

TELECOMMUNICATIONS ACCESS AGREEMENT

This agreement made shall be effective as of the day of ,2021.

Between

Xplornet Communications Inc.
hereinafter called "**Xplornet**"

and

The Corporation of the County of Bruce
hereinafter called the "**County**"

(each, a "**Party**" and, collectively, the "**Parties**")

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

AND WHEREAS, in order to operate as a Carrier, Xplornet wishes to install, repair and maintain wires, cables, ducts, conduits, manholes and other accessories, structures and equipment (collectively, "the Equipment") for the purposes of supplying and distributing fibre in, on, over, under, across or along ("**Within**") the highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the County (collectively, the "**Right-of-Way**" or "**ROWS**");

AND WHEREAS Subsection 11(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, provides that, subject to the rules set out in s. 11(4) of the *Municipal Act, 2001* an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS Section 28(1) of the *Municipal Act, 2001* provides that a municipality has jurisdiction over all highways over which it had jurisdiction on December 31, 2002, all highways established by by-law of the municipality on or after January 1, 2003 and all highways transferred to the municipality under the *Municipal Act, 2001*, the *Public Transportation and Highway Improvement Act* or any other Act;

AND WHEREAS the County has the authority to enter into agreements with any person in respect of the use of any portion of the highway under its jurisdiction upon such terms and conditions as may be agreed;

AND WHEREAS, pursuant to Section 43 of the *Telecom Act*, Xplornet requires the County's consent to construct its Equipment Within the ROWs;

AND WHEREAS the County is willing to grant Xplornet a non-exclusive right to access and use the ROWs; provided that such use will not unduly interfere with the public use and enjoyment of the ROWs, nor any rights or privilege previously conferred or conferred after the Effective Date by the County on Third Parties to use or access the ROWs; and

AND WHEREAS the Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant under which the County hereby provides its consent;

IN CONSIDERATION of the sum of \$2.00 paid by each of the parties to the other and the mutual terms, conditions and covenants contained herein, the Parties agree and covenant with each other as follows;

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** In this Agreement, the following words and phrases shall have the following meanings:

(a) **"Affiliate"** means

- i. in the case of Xplornet, "affiliate" as defined in the *Canada Business Corporations Act* that is also a Carrier; and
- ii. in the case of the County, a local board, agency or commission of the County or a corporation which partially or solely owned by, and is controlled by, the County, and which has a primary purpose, the management and maintenance of the ROWs;

(b) **"Agreement"** means this Telecommunications Access Agreement and all amending Agreements and schedules;

(c) **"Applicable Laws"** means:

- i. applicable federal, provincial or municipal statutes, regulations, laws, orders-in-council, by-laws, codes and policies;
- ii. applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, governmental authority (including the CRTC) or other Person having jurisdiction; and
- iii. applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a governmental authority,
- iv. and "Federal Laws" means those Applicable Laws enacted by the federal government, "Provincial Laws" means those Applicable Laws enacted by the provincial government, and "Municipal Laws" means those Applicable

Laws enacted by the County and/or a lower tier municipality;

- (d) **“Business Day”** means a day that is not Saturday, Sunday or a statutory or civic holiday;
- (e) **“Claims”** means any, and all claims, actions, causes of action, complaints, demands, suits and proceedings of any nature or kind;
- (f) **“County”** means the Corporation of the County of Bruce and its Warden, elected officials, Councillors, officers, employees, contractors, agents, successors, and assigns;
- (g) **“Director”** means Director of Transportation and Environmental Services or an individual designated by him or her from time to time;
- (h) **“Effective Date”** means the date on which this Agreement is executed by the Parties or such other date as agreed to in writing by the Parties;
- (i) **“Xplornet”** means Xplornet Communications Inc. and its directors, officers, employees, agents and successors;
- (j) **“Emergency”** means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety, or an essential service of either of the Parties;
- (k) **“Encroachment Permit”** or **“EP”** means a Permit issued by the road authority of the County authorizing Xplornet to occupy the ROWs with its workforce, vehicles and other equipment performing the Work;
- (l) **“Equipment”** means the transmission and distribution facilities owned by Xplornet and/or its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and equipment located Within the ROWs;
- (m) **“Hazardous Substance”** means any harmful substance including, without limitation, electromagnetic or other radiation contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any Applicable Law (including the common law);
- (n) **“Losses”** means, in respect of any matter, damages, liabilities, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a Third Party or otherwise), and for the purposes of this definition, “costs” shall mean those costs 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;

