

**TELECOMMUNICATIONS EQUIPMENT CONSENT and ROAD  
USER AGREEMENT**

This Agreement made effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”).

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

**CORPORATION OF THE MUNICIPALITY OF WEST ELGIN**

(hereafter the "**Municipality**")

**OF THE FIRST PART**

- and -

**XXXXX**

(hereafter the "**Company**")

**OF THE SECOND PART**

**WHEREAS:**

- A. The Company is a “Canadian carrier” as defined in the *Telecommunications Act*, S.C. 1993, c.38 (“**Telecom Act**”) or “distribution undertaking” as defined in the *Broadcasting Act*, S.C. 1991, c.11 (collectively, a “**Carrier**”) and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”);
- B. In order to operate as a Carrier, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along (“**Within**”) the highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the Municipality (collectively, the “**Rights-of-Way**” or “**ROWS**”);
- C. Pursuant to section 43 of the *Telecom Act*, the Company requires the Municipality’s consent to construct its Equipment Within the ROWs and the Municipality is willing to grant the Company a non-exclusive right to construct within the ROWs provided that it shall not unduly interfere with the public use and enjoyment of the ROW or other public place, including any rights or privileges previously conferred or conferred after the Effective date by the Municipality on Third Parties to use or access the ROWs;

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

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions.** In this Agreement, the following words and phrases shall have the following meanings:
  - (a) “**Affiliate**” means “affiliate” as defined in the *Canada Business Corporations Act*;
  - (b) “**Anti-Bribery Law**” means any anti-bribery law or international convention, as may apply now or in the future, including the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials;
  - (c) “**Manager of Operations & Community Services**” means the Municipality’s reviewing authority or the individual designated by him or her;

- (d) **“CRTC”** means the Canadian Radio-television and Telecommunications Commission.
- (e) **“Emergency”** means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties;
- (f) **“Equipment”** means the transmission and distribution facilities owned by the Company and/or its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and equipment located Within the ROWs;
- (g) **“Hazardous Substance”** means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law (including the common law);
- (h) **“Municipal Consent”** or **“MC”** means the written consent of the Municipality, with or without conditions, to allow the Company to perform Work Within the ROWs that requires the excavation or breaking up of the ROWs (as more particularly described in Schedule “B” to this Agreement);
- (i) **“Non-Compliant Equipment”** means:
  - (i) For all Equipment installed on or after the Effective Date, Equipment that is not compliant with the alignment approved by the Municipality because the placement of the Equipment is greater than a distance of 1m horizontally or vertically from the location approved by the Municipality, and, the placement of such Equipment has a material impact on the Municipality’s ability to manage or use its ROWs; or,
  - (ii) Equipment installed prior to the Effective Date of this Agreement is assumed to be compliant. However, Equipment installed prior to the Effective Date may be deemed Non-Compliant by the Municipality if unapproved deviations from the approved alignment have a material impact on the Municipality’s ability to manage or use its ROWs; or,
  - (iii) Equipment that is not compliant with other requirements of this Agreement.
- (j) **“Permit”** means a Municipal Consent or a Road Permit or both;
- (k) **“Relocation Notice”** means a written notice given by the Municipality to the Company identifying the specific location and reason for the relocation and directing the Company to relocate the Equipment designated in the notice to another reasonable location in the ROW(s).
- (l) **“Road Permit”** means a Permit issued by the Municipality that, generally, is required to authorize the Company to conduct Work that includes any activity that involves a deployment of its workforce, vehicles and other equipment in the ROWs which may interfere with the public use and enjoyment of the ROW for the duration of the Work when performing the Work.(as more particularly described in Schedule “B” to this Agreement);
- (m) **“Service Drop”** means a cable that, by its design, capacity and relationship to other fibre optic cables of the Company can be reasonably considered to be for the sole purpose of connecting backbone of the Equipment to not more than one individual customer or building point of presence;
- (n) **“Term”** means subject to the renewal options described in subparagraph 9.1(a) and termination described in subparagraphs 9.2, 9.3 and 9.4, the Term of this Agreement as commencing on, \_\_\_\_ day of \_\_\_, 2022 and expiring and terminating on, \_\_\_\_ day of \_\_\_, 2027.
- (o) **“Third Party”** means any person that is not a party to this Agreement nor an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with the Company;
- (p) **“Work”** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or

other alteration of the Equipment performed by the Company Within the ROWs, including the excavation, repair and restoration of the ROWs.

