

ROAD USER AGREEMENT

THIS ROAD USER AGREEMENT (the "**Agreement**") made in duplicate this [___] day of May, 2021 (the "**EffectiveDate**")

B E T W E E N:

THE CORPORATION OF THE COUNTY OF ESSEX
(hereinafter referred to as the "**County**")

OF THE FIRST PART

- and -

TEKSAVVY SOLUTIONS INC.
(hereinafter referred to as "**TekSavvy**", and together with the County, the "**Parties**")

OF THE SECOND PART

WHEREAS the County is the owner of and Road Authority for a network of County roads in the County of Essex, including, among others, County Road 2 and County Road 39.

AND WHEREAS TekSavvy is a telecommunications company that operates, among other things, as an internet service provider;

AND WHEREAS TekSavvy has requested permission from the County to construct, install, and maintain cable lines for the provision of internet services in the County of Essex (the "**Installation**"). Portions of the Installation shall run across, over, and/or under certain municipal roadways, including across, over, and/or under certain sections of County Road 2 and County Road 39, with the route of the Installation depicted in **Schedule "A"** in the County of Essex;

AND WHEREAS the necessary municipal approvals have been or will be obtained by TekSavvy;

AND WHEREAS the County has agreed to grant TekSavvy permission to perform the Work (as defined below) along the Highways (as defined below), on certain terms and conditions as set out in this Agreement;

AND WHEREAS by By-law passed by the Council of the County (the "**By-law**"), the duly authorized individuals have been authorized and directed to execute this Agreement on behalf of the County;

AND WHEREAS the Effective date of this Agreement shall be the date this Agreement is executed by the County, which execution shall not occur until all Schedules have been finalized, approved by the County and attached to this Agreement, and the Agreement has been executed by TekSavvy;

NOW THEREFORE IN CONSIDERATION of the undertakings and covenants hereinafter expressed and upon the terms hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereto acknowledged, the County and TekSavvy mutually covenant and agree as follows:

1. RECITALS

1. The Parties warrant that the above recitals are true and that same form an integral part of this Agreement and are accordingly hereby incorporated into this Agreement by reference.

2. DEFINITIONS

1. In this Agreement:
 - (a) "**Applicable Laws**" means any and all applicable laws, statutes, codes, ordinances, principles of common and civil law and equity, rules, approvals, regulations, and municipal by-laws which are binding upon and applicable to the Work and the Installation;
 - (b) "**Approved Plans**" means, as applicable, the approved Plans for the Installation as approved by the County Engineer, in her reasonable discretion, in accordance with the provisions of this Agreement;
 - (c) "**County Engineer**" means the most senior individual employed by the County with responsibilities for Highways within the County or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the County;
 - (d) "**Crossing(s)**" means any place where any component(s) of the Installation cross, in whole or in part, any travelled portion of a Highway;
 - (e) "**Highway(s)**" means any common and public highway, street, roadway, avenue, parkway, driveway, square, bridge, viaduct or trestle, any part of which is intended to be used for or is used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the County, and without limiting the generality of the foregoing, for the purposes of this Agreement specifically refers to County Road 2 and/or County Road 39, and the rights-of-way thereof;
 - (f) "**Installation**" has the meaning given to such term in the Recitals;
 - (g) "**Party**" means, singularly, either the County or TekSavvy and "**Parties**" means, collectively, both the County and TekSavvy;

- (h) **"Plan"** means:
 - (i) construction plans for the proposed Installation, showing the locations and boundaries within the County's jurisdiction where such construction is proposed to take place; and,
 - (ii) all other relevant plans, drawings and other information as may be ordinarily required by the County as part of its regular approval/permit issuing processes under Applicable Laws.
- (i) **"Term"** has the meaning given to such term in Section 5 of this Agreement;
- (j) **"Tree Work"** means cutting, trimming, or removing, or hedges growing on the Highway(s);
- (k) **"Work"** or **"Works"** means any work related to the installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment, or other alteration of the Installation to be undertaken by TekSavvy or its agents or contractors in connection with the installation over, under, and/or along the Highway, or in the right-of-way thereof; and
- (l) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

3. SCHEDULES

- 1. The following Schedules (as may be amended from time to time by mutual agreement of the Parties) are attached hereto and form part of this Agreement:

Schedule "A" – Route depicting the areas of the Installation; and

Schedule "B" – Schedule of Permits, Fees, and Charges

4. GRANT

- 1. The consent, permission, and authority of the County is hereby given and granted to TekSavvy, its employees, agents, and contractors:
 - (a) to enter upon and use the Highways under the jurisdiction of the County to perform the Work, in, on, over under, across and/or along the Highways in accordance with the Approved Plans and the terms of this Agreement. The consent, permission, and authority hereby given extends only to the Highways under the jurisdiction of the County; and
 - (b) to do such other things as may be required by the terms of this Agreement and approved by the County to construct the Installation and perform the Works.

