

MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT made the _____ day of _____, _____ (“Effective Date”)

B E T W E E N:

XXX

(hereinafter called the Company)

- and -

XXX

(hereinafter called the Municipality)

WHEREAS the Company provides telecommunications or broadcasting services;

AND WHEREAS, in order to provide telecommunications or broadcasting services the Company wishes to enter on those highways within the jurisdiction of the Municipality delineated in Schedule “A” (“Service Corridors”) from time-to-time for the purpose of constructing, maintaining, operating and removing support structures, transmission lines and other related telecommunications facilities (as that term is defined in the *Telecommunications Act (Canada)* (“*Telecom Act*”), such support structures, transmission lines and other related telecommunications facilities hereinafter called “Equipment”, in, on, over, under, along or across the Service Corridors;

AND WHEREAS, the Municipality is the public authority having jurisdiction over the Service Corridors;

AND WHEREAS, the Company must obtain the Municipality's consent to the occupancy and use of the Service Corridors consisting of constructing, maintaining, operating and removing its Equipment in, on, over, under, along or across the Service Corridors;

AND WHEREAS, the Company must not unduly interfere with the public use, enjoyment and safety of the Service Corridors and must share the use of the Service Corridors with other providers of services to the public (the Company and all such providers hereinafter collectively called “Service Providers”) when occupying and using the Service Corridors as described above;

AND WHEREAS the Municipality is willing to grant its consent to the occupancy and use of the Service Corridors consisting of the construction, operation, maintenance and removal of the Equipment in, on, over, under, along or across the Service Corridors having due regard to the safety, use and enjoyment of the Service Corridors by others, as described above;

AND WHEREAS the Municipality and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which said consent shall be provided by the Municipality to the Company in the form of a non-exclusive right;

NOW THEREFORE in consideration of the promises and mutual covenants herein contained, the Municipality and the Company each agree with the other as follows:

Scope of Municipal Consent

1. The Municipality hereby consents and grants a non-exclusive right to the Company to occupy and use locations specified by the Municipality within the Service Corridors (“Alignments”) during the Term as defined in section 28 hereof for the purpose of constructing, operating, maintaining and removing its Equipment for use only in the provision of “telecommunications services” (as defined in subsection 2(1) of the *Telecom Act*) or “broadcasting” (as defined in subsection 2(1) of the *Broadcasting Act* (Canada) (“*Broadcast Act*”) subject to the terms and conditions hereinafter set forth and in accordance with all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations.

2. The Company may access the Service Corridors in accordance with the terms of this Agreement for the purpose of exercising its rights under section 1 of this Agreement.

Authorization of Work

3. The Company shall not excavate, break up or otherwise breach the surface of any Service Corridors or engage in any other work therein for the purpose of constructing, operating, maintaining or removing any of its Equipment in, on, over, under, along or across any Service Corridors (each of these activities hereinafter collectively called “Work”) without first:

- a) providing plans to the most senior municipal official responsible for overseeing such Work or his designate (“Commissioner”), setting out a proposal for an Alignment for the Company’s Equipment and such other information required by the Commissioner in a form acceptable to the Commissioner; and
- b) obtaining the written authorization of the Commissioner to an Alignment.

4. The Company shall provide all required information and obtain all required municipal construction and/or other permits normally required by the Municipality in the circumstances prior to commencing any Work.

5. In the event of an emergency involving the Company’s Equipment, the Company may perform such Work as is strictly necessary to end the emergency without the prior consent of the Municipality, provided that the Company notifies the Municipality of the occurrence of the Work without delay.

Conditions

6. All Work conducted by or on behalf of the Company is subject to the following conditions:

- a) the Work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations, including, but not

limited to, the terms of any authorizations granted by the Commissioner, permits issued by the Municipality and the provisions of this Agreement;

- b) the Work shall be conducted and completed to the satisfaction of the Commissioner;
- c) the Work shall be performed in a manner that safeguards and protects all other support structures, transmission lines, equipment, facilities and improvements of any kind (“Improvements”) present in the Service Corridors;
- d) after completion of any Work, the Company shall leave the Service Corridors in substantially the same condition in which it was before such Work was undertaken by the Company, free from nuisance and to the satisfaction of the Commissioner. If the Company fails to repair and restore any Service Corridors to the satisfaction of the Commissioner within two (2) days of being notified by the Municipality, the Municipality may effect such repairs and charge all costs related thereto to the Company;
- e) if the Municipality requires that any Work be stopped, the Company shall cease such Work upon delivery of a written notice to the Company to that effect by the Commissioner; and
- f) the Company shall be responsible for all Work, including the cost of such Work.

