to comply with the terms and conditions of this Agreement and following the provision of written notice by the Municipality to the Company of the non-compliance, the Municipality may suspend the Road Occupancy Permit until a resolution plan in respect to curing the non-compliance is agreed to by the Company and the Municipality in writing. Starting on the second event of non-compliance per Road Occupancy Permit, the Company shall deposit security in the form of a letter of credit with the Municipality, naming the Municipality as beneficiary, within five (5) business days of the resolution plan being agreed to by the Company and the Municipality. The amount of security shall be determined by the Municipal Engineer, having regard to an amount that is proportional to the work being undertaken, and in no case shall the security be less than \$10,000 unless agreed to by the Parties. The Company shall deposit with the Municipality only one letter of credit per Road Occupancy Permit, regardless of the number of non-compliances associated with a given Road Occupancy Permit.
- (b) If any non-compliance is not cured within ten (10) business days of the resolution plan being agreed to by the Company and the Municipality, the Municipality may draw on the letter of credit the amount required to cover the Municipality's reasonable costs to cure the non-compliances. The security, or remaining of, if any, shall be released by the Municipality within five (5) business days after the Municipality's acceptance of the completion of the Company's final restoration Work to the highway associated with the Permit.

4. Manner of Work

4.1 Compliance with Applicable Laws, etc.

Subject to **Section 2.2**, all Work shall be conducted and completed to the satisfaction of the Municipality and in accordance with:

- (a) the Applicable Laws (and, in particular, all laws and codes relating to occupational health and safety);
- (b) the Municipal Guidelines;
- (c) the Agreement; and
- (d) the applicable Permits issued under **Section 3.1**.

4.2 Underground Company Equipment

The Company shall place those portions of the Company Equipment that cross beneath streets or existing buried utilities in ducts, carrier pipes or encased in concrete, or as otherwise reasonably required by the Municipality.

4.3 **Stoppage of Work**

The Municipality may order the stoppage of the Work for any bona fide municipal purpose or cause relating to public health and safety or any circumstances beyond its control having regard to the public interest in having access to communications, including 9-1-1 access services. In such circumstances, the Municipality shall provide the Company with a verbal order and reasons to stop the Work, and the Company shall cease the Work immediately. Within two (2) business days of the verbal order, the Municipality shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise the Company immediately that it can re-commence the Work.

4.4 **Responsibility for Work**

The Company shall be responsible for all permitted Work, including the cost of such Work.

4.5 **Coordination of Work**

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

4.6 **Utility Co-ordination Committee**

The Company may participate in a utility co- ordination committee established by the Municipality and contribute to its equitable share of the reasonable costs of the operation and administration of the committee as approved by such committee.

4.7 **Identification of Contractors**

The Company shall ensure that all of its contractors have proper identification visible on the Work site displaying the name of the Person for which they work.

4.8 **“As-built” Drawings**

Where a Municipal Consent is required in Schedule B, the Company shall make reasonable efforts to, no later than 90 days after completion of any Work provide the Municipal Engineer with accurate “as-built” drawings, prepared in accordance with such standards as may be required by the Municipal Engineer, sufficient to accurately establish the plan, profile, and dimensions of the Equipment installed Within the ROWs. Such drawings shall only be used for the purposes of facilitating the Municipal Engineer’s conduct of planning and issuance of Work permits. The “as-constructed” drawings must be protected through reasonable measures and must not be shared beyond those who require it for the purposes described above, nor must they be used for any other purpose or combined with other information. If requested by the Municipal Engineer, the

Company shall provide one copy of the drawings in an electronic format and one as a hardcopy.

4.9 **Where Equipment is located incorrectly**

Where the location of any portion of the Equipment in a ROW is located outside a distance of 1 metre horizontally (centre-line to centre-line) from the location approved in the Permit and, as a result, the Municipality is unable to install its facilities within the affected ROWs in the manner it expected based on the Permit (the “**Conflict**”), the following shall apply:

The Municipality may provide the Company with written notice of the Conflict and the Company shall, within sixty (60) days of receiving such notice, attempt to resolve the Conflict. If the Company is unable to resolve the Conflict in a reasonable time, then the Company may choose to do one of the following:

- (a) Pay the Municipality the Municipality’s Costs as a direct result of the Conflict.
- (b) Remove or relocate the Equipment or the portion of the Equipment that is incorrectly located at its own costs.

Notwithstanding the foregoing, in circumstances where records of the approved location of the Equipment are non-existent or unavailable, or where the conditions of the applicable ROW have changed materially from what was described in the Permit, the Parties agree to act reasonably when sharing or allocating the associated Relocation Costs. The Municipality shall not be entitled to rely on deviations that are minimal and do not have a material impact on the Municipality, financial or otherwise, in order to avoid responsibility for costs associated with the relocation. Additionally, the Parties recognize that over time, the location of the Company’s Equipment may have changed as a result of activities outside side of its control (such as work performed by the Municipality 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 Company’s Equipment has been impacted by factors outside the Company’s control. Similarly, the Company may not avoid responsibility for the Conflict where the location is impacted by factors outside the control of the Municipality.

4.10 **Street Aesthetics**

Where commercially reasonable and technically practicable and subject to confirmation of additional costs, if any, the Company may participate in joint initiatives with the Municipality, developers and other occupants of the ROWs regarding the installation of new Company Equipment, including installing Company Equipment into specially designed units, pedestals or cabinets or, where permitted, clustering units, pedestals or cabinets together, all for the purpose of improving street, landscape and community aesthetics.

4.11 **Confidentiality**

The Parties recognize that documents shared by the Company with the Municipality as part of this Agreement and under the Telecommunications Act contain information that represents commercially sensitive, confidential information. In the event that any documents relating to this Agreement are captured by a third-party freedom of information request made under provincial freedom of information legislation), prior to providing such information to a Third Party, the Municipality agrees to inform the Company and provide the Company with an opportunity to comment on whether or not the information should be disclosed.

4.12 **Removal of Graffiti**

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

4.13 **Replacement of Old Equipment**

Where the Company locates Equipment, in a ROW for the purpose of replacing old Equipment, the old Equipment located at or above grade, including without limitation, any solid foundation that extends below grade, shall be removed within two hundred and forty (240) days of the new Equipment being placed in the ROW.

4.14 **Maintenance of Above-ground Cabinets**

The Company shall within five (5) Business Days of written notice from the Municipality, or such other reasonable period of time agreed to by the Parties, clean, straighten, paint and repair specifically identified above-ground cabinets as requested by the Municipality.

5. **Emergency Work**

5.1 **Emergency Temporary Relocation**

In cases of an Emergency that requires the Company to temporarily relocate Company Equipment, the parties shall work co-operatively and expeditiously to complete the relocation as soon as practicably possible.

5.2 **Emergency Work by Municipality**

In the event of an Emergency, the Municipality shall as soon as reasonably practicable contact the Company and, as circumstances permit, allow the Company a reasonable opportunity to remove, relocate, protect or otherwise deal with the Equipment, having regard to the nature of the Emergency. Notwithstanding the foregoing, the Municipality may take all such measures it deems necessary to address the Emergency and otherwise re-establish a safe environment and the Company shall pay the Municipality's Costs that are directly attributable to repairing the Company's Equipment, unless the Emergency

situation is caused by an act or negligence of the Municipality, in which case the Municipality will be responsible for all costs.

5.3 **Emergency contact personnel**

The Company and the Municipality shall provide to each other a list of 24-hour emergency contact personnel, available at all times, including contact particulars, and shall ensure that the list is kept current.

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, all to the satisfaction of the Municipality. Subject to Section 6.5, where the Company is required to break or otherwise disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to substantially the same condition it was in before the Work was undertaken, all in accordance with section 6.2 or 6.3 and to the satisfaction of the Municipal Engineer.

6.2 **Permanent Road Restoration**

If the Company has excavated, broken up or otherwise disturbed the surface of a ROW, the requirements for the Company completing the road restoration work will vary depending on if and when pavement has been recently repaved or overlaid, as follows:

- (a) if pavement has been repaved or overlaid during the five-year period immediately prior to the date of issuance of the Permit, then the Municipality may require that the Company grind and overlay the full lane width of pavement in the ROW;
- (b) if pavement has been repaved or overlaid during the two-year period immediately prior to the date of issuance, then the Municipality may require that the Company grind and overlay the full width of the pavement in the ROW;
- (c) in either subsections (a) or (b) above, if Third Parties, the Municipality as a provider of services to the public, or the Municipality's Affiliates, has excavated, broken up or otherwise disturbed the pavement to be ground and overlaid, the costs of that grind and overlay will be apportioned between the Company the Third Parties, the Municipality, or the Municipality's Affiliates on the basis of the area of their respective cuts;
- (d) the Municipality will not require grind and overlay under subsections (a) or (b) above for road restoration work involving:
 - (i) service connections to buildings where no other reasonable means of providing service exists and the Company had no requirement to provide service before the new pavement was placed;

- (ii) Emergencies; and
 - (iii) other situations deemed by the Municipal Engineer to be in the public interest; and
- (e) if the Municipality has required the Company to grind and overlay under either subsections (a) or (b) above, the Company will have no obligation to pay Pavement Degradation fees under Schedule A in relation to that pavement.