2. The consent, permission, and authority hereby given and granted shall be subject to:
 - (a) the rights and obligations of the County to construct, maintain, reconstruct, rehabilitate, and use at any and all times all Highways under the jurisdiction of the County;
 - (b) the right of free and legal use of all Highways by all persons entitled to use them;
 - (c) the rights of the owners of properties adjoining the Highways to enjoy full access to and from the Highways and of constructing crossings and approaches from their properties; and
 - (d) the rights and privileges that the County has granted or may grant to other persons (including, but not limited to, commuters, agricultural vehicles, overweight/oversized loads, and maintenance crews for maintenance of drainage ditches and roadway repairs) on the Highways;

all of which rights are expressly reserved.

3. Save as hereinafter provided, the consent, permission, and authority hereby given and granted to TekSavvy to perform the Works shall at all times be subject to TekSavvy obtaining all permits and/or approvals required from the County under Applicable Laws, which shall be administered in accordance with the procedures set forth in Section 6 of this Agreement, and such other approvals as required under this Agreement.
4. The County acknowledges that the placement of any of the Installation, or any TekSavvy property, within the Highways shall not create or vest in the County any ownership or property rights in the Installation or such TekSavvy property.

5. TERM

1. This Agreement shall have an initial term of twenty (20) years and shall be renewed automatically for successive one (1) year periods (the initial term and each renewal term collectively referred to herein as the "**Term**") unless:
 - (a) this Agreement is terminated by either Party in accordance with this Agreement;
 - (b) termination by the County, by providing not less than 12 month prior written notice to TekSavvy or any successor owner of TekSavvy, in the event that the County requires use of the Highways for an alternative bona fide purpose that conflicts with the presence of the Installation, subject to the County's obligations below;
 - (c) a Party delivers written notice of non-renewal to the other Party at least 120 days prior to the expiration of the then current Term; or

(d) this Agreement is replaced by a new agreement between the Parties.

For clarity, during the initial term and any renewal term, the burdens on the lands owned by the County, and TekSavvy's rights granted herein, pursuant to the terms and conditions of this Agreement, shall be binding upon and deemed to run with all Highways and lands owned by the County.

Notwithstanding the above, in the event that the County provides notice of non-renewal or termination to TekSavvy prior to expiration of the then-current Term and TekSavvy still needs its Installation or to perform further Work within or around the Highways, the Parties shall use commercially reasonable efforts to negotiate and enter into a fresh Road User Agreement.

6. APPROVAL PROCESS

1. Before commencing any Works that require the issuance of County permits or County approvals under Applicable Laws, TekSavvy will deposit both a digital copy and a hard copy of all necessary Plans (including any amendments thereto) with the County Engineer for review and approval pursuant to the terms of this Section 6.
2. The County Engineer shall use commercially reasonable efforts to review and provide approval or refusal of such Plans within ten (10) business days of receipt. In the event the County Engineer does not approve the Plans, the County Engineer shall issue written instructions to TekSavvy with any additional information or modifications which are reasonably required by the County Engineer with respect to the Plans, including the imposition of any reasonable terms and conditions as the County Engineer considers in the best interest of the County in its capacity as custodian of the Highways owned by the County. The Parties agree to work together in good faith to consider amendments to Plans, provided such amendments comply with Applicable Laws. However, TekSavvy shall not undertake Work of any kind until it is in receipt of the Approved Plans or amended Approved Plans, as the case may be, and the relevant permits have been issued by the County.
3. Should there be any disagreement between the County and TekSavvy regarding the requirements of any Plan to be submitted by TekSavvy, the opinion and requirements of the County Engineer in her reasonable discretion shall prevail.
4. TekSavvy is required to consult with the County Engineer in advance of commencing any Works in order to determine what permits and/or approvals are required and agree to apply for and obtain all such permits and/or approvals from the County for the Works. The County shall use commercially reasonable efforts to provide approval or refusal of permits within ten (10) business days of receiving TekSavvy's applications for same.
5. TekSavvy further agrees that prior to commencement of any Work pursuant to this Agreement, it shall obtain all other permits and approvals which are required pursuant to any Applicable Laws, including, where necessary, the approval of any

federal, provincial, and/or lower tier municipal government, and the minimum standards of the County, in order to commence any of the Works.

6. Furthermore, it shall be the sole and absolute responsibility of TekSavvy to notify any other person or body of which it is aware or otherwise notified by the County, which is operating any equipment, installations, utilities, or other facilities, within the Highways where such Work is to be conducted, of the details of the anticipated Work so as to minimize the potential interference with or damage to such existing equipment, installation, utilities, and other facilities by the said Work, and so as to maintain the integrity and security thereof. Should any dispute arise between TekSavvy and any other user of the Highway(s), it is the sole responsibility of TekSavvy to resolve the dispute to the satisfaction of itself and any affected third party.

7. HIGHWAYS

1. Both the County and TekSavvy acknowledge and agree that County Road 2 and County Road 39, or such further roads of the County as the County may expressly agree, are the only Highways authorized for use by TekSavvy and its agents and/or contractors, for the Works and the Installation.
2. If and to the extent TekSavvy wishes, after commencement of the Works, to alter the specific placement of the Installation set out in the Approved Plans, TekSavvy shall request and obtain the prior written approval of the County Engineer prior to altering the Works contained in the Approved Plan, and shall enter into such amendments to this Agreement as the County may require. Such approval process shall be governed by Section 6 of this Agreement.
3. In the event it becomes necessary, during the construction of the Installation, for TekSavvy to transport goods by way of oversized loads on any County Highway(s), TekSavvy shall obtain all of the necessary permits from the County to do so, including posting any security required pursuant to such permits, and to comply with any reasonable conditions that may be required or imposed by the County at that time. Provision of such approvals shall be subject to the timelines specified in Section 6.
4. TekSavvy hereby agrees to comply with the provisions of all relevant By-laws of the County with respect to weight restrictions on the Highways, unless and until it receives the express written permission of the County Engineer to be exempted from the weight restrictions, with such permission and terms of such permission at the sole and absolute discretion of the County Engineer.

8. DECOMMISSIONING AND RELOCATION

1. In the event the County, acting reasonably, deems it necessary or requires that the Installation be relocated within the Highways and, or be altered in its location on the Highways, TekSavvy hereby agrees to relocate and/or alter the location of the

Installation and restore the affected area at its sole cost and expense, provided that the County gives one hundred and twenty (120) days' notice in writing to TekSavvy of the requirement to relocate or alter the location of the Installation, with the timeline for such relocation and/or alteration to be negotiated by the Parties acting reasonably, in an attempt to ensure continued access to the services provided to the customers of TekSavvy. It is acknowledged and agreed that in the event weather conditions negatively impact the ability of TekSavvy to comply with the provisions of this paragraph within the timeline agreed to, the said timeline shall be extended accordingly to allow for the delay caused by adverse weather conditions.

2. Upon termination of this Agreement, TekSavvy shall decommission and remove the Installation to the satisfaction of the County Engineer, acting reasonably. All other obligations of TekSavvy shall continue under the provisions of this Agreement until such obligations have been complied with and/or completed in full to the satisfaction of the County Engineer, acting reasonably.
3. In the event TekSavvy fails to decommission and remove the Installation in accordance with the requirements of the County Engineer within one (1) year of the termination of this Agreement, the County shall have the right to remove and dispose of all or part of the Installation as the County may determine, acting reasonably, and TekSavvy: (1) shall have no recourse against the County for any losses, costs, expenses or damages as a result thereof; and (2) shall be liable for any and all reasonable costs directly incurred by the County in effecting the said removal and disposal of all or part of the Installation.

9. TREE CLEARING AND REPLACEMENT

1. In the event that trees along the Highway are removed or damaged beyond repair by TekSavvy and thereby require removal (a "**Tree Removal**"), TekSavvy shall, subject to requirements under Applicable Law and at its own and sole expense, completely remove the tree(s), including any residual tree stumps to a level below grade and to restore and remediate the surface where the tree(s) were located to an even grade.
2. Further, for each Tree Removal, TekSavvy shall, at the option of the County, provide the County with the tree replacement fee set out in **Schedule "B"** hereto.

10. METHOD OF CONSTRUCTION

1. TekSavvy shall construct the Installation by the method of construction identified in the Approved Plans as submitted to and approved by the County Engineer.
2. TekSavvy shall not deviate from any locations set out in Approved Plans without the prior written approval of the County Engineer. TekSavvy shall be required to provide the County Engineer, within forty-five (45) days of the completing construction of the Installation, as-built drawings (electronically) satisfactory to the County Engineer,

which drawings shall also note the date of completion of the Installation and any related construction aspects of the Works.

3. TekSavvy shall be required to construct the Installation in accordance with the provisions of this Agreement and shall:
 - (a) provide all required traffic control in accordance with the "Ontario Traffic Manual Book 7", and in accordance with the standards of the County, all of which TekSavvy is required to seek and obtain the approval of the County prior to construction being commenced;
 - (b) In the event there is any conflict between the standards mandated in the Ontario Traffic Manual Book 7 and the standards of the County, the standards of the County shall take precedence;
 - (c) during the construction of the Installation procure and maintain commercial liability insurance (the "**Construction Insurance Policy**"), shall file a copy of the Construction Insurance Policy and the Certificate of Insurance with the County, and the said Construction Insurance Policy shall:
 - (i) be comprised of primary and/or umbrella coverage with a limit of not less than five million dollars (\$5,000,000.00) per occurrence;
 - (ii) include commercial general liability covering all operations and liability assumed under this Road User Agreement with the County, and shall include coverage for the following:
 1. Premises and Operations
 2. Blanket Contractual
 3. Broad Form Property Damage
 4. Contingent Employer's Liability
 5. Cross Liability
 6. Severability of Interests
 7. Owners and Contractors Protective
 8. Personal Injury
 9. Employer's Liability
 10. Employees as Additional Insureds
 11. Non-Owned Automobile Including SEF # 96
 12. Hostile Fire

13. Attached Machinery

14. Third Party Environmental Liability

- (iii) include a copy of the endorsement or a letter from the insurer verifying coverage is to accompany the Certificate of Insurance;
 - (iv) include insurance against liability of bodily injury and property damage caused by vehicles and/or owned and operated by TekSavvy, or its agents, and used in conjunction with the construction of the Installation either within or outside the terms of this Road User Agreement, and shall have a limit of liability of not less than five million dollars (\$5,000,000.00) inclusive for any one occurrence;
 - (v) be endorsed to provide that the policy or policies will not be altered, cancelled, or allowed to lapse without providing thirty (30) days prior written notice to the County, with any such notice to be filed with the County Engineer, Department of Engineering, 360 Fairview Avenue West, Essex, Ontario N8M 1Y6, and via facsimile at 519-776-4455;
 - (vi) be endorsed to include the County as an additional named insured.
- (d) provide the County with confirmation, in a form acceptable to the County in its sole discretion, that TekSavvy or its contractors have WSIB coverage in place.

11. RESTORATION

1. Any restoration work required by TekSavvy under this Agreement shall be subject to the approval procedures in Section 6.

12. PROTECTION OF HIGHWAYS, ACCESS, AND FUTURE EXPANSION

Access

1. TekSavvy expressly acknowledges and agrees that it shall not unduly interfere with the right of free and legal use of all Highways by all persons entitled to use them during completion of the construction of the Installation and any related future maintenance of same, and will follow all direction of the County Engineer, acting reasonably, with respect to access by other users of the Highways.
2. TekSavvy further acknowledges and agrees that:
- (a) the County has an overarching responsibility to ensure that the Highways, , are operated and utilized in a manner that ensures safety of users and that maintains the traffic carrying ability and physical integrity of the Highways; and,
 - (b) in light of the responsibility of the County, TekSavvy shall complete the

construction of the Installation in such a manner so as not to harm the structural integrity of the Highways, or interfere with the safety of users of the Highways, during construction and future maintenance of the Installation.

Protection of Highways from Damage

3. No tracked or overweight equipment shall be placed by TekSavvy on the Highways unless County approved protection methods are in place, and with special care and attention being provided with respect to the paved surface of the Highways.

Accommodation of County Moving Permits

4. It is a requirement of this Agreement, that the Highways remain open and available at all times for use by users of the Highways, including users who have been issued oversized/super-load permits by the County. To this end, TekSavvy shall ensure that there remains a minimum of 5.0 metres of passable lane available to traffic at all times.

13. SCHEDULE OF INSTALLATION

1. Following execution of this Agreement, TekSavvy shall provide a schedule of the construction of the Installation to the County, which schedule is subject to approval by the County, in its sole and absolute discretion, acting reasonably.

14. ENVIRONMENTAL LIABILITY

1. The County is not responsible, either directly or indirectly, for any damage to the natural environment or to any 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 directly attributed to TekSavvy's occupation or use of the Highways as part of this Agreement and the Installation.
2. TekSavvy agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs, or expenses, whatsoever, directly related to the construction of the Installation, any future removal of same, and/or its use of the Highways as part of the construction and future maintenance of the Installation and/or any future removal of same, including, without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance on or under the Highways that directly result from:
 - (a) the occupation, operations, or activities of TekSavvy, its contractors, agents, or employees, or by any person with the express or implied consent of TekSavvy within the Highways; or
 - (b) any Works brought or placed within the Highway by TekSavvy, its

contractors, agents, or employees, or any person with the express or implied consent of TekSavvy;

unless such environmental liabilities (including, without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance) were caused directly or indirectly in whole or in part by the negligence or willful misconduct on the part of the County or those for which it is responsible under Applicable Laws.

15. EMERGENCY

1. For the purposes of this Agreement, "**emergency**" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety, or an essential service of the Parties.

As soon as is reasonably possible after an emergency involving the Installation is discovered, TekSavvy shall notify the applicable authorities and advise the County Engineer by telephone and shall keep the County Engineer advised throughout the emergency. Subject to Section 23, if the emergency is caused by the negligence or willful misconduct of TekSavvy, then TekSavvy shall reimburse the County for its costs incurred in connection with the emergency. Forthwith after the emergency, TekSavvy shall provide a written report to the County Engineer of what restoration Work needs to be undertaken with respect to the Installation, which Work shall be subject to the approval process in Section 6.

2. Should TekSavvy fail to comply with its obligations pursuant to this section of the Agreement to the satisfaction of the County Engineer, in her reasonable discretion, the County may complete any and all necessary restoration Work following an emergency, or retain a qualified third party contractor to do so, and shall charge the amounts for same, plus any and all other expenses incurred by the County, which includes, but is not limited to the time expended by the County to oversee the work and for any additional third party expenses, to TekSavvy. TekSavvy expressly agrees to pay for said charges forthwith upon demand from the County.

16. URGENT HIGHWAY REPAIRS

1. During construction of the Installation or any other Works, should the County determine that urgent repairs to the Highway are required, and which repairs are not required as a result of the Works, TekSavvy shall immediately cease any Works underway to permit the County to complete the repairs it deems necessary, in the County's reasonable discretion.

17. RECORD DRAWINGS

1. TekSavvy shall provide two (2) copies of the "as constructed" Installation (with sufficient detail to the satisfaction of the County) for the records of the County plus a final electronic copy prepared in an AUTOCAD, CAD, or GIS environment, prior to release of any deposits or securities (including the Security).

18. PAYMENT OF SECURITY AND FEES

1. TekSavvy covenants and agrees to pay to the County a one (1) time encroachment fee in the amount of \$2,500.00, plus the associated permit fees in the amount of \$150.00 per kilometer for the use of the Highways and/or the associated rights-of-way by TekSavvy for the Installation, the payment of which shall be due and payable upon the execution of this Agreement.
2. TekSavvy covenants and agrees to reimburse the County for any and all reasonable legal, survey, and administrative costs incurred by the County with regard to the preparation, execution and registration of this Agreement and all necessary field work and inspections required to be performed by the County under Applicable Law or as part of the County's permitting processes. In this regard, TekSavvy agrees to pay to the County, upon execution of this Agreement, a retainer towards costs in the amount of five thousand dollars (\$5,000.00), on account of estimated legal fees in the sum of three thousand dollars (\$3,000.00) and estimated administration costs in the sum of two thousand dollars (\$2,000.00). TekSavvy further covenants and agrees to pay within thirty (30) days of being provided with a request by the County such further reimbursement of costs as may be required by the County in accordance with this provision of the Road User Agreement.
3. TekSavvy acknowledges and agrees that **Schedule "B"** attached hereto is a list of fees and charges associated with permits, which are consistent with fees and charges normally required by the County, and which may be requested and issued by the County in respect of the construction of the Installation and the associated Works contemplated by this Agreement, and further undertakes and agrees to pay such fees and charges in accordance with **Schedule "B"**.

19. FORCE MAJEURE

1. If either Party is prevented from carrying out its obligations under this Agreement by reason of any cause beyond its reasonable control, such Party shall be relieved from such obligations while such inability continues; provided, however, that this Section shall not relieve a Party from its obligations to indemnify the other as contemplated herein, and provided further that nothing herein shall require either Party to settle any labour or similar dispute unless it is in the best interests of such Party to do so.

20. APPLICABLE LAWS

1. It is acknowledged and agreed by the Parties that this Agreement is subject to the provisions of all Applicable Laws of the Province of Ontario.

21. NOTICES

1. Any notice to be given under any of the provisions of this Agreement shall be provided to the County by delivering the notice to the Clerk of the County, or by

sending the notice by facsimile transmission to 519-776-4455, or by registered mail, postage prepaid, addressed to the attention of the Clerk of the County at **360 Fairview Avenue West, Suite 202, Essex, Ontario N8M 1Y6**, and to TekSavvy by delivering the same to its head office, or by sending same to its business office by registered mail, postage prepaid, addressed to TekSavvy as follows:

TEKSAVVY
800 Richmond Street
Chatham, Ontario N7M 5J5

if by email:
marc@teksavvy.ca with a
copy to legal@teksavvy.ca

If any notice is sent by facsimile transmission, the notice shall be deemed to have been given on the next business day following its transmission. If any notice is sent by mail, the same shall be deemed to have been given on the fifth (5th) day following the posting of the notice, provided that in the event of a disruption in postal service, either at the point of mailing or the point of delivery, any notice sent by mail shall be deemed to have been given on the day when it is actually received by the addressee of such notice.

22. ASSIGNMENT

1. TekSavvy may not assign any part of this Agreement without the express written consent of the County, which consent shall not be unreasonably withheld. TekSavvy further acknowledges that any proposed assignee shall be required to covenant, in favour of the County, to assume full responsibility of this Agreement.

23. INDEMNIFICATION

1. TekSavvy shall indemnify and save harmless the County, its Councillors, officers, directors, legal counsel, agents, and contractors from and against all claims, suits, demands, liabilities, losses, costs, damages, or other expenses of every kind that the County may incur or suffer as a consequence of or in connection with the Installation or the Works, or in any other way with the rights granted hereunder, except to the extent that such claims, liabilities, losses, costs, damages, and other expenses are caused by the County's negligence or breach or negligence.
2. The County shall likewise indemnify and save harmless TekSavvy, and its representatives officers, directors, employees, agents, affiliates, and/or personnel, but only to the extent that the County is grossly negligent or a party for whom the County is responsible commits willful misconduct.
3. To the extent prohibited by law, and notwithstanding any damages that a Party might incur for any reason whatsoever) a Party's entire liability and exclusive remedy to

the other shall be limited to actual and direct damages resulting from the negligence or willful misconduct of the other.4. In this Section, "**Losses**" are an amount awarded to a third party in, or to be paid to a third party in settlement of, any judicial, administrative, or arbitration claim, investigation, or proceeding. "**Representatives**" are the officers, directors, employees, agents, affiliates, personnel, and councilors (in the case of the County) of a Party to this Agreement.

5. Each Party defends and indemnifies the other Party, and the other Party's Representatives, against all Losses which they suffer as a result of the indemnifying Party's negligence, willful misconduct, or breach of the terms of this Agreement, subject to all of the following;
 - (a) The indemnification is limited by the limitations set out in Sections 23(1) and 23(2), and Section 23(3);
 - (b) The indemnified Party promptly notifies the other party of the claim in writing; and
 - (c) The indemnifying Party has sole control over defence or settlement of the Losses, but the indemnified Party will provide the other Party, and that Party's Representatives, with reasonable assistance in doing so.

24. BREACHES OF THIS AGREEMENT

1. If either Party commits a breach of or otherwise fails to comply with any of the provisions of this Agreement, the other Party shall give notice in writing to the breaching Party specifying the breach complained of. In the event the breaching Party fails to remedy such breach within sixty (60) days of receipt of such notice (or such longer period of time having regard to the nature of the breach as the notifying Party may reasonably deem appropriate), the matter shall be addressed in accordance with Article 24 of this Agreement, being the Dispute Resolution provisions provided for hereunder. If the matter cannot be resolved pursuant to the Dispute Resolution provisions, then the notifying Party may terminate this Agreement on written notice.

25. DISPUTE RESOLUTION

1. Any controversy, dispute, difference, question or claim arising between the Parties hereto in connection with the interpretation, performance, construction, or implementation of this Agreement that cannot be resolved by the County Engineer and a representative of TekSavvy (the "**Dispute**") shall be settled in accordance with this Section. The aggrieved Party shall send the other Party written notice identifying the Dispute, the amount involved (if any) and the remedy sought, and invoking the procedures in this Section. The Parties shall confer in an effort to resolve the Dispute themselves. If the Parties are unable to resolve the Dispute within five (5) business days after receipt of the written notice of the Dispute, then the Dispute is to be referred to a Mediator selected by Agreement between the Parties. If the Parties cannot agree on the selection of a Mediator, the final decision as to the Mediator

shall be at the sole discretion of the County, provided that the Mediator selected is a certified Mediator, a respected senior lawyer with experience in municipal law, or a retired Judge.

2. If the Dispute cannot be resolved by way of Mediation, the Parties may then pursue any remedies available to them at law.
3. Except to the extent that a matter is specifically subject to a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of the Dispute.

26. CONFIDENTIALITY

1. The County agrees not to use confidential information provided by TekSavvy, including but not limited to information relating to the Installation and the Works, or such other information as TekSavvy considers to be of a competitive nature respecting TekSavvy's customers, Installation, and its business operations ("**Confidential Information**") for any purposes other than performance of the Agreement. The County shall protect the confidentiality of the Confidential Information to the same degree or greater as the County protects the confidentiality of its own confidential information which, in any event, shall not be less than a reasonable degree of care. The County shall not disclose any Confidential Information to any third party unless such disclosure is consented to in writing by TekSavvy or otherwise required by law and then only after the County has provided written notice of such requirement to TekSavvy.

27. NUMBER AND GENDER

1. This Agreement shall be construed with all changes in number and gender as may be required by the context.

28. COVENANTS

1. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.

29. INCLUSIONS

1. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.

30. SEVERABILITY

1. The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions of the remainder of the Agreement shall remain valid and of full force and effect.

31. NO JOINT VENTURE, PARTNERSHIP, OR CO-OWNERSHIP

1. The Parties hereby acknowledge and agree that this Agreement is solely a road user 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.

32. GOVERNING LAW

1. This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

33. WAIVER

1. No waiver of any part of this Agreement shall be effective unless in writing and no such waiver shall be deemed a waiver of any other provision in this Agreement or a continuing waiver unless agreed to in writing by the Parties.

34. SURVIVAL

1. 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.

35. BINDING AGREEMENT

1. This Agreement, together with the Schedules attached hereto, constitutes the complete and exclusive statement of the understandings between the Parties, with respect to the Services hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties. This Agreement shall extend to, benefit, and bind the Parties hereto, and their respective successors and permitted assigns.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement, written on this and the preceding sixteen (16) pages, with effect from the day first written above.

**THE CORPORATION OF THE
COUNTY OF ESSEX**

TEKSAVVY SOLUTIONS INC.

Per: Gary McNamara
Title: Warden

Per: Marc Gaudrault
Title:CEO

I have authority to bind TekSavvy.

Per: Mary Birch
Title: Clerk

We have authority to bind the County.

SCHEDULE "A"

SCHEDULE "B"

**COSTS AND PERMIT FEES
As per Road User Agreement**

1. Permit Fees

(a) Per Kilometer of Highway - \$150.00

(b) Tree Replacement Fee - \$300.00

2. Encroachment Fee

One time Encroachment Fee - \$ 2500.00