Representations and Warranties

7. The Company represents and warrants to, and covenants and agrees with the Municipality that:

- a) the Company’s occupancy and use of the Service Corridors shall not unduly interfere with the public use and enjoyment of the Service Corridors;
- b) the Company has no title to or other ownership or property interest in any Alignments or Service Corridors;
- c) the Company shall not register or permit to be registered any instrument claiming an estate, interest or property right in the Service Corridors or other property of the Municipality in any real or personal property registry by virtue of the Company’s occupancy or use of the Service Corridors or this Agreement;
- d) the Company shall not suffer or permit any lien to be filed or registered against any Service Corridors;
- e) the Municipality 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 and the Company hereby agrees to take the Service Corridors on an "as is" basis and that the Municipality is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any hazardous substance from its Service Corridors;

- f) the Company shall use reasonable efforts to schedule Work and share Alignments and support structures with other Service Providers occupying and using the Service Corridors, with the intent of minimizing the necessity for road cuts, construction and the placement of support structures in the Service Corridors;
- g) the Company shall notify the Municipality of any damage caused by the Company in connection with its Work, Equipment or enjoyment of its right to occupy and use Alignments under this Agreement;
- h) the Municipality may cross the Company's Equipment with its own Improvements or otherwise, and may use the Service Corridors for any purpose, and may allow other parties to cross the Company's Equipment with their Improvements or otherwise and to use the Service Corridors, all at no charge to the Municipality; and
- i) all of the covenants, representations, warranties, indemnities and outstanding obligations (including outstanding payment obligations) of the Company under this Agreement shall survive the termination of the Agreement, however caused.

8. The Municipality represents and warrants to and covenants and agrees with the Company that the Municipality has jurisdiction over any Service Corridors for which the Municipality grants consent to the Company and has the authority to grant such consent.

As-Built Drawings

9. The Company shall provide "as-built" drawings to the Municipality in form(s) and content acceptable to the Commissioner, including electronic format if required, within two (2) months of completing the construction of Equipment in, on, over, under, along or across any Service Corridors.

Utility Coordination

10. The Company agrees to participate in any centralized utility location notification procedures of the Municipality with the Municipality and other Service Providers, and to pay its proportionate share of the costs of the administration of such procedures.

11. The Company further agrees to participate in any utility coordinating committees or forums as may be established by the Municipality, and to pay its proportionate share of the costs of the administration of such forums.

12. The Company shall, at no cost to the Municipality, provide locations of Equipment within twenty-four (24) hours of receiving such requests from the municipality.

Emergencies

13. The Company shall provide to the Commissioner a list of twenty-four (24) hour emergency contact personnel and shall ensure that the aforementioned list is always current.

14. The Municipality shall provide to the Company a current list of twenty-four (24) hour emergency contact personnel for both its own personnel and those of the other Service Providers.

Relocation

15. Upon receipt of thirty (30) days advance written notice from the Commissioner, or such other time as is mutually agreed to by the parties, the Company shall, at its own expense, relocate Equipment to which this Agreement relates, or perform any other Work in connection with the Service Corridors as may be required by the Municipality for municipal purposes. However, in cases of emergency, the Municipality may take any measures deemed necessary for public safety with respect to the Equipment that may be required in the circumstances as the Municipality shall determine and the Company shall reimburse the Municipality for all related expenses thereby incurred.

16. If the Company fails to complete the relocation of the Equipment in accordance with section 14, or fails to repair the Service Corridors or to perform any other Work required to be done by the Company pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the Commissioner, the Municipality may, but is not obligated to, at its sole option, complete such relocation or other Work. In such event, the Company shall pay the cost of such relocation Work to the Municipality, together with an administrative charge of fifteen percent (15%) of such cost.

Security

17. The Company may be required to post security with the Municipality from time-to-time in an amount and form acceptable to the Commissioner to guarantee the performance by the Company of its obligations in connection with Work performed under this Agreement. The vehicle by which such security is granted shall, in each case, specify with precision the Work that is guaranteed by the security, and the circumstances under which the Municipality may have recourse to the security. Security posted in respect of certain Work shall be released promptly by the Municipality if and to the extent that the Work is completed to the satisfaction of the Commissioner.

