



Road User Agreement

This Road User Agreement (the "**Agreement**") is made in duplicate this 18th day of January, 2024.

Between:

The Corporation of the County of Essex
(the "**County**")

And:

XPLORE Communications Inc.
(**"XPLORE"**)

WHEREAS the County is an upper tier municipality that is the owner of and Road Authority for a network of County roads throughout the County of Essex;

AND WHEREAS XPLORE is a "telecommunications common carrier" as defined in the *Telecommunications Act*, S.C. 1993, c.38 (the "**Telecommunications Act**") or "distribution undertaking" (and collectively with a "telecommunications common carrier", a "**Carrier**") as defined in the *Broadcasting Act*, S.C. 1991, c.11 (the "**Broadcasting Act**"), and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the "**CRTC**");

AND WHEREAS in order to operate as a Carrier, XPLORE requires to construct, install, operate and maintain Equipment (the "**Installation**"), with portions of the said Installation running in, on, across, along, over, and/or under ("**Within**") certain Highways, or other public places which are under the jurisdiction of the County of Essex (collectively the "**Rights-of-way**") or on other County Structures agreed to by the Parties, that particulars of which will be specified by XPLORE in a schedule presented to the County, seeking County approval at the time any Permit is applied for by XPLORE;

AND WHEREAS, pursuant to Section 43 of the *Telecommunications Act*, XPLORE requires the County's consent to construct its Equipment Within the Rights-of-way, and the County is willing to grant to XPLORE a non-exclusive right to access and use the Rights-of-way, provided that such use will not unduly interfere with the public use and enjoyment of the Rights-of-way, nor

any rights or privileges previously conferred by the County to other third parties to use the Rights-of-way;

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

AND WHEREAS the County has agreed to grant XPLORE permission to perform the Work (as defined below) along the Right-of-way and/or Highways (as defined below), under the terms and conditions as set out in this Agreement;

AND WHEREAS by By-law passed by 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, and attached to this Agreement.

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 Parties mutually covenant and agree as follows:

1.0 Recitals

- 1.1 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.
- 1.2 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.

2.0 Definitions

- 2.1 In addition to any other term defined in this Agreement, the following terms have the following meanings:
 - (a) "**Affiliate**" means:

- (i) in the case of XPLORE, "affiliate" as defined in the *Canada Business Corporations Act* that is also a carrier and includes any body corporate, partnership, or other unincorporated association in which XPLORE, or any of its affiliated bodies corporate (as so defined), has a controlling interest; and
 - (ii) in the case of the County, a local board, agency, or commission of the County, or a corporation which is partially or solely owned by, and is controlled by, the County, and which has as a primary purpose, the management and maintenance of the Rights-of-way.
- (b) "**Applicable Laws**" means any and all applicable laws, statutes, codes, ordinances, principles of common and civil law and equity, rules, approvals, regulations, and County by-laws which are binding upon and applicable to the Work and the Installation but to the extent that any of the above or other County requirements are inconsistent with the terms of this Agreement or federal law, XPLORE shall not be required to comply with the same;
- (c) "**Approved Plans**" means, as applicable, the approved Plans for the Installation as approved by the County Engineer, in his reasonable discretion, in accordance with the provisions of this Agreement;
- (d) "**As-Built Drawings**" means the drawings provided by XPLORE to the County showing all plans and specifications of the alignment in addition to any changes to such plans and specifications made on site during installation, and shall include, where applicable, the following:
 - (i) the location of the Installation, including plan view with offset distances from property lines, profiles, typical cross-sections and other industry standard location information;
 - (ii) construction methods and materials used; and
 - (iii) physical aspects of the Equipment, including the configuration, number, and size of pipes, ducts, chambers, and manholes.

- (e) "**Attachments**" means Equipment, including accessories, structures, and devices in, on, or to certain Municipal Structures.
- (f) "**Confidential Information**" means information considered proprietary by either XPLORE or the County that is delivered or disclosed pursuant to this Agreement and is identified as "confidential" and that is not otherwise readily available to the public, such as technical and business information, financial plans and records, marketing plans, business strategies, trade secrets, present and proposed products, and/or the Equipment of XPLORE or its Affiliates and information related to Third Party attachments;
- (g) "**County Consent**" of "**CC**" means the written consent of the County, with or without conditions, that requires excavation, to allow XPLORE to perform Work;
- (h) "**County Engineer**" means the most senior individual employed by the County with responsibilities for Rights-of-Way 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;
- (i) "**County Structures**" means infrastructure other than Rights-of-Way owned by the County for which the County has provided County Consent;
- (j) "**Crossing(s)**" means any place where any component(s) of the Installation cross, in whole or in part, any travelled portion of a Highway;
- (k) "**Emergency**" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either the County or XPLORE;
- (l) "**Equipment**" means the transmission and distribution facilities owned by XPLORE and/or its Affiliates, comprising of fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds, wireless equipment and ancillary structures used for the purpose of telecommunications;

- (m) "**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 Rights-of-Way and other public places;
- (n) "**Installation**" has the meaning given to the term in the Recitals;
- (o) "**Party**" means, singularly, either the County or XPLORE and "**Parties**" means collectively, both the County and XPLORE together;
- (p) "**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 and/or permit issuing practices under Applicable Laws.
- (q) "**Road Occupancy Permit**" or "**Permit**" means a permit issued by the County authorizing XPLORE to conduct Work that includes any activity that involves a deployment of its workforce, vehicles and other equipment in the Rights-of-way when performing the Work;
- (r) "**Service Drop**" means a cable that, by its design, capacity, and relationship to other cables of XPLORE, can be reasonably considered to be for the sole purpose of connecting Equipment to not more than one individual customer or building point or property;
- (s) "**Telecommunications**" means the emission, transmission, or reception by any wire, cable, radio, optical, or other electromagnetic system, or by any similar technical system;

- (t) **"Term"** has the meaning given to the term in Section 6 of this Agreement;
- (u) **"Third Party"** means any person that is not a party to this Agreement nor an Affiliate of either the County or XPLORE, and includes and entity that attaches its facilities in, on, or to the Equipment under an agreement with XPLORE;
- (v) **"Tree Work"** means cutting, trimming, or removing, or hedges growing on the Rights-of-way; and
- (w) **"Work(s)"** 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 XPLORE or its agents or contractors in connection with the Installation Within the Rights-of-way.

3.0 Schedules

3.1 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" – Scope and Construction Standards

- (a) Annex 1 – Work on Rights-of-Way
- (b) Annex 2 – Work on County Structures

Schedule "B" – Permits, Fees, and Charges

Schedule "C" – Relocation Costs

Schedule "D" – Permits Required by County

4.0 Grant

4.1 The consent, permission, and authority of the County is hereby given and granted to XPLORE, its employees, agents, and contractors:

- (a) to enter upon and use the Rights-of-Way under the jurisdiction of the County to perform the Work on the Highway(s) in accordance with the Approved Plans and the terms of this

Agreement. The consent, permission, and authority hereby given extends only to the Rights-of-Way 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.

4.2 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 Highway(s);

all of which rights are expressly reserved.

4.3 Save as hereinafter provided, the consent, permission, and authority hereby given and granted to XPLORE to perform the Works shall at all times be subject to XPLORE obtaining permits and/or approvals required from the County under Applicable Laws, which shall be administered in accordance with the procedures set forth in Section 7 of this Agreement, and such other approvals as required under this Agreement.

4.4 The County acknowledges that the placement of any of the Installation, or any XPLORE property, Within the Rights-of-Way shall not create or vest in the County any ownership or property rights in the Installation of such XPLORE property.

5.0 Routine Work

- 5.1 Notwithstanding Section 7.1 below, XPLORE may, without first obtaining consent from the County:
- (a) utilize existing ducts or similar structures of the Equipment or a Third Party's equipment;
 - (b) carry out routine maintenance and field testing to its Equipment;
 - (c) install and repair Service Drops; and
 - (d) repair, replace, or upgrade Equipment attached to County Structures

provided that in no case shall XPLORE break up or otherwise disturb the physical surface of the Rights-of-Way without the County's prior written consent.

6.0 Term

- 6.1 This Agreement shall have an initial term of five (5) years and shall be renewed automatically for successive five (5) 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) either Party delivers written notice of non-renewal to the other Party at least 180 days prior to the expiration of the then current Term; or
 - (c) 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 XPLORE's rights granted herein, pursuant to the terms and conditions of this Agreement, shall be binding upon and deemed to run Within the Rights-of-way and lands owned by the County.

- 6.2 Notwithstanding the above, in the event that the County provides notice of non-renewal or termination to XPLORE prior to expiration

of the then-current Term and XPLORE still needs its Installation or to perform further Work Within Rights-of-Way, the Parties shall use commercially reasonable efforts to negotiate and enter into a fresh Road User Agreement.

7.0 Approval Process

- 7.1 Before commencing any Works that require the issuance of County permits or County approvals under Applicable Laws, XPLORE will deposit a digital copy of all necessary Plans (including any amendments thereto) with the County Engineer for review and approval pursuant to the terms of this Section 7.
- 7.2 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 XPLORE 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 Rights-of-way within the County's jurisdiction. The Parties agree to work together in good faith to consider amendments to Plans, provided such amendments comply with Applicable Laws. However, XPLORE shall not undertake Work, excluding for routine work, until the County 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.
- 7.3 Should there be any disagreement between the County and XPLORE regarding the requirements of any Plan to be submitted by XPLORE, the opinion and requirements of the County Engineer in his reasonable discretion shall prevail. To the extent that any Legislation or County requirements would violate XPLORE's obligations with respect to the terms of this Agreement or federal law applicable to XPLORE, XPLORE shall not be required to comply with the same.
- 7.4 Excluding routine work as set forth in Section 5 in this Road User Agreement, XPLORE is required to consult with the County Engineer in advance of commencing Works in order to determine what permits and/or approvals are required and agrees 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 XPLORE's applications for the same.

- 7.5 XPLORE further agrees that prior to commencement of 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, which minimum standards of the County include, but are not limited to, the minimum standards recommended by The Transportation Association of Canada Guidelines, with necessary modifications for site specific issues, in order to commence any of the Works.
- 7.6 Furthermore, it shall be the sole and absolute responsibility of XPLORE 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 Rights-of-Way 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 XPLORE and any other user of the Rights- of-ay, the Parties to this Agreement will work together in good faith to resolve the dispute.

8.0 Highways

- 8.1 Both the County and XPLORE acknowledge and agree that only those Highways specified on any Permit issued to XPLORE for its Work, or such further Highways of the County as the County may expressly agree following the issuance of the applicable Permit, are the only Highways authorized for use by XPLORE and its agents and/or contractors, for the Works and the Installation.
- 8.2 If and to the extent XPLORE wishes, after commencement of the Works pursuant to a Permit, to alter the specific placement of the Installation set out in the Approved Plans, XPLORE shall request and obtain the prior written approval of the County Engineer prior to altering the Works contained in the Approved Plan, by way of an amendment of the existing Permit or the issuing of a new Permit.

- 8.3 In the event it becomes necessary, during the construction of the Installation, for XPLORE to transport goods by way of oversized loads on any County Highway(s), XPLORE 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 7.
- 8.4 XPLORE hereby agrees to comply with the provisions of 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.

9.0 Decommissioning and Relocation

- 9.1 In the event the County, acting reasonably, deems it necessary or requires that the Installation be relocated within the Rights-of-Way for a bona fide municipal purpose and, or be altered in its location on the Rights-of-Way, XPLORE hereby agrees to relocate and/or alter the location of the Installation and restore the affected Rights-of-Way, provided that the County gives at least one hundred and eighty (180) days notice in writing to XPLORE 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 XPLORE. The costs of any relocation of the Installation, or any part of the Installation, that was installed without XPLORE first obtaining the required permits and approvals from the County shall be borne by XPLORE solely within a period of five (5) years of the date of the installation, notwithstanding its rights pursuant to the *Telecommunications Act*. The costs of any relocation of the Installation, or any part of the Installation that was installed with XPLORE first obtaining the required permits and approvals from the County, shall be reimbursed by the County in accordance with the provisions of **Schedule "C"** hereto. It is acknowledged and agreed that in the event weather conditions negatively impact the ability of XPLORE 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.

9.2 Where XPLORE advises the County in writing that it no longer requires the use of any Equipment, XPLORE shall, at the County's request and within a reasonable period of time as agreed to by the Parties, at the sole cost and expense of XPLORE:

- (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 County Engineer, the Abandoned Underground Structures will interfere with any County-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 or other agreed to time 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 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 such Equipment and restore the ROWs within the time specified above and to the reasonable satisfaction of the County Engineer, the County may complete such removal and restoration and the Company shall pay the associated County's Costs.

9.3 In the event XPLORE fails to decommission and remove the Installation in accordance with the requirements of the County Engineer above, within one (1) year of the County Engineer advising that the County requires the removal of the Installation, the County, at its option, upon reasonable final notice to XPLORE, in writing, shall have the right to remove and dispose of all or part of the Installation as the County may determine, acting reasonably, and XPLORE: (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, subject to any limitations in recovery of costs in accordance with the provisions of **Schedule "C"** hereto.

10.0 Tree Clearing and Replacement

- 10.1 Prior to commencement of the Works, the County, or its consultant, and XPLORE shall jointly identify the trees and related Tree Work that will be required for the completion of the Works.
- 10.2 Within ninety (90) days of XPLORE advising the County that it has completed the initial Installation, the County, or its consultant, shall advise XPLORE in writing of any and all trees that the County claims were damaged, providing evidence, as a result of the Installation and associated Works (the "**Tree Notice**").
- 10.3 Following the Tree Notice being delivered, or should the County fail to provide the Tree Notice within ninety (90) days as required, the liability of XPLORE with respect to trees and related Tree Work shall be limited to the trees identified in the Tree Notice. Following the delivery of the Tree Notice, XPLORE may choose to invoke Section 27 "Dispute Resolution" of this Agreement.
- 10.4 In the event that trees along the Highway are removed or damaged beyond repair by XPLORE and thereby require removal (a "**Tree Removal**"), and the County, or its consultant, advising XPLORE of Tree Removal(s) being required, XPLORE 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.
- 10.5 Further, for each Tree Removal, XPLORE shall, at the sole option of the County, provide the County with the tree replacement fee set out in **Schedule "B"** hereto.

11.0 Method of Construction

- 11.1 XPLORE shall construct the Installation subject to the Approved Plans and any associated permits.
- 11.2 XPLORE shall not deviate from any locations set out in Approved Plans without the prior written approval of the County Engineer. XPLORE shall be required to provide the County Engineer, within ninety (90) 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.

- 11.3 XPLORE shall 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 XPLORE is required to seek and obtain from the County prior to construction being commenced.

In the event there is any conflict between the standards mandated in Ontario Traffic Manual Book 7 and the standards of the County, the standards of the County shall take precedence.

12.0 Insurance

- 12.1 XPLORE shall during the construction of the Installation procure and maintain commercial general liability insurance (the "**Construction Insurance Policy**"), shall file a copy of the certificate of insurance with the County, and the said Construction Insurance Policy shall:
- (a) be comprised of primary and/or umbrella coverage with a limit of not less than five million dollars (\$5,000,000.00) per occurrence; and
 - (b) cover all operations and liabilities assumed under this Agreement, and include coverage for the following:
 - (i) premises and operations
 - (ii) blanket contractual
 - (iii) broad form property damage
 - (iv) contingent employer's liability
 - (v) cross liability
 - (vi) severability of interests
 - (vii) owners and contractors protective
 - (viii) personal injury
 - (ix) employees as additional insureds
 - (x) non-owned automobile including SEF # 96
 - (xi) hostile fire
 - (xii) attached machinery

(xiii) sudden and accidental pollution

- 12.2 XPLORE shall also procure and maintain automobile liability insurance with limits of not less than five million dollars (\$5,000,000) each accident and insuring against claims for bodily injury and property damage arising out of the use or operation of XPLORE' owned or leased vehicles used in the performance of this Agreement.
- 12.3 The commercial general liability insurance policy required herein shall include a provision whereby the insurers will endeavour to provide the County thirty (30) days prior written notice of cancellation. Such notice shall be filed with the County Engineer, Infrastructure and Planning Services Department, 360 Fairview Avenue West, Essex, Ontario N8M 1Y6, and via facsimile at 519-776-4455.
- 12.4 The commercial general liability insurance required herein shall include the County as an additional insured but only with respect to liability arising out of XPLORE' operations under this Agreement.
- 12.5 XPLORE shall provide the County with confirmation, in a form acceptable to the County in its sole discretion, acting reasonably, that XPLORE or its contractors have WSIB coverage in place.

13.0 Restoration

- 13.1 Any restoration work required by XPLORE under this Agreement shall be subject to the approval procedures in Section 7.

14.0 Protection of Highways, Access, and Future Expansion

- 14.1 XPLORE expressly acknowledges and agrees that it shall not unduly interfere with the right of free and legal use of the Rights-of-Way by all persons entitled to use them during completion of the construction of the Installation and will follow all direction of the County Engineer, acting reasonably, with respect to access by other users of the Rights-of-Way.
- 14.2 XPLORE further acknowledges and agrees that:
- (a) the County has an overarching responsibility to ensure that the Rights-of-Way, are operated and utilized in a manner that

ensures safety of users and that maintains the traffic carrying ability and physical integrity of the Rights-of-Way; and

- (b) in light of the responsibility of the County, XPLORE shall complete the construction of the Installation in such a manner so as not to harm the structural integrity of the Rights-of-Way, or interfere with the safety of users of the Rights-of-Way, during construction and future maintenance of the Installation.

Protection of Rights-of-Way/Highways from Damage

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

Accommodation of County Moving Permits

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

15.0 Schedule of Installation to County Structures

- 15.1 Following execution of this Agreement, XPLORE 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.

16.0 Environmental Liability

- 16.1 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 XPLORE' occupation or use of the Rights-of-Way as part of this Agreement and the Installation.

- 16.2 XPLORE 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 Rights-of-Way 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 Rights-of-Way that directly result from:
- (a) the occupation, operations, or activities of XPLORE, its contractors, agents, or employees, or by any person with the express or implied consent of XPLORE within the Rights-of-Way; or
 - (b) any Works brought or placed within the Rights-of-Way by XPLORE, its contractors, agents, or employees, or any person with the express or implied consent of XPLORE;
- 16.3 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.

17.0 Emergency

- 17.1 Prior to commencement of the Installation, the County and XPLORE shall provide to each other a list of 24-hour emergency contact personnel, available at all times, including contact particulars, and shall ensure that the list is kept current.
- 17.2 As soon as is reasonably possible after an Emergency involving the Installation is discovered, XPLORE 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 25, if the Emergency is caused by the negligence or willful misconduct of XPLORE, then XPLORE shall reimburse the County for its costs incurred in connection with the Emergency. Forthwith after the Emergency, XPLORE 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 7.
- 17.3 Should XPLORE fail to comply with its obligations pursuant to this Section of the Agreement to the satisfaction of the County Engineer,

in his 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 XPLORE. XPLORE expressly agrees to pay for said charges forthwith upon demand from the County.

- 17.4 Should the Emergency be discovered by the County, the County shall as soon as reasonably practicable contact XPLORE and, as circumstances permit, allow XPLORE a reasonable opportunity to remove, relocate, protect, or otherwise deal with the affected Equipment, having regard to the nature of the Emergency. Notwithstanding the foregoing, the County may take all such measures it deems necessary to address the Emergency and otherwise re-establish a safe environment, and XPLORE shall pay the County's costs that are directly attributable to the Work or the presence of the Equipment in the Rights-of-Way related to addressing the Emergency.

18.0 Urgent Highway Repairs

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

19.0 Record Drawings and Locates

- 19.1 XPLORE shall provide the "as constructed" Installation (with sufficient detail to the reasonable satisfaction of the County) for the records of the County by electronic copy prepared in an AUTOCAD, CAD, or GIS environment, prior to release of any deposits or securities (including the Security).
- 19.2 XPLORE agrees that it shall, throughout the Term, at its own cost, record and maintain adequate records of the locations of its Equipment.
- 19.3 Each Party shall, at its own cost and expense, at the request of the other Party (or its contractors or authorized agents), physically

locate its respective facilities by marking the Rights-of-way using paint, staking, or other suitable identification methods ("**Locates**"), under the following circumstances:

- (a) in the event of an Emergency, as soon as practicably possible, during which the requesting Party will ensure that it has a representative on site to ensure that the area of the Locates is properly identified; and
- (b) in all other circumstances, within a reasonable time and for reasonable purpose as agreed upon by the Parties.

19.4 The Parties agree to respond within fifteen (15) business days to any request from the other Party for a mark up of County owned structures in the Rights-of-Way or the Equipment of XPLORE in the Rights-of-way, as the case may be, and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.

20.0 Payment of Fees

20.1 XPLORE covenants and agrees to pay to the County the fees, charges and County's Costs in accordance with this Agreement, including the fees and charges set out in **Schedule "B"**.

20.2 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 sixty (60) days after the date of the invoice.

20.3 XPLORE shall pay, and shall expressly indemnify and hold the County harmless from, all taxes lawfully imposed now or in the future by the County or all taxes, rates, duties, levies or fees lawfully imposed now or in 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 County, that are attributable to XPLORE' use of the Rights-of-way.

20.4 XPLORE shall not assume any costs for relocations initiated by the County for purposes such as beautification projects or project initiated to provide concessions to Third Parties.