- (o) **MAA** shall mean Municipal Access Agreement
 - (p) **“Municipal Consent”** or **“MC”** means the written consent of the County, with or without conditions, to allow Xplornet to occupy the ROWs;
 - (q) **“Permit”** means an Encroachment Permit (EP) or Municipal Consent (MC);
 - (r) **“Service Drop”** means a cable that, by its design, capacity, and relationship to other fibre optic cables of Xplornet, can be reasonably considered to be for the sole purpose of connecting backbone of the Equipment to not more than one individual customer or building point of presence;
 - (s) **“Third Party”** means any person that is not a party to this Agreement nor an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with Xplornet; and
 - (t) **“Work”** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of the Equipment performed by Xplornet within the ROWs, including the excavation, repair and restoration of the ROWs.
- 1.2. **Industry Terms.** Words having well-known technical or trade meanings within the context of municipal construction and the communications industry shall be so construed, and all listings of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- 1.3. **Headings.** The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.4. **Number and Gender.** Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 1.5. **Business Days.** If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
- 1.6. **Legislation.** All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.

- 1.7. **Currency.** All dollar amounts referred to in this Agreement are stated in Canadian Dollars.
- 1.8. **Recitals.** The Parties agree that the Recitals are true and accurate and shall form part of this Agreement.
- 1.9. **Schedules.** The following schedule is annexed to this Agreement and is hereby incorporated by reference into this Agreement and forms part hereof:

Schedule A – Permits Required by the County

2. USE OF ROWs

- 2.1. **Consent to use ROWs.** The County hereby consents to Xplornet's use of the ROWs for the purpose of performing its Work, subject to the terms and conditions contained in this Agreement, and in accordance with all Applicable Law or other municipal rules, policies, standards and guidelines ("**Municipal Guidelines**") pertaining to the Equipment and the use of the ROWs to the extent, however, that any Municipal Laws or Municipal Guidelines are not inconsistent or in conflict with this Agreement.
- 2.2. **Restrictions on use.** Xplornet shall not, in the exercise of its rights under this Agreement, unduly interfere with the public use and enjoyment of the ROWs.
- 2.3. **Third Party Equipment acquired by Xplornet.** The Parties agree that where Xplornet acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located Within the ROWs (the "**New Equipment**"), and that Third Party is party to a valid and existing municipal access agreement with the County (the "**Old MAA**"), then, effective the day of the acquisition of the New Equipment by Xplornet:
 - (a) the New Equipment shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and
 - (b) where Xplornet has been assigned or has acquired the rights and obligations under the Old MAA, the Old MAA shall be terminated.
- 2.4. **No Ownership Rights.** The parties acknowledge and agree that:
 - (a) the use of the ROWs under this Agreement shall not create nor vest in Xplornet any ownership or property rights in the ROWs, and Xplornet shall be and remain a mere non-exclusive occupant of the ROWs; and

- (b) the placement of the Equipment Within the ROWs shall not create or vest in the County any ownership or property rights to the Equipment, except as expressly provided in this Agreement.

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

3. PERMITS TO CONDUCT WORK

3.1. **Where Permits Required.** Subject to Section 3.5, Xplornet shall not enter upon, excavate, break up or otherwise disturb the surface of any ROW for the purpose of performing its Work without first obtaining, where required, the applicable Permits for the specific Work activity described in **Schedule A**. Notwithstanding anything else in this Agreement, the Parties may mutually agree to follow alternative permitting processes to facilitate certain Work.

3.2. **Submission of Plans.** Unless otherwise agreed to by the County and/or Director, Xplornet shall, prior to undertaking any Work that requires an MC, submit the following to the Director or representative:

- (a) construction plans of the proposed Work showing the locations of the proposed or existing Equipment along with their offsets from the property lines and specifying the boundaries of the area within the County within which the construction is proposed to take place;
- (b) all other relevant plans, drawings, and other information as may be normally required by the Director from time to time for the purposes of issuing Permits;
- (c) all fees required by the County;
- (d) A traffic plan that conforms to the then current version of the Ontario Traffic Manual 7; and
- (e) Site meeting request to review staked running line to confirm location prior to an excavation with the County’s ROW.