Payments to Municipality

18. The Company covenants and agrees to pay to the Municipality:
- a) all of the usual permit fees associated with the permits that the Company requires in connection with its Work; and
 - b) the consideration set out in the Municipality's applicable by-laws, as amended from time-to-time, with respect to the occupancy and use of the Service Corridors, and the consideration set out in Schedule "B", if any, with respect to the occupancy and use of the Service Corridors.

Taxes and Utilities

19. The Company shall, in addition to other amounts specifically payable by it under this Agreement, be responsible for the payment of all taxes attributable to the Company, including, without limitation, those taxes attributable to the Company's use and occupancy of the Service Corridors, and for the payment of the cost of all services and utilities consumed in respect of the Company's operations.

20. For the purpose of section 19, "taxes" includes, without limitation, all taxes, duties, levies, assessments, rates, fees or charges of any kind whatsoever, imposed, levied, assessed or charged now or in the future by any government authority of any kind,

and any payments that are levied in substitution, or in lieu, or in addition to any of the foregoing.

Late Payment Charges

21. Payment terms are net thirty (30) days under this Agreement. Overdue accounts shall be charged interest at the rate of percent (____%) per month compounded monthly or at the maximum lawful rate, whichever is lower.

Obsolete Equipment

22. The Company shall notify the Municipality promptly when it ceases to use any Equipment situated in, on, over, under, along or across the Service Corridors. Upon such notification, the Municipality may, at any time, require the Company to remove the said Equipment within a specified period of time, being no less than ninety (90) days from the date of the Company's notification, failing which such Equipment and any support structure containing only such obsolete Equipment shall be deemed to have been abandoned by the Company and title thereto shall vest in the Municipality.

Excess Capacity

23. Whenever the Company installs new conduits by open cut along or across any Service Corridors, and the new conduits are not employed for the sole purpose of connecting a single building or customer location to the Company's Equipment, the Company shall:

- a) unless otherwise waived by the Commissioner in writing, ensure that any conduits to be placed in the Service Corridors are sized so as to accommodate the transmission capacity requirements of the Company along or across the Service Corridors for a period of _____ years from the date of installation of the conduits; and
- b) install such additional excess conduit capacity as the Commissioner requires and make available to other providers of telecommunications services or broadcasting, on reasonable terms and conditions, such additional excess conduit capacity as the Municipality and the Company may in writing agree or the Canadian Radio-television and Telecommunications Commission or its successor ("CRTC") may direct, for the more efficient administration of the occupancy and use of the Service Corridors.

24. The Company shall use its best efforts to place its Equipment in or along existing support structures situated in the Service Corridors whenever possible.

Third Party Equipment

25. The Company shall not permit any third party to use any Alignment occupied or used by the Company under this Agreement, unless the third party first provides evidence to the Company that it has entered into an agreement with the Municipality in respect of such use.

26. In all cases where the Company shares ownership or other rights with a third party in respect of any Equipment situated in, on, over, under, along or across an Alignment occupied or used

by the Company under this Agreement, the Company shall remain responsible for performing all of its obligations under this Agreement, as if it is the sole owner of the Equipment.

27. For the purpose of sections 25 and 26 of this Agreement a “use” of an Alignment by a third party occurs whenever a third party situates any Equipment or connects any Equipment to the Equipment of the Company in, on, over, under, along or across the Alignment, or is in the position where it may cause any Work to be performed in, on, over, under, along or across the Alignment.

Term of Agreement

28. Unless otherwise terminated in accordance with its provisions, the initial term of this Agreement shall commence on the Effective Date and shall be _____ years in duration. Unless the Agreement is otherwise terminated in accordance with its provisions, it shall be automatically renewed for _____ additional successive terms of _____ years duration each, subject to the renegotiation of the fees set out in Schedule “B”, if applicable. The initial term and the subsequent terms to the extent applicable shall be called the Term.

Default and Termination

29. This Agreement may be terminated at any time during the Term by the mutual written agreement of the Municipality and the Company.

