

# MUNICIPAL ACCESS AGREEMENT

THIS MUNICIPAL ACCESS AGREEMENT made in quadruplicate this 2nd day of May, 2022

**B E T W E E N:**

**North Frontenac Telephone Corporation Limited (NFTC)**

(hereinafter called the "Company")

PARTY OF THE FIRST PART

- and -

**THE CORPORATION OF THE TOWNSHIP OF WILMOT**

(hereinafter called the "Township")

PARTY OF THE SECOND PART

**W H E R E A S:**

- A. The Company is a Canadian carrier as defined in section 2 of the *Telecommunications Act*, S.C. 1993, c. 38, as amended or is a distribution undertaking as defined in subsection 2(1) of the *Broadcasting Act*, S.C. 1991, c. 11, as amended and is regulated by the Canadian Radio-television and Telecommunications Commission (the "CRTC") to operate within the Boundaries of the Township;
- B. Sub-section 43(3) of the *Telecommunications Act*, S.C. 1993, c. 38 provides that no telecommunication line shall be placed in, upon, over or under any highway, land or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place;
- C. The Township has been approached by a number of Telecommunications carriers for access to the municipal right-of-way for the purpose of installing Telecommunications wires and equipment in the municipal right-of-way;
- D. The Company operates a Telecommunications system within the Boundaries of the Township;
- E. The Company wishes to perform Work in, on, under, over, along, above and across Service Corridors within the Township.
- F. The Township requires the Company to obtain permits and pay applicable fees with the Company's use of various Service Corridors as defined in this Agreement; and
- G. The Township is willing to permit the use and occupancy of the Service Corridors where, in its judgment, such use or occupancy will not interfere with its own service requirements and use of the Service Corridors including the consideration of economy and safety and any rights or privileges previously conferred by Township by contract or otherwise to others not a party to this Agreement to use any Service Corridors

**NOW THEREFORE** this Agreement witnesses that in consideration of other good and valuable consideration and the sum of Two Dollars (\$2.00) of lawful money of Canada, now paid by each of the

parties hereto to each of the other parties hereto, (the receipt whereof is hereby acknowledged), the parties hereto agree with each other as follows:

## **ARTICLE 1 – INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the context otherwise specifies or requires, the following terms shall have the respective meanings specified or referred to below and grammatical variations of such terms shall have corresponding meanings:

- (a) **“Affiliate”** has the meaning ascribed thereto in the *Canada Business Corporations Act*, R.S.C. 1985, c.C-44;
- (b) **“Agreement”** means this Municipal Access Agreement;
- (c) **“As-constructed Drawings”** means drawings submitted by the Company to the Township in which the actual location of the installed Equipment is recorded. The submitted drawings will be completed to CSA Standard S250 Mapping of underground utility infrastructure accuracy level 1;
- (d) **“Applicable Law”** means any and all applicable federal, provincial and municipal laws, including environmental laws, health and safety laws, statutes, codes and by-laws (of general application) and any written agreements between the Township and the Company;
- (e) **“Attach”** or **“Attachment”** means the use of, or connection to, the Equipment of the Company by a Third Party;
- (f) **“Boundaries”** means the municipal boundaries of the Township;
- (g) **“Business Day”** means any day that is not a Saturday, Sunday or statutory holiday;
- (h) **“Contractor”** includes subcontractors, workers, suppliers and material men;
- (i) **“Director”** means the Director of Public Works and Engineering of the Township who has responsibilities for Service Corridors within and under the jurisdiction of the Township, or the Person designated by him or her or such other Person as may from time to time be designated by the Council of the Township;
- (j) **“Emergency”** means in the reasonable opinion of the Township there is an unplanned situation where immediate action must be taken to preserve public health, safety or service;
- (k) **“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 but specifically excludes the Company and the Company’s Contractors; and
  - (iii) with respect to the Contractors of the Township or the Company, any officer, employee or agent of the Contractors;
- (l) **“Equipment”** means, but is not limited to, the Company’s wires, cables, ducts, conduits, handholes, manholes, and any other accessories, structures, transmission facilities and

equipment installed or, by submission of a Project Permit or a Right of way work permit, planned to be installed within the Service Corridors;

- (m) **“Hazardous Substance”** means any hazardous substance and includes, but is not limited to, electromagnetic or other radiation, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances as defined in or pursuant to any Applicable Law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal;
- (n) **“Laws”** means all Applicable Laws;
- (o) **“Letter of Credit”** means an irrevocable standby letter of credit from a Canadian chartered bank acceptable to the Township and in a form approved by the Township based upon Form 1 attached to this Agreement or other form of security acceptable to the Township;
- (p) **“Person”** means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative;
- (q) **“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;
- (r) **“Private Easement”** means a non-possessing interest held by one party in land of another whereby the first party is accorded partial use of such land for a specific purpose;
- (s) **“Project Permit”** means a Township document which grants approval, and such approval may be subject to conditions, for the Company to perform Work within a Service Corridor;
- (t) **“Public Utility Coordination Committee”** or **“PUCC”** means a committee established by the Township to evaluate implications of proposals to Township operations, infrastructure and Service Corridor users to mitigate negative impacts, to liaise with other Township departments to obtain comments for special criteria and to coordinate utilities to avoid utility conflicts, to reduce impacts and costs, and to identify joint build opportunities. It is comprised of Township staff, representatives of all utility companies, and, as needed, consultants working on municipal projects;
- (u) **“Qualified”** means the worker or workers in question are duly qualified under Applicable Law;
- (v) **“Right of Way Work Permit”** means a Township document which grants approval, and such approval may be subject to conditions, for the Company to perform Work within a Service Corridor during Work;
- (w) **“Roadway”** means any portion of the Service Corridor 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 of Wilmot
- (x) **“Service Corridor”** means highways as defined in the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, which are under the jurisdiction of the Township as illustrated in **Schedule “A”**, whether directly or by delegation by the Township of Wilmot;
- (y) **“Service Drop”** means a cable 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 of a single family residence or to a commercial or multiple dwelling building point, and shall not be a Temporary Connection, nor of a length greater than one (1) metre within the Service Corridor;

- (z) **"Taxes"** means amounts levied or charged now or in the future by any municipal, 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 Service Corridor and Equipment;
- (aa) **"Telecommunications"** has the same meaning as under Section 2 of the *Telecommunications Act*;
- (bb) **"Term"** has the meaning defined under **Article 2** of this Agreement;
- (cc) **"Third Party"** means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof that attaches its equipment to the Company's Equipment under an agreement with the Company; and
- (dd) **"Work"** means, but is not limited to, the initial area system implementation, maintenance, repair, replacement, testing, relocation, adjustment or other alteration of Equipment in, on, over, along, under, above or across and which may affect the Service Corridors.