3.3. **Refusal to Issue Permits.** The County and/or Director may refuse to issue a Permit referred to in Section 3.1 for any bona fide municipal purpose, including reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing by the County.

- 3.4. **Expiry of MCs.** All MCs for which Work has not commenced shall expire six (6) months from the date of issuance. Xplornet may request an extension in writing of the MC at least one (1) month prior to its expiration. If the Director denies Xplornet's request for an extension and Xplornet wishes to proceed with the proposed Work, then Xplornet shall reapply for a new MC and re-circulate the proposal for the appropriate utilities for review.
- 3.5. **No Permits for Routine Work.** Notwithstanding Section 3.1, Xplornet may, without first obtaining a Permit:
- (a) utilize existing ducts or similar structures of the Equipment with at least twenty-four (24) hours advance written notice to the County; and
 - (b) carry out routine maintenance and field testing to its Equipment; and
 - (c) repair and install service drops;
- provided that in no case shall Xplornet carry out any physical disruption or change to the ROW or its use without the County's prior written consent.
- 3.6. **Restoration of Xplornet Service during Emergencies.** Notwithstanding Section 3.1, in the event of an Emergency, Xplornet shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with Section 3.1; provided that Xplornet complies with Section 3.1 within five (5) Business Days of completing the Work.

4. MANNER OF WORK

- 4.1. **Compliance with Applicable Laws, etc.** All Work shall be conducted and completed to the satisfaction of the County and in accordance with:
- (a) Applicable Law (and, in particular all laws and codes relating to occupational health and safety);
 - (b) the Municipal Guidelines;
 - (c) applicable industry standards;
 - (d) this Agreement; and
 - (e) the applicable Permits issued pursuant to Section 3.1.
- 4.2. **Underground Equipment.** Xplornet shall place those portions of the Equipment that cross beneath streets or existing buried utilities in ducts, carrier pipes or encased in concrete, or as otherwise specified by the County.
- 4.3. **Stoppage of Work.** The County and/or Director may order the stoppage of the Work for any bona fide municipal purpose or cause relating to public health or safety, special events or any circumstances beyond its control, regardless of a Municipal Consent or Encroachment Permit having been issued by the County.

In such circumstances, the County and/or Director shall provide Xplornet with a verbal order and reasons to stop the Work and Xplornet shall cease the Work immediately. Within two (2) Business Days of the verbal order, the County shall provide Xplornet with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the County shall advise Xplornet immediately that it can re-commence the Work.

- 4.4. **Coordination of Work.** Xplornet shall use reasonable efforts to minimize the necessity for road cuts, construction, and the placement of new Equipment Within the ROWs by coordinating its Work and sharing the use of support structures with other existing and new occupants of the ROWs.
- 4.5. **Open Road Cuts.** No open road cuts are permitted on any County Roads without the prior written approval of the County. Both directional bore and trenching are permitted. In the event an open road cut is required Xplornet shall request permission through the Municipal Consent or Encroachment Process Permit process.
- 4.6. **Identification of Contractors.** Xplornet shall ensure that all of its contractors have proper identification visible on the Work site displaying the company name in which the work is being completed for.
- 4.7. **Emergency Contact Personnel.** Xplornet and the County shall provide to each other a list of twenty-four (24) hour emergency contact personnel available at all times and shall ensure that the list is kept current.
- 4.8. **Emergency work by County.** In the event of an Emergency, the County may take such measures it deems necessary, in its sole discretion, to re-establish a safe environment, and Xplornet shall pay the County's reasonable and verifiable costs that are directly attributable to the presence of the Equipment Within the ROWs.
- 4.9. **"As-built" Drawings.** Where required and requested by the County and/or Director, Xplornet shall, no later than forty-five (45) days after completion of any Work, provide the Director with accurate geo referenced electronic "as-built" drawings, prepared in accordance with such standards as may be required by the County from time to time, sufficient, for planning purposes, to accurately establish the location of the Equipment installed within the ROWs. Paper "as-built" drawings that accurately reflect the location of the plant with labeled offsets from property line are also required.