30. This Agreement may be terminated by the Municipality by written notice delivered to the Company upon the occurrence of one of the following events:

- a) the Company fails to pay any undisputed amount payable pursuant to this Agreement within ninety (90) days of the date on which the payment is due;
- b) the Company fails to pay fifty percent (50%) of any disputed amount payable pursuant to this Agreement within ninety (90) days of the date on which the Municipality claims that the payment is due;
- c) the Company unduly interferes with the public (including Service Provider) use or enjoyment of the Service Corridors and does not rectify such interference within thirty (30) days of being notified by the Municipality of the occurrence of such undue interference; or
- d) there is filed by or against the Company in any court an uncontested petition in bankruptcy or insolvency or for reorganization or for 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 assignment or petition remains undismissed after thirty (30) days or is not stayed on appeal.

31. A party to this Agreement may terminate the Agreement upon one hundred and eighty (180) days written notice delivered to the other party if that other party defaults under any of its obligations under this Agreement and fails to correct the default prior to the expiry of the one hundred and eighty (180) day period.

32. Upon termination of the Agreement and in the absence of a new agreement, the Company shall, if and to the extent requested by the Municipality, remove its Equipment, at its own expense, and within the time period specified by the Municipality in accordance with any directions provided

by the Commissioner for such removal, failing which either party may apply to the CRTC for a resolution of the matter. A failure by the Company either to comply with the Commissioner's direction and contest such a direction at the CRTC within thirty (30) days of delivery of written notice of the direction, or to comply with an order made by the CRTC for removal of Equipment within the timeframe set out in the order shall result in the Equipment being deemed to have been abandoned and title therein shall vest in the Municipality.

Occupational Health and Safety and Traffic

33. The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "Safety Rules"). The Municipality may, on twenty-four (24) hours written notice to the Company, or sooner if in the opinion of the Municipality the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Company on that portion of the Equipment located in, on, under, along or across Service Corridors where there appears to be a lack of compliance with the Safety Rules or because conditions of danger exist that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

Environmental Responsibility

34. The Company agrees to assume all environmental liability relating to its occupancy and use of the Service Corridors, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around service corridors which result from:

- a) the operations of the Company in, on, under, along, across or around the Service Corridors; or
- b) any products or goods brought in, on, under, along, across or around the Service Corridors by the Company, or by any other person with the express or implied consent of the Company.

35. For the purpose of subsection 7(e) and section 34, "hazardous substance" means any hazardous substance and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.

Liability and Indemnification

36. The Municipality shall not, in connection with this Agreement, be liable for any damage to the Equipment or other property of the Company, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Company except where caused by the willful misconduct or gross negligence of the Municipality or its employees.

37. The Company hereby indemnifies the Municipality from and against all losses, liabilities, costs, damages, and expenses (including reasonable legal fees and disbursements) incurred by the Municipality in connection with this Agreement as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party caused

by the wilful misconduct or negligence of the Company, its officers, employees, agents, contractors, licensees or invitees.

38. Subject to the provisions of sections 36 and 39, the Municipality hereby indemnifies the Company from and against all losses, liabilities, costs, damages, and expenses (including reasonable legal fees and disbursements) incurred by the Company in connection with this Agreement as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party caused by the wilful misconduct or gross negligence of the Municipality, its officers, employees, agents, contractors, licensees or invitees.

39. Notwithstanding anything contained in this Agreement, the Municipality shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Equipment, other property or Service Corridors governed hereby.

Successors and Assigns

40. This Agreement shall be binding upon and shall inure to the benefit of the Company and the Municipality and their respective successors and assignees. For the purposes of this Agreement, "successors" of a party shall include any person, firm, corporation, or other entity which at any time, whether by merger, acquisition, purchase, or otherwise, shall acquire all or substantially all of the assets of that party. The Company may assign this Agreement during the Term to an "affiliate", as that term is defined in the *Canada Business Corporations Act* (Canada), upon advance written notice to the Municipality. The Company may not otherwise assign this Agreement without the advance written consent of the Municipality, which consent may not be unreasonably withheld, conditioned, or delayed.

41. In the event of any assignment of the Agreement by the Company, the Company shall remain jointly and severally liable under this Agreement in all respects with the assignee, and the Municipality may require the assignee to enter into its own agreement with the Municipality before the assignment becomes effective.

42. Despite section 40, the Company may pledge the rights granted by this Agreement as security without the consent of the Municipality 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.

Non-Parties to Agreement

43. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement.