## **1.2 Section and Headings**

The division of this Agreement into articles, sections, subsections, paragraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

## **1.3 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.

## **1.4 Time of Essence**

Time shall be of the essence of this Agreement.

## **1.5 Governing Law**

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 Laws of the Province of Ontario and the federal Laws of Canada applicable herein, 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.

## **1.6 Entire Agreement**

This Agreement constitutes the entire agreement between the parties 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, acknowledgements or other provisions, express or implied, collateral, statutory or otherwise, that form part 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, acknowledgements, or other provisions not expressly made in this Agreement.

#### **1.7 Amendments and Waivers**

No amendments or waiver of any provision of this Agreement shall be binding on any party unless consented to 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.

#### **1.8 Severability**

Subject to **Article 15**, if any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, and the deletion of such provision would not constitute a material amendment to this Agreement, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct in accordance with the foregoing.

#### **1.9 Currency**

Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian funds.

#### **1.10 Taxes**

Except as otherwise provided in this Agreement, all amounts set out in this Agreement are exclusive of all Taxes. All applicable goods and service 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.

#### **1.11 Independent Contractors**

The relationship of the Company and the Township established by this Agreement is that of independent Contractors, 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 purpose whatsoever.

#### **1.12 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 Service Corridor in accordance with the Township's legal authority.

#### **1.13 Reasonable Performance of Obligations**

Each party agrees that it shall at all time act reasonably in the performance of its obligations and the exercise of its rights under this Agreement.

## **ARTICLE 2 – TERM OF AGREEMENT**

### **2.1 Term**

This Agreement shall commence upon the date of execution and shall continue for five (5) years (the “Term”).

### **2.2 Renewal**

Provided that the Company is not then in default under the terms of this Agreement, this Agreement shall automatically renew on **3rd day of May, 2027**, for a further five (5) year term, and indefinitely on everything fifth (5<sup>th</sup>) anniversary thereafter unless terminated by either party (the “**Renewal Term**”) under the same terms and conditions as contained herein, subject to **Section 7.3**. Should neither party exercise their right of termination this agreement will automatically renew for a period of five (5) years. If the Company does not wish to renew this Agreement then 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. Subject to the Company’s rights under the *Telecommunications Act*, if the Company elects not to renew then 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. The Company’s rights to operate, maintain and service the installed Equipment shall survive any non-renewal unless the Company provides notice in writing, delivered to the Township, of its intentions to surrender these rights.

### **2.3 Survival of Covenants, Indemnities and Obligations on Termination**

If this Agreement is terminated by either the Township or the Company, all the unfulfilled covenants, indemnities and obligations of the Company and the Township hereunder shall survive termination.

## **ARTICLE 3 – USE OF SERVICE CORRIDORS**

### **3.1 Use of the Township Service Corridors**

The Township hereby agrees to grant to the Company non-exclusive permission to enter upon and use the Service Corridors for the purposes of performing Work subject to the terms and conditions contained in this Agreement and in accordance with all Applicable Laws, permits issued to the Company by the Township, or other rules and regulations pertaining to the application and use of the Service Corridors or the Equipment provided such are not in conflict with applicable federal laws or with the terms of this Agreement.

### **3.2 Work Outside of Service Corridors**

This Agreement does not grant permission to the Company to perform Work on Township owned lands outside of the Service Corridors. Any such requests by the Company shall be reviewed by the Township in a manner separate and distinct from this Agreement.

### **3.3 Interference With Public Use and Enjoyment**

Subject to the provisions of **Section 3.1**, the Company agrees that its use of the Service Corridors shall not unduly interfere with the public use and enjoyment thereof.

### **3.4 Approval of Location and Installation**

Prior to commencing the Work:

- (a) the Company shall obtain the prior written approval from the Director in the form of a Project Permit and Right of Way Work Permit as amended from time to time by the Township, with such approval not to be unreasonably withheld or delayed. The Director, acting reasonably, may establish terms and conditions as to how such Work may be undertaken by the Company. As a condition of such approval and commensurate with the complexity of the proposed Work, the Township may, at its sole discretion, require that the Company submit detailed construction design plans to the Director with respect to the Work to be conducted in the Service Corridor;
- (b) notwithstanding the provisions of **Section 3.4 (a)**, in the event of an Emergency, the Company may proceed with the excavation or the breach of the surface of a Service Corridor, provided that in every such case the Company shall provide written notice to the Director as soon as possible following the resolution of the Emergency;
- (c) notwithstanding the provisions of **Section 3.4(a)**, the Company may, without the prior written consent of the Township, and without payment of a fee to the Township, carry out routine maintenance, field testing, subscriber connections, temporary connections, and installation or removal of Equipment where there is no need to excavate, break up or otherwise breach the surface of any Service Corridor provided, however, that in the event that such Work activity will result in a disruption of traffic, the Company will comply with such notification procedures as may be reasonably prescribed by the Township;
- (d) placement of aerial or buried Service Drops which do not cross the Roadway within the Service Corridor require a Right of Way Work Permit. Where buried Service Drops must be placed across the Roadway, **Section 3.4(a)** will apply; and.
- (e) the method of excavation under a Roadway, whether directional boring or an open road 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 Service Corridor and will hand dig and/or vac excavate where Work is to be carried out within one (1) metre of 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.

### **3.5 Joint Utility Co-ordination**

The Company agrees to participate in any PUC's involving all users of the Service Corridors as may be established by the Township or other level of government and to contribute to the reasonable costs of operating such committees through the annual fee outlined in **Section 13.1**.