5. REMEDIAL WORK

- 5.1. **General.** Following the completion of any Work, Xplornet shall leave the ROW in a neat, clean and safe condition and free from nuisance to the extent it was

before the Work was undertaken, all to the satisfaction of the County. Subject to Section 5.2, where Xplornet is required to break or disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to the same or better condition it was before the Work was undertaken, all in accordance with Municipal Guidelines and to the satisfaction of the County.

5.2. **Temporary Repair.** Where weather limitations or other external conditions beyond the control of Xplornet do not permit the completion and final repair to the ROW within the expected period of time the Parties may agree to have Xplornet complete a temporary repair to the ROW; provided that Xplornet completes the final repair within a reasonable time frame, as agreed by the Parties. All repairs to the ROWs by Xplornet shall be performed in accordance with Municipal Guidelines and to the satisfaction of the County.

5.3. **Warranty of Repairs.** Xplornet warrants its temporary repair to the satisfaction of the County until such time as it completes the final repair, 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. Xplornet warrants its final repairs from the date the final repairs are complete for a period of two (2) years.

5.4. **Xplornet Repairs Completed by County.**

(a) Where Xplornet fails to complete a temporary repair and/or restoration to the satisfaction of the County within 30 calendar days of being notified in writing by the County, or such a period as may be agreed to by the Parties; or

(b) The Parties agree that if the County should perform the repair;

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

6. LOCATING FACILITIES IN ROWS

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

(a) in the event of an Emergency, shortly after receiving the request or as soon as practicably possible, following which the requesting Party will ensure that it has a representative on site (or alternatively, provide a

contact number for its representative) to ensure that the area for the Locates is properly identified;

- (b) in all other circumstances, within a time reasonable agreed upon by the Parties;
 - (c) Xplornet shall be a registered member with Ontario One Call (Call before you dig) call centre, that facilitates locate requests and notifies registered owners of underground facilities within the vicinity of the dig-site of the planned excavation.
- 6.2. **Utility Co-ordination Committee.** Xplornet shall participate in any utility co-ordination committees established by the County and contribute to its equitable share of the reasonable costs of the operation and administration of the committee.
- 6.3. **Provision of Mark-ups.** The Parties agree to respond within fifteen (15) days to any request from the other Party for a mark-up of municipal infrastructure or Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment as the case may be located within the portion of the ROWs shown on the plans (the “**Mark-ups**”) and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.
- 6.4. **Inaccurate Locates.** Where Xplornet Locates are found to be in error and, as a result, the County is unable to install its facilities within the affected ROWs in the manner it expected based on the Locates provided by Xplornet, the County will notify Xplornet of the error, following which Xplornet shall attempt to resolve the conflict. If Xplornet, using best efforts, is unable to resolve the conflict in a reasonable time commensurate with the situation and to the County’s satisfaction, Xplornet will pay the County for its reasonable and verifiable costs incurred as a direct result of the conflict.

7. RELOCATION OF EQUIPMENT

- 7.1. **General.** Where the County requires and requests Xplornet to relocate its Equipment for bona fide municipal purposes, the County shall notify Xplornet in writing and, subject to Section 7.3, Xplornet shall, within ninety (90) days therefore or such other time as agreed to by the Parties having regard to the schedules of the Parties and the nature of the relocation required, perform the relocation and any other required and associated Work.
- 7.2. **County’s Efforts.** The County will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to Xplornet customers. The County will provide, on a timely basis, all

Permits and approvals required to allow Xplornet to Relocate the Equipment.