No Property Rights

44. No occupancy or use of the Service Corridors under this Agreement shall create or vest in the Company or any other party any ownership or property rights in any Alignments or in the Service Corridors, and the Company shall be and remain a non-exclusive occupant and user of the Service Corridors.

45. Placement of the Equipment in the Service Corridors shall not create or vest in the Municipality any ownership or property rights to the Equipment, except as specifically provided herein.

Workers' Compensation Coverage

46. The Company agrees that it shall, at its own expense, procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage for itself and all workers, employees, and others engaged in or upon any Work.

Insurance

47. The Company shall maintain insurance in sufficient amount and description as will protect the Municipality from claims for damages, personal injury including death, and for claims from property damage which may arise under this Agreement, including but not limited to the construction, maintenance or operation of the Equipment in, on, under, over, along and across the Service Corridors or any act or omission of the Company's employees, agents, contractors or licensees.

48. In addition to the foregoing, the Company covenants and agrees that with respect to the insurance coverage described in section 47:

- a) the limits of liability for personal injury, bodily injury and property damage combined shall be for not less than five million dollars (\$5,000,000.00) for each occurrence, or such other amount as the Municipality may require by written notice delivered to the Company, from time-to-time;
- b) the comprehensive general liability insurance shall extend to cover the contractual obligations of the Company as stated within this Agreement, shall list the Municipality as an additional named insured and shall contain a cross-liability clause; and
- c) all policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the Municipality by registered mail.

General

49. **Independent Contractors.** The relationship of the Company and the Municipality established by this Agreement is that of independent contractors, and nothing contained 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 venturers, co-owners or otherwise as participants in a joint or common undertaking; or
- c) to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

50. **Notice.** All formal notices hereunder shall be in writing and shall be deemed effective upon receipt when delivered by hand, overnight delivery courier, by facsimile transmission (provided such notice is also given in any of the other manners set forth herein) or when mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses listed below (or at such other address for a party as shall be specified by like notice).

If to the Municipality:

If to the Company:

51. **Modifications.** No waiver of or changes to any provision of this Agreement shall be effective unless reduced to writing and signed by authorized representatives of both parties.

52. **Waiver.** The failure of either party to insist upon strict adherence to any term or condition of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon strict adherence to that term or condition or any other term or condition of this Agreement.

53. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court or regulator of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the parties shall endeavour to give effect to the Agreement as originally contemplated before the provision was held to be invalid or unenforceable to the maximum extent permitted by law.

54. **Counterparts; Original Signature Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one Agreement. Facsimile reproductions of signatures shall be deemed to be original.

55. **Time.** Time is of the essence in this Agreement.

56. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the province or territory in which the Municipality is situated and the laws of Canada applicable therein, excluding the conflict of laws provisions thereof.

57. **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.

58. **Headings.** The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The terms “subsection” and “section” refer to subsection and section of this Agreement, respectively, unless explicitly otherwise stated.

59. **Gender, Number and Person.** Words importing the neuter gender shall include the masculine and feminine genders. In this Agreement, “party”, “third party” or “person” includes any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative of any of the foregoing. Words importing the singular shall include the plural and vice versa.

60. **Treatment of Personnel.** Each party shall bear sole responsibility for payment of compensation (including applicable benefits) to its personnel assigned to perform that party’s obligations under this Agreement, and shall also bear sole responsibility for any applicable source deductions required by law in respect of such personnel. Under no circumstances shall the other party be considered the employer of any such personnel.

61. Except as otherwise expressly stated in this Agreement, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

62. **No Rules of Construction.** This Agreement shall not be interpreted in favour or against a party on the basis of the existence or absence of legal representation in the case of either party.

63. **Inconsistency with Municipal By-laws.** In the event of an inconsistency between this Agreement and any applicable by-law, rule or regulation of the Municipality, the by-law, rule or regulation shall take precedence to the extent of the inconsistency.

64. **Entire Agreement.** This Agreement set forth the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior agreements, whether oral or written, relating to the subject matter hereof.

65. **Acknowledgement.** Each party acknowledges that it has read this Agreement, including the Schedules attached hereto and forming part hereof, and each party understands and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

THE COMPANY - [Insert the name of the Company]

Name:
Title:

Name:
Title:

THE MUNICIPALITY – [Insert the name of the Municipality]

Name:

Title:

Name:

Title: