

MUNICIPAL ACCESS AGREEMENT ACCESS TO MUNICIPAL RIGHTS-OF-WAYI

This Agreement made the _____ day of _____, 2023.

CORPORATION OF THE TOWNSHIP OF WILMOT

(the “Township”)

- and-

UTILITY

(the “Company”)

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

WHEREAS the Company is a “Canadian carrier” as defined in section 2 of the *Telecommunications Act, SC 1993, c 38; Telecommunications Act*) and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the “CRTC”);

AND WHEREAS the Township is a municipal corporation constituted under the laws of Ontario and, as such, disposes of certain powers and must abide by certain obligations set out in various statutes and regulations, including the *Municipal Act, 2001, SO 2001, c 25*;

AND WHEREAS, pursuant to section 43 of the *Telecommunications Act*, in order to operate as a Carrier in the Township, the Company requires consent to construct, remove, maintain and operate its wireline equipment in, on, over, under, either across or along (“Within”) the highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the Township (collectively, “Rights-of-Way” or “ROWS”);

AND WHEREAS the Township is willing, subject to the terms set out in this agreement, to grant the Company a non-exclusive right to access and use the Rights-of-Way where, in the Township’s judgement, such use will not unduly interfere with its own service requirements and the public use and enjoyment of the Rights-of-Way, including the consideration of the functionality of the Rights-of-Way, public health and safety, and any rights or privileges previously conferred or hereafter conferred by the Township by contract or otherwise on others not party to this Agreement to use any of the Rights-of-Way;

AND WHEREAS the Company acknowledges that it must not unduly interfere with the public use, enjoyment and safety of the Rights-of-Way and must share the use of the Rights-of-

Way with other providers of services to the public when occupying and using the Rights-of-Way;

AND WHEREAS the Company further acknowledges that it, along with any number of other carriers, utilities, and services, must share the limited space available within the Rights-of-Way and that the Township has the responsibility of ensuring the safe placement and operation of all ROW users, including managing and preserving future capacity within the space for the long-term benefit of all ROW Users;

AND WHEREAS the Parties have agreed that it would be mutually beneficial to outline the general terms upon which individual approvals shall be obtained;

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

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and phrases shall have the following meanings:

- (a) **"Adjustment"** means a minor shifting or movement of a manhole or handhole lid or cover or pedestal box. Adjustments may be requested to allow for road resurfacing, to address vehicular or pedestrian hazards, or to allow for temporary construction access;
- (b) **"Adverse Effect"** means one or more of:
 - i. impairment of the quality of the natural environment for any use that can be made of it,
 - ii. injury or damage to property or to plant or to animal life,
 - iii. harm or material discomfort to any person,
 - iv. an adverse effect on the health of any person,
 - v. impairment of the safety of any person,
 - vi. rendering any property or plant or animal life unfit for human use,
 - vii. loss of enjoyment of normal use of property, and
 - viii. interference with the normal conduct of business;
- (c) **"Aesthetics"** or **"Aesthetical"** means factors such as balance, colour, movement, pattern, scale, shape, visual weight, usability, and functionality, and is meant to be read in conjunction with Beautification as defined in this Agreement;
- (d) **"Affiliate"** means "affiliate as defined in the *Canada Business Corporations Act*, as well as any partnership or other unincorporated association in which the Company or any of its affiliated bodies corporate (as so defined) has a controlling interest;
- (e) **"Agreement"** means this Municipal Access Agreement; including recitals and schedules;

- (f) **“Alignment”** means the area or all those portions of the Rights-of-Way for which the Township has approved and issued to the Company a Utility Alignment Permit to install any Equipment, as evidenced by the drawings required by Section 5.3 of this Agreement;
- (g) **“Applicable Law”** means any and all federal, provincial and municipal applicable laws, whether statutory, contractual, or otherwise, including: environmental laws, health and safety laws, statutes, codes, policies and by-laws (of general or specific application), the terms and conditions of required permits and/or licenses, federal policies, standards, directives or orders of agencies with jurisdiction, and agreements between the Township and the Company;
- (h) **“As-Constructed”** refers to drawings prepared by or for the Company that reflect the final state of an Alignment once construction or installation is complete. These drawings are sufficient to accurately establish the horizontal location and depth (measurement between the top of the utility infrastructure and the ground surface at the time of installation) of the Equipment. The "as-constructed" drawings shall be of the same quality as the plan approved as part of the Utility Alignment Permit process. Utility Alignment Permit
- (i) **"Attach" or "Attaches" or “Attachment”** means the physical accessing and use of, or attachment to, the Equipment of the Company by an Attaching Third Party pursuant to Article 9.0 of this Agreement;
- (j) **"Attaching Third Party"** means any person, individual, corporate body, firm or other entity, other than an Affiliate, that Attaches, or owns, controls, places or uses an Attachment;
- (k) **“Beautification”** means work by the Township that has as its prime purpose to be any Aesthetical improvement project. Many capital public works projects may incorporate elements of beautification as a secondary purpose, or as an opportunity to improve an area. The following public works undertaken by the Township are not considered beautification projects:
- i. construction and rehabilitation of water mains, sewers and other urban technical networks;
 - ii. accessibility and traffic calming measures; and
 - iii. construction of and geometric modifications to the roadway for purposes of urban development, sustainable transportation, and safety and improved accessibility with a view to respond to movements and the multiple uses of the urban public space, such as:
 - cycling, multi-use and active transportation infrastructure;
 - preferential treatment for buses and other modes of mass transit;
 - safety modifications to pedestrian crossings and sidewalks,

- including for people with reduced mobility;
 - improvements to lighting and LED conversion;
 - upgrades to traffic signals;
 - works, infrastructure and measures to mitigate the effects of climate change, urban heat islands, pollution, and water management for public health reasons; and
 - trees planted for the Township's capital project that are part of the overall design solution;
- (l) **"Business Day"** means a day that is not Saturday, Sunday or a statutory or civic holiday in the province of Ontario;
- (m) **"Carrier"** can refer to either a "Canadian carrier" as defined in section 2 of the *Telecommunications Act*, SC 1993, c 38, a "distribution undertaking" as defined in subsection 2(1) of the *Broadcasting Act*, SC 1991, c 11, or both, according to the context.
- (n) **"Claims"** shall mean any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind;
- (o) **"Company"** refers to the Carrier that is signatory to this Agreement as well as its Affiliates and Contractors, its Employees, and other agents or representatives;
- (p) **"Contractor"** includes contractors, subcontractors, workers, suppliers, and other agents or representatives, as well as the Contractor's employees, retained by the Company or by the Township, as the case may be, to perform any work on its behalf in the context of this Agreement;
- (q) **"Co-locating Third Party"** means any Carrier or other person, other than an Affiliate, to whom the Company has given authorization to use or share all or part of its Equipment located within an alignment approved by the Township, for the Company's use, through a Utility Alignment Permit, typically by allowing the Co-locating Third Party to place its own Equipment in the same location;
- (r) **"Director"** means the Director of Public Works and Engineering of the Township who has responsibilities for Rights-Of-Way within and under the jurisdiction of the Township, or Person designated by him or her or such other Person as may from time to time be designated by the Council of the Township;
- (s) **"Effective Date"** means the date in which the Agreement comes into effect;
- (t) **"Emergency"** means, in the reasonable opinion of the Township, that there is 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;

- (u) **“Employees”** means:
- i. with respect to the Company: any official, officer, employee, Contractor or authorized agent of the Company;
 - ii. with respect to the Township: any official, officer, employee, authorized agent or Contractor of the Township;
 - iii. with respect to the Contractors of the Parties: any officer, employee or agent of the Contractor;
- (v) **“Environmental Laws”** means 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;
- (w) **“Equipment”** means
- i. any facility, apparatus or other thing that is used or is capable of being used by the Carrier to provide services to its customers principally through wires, cables, or any similar wireline-based system of telecommunications, including any ancillary apparatus such as power supplies, cabinets, and kiosks, required for the proper functioning of the system;
 - ii. includes any Support Structure as defined in this Agreement; and
 - iii. excludes facilities, apparatus or other things intended for, or capable of being used for radiocommunication purposes such as antennas, including small cells, which fall under the scope of the *Radiocommunication Act*, RSC 1985, c R-2 and the jurisdiction of Industry, Science and Economic Development Canada.
- (w) **“Hazardous Substance”** means any hazardous substance and includes, but is not limited to, any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination or any of them resulting directly or indirectly from human activities that causes or may cause an Adverse Effect; and includes electromagnetic or other radiation, petroleum products or bi-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, rule, regulation, bylaw or code, whether federal, provincial or

municipal; to, any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination or any of them resulting directly or indirectly from human activities that causes or may cause an Adverse Effect; and includes electromagnetic or other radiation, petroleum products or bi-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, rule, regulation, bylaw or code, whether federal, provincial or municipal;

- (x) **“Letter of Credit”** means an irrevocable standing letter of credit in the form approved by the Township based upon Form 1 attached and issued by a Canadian chartered bank approved by the Township or another form of security acceptable to the Township;
- (y) **“Losses”** means, in respect of any matter, all losses, damages, liabilities, deficiencies, costs and expenses (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), and for the purposes of this definition, **“cost”** shall mean those costs 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;
- (z) **“Lost Productivity Costs”** means those reasonable and verifiable causal costs incurred by the Township when it experiences losses in productivity in carrying out its operations (including capital construction, roadway alterations including but not limited to road widenings, rehabilitation or repair work, or the construction, installation, repair, replacement, extension or maintenance of water or sewage lines, conduits, ducts and pipes or other equipment, materials or any other services owned by the Township) that are identifiable; documented and directly attributable to the presence of the Equipment within the Township’s Rights-of-Way;
- (aa) **“Prime Rate”** means the annual rate of interest established and reported by the Township's bank from time to time as its "prime rate" and used as the base or reference rate of interest for the determination of interest rates that the Township's bank charges to its customers for Canadian dollar loans made in Canada;
- (bb) **“Relocation”** means the relocation or Adjustment of Equipment (such Equipment to be described in a Utility Alignment Permit issued for the purposes of such Relocation) within the Rights-of-Way as may be required by the Township, pursuant to Article 12.0 (Relocation of Equipment) of this Agreement for Township Purposes, and the term "Relocate" will mean the act of undertaking a Relocation;
- (cc) **“Relocation Costs”** means the direct, reasonable and verifiable costs of the

Company or its agents to Relocate its Equipment. These costs include, but are not limited to, depreciation, betterment and salvage costs.;