- 7.3. **Apportionment of Cost for Xplornet Relocation.** The County shall reimburse Xplornet for the cost for labour employed and labour savings devices in such required relocation requested by the County and such cost shall be apportioned equally between the County and Xplornet, and all other costs shall be borne by Xplornet based on the following procedures:
- (a) Within sixty (60) days of receiving the request from the County to relocate the Equipment, Xplornet shall provide the County with a written estimate of the County's reimbursement.
 - (b) Within ninety (90) days of completing the relocation, Xplornet may provide the County with a written invoice for the actual Relocation Costs in a format that clearly identifies the County's reimbursement.
- 7.4. **Equipment affected by County's Capital Works Plan.** Prior to the issuance of a Permit, the County will advise Xplornet in writing whether Xplornet's proposed location for new Equipment will be affected by the County's five-year capital works plan (the "Capital Works Plan"). If the County advises that the new Equipment will be so affected and Xplornet, despite being advised of such, requests the County to issue the Permit, then the County may issue a conditional Permit stating that, if the County requires, pursuant to any project identified in the Capital Works Plan as of the date of the Permit, Xplornet will be required to Relocate the Equipment one (1) year prior to the construction of the "Capital Works Plan". Xplornet will be required to relocate the Equipment at their cost.
- 7.5. **County not responsible for Third Party Relocation Costs.** 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 Xplornet to relocate Equipment at the request of the Third Party;
 - (b) or the costs of relocating the facilities of a Third Party installed on or in the Equipment.
- 7.6. **Where the Equipment is located incorrectly.** The County shall not be responsible for the costs of relocating any portion of the Equipment that is located outside the distance of one meter (1m) horizontally (center line to center line) from the location approved in the Permit or as shown on the as-built composite utility drawing submitted by a developer's engineering firm. Notwithstanding the foregoing, in circumstances where records or the approval location of the Equipment are non-existent or unavailable, or where the

conditions of the applicable ROW have changed materially from what was described in the Permit, the Parties agree to act reasonably when sharing or allocating the associated Relocation Costs.

- 7.7. **Emergency temporary relocation.** In cases of an Emergency that requires Xplornet to temporarily relocate the Equipment, the Parties shall work cooperatively and expeditiously to complete the relocation as soon as practicably possible; provided, however, that the County may, with at least twenty-four (24) hours prior written notice to Xplornet, take any measures it deems necessary for reasons of public health and safety.
- 7.8. **Relocation performed by County.** If Xplornet fails to complete the Relocation in accordance with Section 7.1 to the satisfaction of the County, the County may, at its option, complete such Relocation and Xplornet shall pay the County's reasonable and verifiable costs of the Relocation, including design and inspection fees and the cost of any delays that may be experienced.
- 7.9. **Transfer of Right of Way.** If at any time, the County, in its sole discretion, transfers jurisdiction of a ROW on which Equipment is located, to any other road authority, this Agreement shall no longer be in force and effect with respect to the Equipment located Within the ROW which has been transferred and all obligations with respect to the County related to the ROW pursuant to this Agreement will terminate immediately and will no longer be of force and effect. It will be Xplornet's obligation to obtain confirmation that the terms of this Agreement are acceptable to the new road authority assuming jurisdiction of the road. The County agrees to provide ninety (90) days written notice to Xplornet of any transfer of a ROW to any other road authority.
- 7.10. **Closure and Conveyance.** If at any time, the County, at its sole discretion, intends to close and convey any road upon which Equipment is located and is subject to this Agreement, Xplornet shall be obligated to Relocate its Equipment from the closed portion of the road or negotiate an access easement directly with the new owner of the closed road allowance. The County agrees that it will provide the Xplornet ninety (90) days prior written notice of its intention to close and convey the road.

8. PAYMENTS OF FEES AND OTHER CHARGES

- 8.1. **Invoices.** Unless expressly provided elsewhere in this Agreement, where there are any payments to be made under this Agreement, the Party requesting payment shall first send a written invoice to the other Party, setting out in detail all amounts owing, including any applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that all payments shall be made in full no later than 30 calendar days after the date of the invoice was received.

- 8.2. **Interest.** If either Party does not pay in full within the prescribed time in Section 8.1 all amounts payable to the other Party under this Agreement, and such non-payment continues for more than fifteen (15) days after the date payment is due, the Party owing such amounts shall pay to the other Party interest, before and after judgment, calculated daily and compounded monthly at a rate per annum equal to the Prime Rate plus two percent (2%). All such interest shall be payable on the last Business Day of each calendar month.
- 8.3. **Payment of taxes.** Xplornet 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 tax rates, duties, levies or fees lawfully imposed now or in the future by any regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions) but excluding the County, that are attributable to Xplornet's use of the ROW.
- 8.4. **Disputed Charges.**
- (a) Subject to Section 8.4(b) below, neither Party shall be required to pay any charges which it disputes ("Disputed Charges") until such time as the Disputed Charges have been resolved to the satisfaction of both Parties.
 - (b) A Party shall bring all Disputed Charges to the other Party's attention within sixty (60) days of the applicable invoice date. Failure to do so shall constitute acceptance of the accuracy of the entire contents of the invoice, and that Party shall have no further right to challenge the accuracy of any portion of such invoice.
 - (c) The Parties agree and acknowledge that the undisputed portion of any invoice containing Disputed Charges and all subsequent invoices shall be paid in accordance with the terms and conditions of this Agreement.
 - (d) The Parties agree and acknowledge that if a Party is unsuccessful in its dispute of any portion of any invoice, it shall be required to pay any interest which has accrued on any portion of the disputed invoice.

9. REGULATORY CHANGE

- 9.1. **Agreement May Be Re-negotiated.** If, at any time subsequent to the Effective Date of this Agreement, the provincial or federal governments or a regulatory authority acting within its jurisdiction (including the CRTC) enacts or repeals any legislation or regulation, or orders, directs or mandates anything which affects the subject matter of this Agreement (the "Regulatory Change"), then either Party may notify the other of its intention to renegotiate the terms of this

Agreement based on the Regulatory Change and, within thirty (30) days thereafter, the Parties shall enter into good faith negotiations to amend this Agreement or enter into a new agreement to reflect the Regulatory Change.

9.2. If Parties Are Unable to Come to Terms.

- (a) If the Parties are unable to amend this Agreement or enter into a new agreement pursuant to Section 10.1, then either Party may apply the Dispute Resolution Process set out in Article 16.
- (b) Subject to this right to refer the matter, if the Parties are unable to amend this Agreement or enter into a new agreement within ninety (90) days from the date of the original notice, either Party may terminate this Agreement without further notice and the provisions of Sections 10.4 and 10.5 shall apply.

10. TERM AND TERMINATION

10.1. Initial term and renewal. This Agreement shall have an initial term of five (5) years commencing on the Effective Date and shall be renewed automatically for successive five (5) year terms unless:

- (a) this Agreement is terminated by either Party in accordance with this Agreement;
- (b) a Party delivers initial notice of non-renewal to the other Party at least one hundred eighty (180) days prior to the expiration of the then current term; or
- (c) this Agreement is replaced by a new agreement between the Parties.

10.2. Termination by either Party. Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least thirty (30) days' notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice.

10.3. Termination by County. The County may terminate this Agreement by providing Xplornet with at least seventy-two (72) hours written notice in the event that:

- (a) Xplornet becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes a voluntary subject as a debtor to the provisions of the Companies' Creditors Arrangement Act or the Bankruptcy and Insolvency Act; or

- (b) Xplornet assigns or transfers this Agreement or any part thereof other than in accordance with Section 18.2; or
- (c) Xplornet ceases to be eligible to operate as a Carrier; or
- (d) Xplornet is in material breach of any Municipal Laws and fails to remedy the violation to the satisfaction of the County in an expedient manner; provided, however, that such Municipal Laws is not inconsistent or in conflict with the terms of this Agreement or with any Federal Laws applicable to the use of ROWs.

10.4. Obligations and Rights upon Termination or Expiry of Agreement.

Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with Section 10.3) or expires without renewal, then, subject to use of the ROWs pursuant to the *Telecom Act* and, unless Xplornet advises the County in writing that it no longer requires the use of the Equipment:

- (a) the terms and conditions of this Agreement shall remain in full force and effect until a new municipal access agreement ("New Agreement") is executed by the Parties; and
- (b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and if, after six (6) months following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.
- (c) Should the parties not enter into a new Agreement, Xplornet shall remove or make safe and, and all abandoned equipment and structures.

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

11.INSURANCE

11.1. General. Throughout the term of this Agreement and any renewals or extension thereto, Xplornet shall maintain, at its sole expense, insurance ("Xplornet Insurance") in sufficient amount and description as will protect Xplornet and the County from claims for damages, bodily injury (including death), property damage, and environmental pollution which may arise from Xplornet's operations under this Agreement, including the use or maintenance of the

Equipment within the ROWs or any act or omission of Xplornet and its employees, contractors and agents while engaged in the Work. The Xplornet Insurance shall include all costs, charges and expenses reasonably incurred with any injury or damage.

11.2. **Comprehensive General Liability Occurrence-based insurance.** Without limiting the generality of the foregoing, Xplornet shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:

- (a) covers claims and expenses for liability for personal injury, bodily injury and property damage, and non-owned automobile in an amount not less than Five Million Dollars (\$5,000,000.00) per claim (exclusive of interest and costs);

11.3 **Contractor Pollution Liability Occurrence based insurance.** Without limiting the generality of the foregoing, Xplornet shall obtain and maintain contractor pollution liability occurrence-based insurance coverage which:

- (a) covers claims and expenses for liability for bodily injury, property damage, clean-up expenses and defense costs in an amount not less than One Million Dollars (\$1,000,000.00) per claim (exclusive of interest and costs);
- (b) extends to cover the contractual obligations of Xplornet as stated within this Agreement;
- (c) names the County as an additional insured;
- (d) contains cross liability and severability of interest clauses;
- (e) policy may be on a project or blanket basis.

11.3. **Insurance Certificates.** Prior to the execution of this Agreement, Xplornet shall provide to the County, in a form acceptable to the County, certificates of insurance in respect of the Xplornet Insurance evidencing the cross liability and severability clauses and confirming the County as an "additional insured". Thereafter, Xplornet shall provide the County with evidence of all renewals of the Xplornet Insurance in a form acceptable to the County.

11.4. **General Insurance Conditions.**

- 1) Xplornet Insurance shall not be construed to, and shall in no manner, limit or restrict Xplornet's liability or obligations under this Agreement.
- 2) The County shall not be liable for any premiums relating to policies under the Xplornet Insurance.

- 3) The policies under the Xplornet Insurance shall provide:
- i. Maximum Self-insured Retention or Deductible of no more than Ten Thousand Dollars \$10,000;
 - ii. that they have primary insurance which will not call into contribution any other insurance available to the County;
 - iii. a waiver for severability of interest;
 - iv. that Xplornet Insurance shall not be cancelled, lapsed, or materially changed to the detriment of the County without at least thirty (30) Business Days' notice to the County; and
 - v. Xplornet will immediately notify the County of any changes to or cancellation of the Xplornet Insurance if they will directly affect or reduce the coverage made available to the County.

12. LIABILITY AND INDEMNIFICATION

12.1. **No Liability, County.** Except for Claims or Losses arising, in whole or in part, from the gross negligence or willful misconduct of the County, the County shall not:

- (a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused that may occur as a result of any Work by Xplornet; and
- (b) be liable to Xplornet for any Losses whatsoever suffered or incurred by Xplornet on account of any actions or omissions of the County working Within the ROWs.

12.2 **No liability, both Parties.** 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 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.

12.3 **Indemnification by Xplornet.** Except for Claims or Losses arising, in whole or in part, from the gross negligence or willful misconduct of the County, Xplornet covenants and agrees to indemnify, defend and save harmless the County from and against any and all Claims or Losses that the County may suffer or incur arising from:

- (a) Xplornet exercise of any of its rights under this Agreement;

- (b) Xplornet performance of any Work Within the ROWs and the operation or use of the Equipment by Xplornet;
- (c) Xplornet undertaking any activity Within the ROWs which is ancillary to Xplornet exercise of its rights under this Agreement; and
- (d) Any breach of this Agreement by Xplornet.

12.4 **Survival.** The obligation of Xplornet to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

13. ENVIRONMENTAL LIABILITY

13.1. **County Not Responsible.** The County is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence or injury to any Person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with Xplornet occupation or use of the ROWs, unless such damage was caused directly or indirectly by the gross negligence or willful misconduct of the County of those for which it is responsible in law.

13.2. **Xplornet to Assume Environment Liabilities.** Xplornet agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs, or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal, or remediation of any Hazardous Substance on or under the ROWs that result from:

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

unless such damage was 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 by law.

14. HEALTH AND SAFETY, WSIB

14.1. Xplornet is responsible for all costs associated with its Workplace Safety and Insurance Board (WSIB) for its own employees.