6.3 **Temporary repair.**

Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete a final repair to the ROW within the expected period of time, the Company may complete a temporary repair to the ROW; provided that, subject to Section 6.5, the Company replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by the Company shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the Municipality.

If a temporary repair gives rise to an unsafe condition, then this shall be deemed to constitute an Emergency and the provisions of Section 5.3 shall apply.

6.4 **Warranty for repairs.**

The Company warrants its temporary repair, to the satisfaction of the Municipality until such time as the final repair is completed by the Company, or, where the Municipality is performing the final repair, for a period of two (2) years or until such time as the final repair is completed by the Municipality, whichever is earlier. The Company shall warrant its final repairs for a period of two (2) years from the date of their completion.

6.5 **Repairs completed by Municipality.**

Where:

- (a) the Company fails to complete a temporary repair to the satisfaction of the Municipality within seventy-two (72) hours of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties; or
- (b) the Company and the Municipality agree that the Municipality should perform the repair,

then the Municipality may effect such work necessary to perform the repair and the Company shall pay the Municipality's Costs of performing the repair

7. **Locating Facilities in ROWs**

7.1 **Locates**

The Company agrees that, in addition to the Information it provides to the Municipality under Section 4.8, it shall, throughout the Term at its own cost, record and maintain adequate records of the locations of its Equipment. Each Party shall, at its own cost and at the request of the other Party (or its contractors or authorized agents), physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method (“**Locates**”), under the following circumstances:

- (a) in the event of an Emergency, within two 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;
- (b) in all other circumstances, within a time reasonably agreed upon by the Parties; or
- (c) where provincial OneCall legislation is in force, in accordance with the standards set out in such legislation.

7.2 **Utility Locate Notification System.**

The Company shall become a member of the utility locate notification system (“the Locate System”) with the Municipality and other utility companies (the “Locate System”) unless the Company elects to provide its own Locates and such Locates are performed to a standard equal to or better than Locates provided by the Locate System.

7.3 **Provision of Mark-ups.**

The Parties agree to respond within twenty (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 Company 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 **Inaccurate Locates.**

Where the Company’s Locates do not accurately correspond with the location of the Equipment, and as a result, the Municipality is unable, to install its facilities within the affected ROWs in the manner it expected based on the Locates provided by the Company (“**the Error**”), the following shall apply:

- (a) The Municipality will notify the Company of the Error, following which the Company shall, in consultation with the Municipality, attempt to resolve the Error.

- (b) If the Company is unable to resolve the Error in a reasonable time commensurate with the situation and to the Municipality's satisfaction, acting reasonably, then the Company shall pay to the Municipality the Municipality's Costs as a direct result of the Error.

The obligation set out in part (b) of this clause only applies in circumstances where the as-built drawings or Permits showing the authorized location can be consulted. Additionally, the Parties recognize that over time, the location of the Company's Equipment may have changed as a result of activities outside of its control (such as work performed by the Municipality or a Third Party) and the Company shall not be responsible for the Error. The Parties agree to work together to determine whether the current location of the Company's Equipment has been impacted by factors outside the Company's control.

7.5 **Location Conflicts.**

The locates provided by the Company to the Municipality for pre-design shall contain sufficient design information and survey detail as reasonably required by the Municipal Engineer, such as line and elevation of the Equipment within the alignments. If the Company is unable to provide either the line or elevation information within an agreed-upon time frame, the Municipality may invoice the Company for any costs reasonably incurred by the Municipality in determining the line or elevation of the Equipment within the alignments. With respect to underground facilities, if the Municipal Engineer finds that the locates provided by the Company to the Municipality for pre-design do not contain sufficient design information and survey detail, the Municipality may request further information on the location of these facilities when such information is reasonably necessary. When a request is made for further information on the location of underground facilities, the Company and the Municipality are to proceed as follows:

- (a) First, the Company and the Municipality are to discuss and try to resolve any potential design and/or construction conflicts.
- (b) Should the matter not be resolved through discussions, the Company is to provide markups of drawings to indicate the location of its existing underground facilities in the area of the proposed project giving rise to the request for information on the location of underground facilities.
- (c) As a last resort, if the prior methods are not sufficient to resolve the conflicts, the Company is to undertake field investigations to verify the location of these underground facilities.
- (d) The vertical coordinates are to be provided in the format chosen by the Municipality (Such as depth of cover or metres above sea level) and within a level of accuracy agreed upon by the Municipality and the Company.
- (e) The Municipality and the Company are to each pay 50% of the costs associated with the field investigations.