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

- 1.3 **Recitals, Schedules and Incorporated Documents.** The beginning part of this Agreement entitled “Recitals”, *Schedule “A”* as identified below, and the By-laws and Municipal Policies referred to in this Agreement are hereby incorporated by reference into this Agreement and form part thereof:

**Schedule “A” – Permit Fees**

**Schedule “B” – Permits required by the Municipality**

## 2. USE OF ROWs

- 2.1 **Consent to use ROWs.** The Municipality hereby consents to the Company’s use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable laws or other municipal by-laws, rules, policies, standards and guidelines (“**Municipal Guidelines**”) pertaining to the Equipment and the use of the ROWs; to the extent, however, that any municipal laws and the Municipal Guidelines are not inconsistent or in conflict with this Agreement or with applicable federal laws.

- 2.2 **Restrictions on use.** The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with municipal operations, equipment or installations and the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred or conferred after the Effective Date by the Municipality on Third Parties to use or access the ROWs

- 2.3 **Equipment acquired by the Company.** The Parties agree that, where the Company acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located Within the ROWs (the “**New Equipment**”), then, effective the day of the acquisition of the New Equipment by the Company:

- (a) the New Equipment shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and
- (b) where that Third Party is a Party to a valid and existing Road User Agreement with the Municipality (the “**RUA**”) and the Company, directly or indirectly, acquires the rights and obligations under the said RUA, the RUA shall be terminated.

- 2.4 **No ownership rights.** The Parties acknowledge and agree that:

- (a) the use of the ROWs under this Agreement shall not create nor vest in the Company any ownership or property rights in the ROWs; and
- (b) the placement of the Equipment Within the ROWs shall not create or vest in the Municipality any ownership or property rights to the Equipment.

- 2.5 **Condition of ROWs.** The Municipality makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the ROWs on an “as is” basis.

- 2.6 **Non-Compliant Equipment.** The Municipality bears no liability or responsibility for relocation costs of all of the following:

- (a) Non-Compliant Equipment;
- (b) Third Party telecommunications equipment attached to the Company’s Non-Compliant Equipment; and
- (c) any damages, liabilities, re-design costs and associated delay costs incurred by

other occupiers of a Municipality ROW resulting from the Company's Non-Compliant Equipment.

If the Municipality identifies the existence of Non-Compliant Equipment, the Municipality will issue a Notice of Non-Compliance to the Company. If the Municipality requires the Non-Compliant Equipment to be relocated, the Municipality will send a Relocation Notice to the Company requesting relocation of the Non-Compliant Equipment and the Company must relocate the Equipment as follows:

- (i) above ground Equipment must be relocated within 90 days of the Company receiving a Relocation Notice from the Municipality;
- (ii) below ground Equipment must be relocated within 180 days of the Company receiving a Relocation Notice from the Municipality, such Relocation Notice to be issued by the Municipality only in the event the Municipality approves plans to re-open the site where the Non-Compliant Equipment is located;

Prior to removal or relocation of Non-Compliant Equipment, the Company must obtain a new alignment approval from the Municipality.

If the Company fails to remove or relocate Non-Compliant Equipment as a result of receiving a Relocation Notice from the Municipality, the Municipality may, in its sole and unfettered discretion, complete the removal or relocation and any associated restoration and the Company must pay to the Municipality all reasonable and verifiable costs related to the relocation and restoration.

### 3. APPLICABLE PERMITS

#### 3.1 Permits.

- (a) Subject to Section 3.2 and 3.4, the Company shall not occupy, excavate, break up, disturb, or move oversized or overweight vehicles within a Municipality ROW, where a Permit is required in accordance with this Agreement and Schedule "B", without first obtaining such Permit.
- (b) For each Permit required above, where applicable, the Company shall submit to the Municipality a completed application, in a form specified by the Municipality and including all Fees in effect throughout the Term as set out in *Schedule "A"* to this Agreement as well as any Security required under this Agreement.

#### 3.2 **No Permits for routine Work.** Notwithstanding Section 3.1, the Company may, with advance notice as required by the Municipality, without first obtaining a Permit:

- (a) utilize existing ducts or similar structures of the Equipment with at least twenty-four (24) hours advance notice to the Municipality;
- (b) carry out routine maintenance and field testing to its Equipment; and
- (c) install and repair Service Drops;

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

#### 3.3 **Expiry of Permit.** In the event that the Company has not commenced construction of the approved Work associated with a particular Permit within one (1) year of the date of issuance of the Permit and has not sought and received an extension to the Permit from the Municipality, which extension shall not be unreasonably withheld, the Permit shall be null and void. In such circumstances, any fees paid by the Company in respect of the expired Permit shall not be refunded and the Company must obtain a new Permit for the Work.

#### 3.4 **Submission of plans.** Unless otherwise agreed to by the Municipality, the Company shall, prior to undertaking any Work that requires a Municipal Consent, submit the following to the Municipality Engineer:

- (a) construction plans of the proposed Work, showing the locations of the proposed and existing Equipment and other facilities, and specifying the boundaries of the area within the Municipality within which the Work is proposed to take place;
  - (b) Traffic control plans for the protection of the workers, public and traveling public including detours as required to minimize traffic disruption; and
  - (c) all other relevant plans, drawings and other information as may be normally required by the Municipality Engineer from time to time for the purposes of issuing Permits.
- 3.5 **Refusal to issue Permits.** The Municipality may refuse to issue a Permit in accordance with Section 3.1 for any *bona fide* municipal purpose, including but not limited to reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing by the Municipality, having regard to the public interest in having access to communications, including 911 access services. The Municipality shall make good faith effort to provide consent to alternative suggestions, wherever possible, for routing the Equipment Within the ROW to assist the Company in its efforts to facilitate the installation of its Equipment.
- 3.6 **Restoration of the Company's service during Emergencies.** Notwithstanding Section 3.1, in the event of an Emergency, the Company shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with Section 3.1; provided that such Work does not unduly disrupt any Municipal service or activity and provided that the Company does comply with Section 3.1 within five (5) business days of completing the Work.
- 3.7 **Temporary changes by Municipality.** Notwithstanding any other provision in this Agreement, the Municipality reserves the right to set, adjust or change the approved schedule of Work by the Company for the purpose of coordinating or managing any major events or activities, including the restriction of any Work during those restricted time periods; provided however, that any such adjustment or change shall be conducted so as minimize interruption to the Company's operations. The Municipality shall use its commercially reasonable efforts to provide to the Company forty-eight (48) hours advance written notice of any change to the approved schedule of Work, except that, in the case of any Emergency, the Municipality shall provide such advance notice as is reasonably possible in the circumstances.
- 3.8 **Granting of Permit Deemed as Municipal Consent Required Pursuant to the Telecommunications Act (Canada).** The Municipality agrees and acknowledges that, subject to satisfaction and performance of all terms and conditions both hereto and provided herein and the granting and issuance of any Roads Permit authorizing installation of Equipment as contemplated by this Agreement and in relation to a location specified therein shall be considered and deemed to represent municipal consent to such installation and use thereof as is required pursuant to applicable laws of the Dominion of Canada, including but not limited to the Telecommunications Act, S.C. 1993, c. 38, as amended.

#### 4. MANNER OF WORK

- 4.1 **Compliance with Applicable Laws, etc.** All Work shall be conducted and completed to the satisfaction of the Municipality and in accordance with:
- (a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety);
  - (b) the Municipal Guidelines;
  - (c) this Agreement; and
  - (d) the applicable Permits issued under Section 3.1.

provided that the applicable laws, Municipal Guidelines, this Agreement, and applicable

Permits do not conflict with federal law.

- 4.2 **Underground Equipment.** The Company shall place those portions of the Equipment that cross beneath streets or existing buried utilities in ducts, carrier pipes or encased in concrete, or as otherwise specified by the Municipality. Service drops are not required to be in ducts.
- 4.3 **Installation.** The Company shall utilize construction methods that minimize the impact on the ROWs, including but not limited to trenchless installation technology and single trench installation methods.
- 4.4 **Stoppage of Work.** The Municipality may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health and safety, special events or any circumstances beyond its control. In such circumstances, the Municipality shall provide the Company with a verbal order and reasons to stop the Work and the Company shall cease the Work immediately. Within two (2) business days of the verbal order, the Municipality shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise the Company immediately that it can commence the Work.
- 4.5 **Coordination of Work.** To minimize the necessity for road cuts, construction and the placement of new Equipment Within the ROW, the Company shall, where commercially reasonable and technically practicable, coordinate its work with other existing and new occupants of the ROW.
- 4.6 **Identification of contractors.** The Company shall ensure that all of its contractors have proper identification visible on the Work site displaying the name of the Company for which they work.
- 4.7 **Emergency contact personnel.** The Company and the Municipality shall provide to each other a list of twenty-four (24) hour emergency contact personnel available at all times and shall ensure that the list is kept current.
- 4.8 **Emergency work by Municipality.** In the event of an Emergency, the Municipality may take such measures it deems necessary to re-establish a safe environment, and the Company shall pay the Municipality's reasonable and verifiable costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.
- 4.9 **"As-built" drawings.** The Company shall, no later than ninety (90) days after completion of any Work, provide the Municipality Engineer with accurate "as-built" drawings, prepared in accordance with such standards as may be required by the Municipality Engineer, sufficient, for planning purposes, to accurately establish the location of the Equipment installed Within the ROWs. As-built drawings to be provided in electronic format suitable to be incorporated into the Municipality's GIS mapping. As-built information is provided a reference only. The Municipality shall direct all inquiries regarding the location of the Equipment to the Company. Access to Company As-Built records are for use by the Municipality only and shall not be distributed or disclosed to other parties without prior written consent of the Company. If the Municipality has not received the As-built drawings from the Company within 90 calendar days following the completion of the Work, the Equipment will be considered to be Non-Compliant Equipment.
- 4.10 **Agents and Sub-contractors.** Each Party agrees to work with the other Party directly to resolve any issues arising from any the acts, omissions or performance of its agents and sub-contractors.

## 5. REMEDIAL WORK

- 5.1 **General.** Following the completion of any Work, the Company shall leave the ROW in a neat, clean, and safe condition and free from nuisance, all to the satisfaction of the Municipality. Subject to Section 5.5, where the Company is required to break or disturb the surface of a ROW to perform its Work, it shall repair and restore the disturbed surface of the ROW to the same or better condition it was in before the Work was undertaken, all

in accordance with the Municipal Guidelines and to the satisfaction of the Municipality.

5.2 **Permanent Road Restoration.** If the Company has excavated, broken up or otherwise disturbed the surface of a ROW, the Company shall restore the ROW which the Company has excavated, broken up or otherwise disturbed to a similar state that it was in prior to the commencement of the Work.

5.3 **Temporary repair.** Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete a final repair to the ROW within the expected period of time, the Company may complete a temporary repair to the ROW; provided that, subject to Section 5.5, the Company replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by the Company shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the Municipality.

If a temporary repair gives rise to an unsafe condition, then this shall be deemed to constitute an Emergency and the provisions of Section 4.8 shall apply.

5.4 **Warranty of repairs.** The Company warrants its temporary repair, to the satisfaction of the Municipality until such time as the final repair is completed by the Company, or, where the Municipality is performing the final repair, for a period of one (1) years or until such time as the final repair is completed by the Municipality, whichever is earlier. The Company shall warrant its final repairs for a period of two (2) years from the date of their completion

5.5 **Repairs completed by Municipality.** Where:

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

then the Municipality may effect such work necessary to perform the repair and the Company shall pay the Municipality's reasonable and verifiable direct costs of performing the repair.

## 6. LOCATING FACILITIES IN ROWs

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

- (a) in the event of an Emergency, within two hours of receiving the request or as soon as practicably possible, following which the requesting Party will ensure that it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified; and
- (b) in all other circumstances, within a time reasonably agreed upon by the Parties.

6.2. **Provision of Mark-ups.** The Parties agree to respond within fifteen (15) days to any request from the other Party for a mark-up of municipal infrastructure or Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment, as the case may be, located within the portion of the ROWs shown on the plans (the "**Mark-ups**"), and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.

6.3. **Inaccurate Locates.** Where the Company’s Locates are found to be in error, where the actual location of the Equipment is found to be beyond 1 meter horizontally on either side of the Locates, and, as a result, the Municipality is unable to install its facilities Within the affected ROWs in the manner it expected based on the Locates provided by the Company (the “Error”), the Municipality will notify the Company of the Error, following which the Company shall attempt to resolve the Error. If the Company is unable to resolve the Error in a reasonable time commensurate with the situation, the Company will pay the Municipality for its reasonable and verifiable costs incurred as a direct result of the Error. An Inaccurate Locate resulting from Equipment relocated due to ground movement stemming from, among other things, weather conditions or work or activities carried out by a Third Party, or by, or on behalf of, the Municipality, is not an Error. In the event of a disagreement as to the existence of an Error, the parties agree to work together to determine whether or not the Error stems from ground movement or work or activities carried out by a Third Party, or by, or on behalf of, the Municipality. If it is determined that the conditions of the municipal right-of-way have changed, the parties agree to be reasonable, including with respect to the allocation of direct costs stemming from the change.

7. **RELOCATION OF EQUIPMENT**

7.1 **Municipality Request.** Where the Municipality requires and requests the Company to relocate its Equipment for a bona fide municipal purpose, the Municipality shall notify the Company in writing and, the Company shall complete the requested relocation within ninety (90) days, having regard to the nature of the relocation required, the Company shall commence work to relocate its Equipment within a Right- of-Way.

7.2 **Allocation of Cost.** The responsibility for the costs incurred in relocating the Company’s Equipment or performing such work referenced, where the Municipality has made a request to the Company to relocate its Equipment as set out above will, for the purposes of this Agreement, be based upon the following chart and include all associated costs (labour, materials, design etc.) as well as depreciation, betterment and recovery of costs:

Year(s) After Installation of Equipment	Percentage of Relocation Costs Paid by the Municipality
1	100%
2	100%
3	100%
4	90%
5	80%
6	70%
7	65%
8	60%
9	55%
10	45%
11	40%
12	35%
13	30%
14	20%
15	10%
16	5%
17+	0%

7.3 **Exceptions.**

- (a) Notwithstanding section 7.2, the Municipality shall be solely responsible for paying all costs related to equipment relocation if the relocation is for beautification or



aesthetic purposes. Such costs include, among others, depreciation, betterment, and recovery costs.

- (b) Notwithstanding section 7.2, where the Municipality has given written notice to the Company prior to the issuance of a Road Permit that the location of the Equipment subject to the Road Permit will require relocation within five (5) years, and the Company proceeds to install the equipment despite receiving such notice, then the full cost of any relocation of the Equipment shall be at the Company's sole expense.

7.4 **Upon Request of the Company.** In the event that the Company wishes to relocate Equipment which has been previously installed in accordance with this Agreement at its own expense, the Company shall notify the Municipality of such request, in writing, and such request will thereafter be considered and administered by the Municipality acting reasonably and with diligence giving due consideration to the scope of the works already undertaken by the Company Within the ROWs, provided that, in considering and administering such request the Municipality shall be entitled to take into consideration any specific municipal or engineering interests affected by such relocation including any additional facilities located Within the ROWs. Notwithstanding the foregoing, the Municipality shall not be permitted to unreasonably withhold, delay or condition its approval for such request.

7.5 **Request by Third Party.** Where relocation of Equipment is required due to the Municipality accommodating a third party (hereinafter "**Third Party Work**"), the required relocation or related installation work shall be conducted by the Company in accordance with the terms of this Agreement respecting installation, and the full cost of the amendment or Relocation shall be borne solely by the third party and paid in advance. The Municipality agrees to provide the Company with ninety (90) days' notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of such Third Party Work and indemnify the Company against all claims and liabilities arising from the amendment or Relocation as a condition precedent to any such amendment or Relocation.

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

7.7 **Temporary Reconstruction or Realignment of Road Allowances.** The Company shall, upon reasonable prior notice to the Municipality, have the right to:

- (a) temporarily reconstruct or realign certain portions of the Road Allowances in order to permit the delivery or movement of Equipment.

## 8. PAYMENT OF FEES AND OTHER CHARGES

8.1 **General.** The Company covenants and agrees to pay to the Municipality Permit fees, deposits and security associated with and required or reasonably demanded pursuant to this Agreement. The Permit fees and charges and security are set out in this Agreement and in Schedule "A" to this Agreement.

8.2 **Fees.** The Company covenants and agrees to pay to the Municipality applicable fees as laid out in Schedule "A" ("Fees and Charges").

8.3 **Invoices.** Unless expressly provided elsewhere in this Agreement, where there are any payments to be made under this Agreement, the Party requesting payment shall first send a written invoice to the other Party, setting out in detail all amounts owing, including any

applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that all payments shall be made in full by no later than forty-five (45) days after the date of the invoice was received.

- 8.4 **Default.** Any failure or refusal by the Company to pay any required Fee or Charge as set out in Schedule “A”, any cost required by this Agreement or deliver any Security required under this Agreement within the timelines specified herein shall constitute a default (“Default”). Upon the occurrence of a Default, the Municipality shall deliver a Notice of Default in writing to the Company. The Company shall have thirty (30) days to cure the Default (the “Cure Period”). In the event that the Default is not cured within the Cure Period, then the Municipality shall have the right to draw upon the Blanket Security described in section 10.7 of this Agreement.
- 8.5 **Payment of taxes.** The Company shall pay, and shall expressly indemnify and hold the Municipality harmless from, all taxes lawfully imposed now or in the future by the Municipality, a local municipality within the geographic jurisdiction of the Municipality, or all taxes, rates, duties, levies or fees lawfully imposed now or in the future by any regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions) but excluding the Municipality, that are attributable to the Company’s use of a Municipality ROW.

## 9. TERM AND TERMINATION

- 9.1 **Initial term and renewal.** Subject to the renewal options described in subparagraph 9.1(a) and termination described in subparagraphs 9.2, 9.3 and 9.4, the Term of this Agreement shall commence on \_\_\_\_ day of \_\_\_\_ 2022 and expire and terminate due to expiry on \_\_\_\_ day of \_\_\_\_, 2027 (the “**Initial Term**”).
- (a) The Company in its sole discretion may renew this Agreement with the Municipality for three (3) separate consecutive renewal terms of five (5) years each. To exercise the first option to renew, the Company must provide the Municipality written notice of such election to renew prior to the expiry of the Initial Term, failing which the Agreement will terminate due to expiry. To exercise the second option to renew, the Company must provide the Municipality written notice of such election to renew prior to the expiry of the first valid five-year extension, failing which the Agreement will terminate due to expiry. To exercise the third option to renew, the Company must provide the Municipality written notice of such election to renew prior to the expiry of the second valid five-year extension, failing which the Agreement will terminate due to expiry.
- (b) If a renewal is not exercised prior to the last day of the Initial Term or valid extension, this Agreement shall terminate immediately on the last day of the Term or valid extension, subject to paragraph 9.4 of this Agreement.
- 9.2 **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least seven (7) days’ written notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice. If, however, in the view of the non-breaching Party, it is not possible to remedy or cure the breach within such thirty (30) day period, then the breaching Party shall commence to remedy or cure the breach within such thirty (30) day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching Party.
- 9.3 **Termination by Municipality.** The Municipality may terminate this Agreement by providing the Company with at least seven (7) days written notice in the event that:
- (a) the Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Companies’*

*Creditors Arrangement Act or the Bankruptcy and Insolvency Act;*

- (b) the Company assigns or transfers this Agreement or any part thereof other than in accordance with Section 18.2; or
- (c) the Company ceases to be eligible to operate as a Carrier.

9.4 **Obligations and rights upon termination or expiry of Agreement.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with Section 9.3) or expires without renewal, then, subject to the Company's rights to use the ROWs pursuant to the Telecom Act and, unless the Company advises the Municipality in writing that it no longer requires the use of the Equipment:

- (a) the terms and conditions of this Agreement shall remain in full force and effect until a new replacement agreement (a "New Agreement") is executed by the Parties; and
- (b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months 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.

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

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

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

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

## 10. INSURANCE AND SECURITY

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

- 10.2 **Commercial general liability occurrence-based insurance.** Without limiting the generality of the foregoing, the Company shall obtain and maintain commercial general liability occurrence-based insurance coverage which:
- (a) covers claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence (exclusive of interest and costs);
  - (b) extends to cover the contractual obligations of the Company as stated within this Agreement;
  - (c) include the Municipality as an additional insured;
  - (d) contains cross liability and severability of interest clauses.
- 10.3 **Insurance certificates.** As soon as possible after the execution of this Agreement, the Company shall provide on the Municipality's standard form, the Municipality with certificates of insurance in respect of the Company Insurance evidencing the cross liability and severability clauses and confirming the Municipality as an "additional insured". Thereafter, the Company shall provide the Municipality with evidence of all renewals of the Company Insurance in a form acceptable to the Municipality.
- 10.4 **General insurance conditions.**
- (a) The Company Insurance shall not be construed to, and shall in no manner, limit or restrict the Company's liability or obligations under this Agreement.
  - (b) The Municipality shall not be liable for any premiums relating to policies under the Company Insurance.
  - (c) The policies under the Company Insurance shall provide:
    - (i) that they are primary insurance which will not call into contribution any other insurance available to the Municipality;
    - (ii) a waiver for severability of interest; and
    - (iii) that the Company Insurance shall not be cancelled, lapsed or materially changed to the detriment of the Municipality without at least thirty (30) business days' notice to the Municipality by mail.
  - (d) The Company will immediately notify the Municipality of any changes to or cancellation of the Company Insurance if they will directly affect or reduce the coverage made available to the Municipality.
- 10.5 **Workplace Safety and Insurance Board.** The Company shall provide Workplace Safety and Insurance Board ("WSIB") clearance certificate that confirms the Company is in good standing with the WSIB. The Company shall ensure the WSIB clearance remains in effect when the Company's personnel are working within the ROWs.
- 10.6 **Blanket Letter of Credit.** If requested by the Municipality, the Company shall, within thirty (30) days thereafter, post an irrevocable blanket letter of credit, for the minimum amount of ten thousand dollars (\$10,000.00) (the "**Blanket Security**"). Once posted by the Company, the Municipality may draw upon the Blanket Security and apply the funds therein against any undisputed outstanding financial obligations owed by the Company to the Municipality under this Agreement.
- 10.7 **Blanket Security - Term.** The Blanket Security, if requested, shall be posted for a maximum of up to three (3) years and until such time as the Municipality determines that the Company has established a satisfactory business relationship with the Municipality. If the Municipality is required to draw upon the Blanket Security, the Municipality shall advise the Company and the Company shall, within fourteen (14) days thereafter restore the Blanket Security to its original value.
- 10.8 **Project-specific Security.** The Municipality may also reasonably request, and the

Company shall provide, additional project-specific securities for Work projects in an amount equal to the estimated restoration costs of the projects as determined by the Parties. The Municipality shall release the project-specific security once the Company has fulfilled the conditions of the applicable Permit relating to the restoration of the ROW to the satisfaction of the Municipality.

## 11. RESPONSIBILITY AND INDEMNIFICATION

- 11.1 **No liability Municipality.** The Company hereby acknowledges that the placement, installation, construction, reconstruction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of the Equipment by the Company is performed entirely at the risk of the Company and that the Municipality shall in no way or under any circumstances be responsible or liable to the Company, its contractors, agents, or customers for any damage or losses in consequence thereof, unless due to the negligence of the Municipality or those for whom at law it is responsible.
- 11.2 **Company Indemnity.** The Company hereby releases, indemnifies, completely holds harmless, and agrees to defend the Municipality, its Councillors, officers, employees, legal counsel, agents and contractors, from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs which the Municipality and its successors and assigns may at any time or times hereafter bear, sustain, or suffer, as a result of the Equipment, including without limitation, its placement, installation, construction, reconstruction, inspection, maintenance, use, operation, alteration, enlarging, repair, replacement, relocation and/or removal.
- 11.3 **Municipality Acknowledgement.** The Municipality hereby acknowledges that it is responsible for its negligence and the negligence of those for whom it is responsible for at law.
- 11.4 **Municipality Indemnity.** The Municipality hereby releases, indemnifies, completely holds harmless, and agrees to defend the Company, its officers, employees, legal counsel, agents and contractors, from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs which the Company and its successors and assigns may at any time or times hereafter bear, sustain, suffer, be put to or incur by reason of its negligence and the negligence of those for whom it is responsible at law.
- 11.5 **No liability, both Parties.** Notwithstanding any other provision in this Agreement, neither Party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary, or punitive damages, including damages for pure economic loss or failure to realize expected profits, howsoever caused, or contributed to, in connection with this Agreement and the performance or non-performance of its obligations hereunder
- 11.6 **Survival.** The obligation of a Party to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

## 12. ENVIRONMENTAL LIABILITY

- 12.1 **Municipality not responsible.** The Municipality is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with the Company's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or willful misconduct of the Municipality or those for which it is responsible in law.
- 12.2 **Company to assume environmental liabilities.** The Company agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal or remediation of any Hazardous Substance on or under the ROWs that result

from:

- (a) the occupation, operations or activities of the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company Within the ROWs; or
- (b) any Equipment brought or placed Within the ROWs by the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company;

unless such damage was caused directly or indirectly in whole or in part by the negligence or willful misconduct on the part of the Municipality or those for which it is responsible in law.

The Municipality agrees to provide notice to the Company of any liability arising under this provision in a reasonable period of time after the occurrence. For clarity, the Company shall not be liable in any manner for any events which occurred before the Equipment occupied the ROW.

### **13. NO JOINT VENTURE, PARTNERSHIP OR CO-OWNERSHIP**

- 13.1 **No Joint Venture.** The Parties hereby acknowledge and agree that this Agreement is solely an access agreement and that no relationship is formed between the Parties in the nature of a joint venture, partnership co-ownership arrangement or other similar relationship.

### **14. FORCE MAJEURE**

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

### **15. DISPUTE RESOLUTION**

- 15.1 **General.** The Parties hereby acknowledge and agree that:

- (a) this Agreement has been entered into voluntarily by the Parties with the intention that it shall be final and binding on the Parties until it is terminated or expires in accordance with its terms;
- (b) it is the intention of the Parties that all Disputes (as defined in subsection 15.2) be resolved in a fair, efficient, and timely manner without incurring undue expense and, wherever possible, without the intervention of the CRTC; and
- (c) the CRTC shall be requested by the Parties to consider and provide a decision only with respect to those matters which form the basis of the original Dispute as set out in the Dispute Notice issued under this Section 15.

- 15.2 **Resolution of Disputes.** The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement ("**Dispute**") promptly through discussions at the operational level. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the Dispute and the Parties shall attempt to resolve such Dispute between senior officers who have the authority to settle the Dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve the

Dispute within thirty (30) days of the non-disputing Party's receipt of written notice, the Parties agree to utilize the services of a mutually agreed upon independent third party mediator. The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the Parties together or separately, as necessary, to review all aspects of the issue. In a final attempt to assist the parties in resolving the issue themselves prior to proceeding to legal proceedings and/or the CRTC, the mediator shall provide, without prejudice, a non-binding written recommendation for settlement, within thirty (30) days of holding a mediation. Upon receipt of the written settlement recommendation, if an agreement cannot be reached, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

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

## 16. NOTICE

- 16.1 **Method of Notice.** Any notice required may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission or electronic (e-mail) transmission, to either Party at the following addresses:

**To the Municipality:**

Corporation of the Municipality of West Elgin  
22413 Hoskins Line  
Rodney ON N0L 2C0

[INSERT COMPANY]

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

## 17. FOREIGN CORRUPT PRACTICES ACT AND ANTI-BRIBERY INDEMNITY

- 17.1 Notwithstanding anything to the contrary herein, the Municipality, in its administration of this Agreement, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian or foreign governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, "**anything of value**" includes, but is not limited to, cash or a cash equivalent, discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "Governmental official" shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian or a foreign government, including a local or provincial agency, enterprise, or organization; any official or agent of a Canadian or a foreign public administration or publicly funded organization; any official of a Canadian or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above. The Municipality shall indemnify and hold harmless the Company from all claims brought against the Company as a result of the Municipality or its representatives' failure to comply with Anti-Bribery Law. The

Municipality shall immediately report any breach of Anti-Bribery Law by the Municipality or its representatives. The Municipality shall immediately report any breach of Anti-Bribery Law by the Municipality or its representatives'. The Company shall have the right to audit the Municipality's books and records with respect to payments made on behalf of the Company in the event that the Company believes that the Municipality has violated this Section 17. The Company shall have the right to immediately terminate all payments to the Municipality under this Agreement if the Municipality fails to comply with this Section 17.

## 18. GENERAL

- 18.1 **Entire Agreement.** This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.
- 18.2 **Assignment.** This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, the Company shall, provided that it is not in material breach of this Agreement, have the right to assign this Agreement to an Affiliate without the consent of the Municipality, provided that the Company has given notice to the Municipality.
- 18.3 **Gender and number.** In this Agreement, words importing the singular include the plural and vice versa, words importing gender, include all genders.
- 18.4 **Currency.** Unless otherwise indicated, references in this Agreement to money amounts are to the lawful currency of Canada.
- 18.5 **Parties to act reasonably.** Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
- 18.6 **Amendments.** Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the Municipality and the Company.
- 18.7 **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.
- 18.8 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 18.9 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.
- 18.10 **Enurement.** 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.
- 18.11 **Counterparts:** This Agreement may be executed by the Parties and delivered by facsimile or PDF transmission and in one or more counterparts which when held together shall be considered one and the same Agreement.
- 18.12 **Equitable Relief.** Either Party may, in addition to any other remedies it may have at law or equity, seek equitable relief, including without limitation, injunctive relief, and specific performance to enforce its rights or the other party's obligations under this Agreement.



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

**IN WITNESS WHEREOF** this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the date as set out at the top of page one (1) of this Agreement.

SIGNED, SEALED AND DELIVERED  
in the presence of:

**CORPORATION OF THE  
MUNICIPALITY OF WEST ELGIN**

Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Jana Nethercott, Clerk  
*We have the authority to bind the Corporation*

SIGNED, SEALED AND DELIVERED  
in the presence of:

**[COMPANY]**

Date: \_\_, \_\_\_\_\_

Per:  
Title:

Date: \_\_, \_\_\_\_\_

Per:  
Title:

*I/We have the authority to bind the Corporation*

**SCHEDULE "A"**

**Fees and Charges**

**Telecommunication Equipment Consent and Road User Agreement**

**As Per Municipality of West Elgin Fees and Charges By-law, as amended.**

Fee/Charge	Amount
Municipal Consent	\$200.00 + \$0.25/m
Road Occupancy Permit	\$100

**SCHEDULE "B"**

**Permits required by the Municipality**

**Telecommunication Equipment Consent and Road User Agreement**

WORK ACTIVITY	MC	RP	Notification only	No Permit or Notification
Road occupation that causes no disruption to traffic or pedestrian flow to perform Work			X	
Work that requires oversize or overweight vehicles		X		
Road Occupancy that involves the temporary closure of a vehicle travel lane, parking lane to perform Work		X		
Emergency Work with no Excavation, no utilization of trees and or other municipal infrastructure as a support structure				X
Any installation of Equipment that requires Excavation <sup>1</sup> in the ROW, including: <ul style="list-style-type: none"><li>– the installation of buried Equipment crossing a road;</li><li>– the installation of new Above-ground Plant;</li><li>– the relocation of buried Equipment or Above-ground Equipment;</li><li>– the replacement of existing Above-ground Equipment with equipment that is significantly larger; and</li><li>– the installation of buried Service Drops that cross a road or a break a hard surface of the ROW.</li></ul>	X	X		
The installation of aerial Equipment (excluding aerial Service Drops)		X		
Tree trimming on ROWs		X		
The replacement of existing above-ground Equipment without adding more Equipment or significantly increasing its size (pole replacements excluded)			X	
The installation of buried Service Drops that do not cross a road or break the hard surface of a ROW			X	
Pulling cable through existing underground duct			X	
The installation of or repair to aerial Service Drops				X
The maintenance, testing and repair of Equipment where there is minimal physical disturbance or changes to the ROW				X
Any other Work activity agreed to by the Municipality				X

\_\_\_\_\_