- (dd) **“Rights-of-Way” or “ROW”** refers to the highways, streets, road allowances, lanes, pathways, bridges, viaducts, and similar structures under the jurisdiction of the Region, whether through ownership or other legal means.
- (ee) **“Roadway”** means any portion of the Right-of-Way that is used for pedestrian and/or vehicular traffic and typically includes all carriageways, lanes, alleys, multi-use paths, sidewalks, bridge or viaduct under the jurisdiction of the Township, whether directly or by delegation by the Township:
- (ff) **“Service Connection”** means Equipment that, by its design, capacity and relationship to the overall Equipment of the Company, can be reasonably considered to be for the sole purpose of connecting the Equipment to not more than a single customer or building point. Service Connections do not include Temporary Connections as defined in Article 7.0 Temporary Connections, nor Service Connections of a length greater than one (1) metre within the Right-of-Way;
- (gg) **“Support Structure”** means a legally constructed or installed structure, such as a pole, made of wood, concrete, metal or other material, located within the ROW, owned by the Company or another Carrier, to which wires, cables, or other similar equipment is typically attached. For greater certainty, a Support Structure, in the context of this Agreement, does not include the following:
 - i. A tower or other type of structure primarily intended to support antennas and similar apparatus regulated under the *Radiocommunication Act*;
 - ii. a pole or similar structure that supports electricity transmission or distribution lines, typically owned by an electricity utility;
 - iii. street lights, traffic lights, and other structures owned by the Township.
- (hh) **“Taxes”** means amounts levied or charged now or in the future by any municipal, regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions), having jurisdiction to levy taxes in connection with the Rights-of-Way, and Equipment;
- (ii) **“Telecommunications”** has the meaning set out in Section 2 of the *Telecommunications Act*;
- (jj) **“Third Party”** means any individual, corporation, partnership, association, joint venture or another type of organization of any kind that is not a Party to this

Agreement nor an Affiliate, an Employee or a Contractor;

- (kk) **“Township”** shall mean the Corporation of the Township of Wilmot and shall include its elected officials, officers, employees and agents;
- (ll) **“Township Costs”** or **“Township’s Costs”** means the direct, reasonable and verifiable costs of the Township or its agents to complete an activity, based on the cost of labour and materials, plus an overhead cost equal to fifteen percent (15%) of the total cost of labour and material;
- (mm) **“Township Purpose”** means those powers, duties and functions that the Township is authorized by the *Municipal Act, 2001, S.O. 2001, CHAPTER 25* and other enactments to undertake, including work performed by the Township or other persons relating to Rights-of-Way and Municipal Infrastructure, but excluding work performed solely for:
- i. Beautification;
 - ii. projects initiated to provide concessions to Third Parties; and
 - iii. projects related to development on lands other than the Rights-of-Way;
- (nn) **“Utility Alignment Permit” (“UAP”)** means the written permission of the Township, with or without conditions, to access, use, and occupy the ROW in the manner and in the location specified in the Permit for the purposes of constructing, repairing, or maintaining the Equipment set out in the UAP;
- (oo) **“Work”** means, but is not limited to, any activities related to the Company's installation, removal, construction, , maintenance, repair, replacement, Relocation, adjustment, operation or other alteration of any Equipment, Within any Rights-of-Way, including but not limited to, excavation, repair or restoration of the Rights-of-Way;

1.2 **Industry Terms**

Words having well-known technical or trade meanings within the context of municipal construction and the Telecommunications 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.

1.3 **Section and Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 **Number, Gender, and Persons**

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

importing persons shall include all Persons.

1.5 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.

1.6 Legislation

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

1.7 Governing Laws

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the Applicable Laws, and each Party hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

1.8 Currency

All dollar amounts referred to in this Agreement are stated in Canadian Dollars.

1.9 Taxes

Except as otherwise provided in this Agreement, all amounts set out in this Agreement are exclusive of all Taxes. All applicable goods and services taxes, provincial sales taxes and any and all other value added, sales or other transaction taxes attributable to the license granted by this Agreement are recoverable under this Agreement in the same manner as the amounts on which they are based.

1.10 Rights

Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any ROW in accordance with the Township's legal authority.

1.11 Schedules

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

Schedule A – Permits Required to Perform Work

Schedule B – Form of Permit Application

Schedule C – Fees Payable by the Company

2.0 USE OF RIGHTS-OF-WAY

2.1 The Township hereby consents to the Company's use its ROW for the purpose of

performing its Work subject to the terms and conditions set out in this Agreement and the approved Utility Alignment Permit, and in accordance with all Applicable Laws or other rules, policies, standards and guidelines pertaining to the application and use of the Rights-of-Way.

- 2.2 The Company acknowledges that, in using the ROW, it is bound by this Agreement, the conditions of individual Utility Alignment Permits and the Applicable Law. The Company affirms that it shall not use any ROW in whole or in part for any purpose other than those permitted under this Agreement or as otherwise mutually agreed upon in writing.
- 2.3 For greater clarity, this Agreement does not grant permission to the Company to perform Work on Township owned lands outside of the ROW. Any such request by the Company shall be reviewed by the Township on an individual basis and may be subject to a distinct agreement, or to a modified version of this Agreement.
- 2.4 The Company acknowledges that the Township may use the Rights-of-Way for any Township Purpose. This includes crossing the Company's Equipment with its own improvements or otherwise and allowing other parties to cross the Company's Equipment with their improvements or otherwise, taking reasonable precautions to protect the Equipment of the Company. Therefore, nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Rights-of-Way in accordance with the Township's legal authority.
- 2.5 The Township has made no representations or warranties as to the state of repair of the Rights-of-Way, or the suitability of the Rights-of-Way for any business activity or purpose whatsoever and the Company hereby agrees to use the Rights-of-Way on an "as is" basis.
- 2.6 No use of Rights-of-Way under this Agreement shall create or vest in the Company any ownership of, or property rights in Rights-of-Way, and the Company shall be and remain a mere non-exclusive occupant of the Rights-of-Way. Conversely, no use of Rights-of-Way or placement of Equipment by the Company within Rights-of-Way shall create in favour of the Township any property or ownership rights in such Equipment.
- 2.7 The Company represents and warrants to the Township that it is in good standing under Applicable Laws;
- 2.8 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**"):
 - i. Where the Third Party had not entered into an MAA with the Township, the New Equipment shall form part of the Company's Equipment and shall be governed by the terms and conditions of this Agreement;

- ii. Where the Third Party had entered into an MAA with the Township, the New Equipment shall form part of the Company's Equipment and shall be governed by the terms and conditions of this Agreement upon the Company providing timely notice of the change of ownership to the Township;
- iii. Where that Third Party is a party to a valid municipal access agreement with the Township (the "**Old MAA**") and the Company has not provided timely notice of the change of ownership, the terms of the Old MAA shall continue to govern the acquired Equipment.

3.0 TERM

- 3.1 This Agreement shall be subject to approval by the Township's Council and upon such approval shall be deemed effective on the Effective Date.
- 3.2 Unless it is terminated earlier, in accordance with this Agreement, this Agreement expire five (5) years after the first day of the month in which the Agreement is deemed effective.
- 3.3 Provided that the Company is not then in default under the terms of this agreement, this Agreement shall automatically renew on **XX day of XX month, YYYY (year)**, for a further five (5) year term. If the Company does not wish to renew this Agreement, it shall provide notice in writing to the Township of its intentions not to renew at least six (6) months prior to the expiry of this Agreement.

4.0 PAYMENT OF COSTS AND FEES

- 4.1 Subject to the Company's right to apply to the CRTC, the Company covenants and agrees to pay to the Township fees calculated in accordance with the Township's schedule of fees and charges as amended from time to time. Such fees are to be calculated in accordance with Schedule "A" this Agreement.
- 4.2 The Company acknowledges and agrees that the fees payable pursuant to this Agreement are exclusive of any fees and charges that may be payable to the Township with respect to any other permits required or services provided by the Township.
- 4.3 The Township shall invoice the Company for all costs and fees payable pursuant to this Agreement. The invoice shall contain sufficient detail to explain the costs and fees and the Company shall pay such invoice within sixty (60) days of its issuance.
- 4.4 When applying for a Utility Alignment Permit, the Company shall pay to the Township the Pavement Degradation fees set out in **Schedule B** of this Agreement based on the age of the pavement and the surface area to be disturbed, damaged, or broken by the Company, as determined by the Township. Once the Work has been completed, the Parties shall determine the actual surface area of pavement that was disturbed,

damaged, or broken by the Company and the final amount owed by or to the Company shall be calculated accordingly.

- 4.5 If the Company has not paid an invoice submitted under Sections 4.3 and 4.4, the Company shall pay simple interest at the Prime Rate plus two percent (2%) per annum on all amounts required to be paid under this Agreement.
- 4.6 The Company shall be responsible for the payment of the full cost of all services and utilities consumed by or provided to the Company with respect to the Company's operations and Equipment.
- 4.7 The Company shall be responsible for the payment of all Taxes attributable to the Company, including any Taxes attributable to the Company's use of the Rights-of-way, and for the payment of the cost of all services and utilities consumed with respect to Company's operations.
- 4.8 Disputed Charges
- i. Subject to Subsection 4.8(ii) below, a Party shall be required to pay any charges which it disputes ("**Disputed Charges**") until such time as the Disputed Charges have been resolved to the satisfaction of both Parties.
 - ii. A Party shall bring all Disputed Charges to the other Party's attention within ninety (90) days of the applicable invoice date. Failure to do so shall constitute acceptance of the accuracy of the entire contents of the invoice, and that Party shall have no further right to challenge the accuracy of any portion of such invoice.
 - iii. The Parties agree and acknowledge that the undisputed portion of any invoice containing Disputed Charges and of all subsequent invoices shall be paid in accordance with the terms and conditions of this Agreement.
 - iv. A Party shall not be required to pay any late payment charges that may be attributable to any Disputed Charges.

5.0 UTILITY ALIGNMENT PERMITS

- 5.1 The Company shall not enter, excavate, break up or otherwise break the surface of any Rights-of-Way for the purpose of its Work without first:
- (a) obtaining the applicable Utility Alignment Permit of the Director and/or Right-of-Way Work Permit as stipulated in **Schedule 'B'** of this Agreement prior to commencing any Work Within any Rights-of-Way;
 - (b) when required for Utility Alignment Permit, providing detailed construction plans and all supporting documentation to the Director's satisfaction setting out the

- location of the Equipment within the relevant Rights-of-Way;
- (c) paying all fees required by the Township;
 - (d) obtaining all applicable permits from any other regulatory agencies having jurisdiction, prior to commencing any Work;
- 5.2 Notwithstanding Section 5.1, the Company may carry out field testing, test pitting, routine maintenance and repair, short duration work, placing or repairing aerial or buried service wires or installing temporary service drop wire, and the removal of graffiti without obtaining Utility Alignment Permit. However, the Company must still obtain the applicable Street Occupancy Permit generally applicable in all such circumstances. In no case shall it cause any physical disruption or change to the Right-of-Way or its use, without an approved Utility Alignment Permit for Work Within Rights-of-Way which will not to be unreasonably withheld.
- 5.3 The Company agrees to provide all required information and documentation to support an expedient review process by the Township. The Township, from time to time, may require additional information to support the filing. Drawings must include all existing and proposed infrastructure for all service providers sharing the Rights-of-Way and must incorporate all pertinent mark-up comments from Third Parties obtained during circulation prior to submitting drawings to the Township for review. The Company must show the layout of their existing Equipment on drawings. If the Company is unsure of the location of the Company's and/or other's existing infrastructure, the Company must verify those locations by using locates or other verification procedures at the Company's expense.
- 5.4 A submission for a UPA will not be deemed complete until all requested information and documentation are provided to the Township. Where a submission is incomplete (i.e., existing infrastructure is not shown on the drawings, etc.) a resubmission is required. If the Company requires a change in alignment after the UAP has been approved the Company shall revise the approved UAP design and resubmit to the Township, the Company shall pay to the Township a re-submission fee as set out in Township's **Fees and Charges By-law** and as shown in the attached **Schedule "C"**.
- 5.5 The parties hereby agree to work together to create an efficient method of notifying the Township of the duration of any Work described in Section 5.6.
- 5.6 Once a Utility Alignment Permit submission is deemed complete by the Township, as per Section 5.1, the Township shall provide comments and/or approval to the Company within fourteen (14) Business Days. For Utility Alignment Permit submissions for projects identified by Infrastructure Ontario's Accelerated High-Speed Internet Program (AHSIP) the Township shall provide comments and/or approval to the Company within the timelines stated in the *Building Broadband Faster Act* and/or the *Getting Ontario Connected Act*.

- 5.7 The Company acknowledges that an approved Utility Alignment Permit is valid for a period of one (1) year from the date of approval by the Township, as shown on the approval letter. Failure to complete the Work detailed in the Utility Alignment Permit within one (1) year following approval will render the Utility Alignment Permit invalid. After the Utility Alignment Permit has expired, the Company must re-submit drawings to the Township for review again. This review shall be subject to the same turn-around-times as an original submission, as outlined in Section 5.4.
- 5.8 The Company acknowledges that, once approved, a UAP is valid for a period of one year from the date of approval by the Township, as shown on the approval letter or document. If the Company fails to complete the Work detailed in the UPA within this period, the Company must re-submit an application to the Township. This UAP application shall be considered and processed as a new application.
- 5.9 Where the Company requests an alternative offset from other utilities or the equipment of Third Parties, the variance from the applicable standards must be outlined in the Company's submissions. The concurrence of the affected utility or Third Party should be included in the Company's submissions, but if concurrence is not obtained and verified for the Township, the Parties agree that the timelines indicated in **Section 5.4** may be extended to deal with the variance. The Township will review all technical considerations associated with the variance, and if acceptable to the Director, may, but is not obligated to, include conditions in the Utility Alignment Permit. The Director, at his or her sole discretion, may grant or refuse the variance.
- 5.10 The Company acknowledges and agrees that the Township may refuse to grant approval with regard to any proposed application for reasons of public health and safety, interference with the Township's infrastructure, proposed road reconstruction or the proper functioning of public services, as identified by the Director.
- 5.11 Placement of aerial or buried Service Connections which do not cross the Roadway within the ROW require a Right of Way Work Permit. Where buried Service Connections must be placed across the Roadway, Section 5.1 shall apply.
- 5.12 The method of excavation under a Roadway, whether directional boring or an open cut, must be approved by the Director. The Company, in the performance of its Work, will take into account the existing municipal services under the ROW and will hand dig and/or vacuum excavate where Work is to be carried out within one (1) metre of the existing municipal services. The Company will exercise such care as may be necessary or reasonably requested by the owner of other equipment for the protection of any existing facilities impacted by the excavation area.
- 5.13 Where the Company utilizes existing duct banks or other Support Structures to place Equipment and no physical disturbance or changes to the Right-of-Way or its use is required due to this specific Work activity, the Company shall obtain the applicable Utility Alignment Permit and/or Right-of-Way Work Permit as set forth in **Schedule "A"**,

and pay the applicable fees for such Work as described and in accordance with **Schedule "B"**.

6.0 MANNER OF WORK

6.1 The Company agrees that its Work shall be subject to the following conditions:

- (a) All Work shall be conducted and completed to the satisfaction of the Director, at the Director's sole discretion, and in accordance with all applicable industry standards, this Agreement and all Applicable Law, policies, standards and guidelines as amended, from time to time, none of which will be contrary to the terms and conditions of this Agreement unless they have been agreed to in writing in advance by both Parties.
- (b) The Company must arrange for pre-construction and post-construction inspections of the Work area. During the pre-inspection, all locate lines must be visible, and all proposed Equipment locations must be clearly marked with white paint. The pre-inspection shall be performed by a Township inspector and a representative of the Company.
- (c) Upon completion of the Work, the Company shall notify the Township to arrange a walk-through inspection of the Work area. All areas of the Work area must be restored prior to post-inspection.
- (c) Unless approved otherwise by the Director, the portions of the Equipment which pass over or under existing utilities' buried equipment or which cross beneath a paved roadway shall be placed in a carrier pipe/conduit or be encased in concrete and shall not place substantial point loading or bear directly on any existing pipe, conduit or structure and, where the Equipment crosses a paved roadway, shall, where practical, be constructed or installed via a trenchless method.
- (d) Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete a final repair to the Rights-of-Way within the expected period of time, the Company may complete a temporary repair to the Rights-of-Way, provided that the Company replaces the temporary repair with a final repair as soon as possible when the conditions described herein are rectified. **The Township may choose to, at its own discretion, perform the final repairs to the ROW, the Company shall pay the Township's reasonable and verifiable direct costs of performing such repairs. The Township shall notify the Company in writing the areas that the Township will perform the final restoration.** All repairs to the Rights-of-Way by the Company shall be performed in accordance, without limitation, with the Township's policies and standards, as amended from time to time, and to the reasonable satisfaction of the Director.
- (e) If the Township requires the Work to be stopped for any reasonable cause relating

to public safety, special events, or public health identified by the Township, or the failure of the Company to obtain the requisite permit or as a result of any circumstances beyond the control of the Township as expressed by the Director, the Company shall cease all such Work forthwith upon receipt from the Township of verbal notice, which shall include the reason(s) for such notice to stop Work. Upon receiving such notice, the Company shall leave the site and all adjoining Rights-of-Way in a safe and clean condition. Within two (2) Business Days of providing such verbal notice to stop Work under this subsection, the Director will provide written reasons for such notice to the Company. Once the reasons for the Work stoppage have been resolved to the satisfaction of the Director, the Company, in accordance with a written notice from the Township, shall be allowed to resume its Work.

- (f) The Company shall be responsible for all Work including but not limited to the cost of such Work, subject to the terms of this Agreement. In this regard, the Company is responsible for any cost it incurs to support, maintain, protect, or upgrade its Equipment made necessary as a result of the normal activities of the Township.
- (g) If the Company fails to do any restoration required pursuant to this Agreement in a timely and expeditious manner, to the satisfaction of the Director, the Township may, at its option, complete the restoration and the Company shall pay to the Township the cost of the Township completing any such restoration forthwith plus any directly related overhead charges as set out in the Township's **Fees and Services By-law** as amended from time to time.
- (h) The Company shall use its reasonable efforts to schedule Work and share Rights-of-Way and support structures with other utility companies, carriers, and the Township occupying and using, or intending to occupy or use, the Rights-of-Way, with the intent of minimizing the necessity for road cuts, excavation, construction and the placement of support structures within the Rights-of-Way. ;
- (i) All Contractors working for the Company shall have on site, all applicable permits, a copy of the Utility Alignment Permit, if applicable, and visible proper identification displaying the name of the Company they are working for and their company name.
- (j) The Company shall provide the Township with an up-to-date listing of all its authorized agents and Contractors, along with all appropriate insurance certificates (WSIB, etc.), who may make applications for applicable permits on their behalf. All Utility Alignment Permits, Road Occupancy Permits, shall be issued in the name of the Company.
- (k) The Company acknowledges and agrees that the Township may refuse to grant approval with regard to any proposed location for the Equipment for reasons of aesthetics, public health and safety, conflicts with the Township's infrastructure,

proposed road reconstruction or the proper functioning of public services identified by the Director. The Township may also withhold its approval where the Company has failed to rectify any default under the terms of this Agreement, subject to the Company's rights under the *Telecommunications Act*.

- (l) If the Company's Equipment is found to be in non-compliance with any aspect of the approved location set out in the Utility Alignment Permit within 0.3 metre horizontally (centre line to center line) or 0.2 metre vertically and the Equipment needs to be Relocated, the Company shall be responsible for the cost of Relocating the portion of the Equipment that is not compliant. Where records do not exist or Rights-of-Way conditions may have changed, both Parties agree to act reasonably in determining relocation compensation. The Township agrees to use reasonable efforts to avoid unnecessary Relocations but reserves the right to request that the Equipment be Relocated, as required.
- (m) The Company shall notify the owner of the infrastructure owned by Other ROW Users of any damage caused by the Company to any such facility resulting from its Work or as a result of the presence of its Equipment in the ROW.

6.2 The Company agrees that, unless otherwise provided in an individual UAP or otherwise agreed in writing by the Township, the following conditions shall apply to the completion of its Work:

- (a) If the Company breaks up or disturbs the surface of the ROW, it shall repair and restore the surface to substantially the same or better condition the surface was in before such Work was undertaken by the Company. Such restoration shall be in accordance with any applicable Township policy or standard, and to the satisfaction of the Director.
- (b) After completion of its Work, the Company shall leave the Right-of-Way in a neat, clean and safe condition and free from nuisance, all to the satisfaction of the Director.
- (b) The Company warrants its completed restoration Work to the satisfaction of the Township, for a period of three (3) years from the date of completion.
- (d) If the Company fails to repair and restore the Rights-of-Way after completion of its Work, or to repair, within the warranty period as set out above, a restoration it had previously completed, to the satisfaction of the Director within forty eight (48) hours of being notified in writing by the Township, the Township may effect such repairs and charge all costs related thereto to the Company.
- (c) The Company shall not suffer or permit any liens to be filed or registered against any Right-of-Way, or other Township property. In this regard and, subject to any existing rights of the Company or consents granted to the Company by the Township, any instrument claiming an estate, interest, property right or lien

against the Rights-of-Way or property owned by the Township that is directly related to the Equipment or the Work Within the Rights-of-Way, shall be removed from title to the Rights-of-Way by the Company within twenty (20) days following notice from the Township to the Company of the existence of the instrument, or the Company shall have commenced the process of removing the instrument from title to the Rights-of-Way and be diligently pursuing the removal within the twenty (20) day period referred to above. If the Company fails to remove or commence to remove such instrument within the twenty (20) days, then in addition to any other right or remedy of the Township, the Township may discharge or vacate the instrument by paying into Court the amount required by statute to be paid to obtain a discharge, and the amount so paid by the Township, together with all costs and expenses including solicitor's fees (on a solicitor and his client basis) incurred by the Township in connection therewith, shall be due and payable by the Company to the Township on demand.

7.0 TEMPORARY CONNECTIONS

7.1 The Township recognizes that the Company may need to install temporary connections of Equipment. In those instances where this type of connection is required, the Company shall:

- (a) use the least obtrusive connection;
- (b) unless otherwise consented to by the Township, which consent shall not be unreasonably withheld or delayed, install wires or cables across Roadways with adequate vertical clearance;
- (c) use reasonable efforts to obtain the consent of all affected landowners, which consent shall be recorded in writing and kept on file until the connection is removed;
- (d) provide notice to the Township at (xxx) xxx-xxxx of any connection to streetlights and/or traffic control devices; and
- (e) remove the temporary connection within two (2) months of the start of the next construction season subject to timely receipt of any necessary permits or approvals from the Township and the Applicable Laws.

8.0 CO-LOCATING THIRD PARTY

8.1 The Company shall not grant any Third Party other than a subcontractor or Co-locating Third Party a right to access any Alignment occupied by the Company under this Agreement to perform Work.

8.2 Subject to all Applicable Laws, to the extent that the Company is reasonably able to

allow any person to access or use its Equipment, the Company shall have the right to allow a Co-locating Third Party to Co-locate with its Equipment and to charge and recover a fee from that person for that right, provided that no portion of that fee will be a charge for the use or occupation of the Rights-of-Way.

8.3 In all cases where the Company shares ownership or other rights with a Co-Locating Third Party in respect of any Equipment situated in, on, over, under, along or across an Alignment occupied or used by the Company, the Company shall remain responsible for performing all of its obligations under this Agreement as if it is the sole owner of the Equipment. In its agreements with Co-Locating Third Parties, the Company shall provide that:

- (a) the Co-Locating Third Party shall comply, at its sole expense, with all Applicable Laws; and
- (b) an acknowledgement and agreement by those Third Parties that the use of the Equipment is subject to the requirements and obligations placed on the Company by this Agreement, including that the Co-Locating Third Party shall obtain and maintain any and all permits, licenses, official inspections or any other approvals and consents necessary or required for the placement or operation of the Co-Locating Third Party's equipment.

8.4 Notwithstanding any provision in this Agreement, the Company shall not be liable for the Co-Locating Third Party's:

- (a) failure to observe and perform its obligations under such permits, licenses, official inspections, or any other approvals and consents;
- (b) failure to comply with all applicable laws; and
- (c) acts or omissions.

9.0 MAINTENANCE OF EQUIPMENT

9.1 The Company agrees, at its sole cost and expense, to maintain the Equipment in a safe, clean and sanitary condition and in good and substantial repair, to the satisfaction of the Township.

9.2 Upon being provided with reasonable notice from the Township, the Company will permit the Township, at the Township's sole cost, to inspect the Equipment for the purpose of ascertaining the condition or state of repair thereof or verifying that no default has occurred under this Agreement.

9.3 Where an inspection reveals that repair or maintenance may be necessary, the Township may give the Company notice and the Company hereby agrees to promptly

inspect such Equipment and, if repair is needed, commence or cause the same to be commenced and complete the same within a reasonable period of time. In default of the Company carrying out such repair or maintenance, the Township may carry it out for the account and at the sole cost and expense of the Company. If the Township effects repairs and maintenance pursuant to this Article, the Township shall incur no liability to the Company resulting therefrom except in the event of negligence or willful misconduct on the part of the Township.

9.4 The Company shall take all reasonable measures, to the satisfaction of the Township, to clean, remove or conceal graffiti or other unauthorized markings in a timely manner from its Equipment. In this regard, the Company will, within forty-eight (48) hours' notice from the Township, remove or conceal offensive graffiti from its Equipment. In the event that the Company does not remove or conceal the graffiti in accordance with the measures agreed upon arising from this section, the Township may take such steps as it deems reasonable and necessary to remove or conceal the said graffiti and shall charge the cost of the removal or concealment to the Company. In such event, the Company shall pay the cost of said removal or concealment to the Township, together with an administrative charge of fifteen percent (15%) of such cost. For the purposes of bringing clarity to this Section, all above ground Equipment shall be included.

9.5 The Company shall have a maintenance program to clean, straighten, paint and repair above ground Equipment on a regular basis and shall respond within five (5) Business Days of being notified by a request from the Township to complete any of this maintenance at any location identified by the Township.

9.6 The Company shall have a maintenance program to repair all flush-to-grade street Equipment located within pedestrian facilities. All vertical discontinuity that creates a step formation between the flush-to-grade street Equipment and the pedestrian facility must be less than that stated in the Ontario Minimum Maintenance Standard for Municipal Highways (O.Reg. 239/02) section 16. The Company must treat the vertical discontinuity greater than stated in O. Reg. 239/02 within fourteen (14) days of written or oral notification. All flush-to-grade street Equipment must meet the minimum flush-to-grade Tier 22 load capacity.

10.0 TREES

10.1 The Company is responsible for the costs of any remedial work required to rehabilitate any trees damaged in the performance of its Work or, in the event any trees suffer irreparable damage as a result of the Work, the Company shall replace the trees with ones of an equivalent or better quality or shall compensate the Township for the value of the trees as determined by the Township.

11.0 RELOCATION OF EQUIPMENT

11.1 Upon receipt of a minimum of sixty (60) days written notice from the Township or such

other time as is reasonable having consideration for the complexity and nature of the Work required to complete the Relocation and for minimizing of the potential for service losses or interruptions that may affect the Company’s customers, the Company shall Relocate, or commence to Relocate its Equipment within the Rights-of-Way for Township Purposes. The Township will make a good faith effort to avoid damage to the Equipment affected by the Relocation and to assist the Company in efforts to ensure uninterrupted service to its customers.

- 11.2 Detailed design plans will be submitted to the Company by the Township within a reasonable period of time prior to commencement of the Township Purpose work that requires the Relocation or Adjustment of Equipment.
- 11.3 Where the Company is required to Relocate Equipment from the ROW on to property other than a ROW or other Township property, then the Township shall provide the Company with sufficient time to procure an easement for the Plant from the third party landowner.
- 11.4 In the case of a Township-initiated requirement to Relocate Equipment, the following schedule is to be used to allocate costs directly attributable to such Relocation. These costs include, but are not limited to, depreciation, betterment and salvage costs.

Year(s) After Installation of Equipment	Percentage of Relocation Costs Paid by the Township
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 onwards	0%

For purpose of this Section 11.4, the date to be used for calculating the Relocation

Costs shall be the date of the issuance of the Utility Alignment Permit. For Equipment installed in or attached to the Company's support structures, the date of the issuance of the MC for the support structures shall be used for calculating the Relocation Costs.

- 11.5 The Company is responsible for demonstrating the Utility Alignment Permit date(s) to be used for cost sharing calculations. If there is no Utility Alignment Permit or other similar document in the Company's or the Township's records, the Equipment will be considered as being more than 17 years old and the Company shall bear 100% of all Relocation Costs.
- 11.6 Where costs directly attributable to a Township-initiated requirement to Relocate Equipment are incurred as a direct result of Work undertaken by or on behalf of the Township solely for Beautification or Aesthetics, such costs are to be entirely borne by the Township. These costs include, but are not limited to, depreciation, betterment and salvage costs.
- 11.7 If the Relocation request is dated after the end of the 16th year following the Utility Alignment Permit approval date for such Equipment, the Company will be solely responsible for and pay all the Relocation costs for that Equipment.
- 11.8 The Township will make a good faith effort to provide and approve alternative suggestions, wherever possible, for re-routing the Equipment within the Rights-of-Way affected by the Relocation to ensure uninterrupted service to the Company's customers. However, the Township cannot guarantee uninterrupted service to the Company or the Company's customers during Relocation, nor is the Township responsible for the quality of service offered by the Company to its customers during Relocation.
- 11.9 For greater certainty, in no event shall the Township be responsible for any Relocation costs associated with:
 - (a) Equipment which is Co-located to facilities of a Third Party, regardless of whether or not the Township has requested the Third Party Relocate its Equipment and regardless whether or not a third party agreement governs the Relocation;
 - (b) Temporary Connections; or
 - (c) the Attachments of Third Parties' Equipment.
- 11.10 This Article 11 (Relocation of Equipment) does not apply to Equipment which is Relocated as a preliminary Relocation to accommodate a Township capital project. The Township shall remain responsible for the costs of any Relocation within the framework of this Section for the final Relocation necessary for the Township capital project.
- 11.11 The Company will provide the Township with an estimate of the Relocation costs for the

Equipment and a proposed schedule of the Relocation Work within ninety (90) days of the Township's request, or such longer period of time as agreed upon by the Parties having regard to the schedules of the Parties and the nature and complexity of the proposed Relocation. The written estimates will provide sufficient detail of what the Company estimates it costs for labour, Equipment, materials, and engineering, and will specify the percentage each Party will be responsible for in accordance with Section 11.4. Where the Township is responsible for reimbursing the Company's costs in accordance with Section 11.4, the Township will be responsible for the Company's actual costs.

- 11.12 To receive payment for any Relocation or Adjustment costs payable pursuant to this Article 11.0 (Relocation of Equipment), the Company must submit an invoice to the Township, within one hundred and eighty (180) days of completing the Relocation, for each Relocation, clearly setting out the following:
- (a) the total actual cost of the Relocation;
 - (b) an itemized list of the Relocation costs;
 - (c) the applicable calculation date and age of the Relocated Equipment in accordance with Section 11.4-
 - (d) the Township's share of the Relocation costs.
- 11.13 Notwithstanding any of the foregoing, the Company shall not be required to Relocate any Equipment where:
- (a) the Company has illustrated to the satisfaction of the Township, acting reasonably, that an appropriate alternative course of action is available;
 - (b) the Township has provided the Company with written approval of such alternative course of action (which approval may not be unreasonably withheld by the Township); and
 - (c) the Company has provided its written undertaking to carry out the alternative course of action promptly and within a sufficiently short period of time so as to ensure the Township will be left with sufficient time to complete the affected planned Township construction within the intended time frame (taking into account any delays the Township may encounter as a result of the Company utilizing the alternative course of action).
- 11.14 Notwithstanding Section 11.4, the Township shall not be responsible for any costs of Relocation of Equipment if the Township provided the Company with written notice at the time the Utility Alignment Permit was issued that the Township will require Relocation of the Equipment within three (3) years of the issuance of the Utility

Alignment Permit.