7.6 **Depth.**

Notwithstanding any other provision of this Agreement, the Parties recognize that over time, the location of the Company's Equipment may have changed as a result of activities beyond its control (such as work performed by the Municipality, its Affiliates or a Third Party). In light of this, the Company shall not be responsible for providing the Municipality with vertical location information for its Equipment

8. **Relocation of Equipment**

8.1 **General**

Where the Municipality requires and requests the Company to relocate its Equipment for bona fide municipal purposes, the Municipality shall notify the Company in writing of the purpose of the relocation and, subject to **Section 8.3**, the Company shall, within ninety (90) days thereafter of receiving an approved MC from the Municipality in accordance with **Section 3.1** or such other such time as agreed to by the Parties having regard to the schedules of the Parties and the nature of the relocation required, perform the relocation and any other required and associated Work. The Company shall promptly respond to all requests from the Municipality's employees, officers and agents (including without limitation any engineer appointed under the *Drainage Act*, R.S.O. 1990, c. D.17) for information respecting the location of the works, the costs of relocation, the timing involved in such relocation and other information respecting the works to facilitate any Municipal Project.

8.2 **Municipality's efforts.**

The Municipality will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to the Company's customers. Once the Company has provided the Municipality with all information the Municipality requires to enable it to process a Permit application, the Municipality shall provide, on a timely basis, all Permits required to allow the Company to relocate the Equipment.

8.3 **Equipment affected by Municipal projects.**

If, prior to the issuance of a Permit, the Municipality advises the Company in writing that the new Equipment will be affected by projects in the Municipality's three-year capital works plan, and the Company, despite being advised of such, requests the Municipality to issue the Permit, then the Municipality may issue a conditional Permit stating that the Company will be responsible for all Relocation Costs if the Municipality requires the Company to relocate the Equipment within three (3) years of the date of the Permit for any project identified in the five-year capital works plan, as of the date of the Permit.

8.4 **Relocation to Private Property.**

Where the Company is required to Relocate the Equipment to property other than a ROW or other municipal property, then the Municipality shall:

- (a) provide the Company with sufficient time to procure an easement from the third-party landowner; and
- (b) compensate the Company for its the full costs to acquire and register the easement.

8.5 Reimbursement by Municipality for the Company's Relocation Costs.

The Municipality shall reimburse the Company for all or part of its reasonable and verifiable costs of completing a relocation requested by the Municipality (the "**Relocation Costs**") based upon the principles, methodologies and procedures set out in **Schedule C**. Schedule C may be relied upon by the Municipality and any engineer (including, engineers appointed under the *Drainage Act*, R.S.O. 1990, c. D.17) for the purpose of recovering part or all of the Relocation Costs from any third party(ies) in accordance with applicable legislation or agreements in place.

8.6 Where Equipment is Located Incorrectly.

The Municipality shall not be responsible for the costs of relocating any portion of the Equipment that is located outside a distance of one (1) metre horizontally (center-line to center-line) from the location approved in the Permit. Notwithstanding the foregoing, in circumstances, where records of the approved location of the Equipment are non-existent or unavailable, or where the conditions of the applicable ROW have changed materially from what was described in the Permit, the Parties agree to act reasonably when sharing or allocating the associated Relocation Costs. The Municipality shall not be entitled to rely on deviations that are minimal and do not have a material impact on the Municipality, financial or otherwise, in order to avoid responsibility for costs associated with the relocation. Additionally, the Parties recognize that over time, the location of the Company's Equipment may have changed as a result of activities outside side of its control (such as work performed by the Municipality or a Third Party) and the Company should not be responsible for the conflict. The Municipality will disclose any knowledge as to whether the current location of the Company's Equipment has been impacted by factors outside the Company's control.

8.7 Relocation Performed by Municipality.

8.8 If the Company fails to complete the Relocation in accordance with Section 8.1 to the reasonable satisfaction of the Municipality:

- (a) The Municipality will notify the Company, following which the Company shall, in consultation with the Municipality, attempt to complete the Relocation in such manner.
- (b) If the Company is unable to complete the Relocation in such manner and within a reasonable time, then the Municipality may, at its option, complete such Relocation or otherwise reasonably remedy the occurrence, and the Company shall pay the Municipality's Costs of the Relocation or remedy of the occurrence,

including design and inspection fees and the cost of any delays that may be experienced.

8.9 Discontinuance of ROW.

Where, in the opinion of the Municipality, a ROW (or any portion thereof) in which Equipment is located is no longer required for use by the Municipality as such, the Municipality may cause such ROW to be discontinued by registering a Notice of Discontinuance in the proper Registry Office; provided that:

- (a) if the Municipality owns the land upon which the ROW is located and does not require the Company to Relocate the Equipment, the Municipality will, prior to the discontinuance and conveyance of the ROW, cause an easement to be registered against the property in favour of the Company at the Municipality's cost. The Municipality will be responsible for the cost of registration of the easement in the land titles office;
- (b) if the Municipality owns the land upon which the ROW is located and does require the Company to Relocate the Equipment, the Parties shall, prior to the discontinuance and conveyance of the ROW, effect the Relocation of the Equipment in accordance with Sections 8.1, 8.2 and 8.4.

9. Fees and Other Charges

9.1 General.

The Company covenants and agrees to pay to the Municipality the fees, charges, and Municipality's Costs in accordance with this Agreement, including the fees and charges set out in Schedule A.

9.2 Invoices.

Unless expressly provided elsewhere in this Agreement, where there are any payments to be made under this Agreement, the Party requesting payment shall first send a written invoice to the other Party, setting out in detail all amounts owing, including any applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that all invoices shall be issued within sixty (60) days and all payments shall be made in full by no later than ninety (90) days after the date of the invoice was received.

9.3 Interest.

If either Party does not pay in full within the prescribed time period all amounts payable to the other Party under this Agreement, and such non-payment continues for more than fifteen (15) days after the date payment is due, the Party owing such amounts shall pay to the other Party interest, before and after judgment, calculated daily and compounded monthly at a rate per annum equal to the Prime Rate plus two percent (2%). All such interest shall be payable on the last Business Day of each calendar month.

9.4 **Payment of taxes.**

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

10. **Term and Termination**

10.1 **Initial term and renewal.**

This Agreement shall have an initial term of five (5) years commencing on the Effective Date and shall be renewed automatically for successive 5-year terms subject to the renegotiation of fees set out in Schedule A, if applicable. If the Parties fail to renegotiate the fees set out in Schedule A within thirty (30) days of automatic renewal, the dispute shall be decided by an arbitrator whose decision shall be binding. Notwithstanding the above, this Agreement shall not be automatically renewed where:

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

10.2 **Termination by either Party.**

Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours' notice in the event of a material breach of this Agreement by the other Party after notice thereof (including failure to pay an Undisputed Amount with the time provided) and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice. If, however, in the view of the non-breaching Party, it is not possible to remedy or cure the breach within such thirty (30) day period, then the breaching Party shall commence to remedy or cure the breach within such thirty (30) day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching party.

10.3 **Termination by Municipality.**

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

- (a) the Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or

becomes voluntarily subject as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*;

- (b) the Company assigns or transfers this Agreement or any part thereof other than in accordance with Section 17.8; 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 and 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 Municipality in writing that it no longer requires the use of the Equipment:

- (a) the terms and conditions of this Agreement shall remain in full force and effect until a new municipal access agreement (a "New Agreement") is executed by the Parties; and
- (b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months or other time period as may be mutually agreed upon by the Parties, following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to resolve the terms and conditions of the New Agreement to the extent of non-consensus.

10.5 **Removing abandoned Equipment.**

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

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

Upon removal of the abandoned Equipment or upon the removal or making safe of Underground Structures, the Company shall repair any damage resulting from such removal or making safe and restore the affected ROWs to the condition in which they existed prior to the removal or making safe. If the Company fails to remove such Equipment and restore the ROWs within the time specified above and to the satisfaction of the Municipal Engineer, the Municipality may complete such removal and restoration and the Company shall pay the associated Municipality's Costs.

10.6 **Continuing obligations.**

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

11. **Insurance and Security**

11.1 **General.**

Throughout the term of this Agreement, the Company shall maintain, at its sole expense, insurance (the "**Company Insurance**") in sufficient amount and description as will protect the Company and the Municipality from claims for damages including, bodily injury (including death) and property damage which may arise from the Company's operations under this Agreement, including the use or maintenance of the Company Equipment within the ROWs or any act or omission of the Company and its employees, contractors and agents while engaged in the Work. The Company Insurance shall include all costs, charges and expenses reasonably incurred with any injury or damage.

11.2 **General Liability Occurrence-based Insurance.**

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

- (a) covers claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence. Excess or umbrella insurance may be used to achieve the required insured limits;
- (b) extends to cover the contractual obligations of the Company as stated within this Agreement;
- (c) confirms the Municipality as an additional insured with respect to liability arising out of the Company's operations under this Agreement; and
- (d) contains cross liability and severability of interest clauses.

11.3 Insurance Certificates.

Prior to the execution of this Agreement, the Company shall provide, in a form acceptable to the Municipality acting reasonably, the Municipality with certificates of insurance in respect of the Company Insurance evidencing the cross liability and severability clauses and confirming the Municipality as an “additional insured”. Thereafter, the Company shall provide the Municipality with evidence of all renewals of the required Company Insurance in a certificate of insurance form acceptable to the Municipality acting reasonably.

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 Municipality shall not be liable for any premiums relating to policies under the Company Insurance.
- (c) The policies under the Company Insurance shall provide:
 - (i) that the Commercial General Liability insurance is primary insurance which will not call into contribution any other insurance available to the Municipality; and
 - (ii) that the Company Insurance shall not be cancelled lapsed during policy terms without at least thirty (30) Days notice to the Municipality by mail.
- (d) The Company will immediately notify the Municipality of any changes to or cancellation of the Company Insurance if they will directly affect or reduce the coverage made available to the Municipality.

12. Liability and Indemnification

12.1 Definitions.

For the purposes of this Article 12, the following definitions shall apply:

- (a) “**Municipality**” means the Municipality and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns;
- (b) “**Company**” means the Company and its directors, officers, employees, contractors, agents, successors and assigns;
- (c) “**Claims**” means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind;
- (d) “**Losses**” means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs and expenses; and

- (e) “Costs” means those costs (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

12.2 **No liability, Municipality.**

Except for Claims or Losses arising, in whole or in part, from the negligence or willful misconduct of the Municipality, the Municipality shall not:

- (a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused; and
- (b) be liable to the Company for any Losses whatsoever suffered or incurred by the Company, on account of any actions or omissions of the Municipality under this Agreement.

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 non-performance of its obligations hereunder. Neither party shall be required to indemnify the other party to the extent any such damage or losses arise out of or are caused by a breach of this Agreement or any unlawful act or any negligent act or omission by the other party or any third party. This section shall survive the termination of this Agreement.

12.4 **Indemnification by Municipality.**

The Municipality hereby indemnifies the Company from and against all Losses and/or Costs incurred by the Company in connection with this Agreement as a result of any Claim, action, suit or proceeding based on a Claim of injury to any person, including injury resulting in death or damage to property of any Third Party, including property of the Company caused by or attributable to the omission, negligence, willful misconduct or gross negligence of the Municipality, its officers, employees, agents, contractors, licensees or invitees.

13. **Environmental Liability**

13.1 **Municipality not responsible.**

The Municipality is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge,

leak, spill or release of any Hazardous Substance in connection with the Company's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or willful misconduct of the Municipality 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 Municipality or those for which it is responsible in law.

14. **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 arising subsequent to this Agreement; or order of any civil or military authority; national emergencies, insurrections, riots or wars or strikes, lockouts or work stoppages ("**Force Majeure**"). In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues. Should the suspension of obligations due to Force Majeure exceed two (2) months, either Party may terminate this Agreement without liability upon delivery of notice to the other Party.

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 senior officers who have the authority to settle the Dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve the Dispute within thirty (30) days of the non-disputing Party’s receipt of written notice, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

15.3 Continued performance.

Except where clearly prevented by the nature of the Dispute, the Municipality and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this **Article 15**.

16. Notices

16.1 Method of Notice.

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

If to the Municipality:

The Corporation of the Town of Tecumseh
917 Lesperance Road
Tecumseh, Ontario N8N 1W9
Email:
Fax: 519-735-6712

If to Xplore Inc.:

Xplore Inc.
Attn: Vice President, Legal
625 Cochrane Drive, Suite 1000

Markham, ON L3R 9R9
Email: legal@xplore.ca

With a copy to:

Xplore Inc.
Attn: Vice President, Network Build
625 Cochrane Drive, Suite 1000
Markham, ON L3R 9R9
Email: Chris.Tsakopoulos@xplore.ca

If to Xplore Fibre L.P.

Xplore Fibre L.P.
Attn: Vice President, Legal
625 Cochrane Drive, Suite 1000
Markham, ON L3R 9R9
Email: legal@xplore.ca

With a copy to:

Xplore Fibre L.P.
625 Cochrane Drive, Suite 1000
Markham, ON L3R 9R9
Email: Chris.Tsakopoulos@xplore.ca

16.2 **Delivery of notice.**

Any notice given pursuant to Section 16.1 shall be deemed to have been received on the date on which it was delivered in person, or, if transmitted by facsimile during the regular business hours of the Party receiving the notice, on the date it was transmitted, or, if transmitted by facsimile outside regular business hours of the Party receiving the notice, on the next regular business day of the Party receiving the notice; provided, however, that either Party may change its address and/or facsimile number for purposes of receipt of any such communication by giving ten (10) days' prior written notice of such change to the other Party in the manner described above.

16.3 **Alternative Method of Notice.**

Any notice may also be given by e-mail to the address provided by the relevant Party of such purpose. Notice by-email shall be effective on the date of its delivery.

17. **General**

17.1 **Entire agreement.**

This Agreement, together with the Schedules attached hereto, constitutes the complete and exclusive statement of the understandings between the Parties with respect to the

rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.

17.2 Gender and number.

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

17.3 Sections and headings.

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

17.4 Statutory references.

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

17.5 Including.

Where the word “including” or “includes” is used in this Agreement it means “including (or includes) without limitation as to the generality of the foregoing”.

17.6 Currency.

Unless otherwise indicated, references in this Agreement to money amounts are to the lawful currency of Canada.

17.7 Voluntary Agreement.

The Company represents and warrants that it has entered into this Agreement voluntarily, believing the terms to be fair and reasonable, and it has not been subject to any undue influence, pressure, coercion or duress in entering this Agreement.

17.8 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, or in the case of the Company, in connection with an acquisition, corporate reorganization or sale of substantially all of its assets, without the consent of the other Party, provided that: i) it is not in material breach of this Agreement; ii) it has given written notice to the other Party; iii) any assignee agrees to be bound by the terms and conditions of this Agreement; and iv) the assignee is

not in direct competition with the other Party, in which case, prior written consent would be required.

17.9 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.

17.10 Amendments.

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

17.11 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.

17.12 Governing law.

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

17.13 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.

17.14 Severability.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this agreement shall continue in full force and effect.

17.15 Inurement.

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

17.16 Equitable Relief.

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

In Witness Whereof the Parties hereto have executed this Agreement by their duly authorized representatives.

The Corporation of the Town of Tecumseh

Per: _____
Gary McNamara, Mayor

Per: _____
Robert Auger, Clerk

We have authority to bind.

Xplore Inc.

Per: _____
Chris Tsakopoulos, ASO

I have authority to bind.

Xplore Fibre L.P. by its general partner, Xplore Spectrum Holdings Inc.

Per: _____
Chris Tsakopoulos, ASO

I have authority to bind.

Schedule A

Fees and Charges Payable by the Company

The fees below are effective as of January 1, 202___ and will be automatically increased annually by Consumer Price Index effective January 1st of each subsequent calendar year based on the previous November 30th year over year Ontario CPI increase as advised by the Treasurer of the Municipality.

"**Consumer Price Index**" means the percentage change from year to year of the Consumer Price Index for "All Items" in the "Province of Ontario" as calculated/maintained by Statistics Canada (or such federal government body charged with calculation thereof from time to time).

1. **Permit Fees**

Fees for each application inclusive of Legal, Road Occupancy Permit, Plan Review and Inspection Fees of:

\$400.00 per application; plus

2. **Causal Lost Productivity Costs**

These costs are recovered by the Municipality through the addition of a loading factor of 15%, which is included in the permit fees listed above.

3. **Pavement Degradation Fee**

Unless otherwise indicated in the Agreement, at the time of applying for a permit, the Company shall pay the Municipality the pavement degradation fees set out in Schedule B based on the age and area of the pavement to be broken by the Company, as estimated by the Municipality. Once the Work has been completed, the Parties shall determine the actual area of pavement that was disturbed or broken by the Company and the final amount owed by or to the Company. Cost recovery for pavement restoration costs and increased cost of future pavement repairs and replacement based on the following schedule:

Pavement Age (Years)	Fee (Cost per square meter)
1-2	\$24
3-4	\$20
5-6	\$16
7-8	\$10
9-10	\$10
10-20	\$4
20+	N/A

Schedule B

Permits Required by the Municipality

Work Activity	Municipal Consent	ROP ¹	Notification only	No Permit or Notification
Any installation of Equipment that requires Excavation (meaning the breaching or breaking up of the hard surface of the ROW, and includes activities such as day-lighting, test pitting, digging pits and directional boring but excluding hand-digging) in the ROW, including: <ul style="list-style-type: none"> - the installation of buried Equipment crossing a road; - the installation of new Above-ground Equipment; - the relocation of buried Equipment or Above-ground Equipment; - the replacement of existing Above-ground Equipment with equipment that is significantly larger; and - the installation of buried Service Drops that cross a road or a break a hard surface of the ROW. 	X	X		
The installation of aerial Equipment (excluding aerial Service Drops) if it materially interferes with the public use and enjoyment of the ROW.		X		
Tree trimming on ROWs			X	
The replacement of existing Above-ground Equipment without adding more Equipment or significantly increasing its size (pole replacements excluded)			X	
The installation of buried Service Drops that do not cross a road or break the hard surface of a ROW			X	
Pulling cable through existing underground duct			X	
The installation of or repair to aerial Service Drops				X
The maintenance, installation, testing and repair of Equipment where there is minimal physical disturbance or changes to the ROW				X
Any other Work activity agreed to by the Municipality				X

¹“ROP” means Road Occupancy Permit

²“Above-ground Equipment” means, in all cases above, any structure located on the surface of the ROW used to house or support the Equipment, and includes cabinets, pedestals, poles and lamp poles but excludes aerial Equipment.

Schedule C

Relocation Costs

1. **Reimbursement for Relocation Costs.** Unless otherwise indicated in this schedule, the Municipality shall reimburse the Company for all or part of its reasonable and verifiable costs of completing any relocation requested by the Municipality such as labour, engineering and equipment cost associated with relocation based upon the following principles methodologies and procedures;

a. the Municipality shall pay the percentages of the Company's relocation costs set out in the following table:

Year(s) after installment of equipment	Percentage or Relocation Costs paid by Municipality
Year 1	100%
Year 2	100%
Year 3	100%
Year 4	90%
Year 5	80%
Year 6	70%
Year 7	65%
Year 8	60%
Year 9	55%
Year 10	50%
Year 11	45%
Year 12	40%
Year 13	35%
Year 14	30%
Year 15	10%
Year 16	5%
Year 17+	0%

b. for the purposes of this section, the date to be used for calculating the Relocation Costs will be the date of installation of the Equipment.

c. within thirty (30) days of receiving the request from the Municipality to relocate the Equipment, the Company shall provide the Municipality with a written

estimate of the Relocation Costs for such relocation, including an estimate of the Municipality's reimbursement under the subsection (a).

- d. the Municipality reserves the right to solicit three (3) quotations from other companies to evaluate potential costs of relocation at its discretion.
 - e. within sixty (60) days of completing the relocation, the Company may provide the Municipality with a written invoice for the actual Relocation Costs in a format that clearly identifies the Municipality's reimbursement under subsection a).
2. **Beautification.** The Municipality will be solely responsible for and will pay to the Company all Relocation Costs attributable to the aspect of a relocation that is required for a beautification, aesthetics, or similar purposes. These costs include, but are not limited to, depreciation, betterment, and salvage costs.
3. **Relocation Requests from Third Parties.** The relocation of Equipment that is requested by a Third Party or that is not required for a Municipal Project shall be at the discretion of the Company, acting reasonably. In such circumstances:
 - a. unless otherwise agreed to by the Municipality and the Third Party, the Municipality shall not be responsible under this Agreement for the Company's Relocation Costs at the request of a Third Party or the costs of relocating the facilities of a Third Party installed on or in the Equipment;
 - b. any such relocation shall be subject to obtaining all applicable Permits from the Municipality in accordance with this Agreement
4. **Company not responsible for Third Party Relocation Costs.** Unless otherwise agreed to between the Company and the Third Party, in no event shall the Company be responsible under this Agreement for:
 - a. the costs of the Company to relocate Equipment at the request of a Third Party or an Affiliate or the Municipality under this Agreement; or
 - b. the costs of relocating the facilities of a Third Party or an Affiliate of the Municipality installed on or in the Equipment.
5. **Special Circumstances.** Notwithstanding the provisions contained within Schedule C, parties agree that special circumstances may arise with respect to a specific relocation whereby the Parties may mutually agree to negotiate alternative cost sharing arrangements. In particular, major projects benefiting from provincial and/or federal funding will typically be deemed to cover 100% of the Company's Relocation Costs. Such alternative arrangements shall be agreed upon in writing by both parties.
6. **Adjustments.** Adjustment of Equipment located in the ROW to accommodate a re-grading, elevation adjustment or resurfacing activity by the Municipality is considered relocation, and the allocation of costs it to be determined in accordance with Section 1 of this Schedule.

7. **Equipment Upgrades.** Unless otherwise agreed to by the Parties, Relocation Costs shall not include the installation of any Equipment by the Company for the purpose of providing an up-graded service or additional Equipment, which shall be at the sole cost of the Company. For clarity, Equipment upgrades do not include circumstances where:
- a. the installation of Equipment of a different nature is required to accommodate technological change or industry construction methods;
 - b. the installation of current technology is necessary as the Equipment to be relocated cannot be salvaged without incurring greater costs;
 - c. the installation of current technology is no more expensive than the installation of Equipment of the same nature as the Equipment to be relocated;
 - d. the installation of a greater length or other modification(s) is required to accommodate, for example, space constraints or the presence of Third-Party equipment; or
 - e. the undergrounding of aerial Equipment is required.