### **3.6 Change in Proposed Location of Equipment**

For the Work, if the Equipment cannot, due to field conditions, be installed within the approved location, then the Company may apply to the Director for approval of the new location and the Director shall consider and reply to the proposal typically within forty-eight (48) hours.

### **3.7 Report on Equipment**

The Company shall, at the request of the Director, provide annually, on or before the anniversary date of the execution of this Agreement, to the Township, a report in a form satisfactory to the Director listing the location of all the Equipment installed, altered, relocated, or removed by it, or on its behalf in the Service Corridors to date and identifying all the Equipment installed in the twelve (12) months immediately preceding this report. For greater certainty, there shall be no requirement for the Company to report the Equipment installed, altered, relocated or removed in accordance with **Section 3.4(c)** herein.

### **3.8 Installation of New Equipment**

The Company shall not install any new Equipment in the Service Corridor except pursuant to, and in accordance with this Agreement.

### **3.9 As-Constructed Drawings**

The Company shall provide As-Constructed Drawings, at its expense, to the satisfaction of the Director, within three (3) months of completing the installation of the Equipment. All As-Constructed Drawings shall be in a digital format, to the satisfaction of the Director, and in hard copy if specifically requested by the Director.

## **ARTICLE 4 – CONDITIONS OF WORK**

### **4.1 Conditions of Work by the Company**

The Company agrees that all Work conducted by the Company on a Service Corridor is subject to the following conditions:

- (a) all Work shall be conducted and completed in accordance with the approved plans to the satisfaction of the Director. The Company undertakes and agrees that it will construct, operate and maintain its Equipment in accordance with sound engineering practice and all applicable federal and provincial statutes, regulations, policies, guidelines, standards and municipal by-laws, policies, guidelines, standards, and Right of Way Work Permit;
- (b) any portions of the Equipment which cross the Roadway of the Service Corridors shall be placed in a carrier pipe or be encased in concrete unless otherwise approved by the Director;
- (c) if the Company breaks the surface of a Service Corridor, it shall repair and restore the surface of the Service Corridor as expeditiously as possible to substantially the same condition, or better, it was in before such Work was undertaken by the Company in accordance with the Right of Way Work Permit and to the reasonable satisfaction of the Director. The Company shall, at its sole expense, maintain that portion of the Service Corridor by repairing any settling caused by the Company's Work in the Service Corridor to the satisfaction of the Director. Both parties recognize that, weather permitting, final repair of the Service Corridor shall be completed as soon as possible and in accordance with any applicable Right of Way Work Permit. If the Company fails to repair and restore a Service Corridor within twenty-four (24) hours of being notified by the Township or as approved by the Director, the Township may undertake such necessary repairs and recover the costs of such repairs and related and incidental costs from the Company. Notwithstanding the foregoing, in the case of Emergencies, the Township reserves the right to make repairs immediately and recover the costs of such repairs and related and incidental costs related or attributable to the Company's Work from the Company;
- (d) where the Township requires the Work to be stopped for any design conflict or safety reason, the Company shall cease all such Work forthwith upon receipt of such verbal stop-work notice, including the reason, from the Township. The Director shall within twenty-four (24) hours of such verbal stop-work notice provide written reasons for issuing the stop-work notice to the Company and an estimated work resumption time. Once the reason for the Work being stopped has been resolved to the satisfaction of the Director, the Township shall lift such stop-work order and the Company shall be permitted to resume its Work;
- (e) although the Township agrees to assist the Company as best as it is able with respect to identifying the approximate location of existing municipal infrastructure during the Work,

the Company acknowledges that the Township will in no way be responsible or liable for locates in the Service Corridor. For further clarification, while the Township's as-recorded drawings will be made available during the Work at a cost per the council approved fees and charges bylaw, the Township will not be responsible for locates or any information or accuracy of any information supplied by the Township so to assist the Company with identifying the approximate location of existing municipal infrastructure in the Service Corridor;

- (f) in the course of constructing, maintaining and repairing the Equipment, the Company shall take all reasonable steps that a prudent Company similarly situated would take to protect all equipment installed by others in the Service Corridor;
- (g) the Company is responsible for the costs of any remedial work required to rehabilitate any trees damaged during the performance of any Work permitted by this Agreement or, in the event any trees suffer irreparable damage the Company shall compensate the Township for the value of the trees as determined by the Township's Urban Forestry Manager or approved designate. In the event that a third party expert is required to determine the value of tree damage these service cost will be borne by the Company;
- (h) 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 Equipment, including signage of the Company. In this regard, the Company will within forty-eight (48) hours' notice from the Township, or within such other time period as mutually agreeable to the parties, remove or conceal all graffiti from Equipment. In the event that the Company does not remove or conceal the graffiti in accordance with this section, the Township may take such steps as it deems reasonable and necessary to conceal the said graffiti and shall charge the cost of the concealment to the Company;
- (i) the Company is responsible to ensure that all work sites where Contractors are working on behalf of the Company, are clearly identified with placards displaying the Company name and contact phone number. The Company shall ensure that all Contractors are working in accordance with current municipal standards, as provided by the Township to the Company and Applicable Law, and will obtain any other permits as may be required from time to time;
- (j) the Company agrees that, wherever reasonably possible in the sole opinion of the Company, the Company shall use the existing Equipment occupying the Service Corridors belonging to other entities for the installation and maintenance of the Equipment so as not to further encumber the Service Corridors with additional Equipment; and
- (k) notwithstanding any provisions contained within this Agreement to the contrary, the Company is responsible for the full cost of all Work and undertaking with respect to its Equipment including the cost of such Work in accordance with sound industry practices.

#### **4.2 Worker Safety**

The Company shall, in performing any and all Work in connection with this Agreement, ensure:

- (a) that its employees, Contractors and subcontractors are Qualified;
- (b) that safe work practices are used in carrying out the Work; and
- (c) that any and all of its employees, works, agents, Contractors and subcontractors and servants shall, at all times, comply with all Applicable Laws.

#### **4.3 Conformity with Applicable Law**

The Company, in performing any and all Work in connection with this Agreement, shall ensure that all Work is in accordance with Applicable Law.

#### **4.4 Winter restrictions**

The Company acknowledges that, other than Emergency Work and/or Temporary Connections, the Township shall not issue any Right of Way Work Permit for Work to be performed between November 1 and April 1 each winter.

### **ARTICLE 5 – TEMPORARY CONNECTIONS**

#### **5.1 Temporary Connection Requirements**

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

- (a) use the least obtrusive connection possible;
- (b) cross Service Corridors with adequate vertical clearance unless otherwise consented to by the Township, which consent shall not be unreasonably withheld or delayed;
- (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 Township 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.

### **ARTICLE 6 – REPRESENTATIONS AND WARRANTIES**

#### **6.1 Representations and Warranties of the Company**

The Company represents, warrants, acknowledges and agrees as follows, and further acknowledges that, except as otherwise expressly provided herein, the Township is relying on such representations and warranties in connection with this Agreement:

- (a) the Company acknowledges that the use of a Service Corridor under this Agreement shall not create or vest in the Company any ownership or property rights in a Service Corridor and the Company shall be and remain a non-exclusive occupant of the Service Corridor;
- (b) unless requested by the Director and subject to any existing rights of the Company or consents granted to the Company by the Township the Company shall not file, register, suffer or permit to be filed or registered any instrument claiming an estate, interest, property right or lien against the Service Corridors in any real or personal property registry under or by virtue of the Company use of the Service Corridors or this Agreement;
- (c) subject to Article 6.1(b), any instrument created by or filed against the Company, claiming an estate, interest, property right or lien against the Service Corridors shall be removed from title to the Service Corridor at the request of the Director, 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 Service Corridor and be diligently pursuing the removal within the twenty (20) day period referred to above. If the Company fails to discharge or vacate any instrument claiming an estate, interest, property right or lien within 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 direct costs and expenses including solicitor's fees (on a solicitor and his/her client basis) incurred in connection therewith shall be due and payable by the Company to the Township on demand;

- (d) the Company acknowledges that the Township has made no representations or warranties as to the state of repair of the Service Corridors or the suitability of the Service Corridors for any business, activity or purpose whatsoever or the presence or absence of Hazardous Substances under the Service Corridors and the Company hereby agrees to use the Service Corridors at its own risk and on an "as is" basis. The Company further acknowledges that the Township will make no representations as to locates within the Service Corridors for the purposes of the Work;
- (e) it is a company in good standing under the applicable corporate and bankruptcy laws;
- (f) the Company acknowledges and agrees that if the Equipment is installed in the existing Equipment or support structure of other entities or of the Township, all terms and conditions of this Agreement will apply to the Equipment;
- (g) subject to the Township's applicable by-laws, policies, guidelines, standards and Right of Way Work Permit as amended, the Company shall, to the satisfaction of the Director, provide as-recorded drawings, both electronic and hard copy, to the Township sufficient to adequately establish the location and extent of the Equipment in a manner consistent with the level of detail and accuracy provided to the Township by similar utilities for similar work both during and after the Work;
- (h) Each party shall, at its sole cost and expense, provide locates (stake-outs) of its equipment located within the Service Corridor for the Work:
  - i) within two (2) hours in the event of an Emergency, using reasonable best efforts; and
  - ii) within timeframes which are mutually negotiated between the Township and the Company or the locate service provider in all other cases.

Both parties agree to provide as much advance notice as possible for all locate requests;

- (i) Each party shall provide to the other party a list of their 24 hour emergency contact personnel and shall ensure that the aforementioned list is kept current;

## **ARTICLE 7 – LETTER OF CREDIT**

### **7.1 Letter of Credit for the Work**

Where the Company fails to perform in a manner satisfactory to the Township, the Township shall notify the Company in writing of such failure to perform, including sufficient detail of the failure and the required remedy and shall specify a reasonable timeframe for the Company to remedy the failure. Should the Company fail to remedy or commence to remedy the failure to perform within

the specified timeframe to the satisfaction of the Director, the Township, notwithstanding any other remedies available to it, may:

- (a) immediately require the Company to file a Letter of Credit, or other form of security acceptable to the Township, in the amount of Ten Thousand Dollars (\$10,000.00) or as per reasonably determined by the Director of Public Works and Engineering; and
- (b) at the time of renewal, elect to renew this Agreement subject to an increase in the amount of the irrevocable Letter of Credit, said amount to be established at the sole discretion of the Township.

### **7.2 Release of Letter of Credit for the Work**

The Letter of Credit will be released to the Company by the Township only upon termination or assignment of this Agreement.

### **7.3 Reduction or Release Upon Renewal or Renegotiation**

Upon renewal or renegotiation of this Agreement, and at the sole discretion of the Director or upon completion of the Work and termination of a two year maintenance period, the Letter of Credit identified under this **Article 7** may be reduced or released.

## **ARTICLE 8 – ACCESS TO and INSTALLATION of ADDITIONAL EQUIPMENT**

### **8.1 Excess Capacity**

Pursuant to the requirements of applicable regulatory bodies, and the established business processes of the Company including any contractual agreements with any Third Parties that may be entered into or, solely at the option of the Company, not entered into, the Company shall consider all reasonable requests by Third Parties to make use of any excess capacity of the Company's Equipment.

## **ARTICLE 9 – THIRD PARTY ATTACHMENTS**

### **9.1 Third Party Attachments**

The Company shall only permit Third Party's equipment to be attached to or installed in the Company's Equipment, where the Company is placing that equipment for the Third Party within the Service Corridors and where, in the opinion of the Company, said Third Party has demonstrably complied with the Township's requirements. If the Third Party is intending to complete the work itself or with its Contractor, then the Third Party shall demonstrate to the satisfaction of the Company that it has entered into a separate Municipal Access Agreement with the Township prior to the Company's approving the attaching or installing of that Third Party equipment to or in the company's Equipment and the onus shall be on that Third Party to obtain applicable Permits to perform work within the Service Corridors.

### **9.2 Indemnity**

The Company agrees to indemnify and save harmless the Township from any claims, demands, causes of action, loss, costs, expense or damages, including any direct or indirect costs, legal fees and disbursements that the Township may suffer, incur or be liable for, resulting from the installation of any Third Party equipment by the Company, including any activities related thereto, to the extent caused by the negligence of the Company and those for whom it is responsible in law in acting for

any such Third Party, unless such Third Party equipment is governed by a Municipal Access Agreement entered into between the Third Party and the Township.

## **ARTICLE 10 – ENVIRONMENTAL LIABILITY**

### **10.1 Environmental Liability**

The Township is not responsible, either directly or indirectly for any damage to property, including any nuisance effects or injury to any Person, however caused, including death, arising from the escape, discharge, spill, or release of any Hazardous Substance resulting from the Company's use of the Service Corridor. The foregoing release shall not extend to any loss, damage, injury or death caused by the gross negligence or willful misconduct of the Township, its employees, agents, contactors or those other Persons for whom the Township is in law responsible.

The Company agrees to assume all environmental liabilities relating to its use of the Service Corridors including but not limited to any liability for clean-up of any Hazardous Substances on or under the Service Corridors which result from:

- (a) the operations of the Company in, on, under, over, above, along or across the Service Corridors; or
- (b) any Equipment brought in, on, under, above, over, along, or across the Service Corridor by the Company, its Contractors, agents or Employees or by any Person with the express or implied consent of the Company.

## **ARTICLE 11 – RELOCATION OF EQUIPMENT**

### **11.1 Relocation of Equipment**

If the Township requires that the Equipment be relocated, where, in the sole discretion of the Director there is a specific municipal need, then the Company shall, within one hundred and twenty (120) days, or such longer period of time as agreed upon by the parties having regard to the schedules of the parties and the complexity and nature of the proposed relocation, relocate such Equipment subject to the following:

- (a) the Company shall have received from the Township a written notice requesting the relocations; and
- (b) allocation of costs are to be solely responsible by **North Frontenac Telephone Corporation Limited**

### **11.2 Relocation for alternate project management styles**

The parties agree that if it is mutually acceptable, relocation of the Equipment may be completed by the Township at the Company's expense to accommodate any design/build project, or any other project management style that is beneficial for both parties wherein the Township completes the Equipment removal and/or relocation.

### **11.3 Emergency Relocation**

In an Emergency, the Township, having first attempted to contact the Company through the activation of Township's Emergency Operations Centre, may take any measures it deems necessary as allowed under Applicable Law for public health and safety with respect to the relocation of the Equipment at the Company's expense. Notwithstanding anything in this

Agreement, the Township shall not be liable for any damage of any nature caused to the Company by reason of such relocation nor shall the Township indemnify or save harmless the Company from and against any actions, causes of action, proceedings, claims or demands brought against the Company for any damage of any nature caused by reason of such relocation. The Township will make a good faith effort to avoid damage to the Equipment affected by the relocation and to assist the Company in its efforts to ensure uninterrupted service to its customers.

#### **11.4 Failure to Complete Relocation**

If the Company fails to complete the relocation of the Equipment in accordance with Article 11.1 to the satisfaction of the Director, having consideration for the complexity and nature of the Work required to complete the relocation and to the minimizing of the potential for service losses or interruptions that may affect the Company's customers, the Township may, but is not obligated to, at its option, complete such relocation and the Company shall pay the actual costs of such relocation or adjustment to the Township forthwith plus any administration costs and, in default of payment thereof, the amount of such cost with interest at the rate of two percent (2%) per annum above the Prime Rate shall be due and payable by the Company upon receipt by the Company of an invoice setting out such cost and interest.

#### **11.5 Alternate Locations**

The Township will make a good faith effort to provide and approve alternative suggestions, wherever possible, for re-routing the Equipment within the Service Corridor affected by the relocation to assist the Company in its efforts to facilitate the provisions of services to its customers. The Township will bear no responsibility for the suitability of the alternative suggestions and, as per **Section 6.1(d)**, the Service Corridors will be used in an "as is" basis. The Company is solely responsible to confirm the suitability of the alternative suggestions.

#### **11.6 Exceptions**

Notwithstanding the provisions of **Section 11.1**, the following nine (9) exceptions may apply:

- (a) the provisions of **Section 11.1** do not apply to Relocation of Equipment where that Equipment is providing a temporary connection, as per Article 5;
- (b) for greater certainty, the provisions of **Section 11.1** do not apply to Equipment which is attached to facilities of a third party unless the Company has applied for and obtained a Right of Way Work Permit for the Equipment;
- (c) in the event the Township requires the Company to relocate its Equipment primarily for beautification, aesthetic or other similar purposes, the Township shall pay 100% of the cost of such relocation, minus depreciation, salvage and betterment of the Company's costs related to the relocation of the Company's Equipment;
- (d) special circumstances may arise with respect to a specific relocation whereby the parties may mutually agree to negotiate alternative cost sharing arrangements. Such alternative arrangements shall be agreed upon in writing by both parties prior to approval of a new location;
- (e) the Company will be totally responsible for the cost of relocation if it installs Equipment despite the Township's written notification to the Company, at the time of the Company's application, that because of projects scheduled within the Township's five (5) year plan the Company will be required to relocate its Equipment within the three (3) years referred to above;

- (f) subject to **Section 11.6(d)**, the Township shall be under no financial responsibility for costs incurred by the Company to obtain a Private Easement, resulting from relocations of Equipment to areas outside of the Service Corridor;
- (g) irrespective of when the Equipment was installed by the Company, the Company shall be solely responsible for any costs and expenses associated with the relocation of its Equipment where such relocation is required solely by the Company;
- (h) in no event shall the Township be responsible in any way for costs incurred for relocating Equipment for which the Equipment is not found to be installed in the location approved by the Township, excepting minor variations from the approved location of no more than one half (0.5) metres horizontally or vertically which the Director, in his sole discretion, has determined to be of no consequence. Where records are non-existent or right of way conditions may have changed, both agree to act reasonable in determining relocation compensation; and
- (i) for Equipment relocation requests from parties other than the Township or those not required for municipal purposes, such relocations shall be at the discretion of the Company acting reasonably and all of the costs of such relocations will be charged directly to the party requesting such relocation.

## **ARTICLE 12 – LIABILITY AND INDEMNIFICATION**

### **12.1 Liability and Indemnification**

Subject to the provisions of this Agreement:

- (a) the Township is not responsible, either directly or indirectly, for any damage to the Equipment that may occur as a result of the Work by the Company except to the extent caused by the negligence or willful misconduct of the Township, its Employees or those Persons over whom the Township is responsible in law. The Township shall in no event be liable, either directly or indirectly, to the Company for any losses, claims, charges, damages and expenses whatsoever suffered by the Company, in connection with this Agreement, on account of any actions or omissions of the Township, its Employees or those other Persons for whom the Township is in law responsible, save and except those damages to the extent caused or contributed to a breach of the terms of this Agreement or by the negligence or willful misconduct of the Township, its Employees or those other Persons for whom the Township is in law responsible in the performance of this Agreement;
- (b) 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 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, other persons for whom the Company is responsible in law for, licensees and invitees of the Company, caused by, resulting from or attributable to a breach of the terms of this Agreement, or the negligent or willful misconduct of the Township or any of its Employees or those other persons for whom the Township is in law responsible in the performance of this Agreement. The Township will, upon demand and at its 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 Company on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against the Company for any and all legal expenses in connection therewith; and

- (c) 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 all losses, costs, damages or expenses suffered or incurred by the Township, by reason of any damage to property, including property of the Township, or injury, including injury resulting in death to persons including the Employees, other persons for whom the Township is responsible in law for, licensees and invitees of the Township, caused by, resulting from or attributable to a breach of the terms of this Agreements, or the negligent or willful misconduct of the Company or any of its Employees or those other persons for whom the Company is in law responsible in the performance of this Agreement. The Company will, upon demand 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 judgment or decree which may be rendered against the Township in any such suit, action, or other legal proceeding, and will reimburse the Township for any and all legal expenses incurred in connection therewith.

## **12.2 Indirect or Consequential Losses**

Subject to **Section 9.2** of this Agreement, the Township shall not be liable to the other party or any third party in any way for indirect or consequential losses or damages whatsoever including damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement.

## **12.3 Damage or Destruction to Equipment**

Notwithstanding anything in this Agreement, under no circumstances shall the Township be responsible for or indemnify or save harmless the Company for damage or destruction to Equipment where:

- (a) the Equipment was installed in a location and manner which is inconsistent with the terms of the approval granted by the Township for such Equipment;
- (b) the Company provided an incorrect locate; or
- (c) the Equipment is not operated and maintained in compliance with the provisions of this Agreement.

## **12.4 Injury to Third Persons or Damage Caused by Other Users**

Notwithstanding anything contained in this Agreement, under no circumstances shall the Township be responsible for or indemnify or save harmless the Company for injury to third Persons or for damage or destruction of Equipment arising from or attributable to the installation of equipment in the Service Corridors by other users.

# **ARTICLE 13 – FEES AND RECOVERABLE COSTS**

## **13.1 Fees**

In addition to the retainer as payment for work of the Township pursuant to this Agreement, the Company covenants and agrees to pay to the Township upon execution of this Agreement, a fee of Ten Thousand Dollars (\$10,000.00) as a general fee for administrative and other work performed by the Township prior to the execution of this Agreement and throughout the first year of the Term. Annually thereafter, on the anniversary date of the execution of this Agreement, the Company covenants and agrees to pay to the Township an annual administrative fee in the amount of Four Thousand Three Hundred and Thirty Dollars (\$4,330.00) plus applicable Taxes.

### **13.2 Application Fees, Permit Fees, Charges, and Taxes**

The Company covenants and agrees to pay to the Township all applicable amounts as provided in this Agreement and as per the Fees and Charges Bylaw and under **Schedule B** including but not limited to; application fees, permit fees, pavement degradation, charges, recoverable costs, and realty taxes. In the event that the Service Corridors are assessed in the future as a result of the Company's use of the Service Corridors, the Company agrees to indemnify the Township for any taxes due and payable by the Township as a result of this assessment.

### **13.3 Lost Productivity Costs**

The Company also covenants and agrees to pay to the Township costs to recover significant additional costs incurred by the Township attributable to the presence of the Equipment located within the Service Corridors. These costs will be charged by the Township based on actual costs incurred by the Township and shall be charged to the Company within forty-five (45) days of the completion of the Township's work. 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 including:

- (a) the location of the Equipment;
- (b) a description of the Township's work;
- (c) an explanation of the nature of the interference caused by the Company's Equipment; and
- (d) an itemized breakdown of the Township's costs including labour, supplies, equipment and applicable loading factors and evidence of the Company's pro-rated share of such costs as allocated amongst the various utilities located in the Service Corridor as provided to the Company.

### **13.4 Interest Rate**

If applicable, as acknowledging that payment for the Work will be made unilaterally by the Township from the retainer deposit as noted in **Sections 13.1 and 13.2** above, the Company will pay simple interest at the Prime Rate plus two percent (2%) per annum on all amounts required to be paid under this Agreement, from the due date until payment in full; both before and after judgment.

## **ARTICLE 14 – INSURANCE**

### **14.1 Insurance to be maintained general**

Company or the Company's Contractors shall maintain general liability insurance or alternatively provide reasonable evidence of self-insurance in an amount of at least Five Million (\$5,000,000.00) Dollars per occurrence from claims for physical damage to tangible property and bodily injury including death which may arise from the other party's operations under this Agreement, including the use or maintenance of the Equipment on or in the Service Corridors or any act or omission of the Company or the Company's Contractors, agents or employees while engaged in work operations within the Service Corridors.

### **14.2 Insurance to be Maintained by Company**

During the term of this Agreement, the Company is required to maintain in full force and effect and at its own expense, the following insurance coverage or its equivalent satisfactory to the Director:

- (a) general liability insurance including bodily injury and death, personal injury, physical damage to tangible property including loss of use thereof, contractual liability, non-owned automobile liability, owners' and contractors' protective, products and completed operations and employers' liability, with coverage including the activities and operations conducted by the Company, and its Contractors and others for whom the Company is responsible for in law. These policies will all:
  - (i) be written on an occurrence basis with coverage for any one occurrence or claim of at least Five Million Dollars (\$5,000,000.00) per occurrence, and in the aggregate annually only for products and completed operations;
  - (ii) name the Township as additional insured limited to claims arising from the Company's operations under this Agreement; and
  - (iii) contain a severability of interests and cross liability insurance clauses. The Company is responsible for payment of any loss or losses within the deductible;
- (b) automobile liability coverage in an amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence, and in the aggregate amount of at least One Hundred Million Dollars (\$100,000,000.00);
- (c) the Company shall maintain Environmental Impairment Liability Insurance in an amount of not less than Five Million Dollars (\$5,000,000.00) per claim or occurrence and in the aggregate annually;
- (d) all policies of insurance shall:
  - (i) be written with an insurer licensed to do business in Ontario; and
  - (ii) be non-contributing with, and will apply only as primary and not excess to any other insurance available to the Township to the extent of its rights as an additional insured; and
- (e) prior to execution of this Agreement and annually at expiration date of the insurance policies, the Company shall provide the Director a Certificate of Insurance satisfactory to the Township evidencing same, and recording that the Township shall be notified in writing not less than thirty (30) days before any material change, cancellation, lapse or termination of the policies to the detriment of the Township.

## **ARTICLE 15 – LEGISLATIVE CHANGE**

### **15.1 Legislative Change**

If at any time subsequent to the parties entering into this Agreement:

- (a) the provincial or federal government or a regulatory authority, acting within its jurisdiction, enacts, repeals, or amends any legislation or regulation, or orders, directs or mandates anything which pertains to the Company's use of the Service Corridor or to the subject matter of this Agreement; or
- (b) there is rendered any decision of a court of final appeal or tribunal which pertains to the Company's use of the Service Corridor or 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 (the "Notice") from the notifying party and any newly permitted terms and conditions pursuant to such new or amended agreement will take effect from the date upon which the Notice expires.

## **15.2 Failure to Reach Agreement**

If the parties are unable to renegotiate the terms and conditions of this Agreement under **Section 15.1** then the unresolved matters may, with thirty (30) days prior written notice from the requesting party, be referred by the requesting party to the CRTC for resolution or be referred by the requesting party to arbitration for resolution in accordance with **Article 16** of this Agreement which arbitration will be governed by Applicable Laws. Subject to the right to refer the matter to the CRTC or to request arbitration, if an amendment or new agreement is not reached within ninety (90) days from the date on which Notice was received, either party may terminate this Agreement without further notice and both parties shall fulfill their respective obligations thereafter in accordance with this Agreement.

## **ARTICLE 16 – ARBITRATION**

### **16.1 Arbitration**

In the event of any dispute or disagreement between the parties hereto as to the terms and conditions of any renewal Agreement and any successor Agreement or as to the meaning or interpretation of anything contained in this Agreement or as to the performance or non-performance hereof or as to the respective rights and obligations of the parties, the parties agree to negotiate in good faith and, failing which, refer such dispute or disagreement to the CRTC in all cases in which it has jurisdiction to hear the matter, or otherwise refer such dispute or disagreement to non-binding arbitration under the provisions of **Section 16.2**.

### **16.2 Procedure**

Subject to **Article 16**, whenever the *Municipal Arbitrations Act*, R.S.O., 1990, c. M. 48, shall extend and apply to the Township, any reference to arbitration shall be to the Official Arbitrator appointed under the Act and shall be governed by the provisions of the Act. At any other time, the procedure upon arbitration pursuant to the provisions of **Section 16.1** shall be as follows:

- (a) within twenty (20) days after the written request of either of the parties hereto for arbitration, each of them shall appoint one (1) arbitrator and the two (2) so appointed shall, within twenty (20) days after the expiration of the twenty (20) day period, select a third. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two (2) arbitrators so appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty (20) day period mentioned above, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitration Act, 1991* as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

## **ARTICLE 17 – TRANSFERS/GENERAL CLAUSES**

### **17.1 Transfer or Assignment**

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

- (a) by the Township or Company in its entirety, to a single sublicense, grantee, transferee or assignee with the other's prior written consent, which consent shall not be unreasonably withheld. However, no approval will be required for an assignment, transfer or sublet to an Affiliate or to a purchaser of all of the Company's assets, although the Company shall notify the Township of such sublicense, grant, assignment, transfer or sublet;
- (b) by the Company in part during the Term or Renewal Term without the Township's prior consent in writing provided:
  - (i) the Company ensures that the sublicensee, grantee, transferee or assignee files an irrevocable Letter of Credit in the amount of Ten Thousand (\$10,000.00) Dollars with the Township effective the date of the sublicense, grant, transfer or assignment pursuant to **Article 7**;
  - (ii) the Company provides evidence of the sublicensee's, grantee's, transferee's, or assignee's insurability to the Township in accordance with the requirements of **Article 14**;
  - (iii) the Company, where a telecommunications carrier, provides evidence that the sublicense, grantee, transferee, or assignee is a Canadian carrier as defined in section 2 of the *Telecommunications Act*, S.C. 1993, c.38, as amended, or is a distribution undertaking as defined in subsection 2(1) of the *Broadcasting Act*, S.C. 1991, c. 11, as amended and is regulated by the CRTC to operate within the boundaries of the Township; and
  - (iv) the sublicense, grantee, transferee, or assignee enters into a written agreement with the Township in which it agrees to assume all of the obligations and liabilities of the Company under this Agreement;
- (c) by the Company in part or in its entirety during the Term without the Township's prior written consent to an entity that is controlled, directly or indirectly, by the Company or its parent corporation or to an entity that controls the Company, although the Company shall notify the Township of such event as soon as reasonably possible after it occurs.

### **17.2 Joint and Several Liability**

The Company shall remain jointly and severally liable with the assignee to the Township for all Equipment installed prior to the date of assignment until the assignee has entered into an agreement with the Township which assumes this liability.

### **17.3 Enurement**

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and their respective successors and permitted assigns.