- 11.15 The Company may request, and the Township may agree, subject to the Parties' mutual agreement to the specific terms and conditions, for the Township to complete the Relocation of the Equipment.
- 11.16 If the Company fails to complete the Relocation of the Equipment in accordance with Section 11.1 or request that the Township complete the Relocation pursuant to Section 11.12, the Township may, but is not obligated to, at its sole option, complete such Relocation or other Work. In such event, the Company shall pay the cost of such Relocation Work to the Township, together with an administrative charge of fifteen percent (15%) of such cost.
- 11.17 In no event shall the Township be responsible in any way for costs incurred for Relocating Equipment not installed in the location approved by the Township, as stated in Section 6.1(m), or installed without the approval of the Township. In cases where the Company's Equipment is found to be inconsistent with the approved location, that portion of relocation costs attributable to the Equipment in non-compliance with the approved location will be paid by the Company with it being understood that the Township shall not be entitled to rely on deviations that do not have a material impact on the Township, financial or otherwise, in order to avoid responsibility for costs associated with the relocation.
- 11.18 The Township shall not be responsible for the cost of Relocation of the Company's Equipment where the Relocation is requested by a Third Party and/or where such request is not for Township Purposes. (By way of illustration, if the widening of the Right-of-Way is required for a development project as part of the development approval process, Section 11.4 would not apply and the developer would be informed by the Township that it is responsible for negotiating a cost sharing arrangement with the Company respecting the cost of Relocating the Company's Equipment. For greater clarity, any Work required because of Relocations requested by a Third Party remains subject to securing the applicable permits prior to commencement of the Work.
- 11.19 If a developer, on behalf of the Township, and as part of its development project, wishes to accelerate the commencement date of a Township project that is identified in the Township's 10 Year Capital Construction Program or Plan, the Township and the Company shall share the Relocation Costs in accordance with Section 11.4, despite the acceleration resulting from a Third Party request
- 11.20 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 the Parties prior to approval of a new location. Any such non-standard agreements shall be subject to Township Council approval.

11.21 Where the Township has incurred Lost Productivity Costs, the Company covenants and agrees to pay to the Township these Lost Productivity Costs, provided that the Township has provided reasonable written documentation describing these costs, including but not limited to:

- (a) the location of the Work;
- (b) a description of the Township work, including the sewage lines, conduits, ducts and pipes affected;
- (c) an explanation of the nature of the interference caused by the Work;
- (d) an itemized breakdown of the Lost Productivity Costs, including but not limited to, labour, supplies, equipment and applicable loading factors; and
- (e) an explanation of the methodology and data sources used by the Township to determine the various lost productivity elements and their associated cost(s).

If the Company disputes the Lost Productivity Costs as described above, including but not limited to the amount of or the pro-rated share thereof or whether the Company should be responsible for such costs (the “**Dispute**”), the Company shall provide written notice to the Township of the Dispute within forty-five (45) days of receipt of the invoice.

In the event the matter cannot be resolved by the Parties within thirty (30) days of the receipt of the Dispute by the Township, the Company shall pay the invoice without prejudice to its right to apply to the CRTC for a determination of the Dispute and entitlement to a refund of same in the event the CRTC determines such charges were not properly chargeable.

Any Lost Productivity Costs which the Township proposes to collect from the Company pursuant to this Agreement will represent the Lost Productivity Costs pro-rated among the various service providers located Within the Rights-of-Way, including, without limitation, utilities located Within the Rights-of-Way.

11.22 Where, in the opinion of the Township, a ROW (or any portion thereof) in which Equipment is located is no longer required for use by the Township as such, the Township may cause such ROW to be discontinued by registering a Road Closing By-law or similar Notice of Discontinuance in the proper Registry Office, to the extent the notice is registrable; provided that:

- (a) if the Township owns the land upon which the ROW is located and does not require the Company to Relocate the Equipment, the Township shall, prior to the discontinuance or conveyance of the ROW, cause an easement to be registered against the property in favour of the Company;

- (b) if the Township 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 or conveyance of the ROW, effect the Relocation of the Equipment in accordance with the Relocation provisions of this Agreement; and
- (c) in all cases, the Township shall reimburse the Company in accordance with the Section 11.4.

11.23 Where the Region expropriates or otherwise acquires real property owned by a Third Party for a Township Purpose (the **"Acquired Township Property"**) on which the Company enjoys an easement registered on or against the title to the Acquired Township Property (the **"Company Easement"**), the Company shall:

- (a) at the request of the Township, provide the Township with Mark-Ups as set out in Section 17.5;
- (b) abandon the Company Easement at no cost to the Township and, to this end, shall provide the Township with:
 - i. an executed transfer, release, and abandonment of the Company Easement in registrable form, to be provided within 10 Business Days' of the Township's request; and
 - ii. a release of the Company's rights to compensation, including under the *Expropriations Act*, R.S.O. 1990, c.E.26, for the release, abandonment, and extinguishment of the Company Easement in a form acceptable to the Township; and
- (c) reimburse the Township for any fees or costs related to the abandonment of the Company Easement.

11.24 The Township agrees that the Company shall be permitted, whenever possible, to maintain its Equipment within the Acquired Township Property. The Equipment located within the Acquired Township Property shall be governed by the terms of this Agreement and a Utility Alignment Permit shall be issued by the Township to the Company upon final registration of the documents extinguishing the Company Easement.

11.25 In the event the Township requires the Company to Relocate the Equipment located within the Acquired Township Property:

- (a) the Company shall provide the Township with an estimate of its Relocation Costs to Relocate such Equipment; and
- (b) the Township will reimburse the Company for 100% of the Relocation Costs actually incurred by the Company, notwithstanding any other provision of this Agreement.

12.0 ABANDONMENT OF EQUIPMENT

- 12.1 In Article 12, the terms “Abandon”, “Abandoned”, and “Abandonment” refer to Equipment that is no longer in use and will not be used in the future either by the Company or a Co-locating Third Party.
- 12.2 In the event the Company decides to Abandon the Equipment Within the Rights-of-Way, it shall, within ninety (90) days prior to the abandonment, provide written notification, subject to Article 27.0 (Notices) to the Township of the location and details of such abandonment. At any time after receiving written notification of abandonment, when directed in writing by the Township, the Company shall:
- (a) within six (6) months written notice, subject to Article 27.0 (Notices), from the Township and at its own expense, remove all or any portion of its Equipment that is used solely by the Company from the affected Rights-of-Way and restore such Rights-of-Way in accordance with this Agreement, failing which the Township may remove such Equipment and restore the affected Rights-of-Way and charge its reasonable costs of doing so back to the Company.
 - (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 Director, the Abandoned Underground Structures will interfere with any Township-approved project that will require excavation or otherwise disturb the portions of the Rights-of-Way in which the Abandoned Underground Structures are located, then the Company shall, at or about the time the excavation of such portions of the Rights-of-Way for said project commences, remove the Abandoned Underground Structures therein;
- 12.3 In the event that the Township decides to assume ownership of the abandoned Equipment rather than require its removal, the Company agrees that all right, title, and interest in the Equipment will be assumed by the Township on an “as is, where is” basis, free and clear of all liens and charges, and the Company shall have no further right, title or interest in such Equipment.
- 12.4 The Company shall, at all times, respond in a timely fashion to inquiries from the Director as to whether or not Equipment has been Abandoned by the Company. The Company’s response shall clearly indicate the nature of the continued use of the Equipment in question.
- 12.5 Where the Company has not provided the Township with notice that it has abandoned its Equipment, the Township may at any time request that the Company remove the abandoned Equipment at the expense of the Company. The Company shall, at all times, respond to inquiries from the Director on whether its Equipment or parts thereof have been abandoned.

13.0 EQUIPMENT VERIFICATION AND PROCEDURES FOR TOWNSHIP CAPITAL PROJECTS

13.1 The Company agrees to verify and validate Equipment location whenever requested by the Township for Township capital projects using the following steps:

- (a) in the design stage, meet with the Township or its representatives upon request to discuss and work to resolve potential design and construction conflicts;
- (b) if, after such discussions, construction conflicts cannot be resolved because the Township believes that the Equipment is not installed in the Approved Location and it is determined by the Township that its proposed design may be susceptible to a risk based on the Township's assessment of the actual location of the existing Equipment, the Company shall, at the Township's request, complete pre-engineering locates of its Equipment;
- (c) where, upon completion of pre-engineering locates, the Township still believes that its proposed project design may still be susceptible to a risk based on the Township's determination that the actual location of existing Equipment is either not verifiable or is not in the Approved Location, the Company shall, at the request of the Township undertake a field investigation using a locating method(s) agreeable to both Parties, to verify horizontal and vertical location of buried Equipment. Where such method(s) of locating confirm the Equipment to reasonably be where the Company has represented it to be, the actual cost of such investigations shall be shared equally by the Company and the Township; and
- (d) if the results obtained from the pre-engineering locates under Section 15.1(b) or the field investigations under Section 15.1(c) determine that the Equipment is not in the Approved Location and because of the confirmed location of the Equipment the Township is required to redesign its work, the Company will bear the associated full cost for the re-design so required and the field investigations.

13.2 Where, during construction of Township capital projects, the Company's Equipment is found not to reasonably be in the Approved Location or in the staked-out location, and the Township determines it may or it does incur any direct or indirect costs as a result of the actual location of the Company's Equipment, the Township shall notify the Company of such and provide a report of its estimated costs that could result from the situation, within twenty-four (24) hours. If the Company is unable to address the discrepancy between the Approved Location and the actual location of its Equipment or to rectify the problem in a reasonable manner or does not come to other arrangements with the Township, both in a reasonable time commensurate with the situation, in addition to the Township's remedies herein, the Company agrees to compensate the Township for any reasonable and verifiable additional costs which the Township incurs in completing its work as a result of the actual location of the Company's Equipment or if the Township requires the Company to Relocate its Equipment in order to complete its work

because the Equipment is not in the Approved Location, the Company may Relocate its Equipment at its own cost to a new location approved by the Township within a time frame agreed to by both Parties and pay to the Township any reasonable and verifiable costs for any construction delays experienced by the Township as a result of the Company's Relocation Work.

- 13.3 The Parties acknowledge that location of the Company's older Equipment may not be in the location that is represented on historical records of either Party. In those instances, the Parties shall follow the process outlined in Sections 13.1 and 13.2 to verify the location of all subsurface Equipment to meet the needs of the Township capital project.

14.0 UTILITY CO-ORDINATION

- 14.1 The Parties agree to confer with each other through the Public Utility Coordinating Committee (the "PUCC") meetings on matters of mutual interest.
- 14.2 The Company agrees to participate in any PUCG involving all users of the Rights-of-Way as may be established by the Township and to contribute to the cost of operation of such committees.
- 14.3 The Company will make every reasonable effort to participate in joint opportunities with other utilities, developers and the Township for the purpose of improving street and community Aesthetics and to minimize the necessity for road cuts and construction. This may include installing Equipment into joint use trenches, specially designed units, pedestals or cabinets or, where applicable regulations allow, clustering units, pedestals or cabinets together to improve street and landscape Aesthetics. The Company reserves the right to determine when fair and equitable terms have been reached and technical and service requirements are satisfied.
- 14.4 Upon request of the Township at the time of Utility Alignment Permit application, the Company shall provide to the Township, at its own expense and within two (2) months of completing the construction or installation of any of the Equipment, "as-constructed" drawings in an electronic format as mutually agreed upon between the Parties. Upon request from the Company, and subject to any licensing restrictions relating to the release of information, any available licensing digital ortho-imagery and/or mapping shall be provided by the Township to the Company at the Company's expense for the Company's use as a base map on which to submit permits to the Township.
- 14.5 The Parties agree to identify planned and existing Equipment in response to a mark-up request related to maintenance or new construction projects. Such response shall be returned to the other Party or its consultant no later than fifteen (15) business days after receipt of the request. In the event, the Company does not provide a response to a mark-up request in the prescribed timeframe identified, then it will be presumed the Company does not have any comments to share. The Company acknowledges and agrees that the Township shall approve a maintenance or new construction project from

another party without the Company's mark-up response.

- 14.6 Each Party shall adhere to the *Ontario Underground Infrastructure Notification System Act* for locate requests.
- 14.7 Where either Party's locates are found to be in error and, as a result, the other Party is unable to install its facilities Within the affected ROWs in the manner it expected based on the locates provided by the locating Party, the affected Party shall notify the locating Party of the error within twenty- four (24) hours, following which the locating Party shall attempt to resolve the conflict. If the locating Party is unable to resolve the conflict in a reasonable time commensurate with the situation and to the affected Party's satisfaction, the locating Party shall pay the affected Party its reasonable and verifiable additional costs incurred as a direct result of the conflict.
- 14.8 Each Party shall provide to the other Party a list of local emergency contact personnel who shall be available at all times and shall ensure that the aforementioned list is current.
- 14.9 The Company shall use commercially reasonable efforts to coordinate Work Within the Rights-of-Way with other service providers occupying and using or intending to occupy or use the Rights-of-Way with the intent of minimizing the necessity for road cuts, construction and the placement of additional support structures in the Rights-of-Way.

15.0 SECURITY

- 15.1 In the event that the Company fails to make payment in accordance with this Agreement, or if the Company has not had a previously satisfactory business relationship with the Township, at the sole discretion and request of the Director, the Company agrees to post an irrevocable blanket letter of credit in a form satisfactory to the Township's Director of Finance in the minimum amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000), or other form of security acceptable to the Township, or at a higher value as determined by the risk and agreed upon by the Township and the Company, within thirty (30) days of a request from the Director of Finance. Such blanket security, once posted by the Company, may be drawn on by the Township and the funds applied against any current, outstanding financial obligations owed by the Company to the Township under the terms of this Agreement. Such blanket letter of credit shall be posted for the term of this Agreement or until such a time that, at the sole discretion of the Director of Finance, a satisfactory business relationship has again been established by the Company with the Township. The Letter of Credit shall:
- (a) name the Township as beneficiary;
 - (b) be in a form satisfactory to the Township's Director of Finance;
 - (c) be provided within 30 day period after the Township's request; and
 - (d) remain in place for the duration of the term of this agreement.

- 15.2 Notwithstanding the above, the Township reserves the right to acquire, and the Company agrees to provide, additional project specific securities for significant projects beyond the scope of the original blanket letter of credit in an amount equal to any and all restoration costs of any such projects as determined by the Director of Finance. The project specific letter of credit shall be released once the conditions of the applicable Utility Alignment Permit related to restoration of the Rights-of-Way have been fulfilled to the satisfaction of the Director and the Director of Finance.
- 15.3 Should the Township be required to draw on the blanket securities, the Company shall immediately reinstate the blanket securities posted under Section 15.1 herein, to the value in effect at the time of drawing.

16.0 INDEMNIFICATION AND LIABILITY

- 16.1 The Company shall indemnify and save harmless the Township from and against all actions, causes of action, proceedings, claims and demands brought against the Township, and from and against all losses, costs, damages or expenses suffered or incurred by the Township, by reason of any damage to property, including property of the Township, claims for injurious affection, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the Township, caused by, resulting from or attributable to the negligent act or omission or willful misconduct of the Company or any of its Employees, servants, licensees or invitees in the performance of this Agreement and the Company shall, upon demand by the Township and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the Township on any such claim, demand or cause of action, and will pay and satisfy any judgement or decree which may be rendered against the Township in any such suit, action or other legal proceeding, and shall reimburse the Township for any and all reasonable legal expenses on a substantial indemnity basis incurred in connection therewith. The Company's obligation to indemnify, defend and save harmless the Township shall survive the termination of this Agreement.
- 16.2 The Township shall indemnify and save harmless the Company from and against all actions, causes of action, proceedings, claims and demands brought against the Company, and from and against all losses, costs, damages or expenses suffered or incurred by the Company, by reason of any damage to property, including property of the Company, or injury, including injury resulting in death, to persons, including the Employees, servants, licensees and invitees of the Company, caused by, resulting from or attributable to the gross negligence or willful misconduct of the Township or any of its Employees, servants, licensees or invitees in the performance of this Agreement.
- 16.3 The Parties agree to promptly provide each other with written notice of any such claims which may result in an indemnification obligation hereunder and, in any event, such notice shall be provided within seven (7) business days of the indemnified Party

becoming aware of the claim in accordance with Article 27 (Notices). The indemnified Party will provide reasonable particulars, to the extent of their knowledge, of the factual basis for the claim and the amount of the claim to the indemnifying Party as soon as reasonably practicable such that all relevant information should be received by the indemnifying Party within twenty-one (21) business days of providing written notice to the indemnifying Party.

- 16.4 If the Company does not assume and continue control of the defense of any third party claim within fifteen (15) business days of the initial written notice of the claim from the Township, then the Township shall have the exclusive right to contest, settle or pay the amount claimed, and shall have the right to recover all amounts in full from the Company.
- 16.5 The indemnifying Party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim will occur without the prior written consent of the indemnifying Party, which consent shall not unreasonably be withheld or delayed, provided that the indemnifying Party may not agree to any settlement terms and conditions which involve the admission of liability by the indemnified Party or the imposition of any liability on the indemnified Party without the indemnified Party's prior written consent.
- 16.6 Notwithstanding anything contained in this Agreement, the Township and the Company shall not be liable to each other in any way for indirect, special or punitive or consequential losses or damages, or damages for pure economic loss, arising directly or indirectly from this Agreement or any breach thereof or any Equipment or use of any Right-of-Way even if advised of the possibility thereof.

17.0 INSURANCE

- 17.1 The Company shall maintain insurance as will protect the Company and the Township as an additional insured from claims for damages, personal injury including death, and for claims from property damage which may arise from the Company's Work in the Township under this Agreement, including without limitation, their use or maintenance of the Equipment Within the Rights-of-Way, or any act or omission of the Company's Employees while engaged in its Work and such coverage shall include all costs, charges and expenses reasonably incurred with any bodily injury or physical damage to tangible property.
- 17.2 In addition to the foregoing, the Company covenants and agrees as follows:
- (a) the Company shall maintain at its expense during the term of this Agreement comprehensive general liability occurrence-based insurance coverage with an insurer licensed to underwrite insurance in Ontario covering claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million (\$5,000,000.00) Dollars per occurrence and an annual

aggregate limit of not less than Five Million (\$5,000,000) Dollars for products and completed operations, and name the Township as an additional insured to the extent of the Company's negligence or omissions. Such insurance may be composed in combination of primary and excess (umbrella) insurance policies;

- (b) the Company shall maintain Environmental Impairment Insurance with a limit of not less than Five Million (\$5,000,000.00) dollars for site clean-up, third party bodily injury, and property damage arising from any one accident or occurrence;
- (c) the Company shall maintain at its expense during the term of this Agreement commercial general liability occurrence-based insurance coverage with an insurer licensed to sell insurance in Ontario covering claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million (\$5,000,000.00) Dollars per claim exclusive of interest and costs and such insurance shall include the contractual obligations of the Company as stated within this Agreement and name the Township as an additional insured. Excess (or 'umbrella') insurance may be used to achieve the required insured limit;
- (d) the insurer shall have an AM Best rating of at least A-.
- (e) all policies shall provide that they are primary insurance which will not call into contribution any other insurance available to the Township to the extent of the Company's negligence or omissions, and shall further provide that such insurance shall not be cancelled, lapsed or materially changed to the detriment of the Township, acting reasonably, without at least thirty (30) business days' notice to the Township by the insurer through registered mail;
- (f) the insurance coverage required under this Agreement shall not be construed to, and shall in no manner, limit or restrict the Company's liability or obligations under this Agreement; and
- (g) forthwith upon the execution of this Agreement, the Company shall provide the Township with certificates of insurance evidencing the insurance coverage required by this Agreement and thereafter provide renewals of such insurance coverage as required. Such certificates will confirm the Township as an Additional Insured and will evidence Cross Liability and Severability Clauses.

17.3 Proof of Insurance and Claim Protocol:

- (a) the Company shall deposit with the Township prior to the execution of this Agreement certificates of insurance on the Township's standard certificate insurance forms as well as renewal certificates thereafter;
- (b) the Company shall not do or omit to do anything that would impair or invalidate

the insurance policies;

- (c) delivery to and examination or approval by the Township of any certificates of insurance or other evidence of insurance shall not relieve the Company of any of its indemnification or insurance obligations under the Agreement. The Township shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or to advise the Company in the event such insurance coverage is not in compliance with the requirements set out in the Agreement;
- (d) claims reported to the Company by a third party or by the Township (herein referred to as the "**Claimant**") shall be promptly investigated by the Company. The Company and/or its insurer shall make contact with the Claimant within five (5) Business Days of receipt of notice of a claim. The Company and/or insurer shall initiate an investigation of the claim immediately upon notice, and advise the Claimant by letter of its position regarding resolution of the claim within twenty (20) Business Days of the notice. The Company shall include in its letter of resolution the reasons for its position. Failing acceptance of the resolution by the Claimant of the proposed resolution, the Company agrees to report the claim to its insurer for further review and response to the Claimant. Failure to follow this procedure shall permit the Township to investigate and resolve any claims and offset the resultant costs against any monies due, from time to time, under the Agreement.

18.0 ENVIRONMENTAL RESPONSIBILITY AND LIABILITY

- 18.1 The Township has made no representations or warranties as to the quality, condition or sufficiency of the Rights-of-Way for any purpose, or as to the presence or absence of Hazardous Substances on or under the Rights-of-Way and the Rights-of-Way are used and occupied by the Company at its own risk with all faults and imperfections whatsoever and on a strictly "as is, where is" basis.
- 18.2 Notwithstanding the above, in no circumstance shall the Company be liable for the remediation or clean-up of any Hazardous Substances existing Within the Rights-of-Way prior to the term of this Agreement, save and except for any remediation or clean-up required as a result of the Company's Work Within the Rights-of-Way prior to the term.
- 18.2 The Township is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death arising from the escape, discharge, spill or release of any Hazardous Substance resulting from the Company's use of the Rights-of-Way (an "**Occurrence**"). The foregoing release shall not extend to any damage, injury or death caused by the gross negligence or willful misconduct of the Township, its Employees, or those other persons for whom the Township is in law responsible.
- 18.3 The Company agrees to assume all environmental liabilities relating to its use of the

Rights-of-Way including, but not limited to, any liability for investigation and/or clean-up of any Hazardous Substance Within the Rights-of-Way which result from:

- (a) the operations of the Company Within the Rights-of-Way; or
- (b) any Equipment brought Within the Rights- of-Way by the Company, its Contractors, 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 negligence or willful misconduct on the part of the Township.

18.4 The Company must immediately report an Occurrence or the presence of a Hazardous Substance that the Company may discover while carrying out Work Within Rights-of-Way to all of the following:

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

18.5 The Township agrees to provide notice to the Company of any liability of which it has knowledge arising under this provision in a reasonable period of time after an Occurrence.

19.0 WORKERS' SAFETY AND INSURANCE BOARD COVERAGE

19.1 The Company shall pay to the appropriate provincial Workers Safety and/or Insurance Board/Commission all assessments and levies owing to the Board/Commission by the Company, its Employees and others engaged in providing services under this Agreement and any unpaid assessment or levy shall be the sole responsibility of the Company.

19.2 Prior to commencing the Work, the Company shall provide to the Director evidence of compliance with the requirements of the Province of Ontario with respect to Workers' Compensation Insurance.

19.3 The Company's workers, Employees, Contractors and servants shall, at all times be required to comply with the rules of the Ontario *Workplace Safety and Insurance Act, 1997* and Regulations, the Ontario *Occupational Health and Safety Act* (the "OHS") and Regulations, the Canada Labour Code Part 11 and Regulations as they apply to the Company, its Employees and Contractors or any amendments or additions thereto, and when applicable, all by-laws, regulations and rules which apply to performance or Work

on Rights-of-Way or private property which relate to the safety of workers and the public.

- 19.4 If the Township becomes involved in a charge, offence, prosecution, civil litigation or any other legal proceedings under or related to the *Workplace Safety and Insurance Act, 1997*, OHSA, *Canada Labour Code*, or any regulations under the *Workplace Safety and Insurance Act, 1997*, OHSA or *Canada Labour Code* arising out of or related to a breach of this Agreement by the Company or the Company's performance or lack of performance of the Agreement or the Company's violation of the *Workplace Safety and Insurance Act, 1997*, OHSA, *Canada Labour Code* or any regulations thereunder, then the Company shall be fully liable for, indemnify and pay the Township's fine, penalty, judgement, debt, damages and reasonable legal fees and disbursements, limited to the extent of the Company's negligence and those over whom it is responsible in law.
- 19.5 The Company acknowledges that out-of-province Contractors are not exempt from having to register and comply with the requirements of the Workers' Safety and Insurance Board of Ontario. Prior to commencing the Work, all out-of-province Contractors not required to be registered in Ontario shall provide:
- (a) written confirmation from the Workers' Safety and Insurance Board of Ontario stating that the Contractor is not required to be registered in Ontario; and
 - (b) evidence of compliance with the requirements of the province or territory or place of business of the Contractor with respect to workers' compensation insurance.
- 19.6 At any time during the term of this Agreement, when requested to do so by the Township, the Company shall provide evidence of compliance by itself and its subcontractors. Failure to provide satisfactory evidence in respect of workers' compensation insurance shall result in future permits being denied by the Township until satisfactory evidence of compliance has been received by the Director.

20.0 EMERGENCY

- 20.1 In the event of an Emergency, the Parties shall, at no cost to the other Party and using reasonable best efforts, provide locates of its Equipment in the affected area within two (2) hours of receiving a request by the other Party, its Contractors or authorized agents.
- 20.3 In the event of an Emergency, the Company shall be permitted to carry out such remedial Work as is reasonably necessary to re-establish services where such services are determined by the Company to be essential services, prior to satisfying Article 5.0 (Permits). Within five (5) business days of completing its remedial Work to restore its essential service in response to an Emergency, the Company shall comply with the requirements of Article 5.0 (Permits).
- 20.4 In cases of Emergency, both Parties agree to work co-operatively and apply

commercially reasonable best efforts to Relocate Equipment immediately as directed by the Director, provided that in cases of Emergency, the Township may take any measures deemed necessary for public health and safety with respect to the Equipment that may be required in the circumstances.

- 20.5 Notwithstanding Section 7.1, in the event of an Emergency, the Township will take appropriate measures determined necessary by the Director to re-establish a safe environment, taking reasonable precautions to protect the public and the Equipment of the Company. Where any costs incurred by the Township in re-establishing a safe environment are attributable to the Work of the Company or as a result of the presence of the Company's Equipment these costs shall be charged back to the Company in accordance with Article 4.0 (Payment of Costs and Fees) of this Agreement.

21.0 LEGISLATIVE CHANGE

- 21.1 If, at any time subsequent to the entering into of this Agreement, the provincial or federal government or a regulatory authority, acting within its jurisdiction, enacts or repeals any legislation or regulation, or orders, directs or mandates anything which pertains to the subject matter of this Agreement, then either Party may notify the other of its intention to require the other Party to enter into good faith negotiations to amend this Agreement, or to enter into a new agreement reflecting such legislative or regulatory action or court or tribunal decision, as the case may be, within thirty (30) days after written notice, subject to Article 25.0 (Notices) from the notifying Party and any newly permitted terms and conditions, charges or fees pursuant to such new or amended agreement will take effect from the date upon which the notice expires.
- 21.2 If the Parties are unable to re-negotiate the terms and conditions of this Agreement, then the unresolved matters may, within 30 days of notice from the requesting Party, be referred by either Party to the CRTC. If CRTC adjudication has not been invoked, either Party may terminate this Agreement.

22.0 TERMINATION

- 22.1 The Parties mutually agree that if either Party materially fails to carry out any of its obligations under this Agreement, the non-defaulting Party can put the defaulting Party on notice of the deficiencies it wishes the defaulting Party to correct, failing which the non-defaulting Party will be entitled to terminate this Agreement as set out below.
- 22.2 If the defaulting Party has not remedied the deficiencies set out in the notice to the reasonable satisfaction of the non-defaulting Party within 30 days of receiving the notice, this Agreement may be terminated by the non-defaulting Party. Termination shall take place by giving notice to the defaulting Party. Termination shall be effective upon receipt of the notice of termination by the defaulting Party.
- 22.3 If this Agreement is terminated by either Party in accordance with the terms allowed

under this Agreement, all the unfulfilled covenants, indemnities and obligations of the defaulting Party herein incurred prior to the termination shall survive such termination.

- 22.4 Despite this Article 22.0 (Termination), this Agreement may be terminated immediately and without prior notice by the Township in the event that:
- (a) the Company fails to pay any amount payable pursuant to this Agreement within sixty (60) days of the date on which the payment is due;
 - (b) 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*, as amended from time to time, or any successor legislation;
 - (c) subject to Article 26.0 (Assignment), the Company transfers, assigns, or sublicenses any part or all of its interest in this Agreement other than in accordance with the provisions of this Agreement, or attempts to do same;
 - (d) the Company ceases to be eligible to operate as a Canadian carrier or distribution undertaking within the meaning of the *Telecommunications Act*, or as regulated by the CRTC as amended from time to time, or any successor legislation;
 - (e) the Company violates any Applicable Law in connection with the use of the Rights-of-Way and fails to remedy or commence to remedy the violation to the satisfaction of the Township, within thirty (30) days from the date of receiving notice of the violation from the Director; or
 - (f) the Company unduly interferes with the public use and enjoyment of the Rights-of-Way and does not rectify the interference.
- 22.5 In the event of termination by the Township, the Company shall continue to be liable to the other party for all payments due and obligations incurred under the Agreement prior to such termination.
- 22.6 Notwithstanding Sections 22.3 and 22.4 (a), the obligations of the parties shall survive the termination of this Agreement, regardless of whether a Party has materially failed to carry out any of the terms, covenants and conditions contained herein or has defaulted in any of its obligations under the terms hereof and such failure has not been corrected in accordance with Section 22.1.
- 22.6 Notwithstanding any other provision of this Agreement, if this Agreement is terminated or expires without renewal, then, subject to the Company's rights to use the ROWs pursuant to the *Telecommunications Act* and unless the Company advises the Township in writing that it no longer requires the use of the Plant:

- (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 months following the expiry of this Agreement, the parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.
- (c) The rights and privileges contained herein relating to obtaining permits for Work shall come to an end unless other mutually acceptable negotiated arrangements are made between the parties.

23.0 DISPUTE RESOLUTION

- 23.1 The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement (a "**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 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 private and confidential.
- 23.2 If the Parties fail to resolve the dispute within 30 days of the notice, either Party may refer the matter to the CRTC for adjudication.

24.0 NO OWNERSHIP RIGHTS

- 24.1 No use of the Rights-of-Way under this Agreement shall create or vest in the Company any ownership or property rights in the Rights-of-Way whatsoever, and the Company shall be and remain a non-exclusive occupant of the Rights-of-Way. Placement of the Equipment in the Rights-of-Way shall not create or vest in the Township any ownership or property rights to the Equipment except as provided in this Agreement. The Parties agree that this Agreement creates contractual rights only between the Parties for the use of the Rights- of-Way.

25.0 NOTICES

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

address:

Township:

Township of Wilmot
60 Snyder's Road West
Baden, ON N3A 1A1
Attention: XXXX
Tel: (519) 634-XXXX

and to the Company at the following address:

UTILITY
Utility Contact
123 Street A
City, Province
Attention:
Tel:
Email:

With a copy to:

Utility
Main Office Location

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

26.0 ASSIGNMENT

26.1 This Agreement may be sublicensed, granted, transferred or assigned:

- (a) by the Township or the Company in its entirety, to a single sub-licensee, grantee, transferee or assignee with the other's prior consent in writing, which consent may not be unreasonably withheld; and
- (b) by the Company in part during the term of this Agreement without the Township's prior consent in writing, if the Company:

- i. upon having first given notice to the Township of the sublicense, grant, transfer or assignment; and
- ii. provided the sub-licensee, grantee, transferee or assignee is an Affiliate of the Company within the meaning of the Canada Corporations Act as amended from time to time.

26.2 Despite the sublicense, grant, transfer or assignment of this Agreement or any part thereof by the Company, the Company will remain fully responsible to the Township for fulfillment of the obligations and liabilities of the Company described in this Agreement regardless of whether the obligations or liabilities arise out of any acts or omissions by the sublicensee, grantee, transferee or assignee until the sublicensee, grantee, transferee or assignee has entered into its own agreement with the Township which assumes such obligations and liabilities.

26.3 The Company may pledge the license granted by this Agreement as security without the consent of the Township to any person directly or indirectly providing financing to the Company but such pledge shall not release the Company from its obligations and liabilities under this Agreement.

27.0 GENERAL

27.1 This Agreement constitutes the entire agreement between the Township and the Company with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, whether written or oral between the Parties. Except as provided in this Agreement, there are no conditions, covenants, agreements, representations, warranties, acknowledgments or other provisions, express or implied, collateral, statutory or otherwise, that form part of or affect this Agreement. The execution of this Agreement has not been induced by, nor do any of the Parties rely upon or regard as material, any conditions, covenants, agreements, representations, warranties, acknowledgments, or other provisions not expressly made in this Agreement.

27.2 This Agreement may only be amended or supplemented by a document executed in writing by both the Township and the Company. No amendments or waiver of any provision of this Agreement shall be binding on either Party unless consent provided in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless expressly provided.

27.3 This Agreement benefits and binds the Township and the Company and the successors of each of them. The Company shall ensure that its Employees and representatives abide by the applicable terms and conditions of this Agreement when completing any Work or fulfilling any obligations herein on behalf of the Company.

- 27.4 Each Party hereby represents and warrants to the other that it has all requisite right, power and authority to enter into and perform its obligations under this Agreement.
- 27.5 If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from this Agreement and this Agreement remains in force unaffected by that finding or by the severance of that term.
- 27.6 Words having well known technical or trade meanings within the context of municipal construction and the Telecommunications 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.
- 27.7 All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.
- 27.8 The relationship of the Company and the Township established by this Agreement is that of independent contracting parties, and nothing in this Agreement shall be construed:
- (a) to give either Party the power to direct or control the day-to-day activities of the other;
 - (b) to constitute the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or
 - (c) to allow either Party to create or assume any obligations on behalf of the other Party for any purposes whatsoever.
- 27.9 This Agreement creates contractual rights only between the Township and the Company and not an interest in the Rights-of-Way and the Company covenants and agrees with the Township that the Company shall cease and desist from any registration of this Agreement or of any right howsoever arising under it.
- 27.10 No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the Party alleged to have given the waiver. No waiver by a Party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
- 27.11 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.
- 27.12 Time shall be of the essence in this Agreement.
- 27.13 Except for the Parties' obligations to make payments to each other under this

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

- 27.14 Authority of Director: Where the Township is required to make any decisions or exercise its discretion pursuant to this Agreement, then the Director may make such decisions or exercise such discretion on behalf of the Township.
- 27.15 This Agreement is the product of negotiations between the Township and the Company and their respective legal counsel, and no provisions shall be construed for or against any Party by reason of ambiguity in language, rules of construction against the draftsman, or similar doctrine.
- 27.16 No Confidential Information
- (a) The Company shall not include confidential information it considers to be of a competitive nature respecting the Company's customers, Equipment, material or business ("**Confidential Information**") in any information it submits to the Township pursuant to this Agreement, whether such submission of information is by way of notice, plans, drawings, forms, applications, letters or any other form or medium;
- (b) The Company acknowledges that the Township shall not treat any information received from the Company pursuant to this Agreement as Confidential Information.
- 27.17 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.
- 27.18 This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada.
- 27.19 This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns, and may not be changed or modified except in writing, duly signed by the Parties hereto.
- 27.20 This Agreement may be executed in counterparts, each of which shall be deemed to be

an original, and all of which such counterparts, together, shall constitute one and the same agreement. Counterparts may be executed in original, facsimile, or electronic form, and the parties shall accept any signatures received by facsimile or in electronic form as if they were original signatures of the parties.

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

) **THE TOWNSHIP OF WILMOT**
)
) Per: _____
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) Per: _____
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) **BELL CANADA**
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) Per: _____
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) Per: _____
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SCHEDULE A - Permits Required to Perform Work

WORK ACTIVITY	No Permit or Notification	Notification only	SOP	MC
<ul style="list-style-type: none"> Maintenance, testing and repair to cabinets, pedestals, poles and other above ground equipment, including replacement (except pole replacement), but with no significant increase in the size or depth 	X			
<ul style="list-style-type: none"> Routine maintenance and repair where there will be minimal physical disturbance or changes to the ROW or its use, including: <ul style="list-style-type: none"> - field testing and test-pitting; - installing single service connections or cable inside existing duct structure; or - replacing "like for like" structures (without adding more Equipment) 			X	
<ul style="list-style-type: none"> Aerial Service Drops 	X			
<ul style="list-style-type: none"> Buried Service Drops (<i>i.e.</i>, single wire containing no more than 4 wires for lengths of greater than 10 metres) 		X		
<ul style="list-style-type: none"> Pulling or placing cabling through or on existing support structures (with or without pits) <ul style="list-style-type: none"> • Tree trimming 			X	
<ul style="list-style-type: none"> Excavations (including day-lighting) within the ROW to investigate subsurface conditions, infrastructure location or to perform maintenance - No additional Equipment installed 			X	
<ul style="list-style-type: none"> Cable pulling and placing through incidental duct where there will be excavation 			X	X
<ul style="list-style-type: none"> All new direct buried and aerial installations (excluding Service Drops) 			X	X
<ul style="list-style-type: none"> Directional boring and associated pits for Work of installing new Equipment 			X	X
<ul style="list-style-type: none"> New installation of cabinets, pedestals, Poles and other above-ground equipment, or significant increase in size of any of the above 			X	X
<ul style="list-style-type: none"> Road crossings, including buried Service Drops crossing the road 			X	X
<ul style="list-style-type: none"> Relocation of underground or surface Equipment 			X	X

SCHEDULE B - Fees Payable by the Company

1. Administrative Fee

Upon the execution of this Agreement, and on every anniversary date thereafter, the Company shall pay an Administrative Fee equal to **\$5,000.00**.

2. Annual Fees for SOPs

In addition to the above Administrative Fee, the Company shall pay an annual fee based on the number of applications for SOPs submitted by the Company in any calendar year, to be invoiced in the January of the following year.

No. of SOP Applications	Annual SOP Fee
0 to 100	Covered by Admin Fee
101 and < 501	\$4,000.00
501 and < 1001	\$8,000.00
1001 and < 2001	\$10,000.00
2001	\$15,000.00

3. Utility Alignment Permit Fee

Item	Details	Fee*
Utility Alignment Permit (MC)	Approval valid for six (6) months.	\$600 per street (includes a 20 m wrap-around)
Utility Alignment Permit Re-submission	In the event an application must be resubmitted as a result of an error in a locate provided by the Township for services owned by the Township or as a result of a conflict with future Township plans, the re-submission fee will not be payable.	\$300 per street (includes a 20 m wrap-around)
Utility Alignment Permit Extension	Extension of previously approved MC (expired within six (6) months)	\$50 per extension
Road Occupancy Permit	Cost is per street.	\$150 per street
Road Occupancy Permit Revision or Extension		\$45.67 per application
Inspection	Construction inspections (may	\$175 per visit

	include pre-construction, post construction and/or during construction.	
Non-conforming Installation	Charge for each crossing of a municipal address when an installation does not conform to the Township's Standards (e.g.: drops installed near surface)	\$50 per municipal address crossing
Road Degradation**	less than 2 years	\$50.75 per m²
	for 2 to 3 years	\$40.60 per m²
	for 4 to 5 years	\$30.45 per m²
	for 6 to 10 years	\$20.30 per m²
	for more than 10 years	\$15.23 per m²
Attachment to Township Infrastructure		\$xx.xx per Attachment per year

* **FEE:** The fees listed in this Fee Schedule "A" are valid for the 2022 calendar year and will increase every year by an amount equal to the increase in the Consumer Price Increase (CPI) published by Statistics Canada (Toronto All-Items September to September), or another similar index should that index become unavailable.

** **ROAD DEGRADATION:** The minimum charge for road degradation shall be the equivalent of a minimum one (1) square meter cut.

Lost Productivity Costs

1. These costs shall be charged to the Company within forty-five (45) days of the completion of the Township work.
2. The Lost Productivity Costs are payable to the Township within forty-five (45) days of receipt of an invoice thereof, provided that the Township has provided reasonable written documentation describing these costs as per Section 12.20.

Harmonized Sales Tax (HST) and Goods and Services Tax (GST)

1. All charges and fees pursuant to this Schedule "A" shall be payable at the rates stated plus an amount identified as payment of the Harmonized Sales Tax (HST) and the Goods and Services Tax (GST) on such amount as assessed, charged, and levied by the Government of Canada. The Township's HST/GST registrant's number is xxxxxxxxxxxx.

SCHEDULE C
GUIDELINES FOR SAFE CONSTRUCTION IN THE PROXIMITY OF LOW IMPACT DEVELOPMENT FOR STORMWATER INFRASTRUCTURE

Low Impact Development (“LID”) practices are, for the purposes of this Agreement, alternative stormwater infrastructure assets used to convey and treat stormwater runoff by improving stormwater quality and reducing rate and/or volume at or near its source, to protect watershed health.

Within the Rights-of-Way, potential LID facilities may include (but are not limited to) the following:

- (a) bioretention (rain garden) areas which are boulevard bump-out areas at each terminus of on-street curb-less parking;
- (b) permeable interlocking concrete pavers within lay-by parking areas;
- (c) bioswales within designated stormwater management features of boulevard areas to accept road runoff and boulevard drainage;
- (d) enhanced swales;
- (e) permeable interlocking concrete pavers and porous asphalt for sidewalks and/or multi-use pathways where feasible;
- (f) soil cells (e.g. Silva and/or Strata Cells); and/or
- (g) water re-use sites with either buried or surface storage.

LID systems can include the following features:

- Growing medium soil layer or variable type of permeable pavement surface;
- Filter layer separating the soil from a rock reservoir below;
- Rock reservoir or in some cases manufactured underground stormwater storage units or structural support units;
- Under-drain pipe connected to the storm drainage system;
- Inlet/outlet that drains excess water to the storm drainage system or emergency overland escape route; and/or
- Specifically chosen vegetation on the surface where an LID facility is appropriate.

If the Company plans to perform Work that will disturb the ground in or around an LID system, the following procedures must be undertaken prior to commencing Work:

Insert procedures or refer to them here.

Note: In the event of an Emergency affecting an LID system, the Company must attend to the Emergency and immediately notify the Township as per Article 22.0 (Emergency).

Locate Information and Exposure Guidelines

Ontario One-Call and the **Excavation Permitting** process will notify the Company if an LID system will be within five (5) metres of the proposed construction area. Township personnel will need to be present to delineate the full extent of the LID system on-site to determine the potential magnitude of disturbance prior to construction activities. Buried sub-drain and stormwater connections will need to be hand exposed by non-destructive means within the construction area where present.

Construction Guidelines

In the case where Work activities disturb and negatively impact an LID system, the Company will need to make arrangements with the Township to ensure the LID installation is offline. Once that is confirmed, the Work can occur.

Township inspectors will have uninterrupted access to the work site. Copies of the following documentation shall be provided to the inspectors if requested:

- Road Occupancy Permit;
- Locate tickets; and
- the approved Utility Alignment Permit showing the approved location of the Company's proposed Equipment

Remediation Activities

Due to the detailed engineering parameters used in the design and construction of an LID system, and the potentially site-specific materials specifications and plants, the excavation must be filled with a clean fill upon completion of any activity within the footprint and adjacent land that is part of the design (inlets, outlets, overflow areas, underground stormwater infrastructure connections, etc.) of the LID system.

Upon completion, the Township and its pre-approved Contractors will undertake rehabilitation activities wherever possible, or complete reconstruction activities where warranted. The decision on whether rehabilitation activities can be undertaken on an installation is dependent on the type of the LID system disturbed and the amount of disturbance. This decision will be at the sole discretion of the Director, acting reasonably, and will be confirmed in a notice to the Company.