21.0 Force Majeure

21.1 Except for the Parties' obligations to make payments to each other under this Agreement, if either Party is prevented from carrying out its obligations under this Agreement by reason of any cause 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**"). 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.

22.0 Applicable Laws

22.1 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.

23.0 Notices

23.1 Any notice to be given under any provisions of this Agreement shall be:

(a) Provided to the County by delivering the notice to the Clerk of the County by any of the following:

By registered mail, postage prepaid, addressed to the County as follows:

The Corporation of the County of Essex
Attention: County Clerk
360 Fairview Avenue West
Essex, Ontario N8M 1Y6

By email, emailed as follows:

To: clerks@countyofessex.ca with a copy to the County Solicitor at dsundin@countyofessex.ca

- (b) Provided to XPLORE by delivering the notice to XPLORE by any of the following:

By registered mail, postage prepaid, addressed to XPLORE as follows:

XPLORE Communications Inc.

By email, emailed as follows:

To: @XPLORE.com with a copy to @XPLORE.com

- 23.2 If any notice is sent by electronic 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, whether signed for or not, but 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.

24.0 Assignment

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

25.0 Liabilities and Indemnification

- 25.1 For the purpose of this Section 25, the following definitions shall apply:
- (a) "**County**" means the County and its elected and appointed officials, officers, employees, contractors, agents, successors, and assigns;
 - (b) "**XPLORE**" means XPLORE and its directors, officers, employees, contractors, agents, successors, and assigns;

- (c) "**Claims**" means any and all claims, actions, causes of action, complaints, demands, suits, or proceedings of any nature or kind;
- (d) "**Losses**" means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs (as defined immediately below) and expenses; and
- (e) "**Costs**" means those costs or expenses (including, without limitation, all reasonable legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

25.2 XPLORE hereby indemnifies the County from and against all Losses and/or Costs, incurred by the County in connection with this agreement as a result of any Claim, action, suit or proceeding based on a Claim of injury to any person, including injury resulting in death or damage to property of any Third Party, including property of the County caused by or attributable to the omission, negligence, willful misconduct or gross negligence of XPLORE, its officers, employees, agents, contractors, licensees or invitees.

25.3 The County hereby indemnifies XPLORE from and against all Losses and/or Costs incurred by XPLORE in connection with this Agreement as a result of any Claim, action, suit or proceeding based on a Claim of injury to any person, including injury resulting in death or damage to property of any Third Party, including property of XPLORE caused by or attributable to the omission, negligence, willful misconduct or gross negligence of the County, its officers, employees, agents, contractors, licensees or invitees.

25.4 Neither party shall be required to indemnify the other party to the extent any such damage or losses arise out of or are caused by a breach of this Agreement or any unlawful act or any negligent act or omission by the other party or any third party. This Section shall survive the termination of this Agreement.

25.5 Notwithstanding anything else 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 for 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.

26.0 Counterparts

26.1 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 complaint. 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.

27.0 Dispute Resolution

27.1 The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement (the "**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. If the Parties fail to resolve the Dispute within thirty (30) days of the non-disputing Party's receipt of written notice, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

27.2 Except where clearly prevented by the nature of the Dispute, the County and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this Section 27.

28.0 Confidentiality

28.1 The Parties agree not to use Confidential Information provided by the other for any purposes other than performance of the Agreement. The Parties shall protect the confidentiality of the Confidential Information to the same degree or greater as the

Parties protect the confidentiality of their own respective Confidential Information which, in any event, shall not be less than a reasonable degree of care. The Parties shall not disclose any Confidential Information to any Third Party unless such disclosure is consented to in writing by the other Party or otherwise required by law and then only after the affected Party has been provided written notice of such requirement.

- 28.2 Information that was lawfully in either Party's possession before receipt of it from the other Party, or information that is or becomes a matter of public knowledge through no fault of either Party, or was independently discovered or developed by either Party, is not considered Confidential Information under the Agreement.
- 28.3 The duties and obligations to protect the Confidential Information survive termination of the Agreement and must continue until the Party originally claiming the information to be Confidential Information releases that claim by deed or action.
- 28.4 Improper disclosure or use of Confidential Information may cause irreparable harm to XPLORE or the County, as the case may be, and such harm may not be adequately compensated by damages. As a result, in addition to all other remedies either Party may have, either Party may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use of any Confidential Information contrary to the provisions of the Agreement.
- 28.5 Each Party will indemnify and save the other Party harmless from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses which may be brought against or suffered by the other Party as a consequence of the unauthorized disclosure by the indemnifying Party of the Confidential Information of the other Party.

29.0 General Terms

- 29.1 This Agreement shall be construed with all changes in number and gender as may be required by the context.
- 29.2 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.

- 29.3 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.
- 29.4 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.
- 29.5 This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.
- 29.6 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.
- 29.7 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.
- 29.8 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.

The Parties hereto have each electronically executed this Agreement, written on this and the preceding twenty-five (25) pages, with effect from the day first written above.

THE CORPORATION OF THE COUNTY OF ESSEX

Per: Hilda MacDonald, Warden

Per: Mary Birch, Clerk

We have authority to bind the County.

XPLORE COMMUNICATIONS INC.

Per:

Per:

We have authority to bind XPLORE.

Schedule "A"

Scope and Construction Standards

1.0 Overview

- 1.1 This **Schedule "A"** describes the Work and process to be performed and followed by XPLORE and the County, and the specifications to which the Parties shall adhere to. This **Schedule "A"** Scope and Construction Standards, may be modified and amended as required in accordance with the terms of the Agreement, or as further agreed by the Parties in writing.
- 1.2 For the purposes of this **Schedule "A"**, acronyms and terms that are not defined herein shall have the meanings ascribed to them in the Agreement.
- 1.3 The Parties agree that for the purpose of this **Schedule "A"** and the Agreement, the following Annexes form part of the Agreement and describe, outline and determine the scope of Work, requirements and Constructions Standards applicable to each.
- 1.4 The Annexes to this Schedule are:
- (a) Annex 1: "**Work on Rights-of-Way**" meaning the installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of the Equipment performed by XPLORE within the Rights-of-way, for the purpose of providing Telecommunications.
 - (b) Annex 2: "**Work on County Owned Structures**" meaning the installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of all Equipment attached to County Owned Structures with respect to telecommunication Equipment, including the necessary Attachments for the purpose of providing Telecommunications.

2.0 Construction Standards

- 2.1 XPLORE shall comply with the procedures, standards and guidelines described in the Agreement and each Annex hereto, as applicable and any tables, charts, figures or other attachments forming part of any Annex, as applicable.

- 2.2 All Work carried out by XPLORE shall comply with the Standards and requirements outlined in any Schedule or Annex, as applicable and shall also comply with all applicable federal and provincial statutes, regulations, and applicable guidelines and rules thereto.
- 2.3 The Party requesting changes to this Article 2 ("Construction Standards") will provide notice to the other Party in accordance with the terms of the Agreement.
- 2.4 All Work shall be conducted and completed to the reasonable satisfaction of the County and in accordance with:
- (a) Applicable Laws (and, in particular, all laws and codes relating to occupational health and safety);
 - (b) this Agreement; and
 - (c) the applicable Permits issued by the County.
- 2.5 Notwithstanding Section 2.4 of this **Schedule "A"**, and any other provision of the Agreement, to the extent that any standards of the County are, or become inconsistent or contradict, the terms of this Agreement, or the *Telecommunications Act*, or impose costs not mutually agreed to on XPLORE, XPLORE shall not be required to comply with such standards.
- 2.6 The County may order the stoppage of the Work for any bona fide County purpose or cause relating to public health and safety or any circumstances beyond its control. In such circumstances, the County shall provide XPLORE with a verbal order and reasons to stop the Work and XPLORE shall cease the Work immediately. Within two (2) business days of the verbal order, the County shall provide XPLORE with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the County shall advise XPLORE immediately that it can commence the Work.
- 2.7 XPLORE shall use its reasonable efforts to minimize the necessity for road cuts, construction and the placement of new Equipment within the Rights-of-way by coordinating its Work and sharing the use of support structures with other existing and new occupants of the Rights-of-way.
- 2.8 XPLORE shall participate in a utility co-ordination committee, should one be established by the County, and contribute to its equitable share of the reasonable costs of the operation and administration of the committee as approved by such committee.

Annex 1 to Schedule "A" Work on Rights-of-Ways

1.0 Overview

- 1.1 This Annex describes the Work and process to be performed and followed by XPLORE and the County, and the specifications to which the Parties shall adhere to when carrying out Work on the Rights-of-Way. This Annex "1" Work on the Rights-of-Way, may be modified in accordance with the terms of the Agreement.

2.0 Equipment Location

- 2.1 Where required by the County, XPLORE shall, no later than ninety (90) days after completion of any Work, provide the County Engineer with accurate "As-Built Drawings", prepared in accordance with such reasonable standards as may be required by the County Engineer, sufficient to accurately establish the plan, profile and dimensions of the Equipment installed within the Rights-of-Way. Such drawings shall only be used for the purposes of facilitating the County Engineer's conduct of planning and issuance of Work permits. The "As-Built Drawings" must be protected through reasonable measures and must not be shared beyond those who require it for the purposes described above, nor must they be used for any other purpose or combined with other information.
- 2.2 Where the location of any portion of the Equipment in a Right-of-Way is located outside a distance of one (1) metre horizontally (centre-line to centre-line) from the location approved in the Permit or as shown on the as-built drawings (as accepted by the County) and, as a result, the County is unable to install its facilities within the affected Rights-of-Way in the manner it expected based on the Permit or as-built drawings (the "**Conflict**"), the following shall apply:
- (a) The County shall notify XPLORE of the Conflict, and XPLORE shall, in consultation with the County, use commercially reasonable efforts to attempt to resolve the Conflict.
 - (b) If XPLORE is unable to resolve the Conflict to the reasonable satisfaction of the County and in a reasonable period of time, taking into consideration the circumstances of the situation, then XPLORE shall pay the County the County's costs that arises as a direct result of the Conflict.

3.0 Agents and Sub-contractors

3.1 Each party agrees to work with the other Party directly to resolve any issues arising from any acts, omissions or performance of its agents and sub-contractors.

4.0 Remedial Work

4.1 Following the completion of any Work, XPLORE shall leave the Right-of-Way in a neat, clean, and safe condition and free from nuisance, all to the reasonable satisfaction of the County. Where XPLORE is required to break or otherwise disturb the surface of a Right-of-Way to perform its Work, it shall repair and restore the surface of the Right-of-Way to substantially the same condition it was in before the Work was undertaken, all in accordance with the standards of the County and to the reasonable satisfaction of the County Engineer.

5.0 Road Restoration

5.1 If XPLORE has excavated, broken up or otherwise disturbed the surface of a Right-of-Way, the requirements for XPLORE completing the road restoration work will vary depending on if and when the pavement has been recently repaved or overlaid, as follows:

- (a) if pavement has been repaved or overlaid during the five-year period immediately prior to the date of issuance of the Permit, then the County may require that XPLORE grind and overlay the full lane width of pavement in the Right-of-Way;
- (b) if pavement has been repaved or overlaid during the two (2) year period immediately prior to the date of issuance, then the County may require that XPLORE grind and overlay the full width of the pavement in the Right-of-Way;
- (c) in either subsections (a) or (b) above, if Third Parties, including the County as a provider of services to the public, has excavated, broken up or otherwise disturbed the pavement to be ground and overlaid, the costs of that grind and overlay will be apportioned between XPLORE and the Third Parties on the basis of the area of their respective cuts;
- (d) the County will not require grind and overlay under subsections (a) or (b) above for road restoration work involving:

- (i) service connections to buildings where no other reasonable means of providing service exists and XPLORE had no requirement to provide service before the new pavement was placed;
 - (ii) emergencies; and
 - (iii) other situations reasonably deemed by the County Engineer to be in the public interest; and
- (e) If the County has required XPLORE to grind and overlay under either subsections (a) or (b) above, XPLORE will have no obligation to pay Pavement Degradation fees under **Schedule "B"** in relation to that pavement.

6.0 Repairs

- 6.1 Where weather limitations or other external conditions beyond the control of XPLORE do not permit it to complete a final repair to the Right-of-Way within the expected period of time, XPLORE may complete a temporary repair to the Right-of-Way; provided that XPLORE replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the Right-of-Way by XPLORE shall be performed in accordance with the standards of the County and to the reasonable satisfaction of the County Engineer.
- 6.2 If a temporary repair gives rise to an unsafe condition, then this shall be deemed to constitute an Emergency.
- 6.3 XPLORE warrants its temporary repair, to the reasonable satisfaction of the County until such time as the final repair is completed by XPLORE, or, where the County is performing the final repair, for a period of two (2) years or until such time as the final repair is completed by the County, whichever is earlier. XPLORE shall warrant its final repairs for a period of two (2) years from the date of their completion.
- 6.4 Where:
- (a) XPLORE fails to complete a temporary repair to the reasonable satisfaction of the County within seventy-two (72) hours of being notified in writing by the County, or such other period as may be agreed to by the Parties; or

- (b) XPLORE and the County agree that the County should perform the repair, then the County may affect such work necessary to perform the repair and XPLORE shall pay the County's Costs of performing the repair.

Annex 2 to Schedule "A" Work on County Structures

1.0 Overview

- 1.1 This Annex describes the Work and process to be performed and followed by XPLORE and the County, and the specifications to which the Parties shall adhere to when carrying out Work on County Structures. This Annex 2 to **Schedule "A"** of the Agreement, Work on County Structures, may be modified in accordance with the terms of the Agreement.
- 1.2 The County hereby grants XPLORE a non-exclusive right to place, attach install, operate, upgrade, maintain, Work and remove Attachments, in, on or to certain County Structures, subject to XPLORE obtaining the appropriate permit from the County to do so, and which are subject to change upon mutual agreement by the Parties. While performing such Work XPLORE shall comply with the terms of the Agreement and follow the procedures and guidelines detailed in this Annex 2.
- 1.3 The County grants XPLORE a non-exclusive right to use any of the County's existing conduit that may be necessary for XPLORE to run power and fibre to each Attachment and the County also grants XPLORE the right to connect to the County's existing power source, whenever possible.
- 1.4 XPLORE covenants and agrees to pay the County the fees associated with the permits and that XPLORE requires in connection with the Work, and the fees set out in **Schedule "B"** with respect to the power consumption of the Attachments.

2.0 Approval

- 2.1 XPLORE will, in accordance with the terms of the Agreement, provide the County Engineer the following:
- (a) a detailed description of the Attachment;
 - (b) a detailed engineering plan showing the proposed location of the Attachment;
 - (c) a detailed description of the scope of the Work required to place, attach, or install the Attachment;

- (d) a schedule setting out the proposed timetable for the commencement, performance, and completion of the Work; and
- (e) any other information as the County Engineer may reasonably require.

3.0 Standards of Work

3.1 XPLORE will conduct Work on County Structures in accordance with Article 2 of Schedule "A" and will comply with the following Conditions for Work carried out on County Structures:

- (a) 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 present on the County Structure at the time of installation;
- (b) Upon completion of any work, XPLORE shall repair and/or restore any damage to the County Structure caused by the Work to the condition in which existed prior to the Work, reasonable wear and tear is excepted; and
- (c) If XPLORE fails to repair and/or restore the County Structure within thirty (30) business days of being notified by the County, the County may make such repairs and XPLORE shall pay the County's repair costs, upon presentation of a detailed invoice.

4.0 Interference

4.1 The County will use best efforts to avoid interfering with the Attachment or Equipment. However, XPLORE acknowledges and accepts that the County may, acting reasonably, interfere with the Attachment or Equipment for the operation, repair or maintenance of the County Structure and or improvements. The County agrees that in the event any such repair or maintenance of the County Structure, including improvements, is required, it shall provide XPLORE thirty (30) business days prior written notice unless the requirement to repair and/or maintain a County Structure is due to an emergency situation involving the health and safety of the public such that, in the discretion of the County, it would be prudent or reasonably necessary to act in a shorter period of time. XPLORE agrees that the County will not be responsible for any costs, losses

or damages suffered by XPLORE, as a result of the County's interference with the Attachment or Equipment, unless caused by the willful misconduct or negligence of the County, its elected officials, appointed officers, employees, agents or contractors, and or anyone for whom the County is responsible by law. The County shall use best efforts to not grant any third party using its Facilities a right to unduly interfere with the Attachment or Equipment and further agrees to fully cooperate with XPLORE if any Third Party using the County Structures interferes with the Attachment or Equipment.

Schedule "B"

Permits, Fees, and Charges

1.0 Overview

1.1 The CRTC allows municipalities to recover all demonstrable "causal costs" attributable to a telecommunication company's project. The Fees outlined below are based on a recovery of costs related to the installation of XPLORE' Equipment within the County's Rights-of-Ways.

2.0 Permit Fees

- 2.1 XPLORE shall be charged the following:
- (a) Per Kilometre of Highway - \$150.00
 - (b) Tree Replacement Fee - \$300.00

3.0 Pavement Degradation Fees

3.1 The following Pavement Degradation Fees shall be charged to XPLORE per square metre of pavement:

Pavement Age	Rates
0 to 5 years	\$47.93
6 to 10 years	\$35.95
11 to 15 years	\$23.96
16 to 20 years	\$11.98
21 years and over	N/A

4.0 Wireless Attachment Fees

4.1 The following Wireless Attachment Fees shall be charged to XPLORE per small cell per annum:

- (a) 1-75 attachments - \$0.00 per annum per small cell
- (b) 76+ attachments - \$50.00 per annum per small cell

5.0 Power Consumption Fee for Wireless Attachments

5.1 THIS SECTION INTENTIONALLY DELETED – BUT SUBJECT TO NEGOTIATION AND AMENDMENT IN THE EVENT WIRELESS ATTACHMENTS ARE DEPLOYED ON COUNTY STRUCTURES.

Schedule "C" Permits, Fees, and Charges

1.0 Overview

1.1 The County shall reimburse XPLORE for all Relocation Costs ("in kind" or "like-for-like" Equipment) based upon the following principles, methodologies, and procedures:

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

1.2 For Conduit-encased concrete structures, the County shall be responsible for a percentage of the Relocation Costs based on the CRTC methodology as contained in Telecom Decision CRTC 2008-91. The remaining useful life of equipment shall be based on Telecom Decision CRTC 2008-14 for determining the life expectancy of the equipment using straight-line depreciation of the equipment life. XPLORE shall be responsible for the remainder of the costs, including any costs to augment its network.

1.3 For the purpose of this Schedule "C" Conduit shall mean a reinforced passage or opening in, on, over or through the ground or

watercourses capable of containing communication facilities and includes main Conduits, laterals to poles and into buildings, underground dips, short sections of Conduits, under roadways, driveways, parking lots and similar Conduit installations but excludes Manholes, central-office vaults or other access points and Conduit entering the central office vault.

- 1.4 Where costs directly attributable to a County-initiated requirement to relocate Equipment are incurred as a direct result of work undertaken by or on behalf of the County for beautification, aesthetics, or other similar purposes, such costs are to be entirely borne by the County. These costs include, but are not limited to, depreciation, betterment, and salvage costs.

2.0 Relocation Costs Infrastructure Projects

- 2.1 It is agreed that should the County enter into a cost sharing agreement with the Province of Ontario and/or the Government of Canada for a major infrastructure project, the County's application for such funding will identify all costs associated with the design and construction of that project, including any required relocation of the XPLORE' Plant, such that the XPLORE' relocation costs can be included in the cost sharing agreement. For clarity, this clause relates to new capital projects that benefit from an equal or higher cost share being covered by provincial and/or federal funding under agreements for that/those specific project(s), and does not apply to funding programs such as Provincial or Federal Gas Tax where the province and/or federal government does not dictate which individual project the funding is for.

3.0 Third Party Relocation Costs

- 3.1 Unless otherwise agreed to between the County and the Third Party, in no event shall the County be responsible under this Agreement for:
- (a) the costs of XPLORE to relocate Equipment at the request of a Third Party; or
 - (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment.
- 3.2 Unless otherwise agreed to between XPLORE and the Third Party, in no event shall XPLORE be responsible under this Agreement for:

- (a) the costs of XPLORE to relocate Equipment at the request of a Third Party under this Agreement;
- (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment; and/or
- (c) commencing a relocation of Equipment until XPLORE and the Third Party have agreed to relocation costs.

3.3 In order to provide XPLORE with the opportunity to budget for Relocations of which the County may have prior knowledge, the County will allow XPLORE involvement with the County's PUCG to facilitate and coordinate XPLORE's Relocations.

Schedule "D" Permits Required by the County

WORK ACTIVITY	CC	ROP	Notification only	No Permit or Notification
Any installation of Equipment that requires Excavation ¹ in the ROW, including: <ul style="list-style-type: none"> – the installation of buried Equipment crossing a road; – the installation of new Above-ground Equipment²; – the relocation of buried Equipment or Above-ground Equipment; – the replacement of existing Above-ground Equipment with equipment that is significantly larger; and – the installation of buried Service Drops that cross a road or a break a hard surface of the ROW. 	X	X		
Installation of Attachments			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 County				X

¹ "**Excavation**" means the breaching or breaking up of the hard surface of the ROW, and includes activities such as day-lighting, test pitting, digging pits and directional boring but excludes hand-digging.

² "**Above-ground Equipment**" means, in all cases above, any structure located on the surface of the ROW used to house or support the Plant, and includes cabinets, poles, and lamp poles, but excludes aerial Plant.