### **17.4 Pledge of License as Security**

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

## **17.5 Jurisdiction**

The Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

## **ARTICLE 18 – TERMINATION**

### **18.1 Default by Company**

If the Company defaults in any of its material obligations under this Agreement and fails to correct the default within thirty (30) days of written notice from the Township or fails to commence correcting the default within thirty (30) days of written notice from the Township and fails to complete the correction within a reasonable time after the written notice is received, the Township may, at its option, after written notice to the Company:

- (a) terminate this Agreement in the event of a default identified in **Section 18.3**;
- (b) perform the obligation at the Company's expense;
- (c) draw on the irrevocable Letter of Credit as required; and,
- (d) take any other action as required.

### **18.2 Events Constituting Default by Company**

The following events shall constitute an event of default on the part of the Company permitting the termination of this Agreement:

- (a) If the Company defaults in the payment of any material amounts payable pursuant to this Agreement; or
- (b) if there is filed by or against the Company in any court an uncontested petition in bankruptcy or insolvency or for reorganization on account of bankruptcy or insolvency or for the appointment of a liquidator of the Company's property, or if the Company makes an assignment or petitions for or enters into an arrangement for the benefit of creditors and any such petition remains undismissed after thirty (30) days or stayed on appeal.

### **18.3 Continuing Obligations**

In the event of termination of this Agreement by expiry of its Term, Renewal Term, or otherwise;

- (a) the Company and/or its successors and assignees shall continue to be liable to the Township for all payments due and obligations under this Agreement;
- (b) the Company's installed Equipment shall remain the property of the Company; and
- (c) all the unfulfilled covenants, indemnities and obligations of the Company and the Township hereunder shall survive.

### **18.4 Abandonment of Equipment**

Whenever the Company ceases to use and will not in future use ("**Abandons**") any portion of the Equipment in, on, under, over, along or across a Service Corridor, it shall:

- (a) within thirty (30) days of such abandonment, file with the Township a statement in writing giving in detail the location of the Equipment that has been Abandoned;
- (b) if requested by the Township, remove said Equipment at the Company's sole cost and expense;
- (c) subject to **Section 18.4(d)** below, make safe any underground vaults, manholes and any other underground structures that are not occupied or used by a Third Party; and
- (d) forthwith repair any damage resulting from the removal and restore the Service Corridors to the condition in which they existed prior to the removal. If the Company fails to remove its abandoned Equipment and restore the Service Corridors, the Township may complete the removal and restoration and charge all such costs to the Company.

## **ARTICLE 19 – NOTICE**

### **19.1 Notice**

Any notices under this Agreement given to the parties hereunder shall be conclusively deemed to 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 in the case of the Township to:

The Corporation of the Township of Wilmot  
60 Snyder's Road West  
Baden, Ontario  
N3A 1A1

Or in the case of the Company to:

North Frontenac Telephone Corporation Limited  
504 Eglinton Ave. W.  
Toronto, Ontario  
M9C 5K6  
Email: groughley@nftctelecom.com

Any notice made by mail will be deemed to have been given or served on the fifth (5<sup>th</sup>) day after it is deposited in any post office in Canada. Any notice given by personal delivery, or email will be deemed to have been given on the first (1<sup>st</sup>) 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.

**IN WITNESS WHEREOF** the parties hereto have affixed their corporate seal under the hand of their proper officers or set their hand and seal.

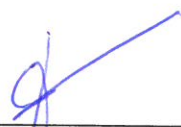
**THE CORPORATION OF THE  
TOWNSHIP OF WILMOT**

**North Frontenac Telephone  
Corporation Limited**

Corporation Per:

Per:

\_\_\_\_\_  
Dawn Mittelholtz, Clerk

  
\_\_\_\_\_  
Name: Ray Stanton  
Position: President

\_\_\_\_\_  
Les Armstrong, Mayor

\_\_\_\_\_  
Name:

*We have authority to bind the Township*

*I/We have authority to bind the Company*

**FORM "1"**

NOTE: Township policy requires that the Letter of Credit be issued by any one of the following financial institutions:

Bank of Montreal,  
Bank of Nova Scotia,  
Canadian Imperial Bank of Commerce,  
Royal Bank of Canada,  
Toronto-Dominion Bank or,  
Meridian Credit Union

Your Name & Address

Date of Issue:  
Irrevocable Standby Letter of Credit

Reference No:

APPLICANT

BENEFICIARY:  
THE CORPORATION OF THE TOWNSHIP OF  
WILMOT  
60 Snyder's Road W  
BADEN, Ontario N3A 1A1

AMOUNT:  
MAXIMUM in Canadian Dollars:

We hereby authorize you to draw on (Bank & Address) for Account of (Applicant), up to an aggregate amount of (amount) (CAD) available of your drafts at sight, indicating L/C number and date, accompanied by:

Your signed statement certifying that the amount drawn under this Credit is due and payable to you by (applicant), that you have requested payment of the said amount from (applicant) and have not received payment.

The original of this Standby Letter of Credit

It is a condition of this Standby Letter of Credit that it is deemed to be automatically extended without amendment for one year from the date of expiry hereof or any future expiration date, unless at least thirty (30) days prior to any expiration date, we notify you in writing by registered mail or courier that we elect not to consider this Standby Letter of Credit extended for any such additional period. Upon receipt by you of such notice, you may draw hereunder by means of your demand stating that you are claiming under this Standby Letter of Credit because we have elected not extend it.

We hereby engage with you that drafts drawn in conformity with the terms of this Standby Letter of Credit will be duly honoured if presented to us on or before the expiry date.

This Standby Letter of Credit is subject to the version of the ICC Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Paris, France, which is in effect on the date of issue.

# Schedule A (Map of area to be serviced by NFTC)



**Legend**  
— WAT\_15\_NFTC Road Coverage  
— Wilmot Boundary



Province of Ontario, Esri Canada, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc.  
METI/NASA/USGS, EPA, NPS, USDA, NRCan, Parks Canada  
Wilmot Centre

## **SCHEDULE 'B'**

The Company shall pay the Township the following fees for the Township's costs attributable to the Work:

- The Township's labour and machine time rates plus fifteen percent (15%); and
- Subcontractor invoices related to the Recoverable Costs as described in Section 13.2.

The Township's labour, equipment rates are as per the Township's fees and charges bylaw