- 14.2. Xplornet shall, throughout the Term of the Agreement, maintain or cause to be maintained a WSIB Clearance Certificate for itself, its employees, subcontractors and subcontractor's employees under the *Workplace and Insurance Act*.
- 14.3. Xplornet shall comply with the *Occupational Health and Safety Act (Ontario)*, the *Workplace Safety and Insurance Act (Ontario)*, the *Human Rights Act (Ontario)*, and applicable regulations under such legislation and all other obligations with respect to worker health, safety, and treatment.

15. FORCE MAJEURE

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

16. DISPUTE RESOLUTION

- 16.1. **General.** The Parties will attempt to resolve any dispute arising out of this Agreement promptly through discussions at the operation level. In the event that a resolution is not achieved, the disputing Parties shall provide the other Party with written notice of the same and the Parties shall attempt to resolve such dispute between senior officers who have the authority to settle such dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve such dispute within thirty (30) calendar days of the non-disputing Party's receipt of written notice, either Party may initiate legal proceedings and/or submit the matter to the CRTC for resolution.
- 16.2. **Continued Performance.** Except where clearly prevented due to the nature of the Dispute, the County and Xplornet agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this Article 16.

17. NOTICES

- 17.1. **Method of Notice.** Any notice required to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile or electronic transmission to either Party at the following addresses:

If to Xplornet Networks:

Xplornet Networks Inc.
Mohammed Al Taha
Construction Project Manager, Fibre Construction

Phone – 1 (587) 215-3858

Email: mohammed.al-taha@corp.xplornet.com

With a copy to: VP, Legal

Email: Xplornet.Legal@corp.xplornet.com

If to the County :

County of Bruce
30 Park Street, P.O. Box 398
Walkerton, ON NOG 2VO
Attention: Director of Transportation and Environment
Miguel Pelletier
mpelletier@brucecounty.on.ca

and/or

Gary Keeling, Engineering Technician
gkeeling@brucecounty.on.ca

Phone – 519-881-2400

Any notice may also be given by prepaid registered mail mailed within the Province of Ontario and such notice shall be effective five (5) Business Days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission or electronic transmission as stated above.

- 17.2. **Delivery of Notice.** Any notice given pursuant to Section 17.1 shall be deemed to be received on the date on which it was delivered in person, or, if transmitted by facsimile during the regular business hours of the Party receiving the notice,

on the date it was transmitted, or, if transmitted by facsimile outside of regular business hours of the Party receiving the notice, on the next regular Business Day of the Party receiving the notice.

18. GENERAL

- 18.1. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral and written, between the Parties.
- 18.2. **Assignment.** This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, Xplornet shall, provided that it is not in material breach of this Agreement, have the right to assign this Agreement to an Affiliate or a purchaser that is a Carrier of substantially all of the assets of the company without the consent of the County, provided that Xplornet has given prior written notice to the County.
- 18.3. **Parties to Act Responsibly.** Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
- 18.4. **Authority to Enter/Perform Agreement.** Each Party hereby represents and warrants to other that it has all requisite right, power and authority to enter into and perform its obligations under this Agreement.
- 18.5. **Authority of Director.** Where the County is required to make any decisions or exercise its discretion pursuant to this Agreement, then the Director may make such decisions or exercise such discretion on behalf of the County.
- 18.6. **Amendments.** Except as expressly provided in this Agreement, no modification of or amendments to this Agreement shall be effective unless agreed to in writing by the County and Xplornet.
- 18.7. **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.
- 18.8. **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.

- 18.9. **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any right, power or remedy.
- 18.10. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything in this Agreement shall continue in full force and effect.
- 18.11. **Inurement.** This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns.
- 18.12. **Equitable Relief.** Either Party may, in addition to any other remedies it may have at law or equity, seek equitable relief, including without limitation, injunctive relief, and specific performance to enforce its rights or the other party's obligations under this Agreement.
- 18.13. **Contra Proferentem.** This Agreement is the product of negotiations between the County and Xplornet and their respective legal counsel, and no provisions shall be construed for or against any Party by reason of ambiguity in language, rules of construction against the draftsman, or similar doctrine.
- 18.14. **Counterpart.** This Agreement may be executed in counterparts and the counterparts together shall constitute an original. Counterparts may be executed either in original, faxed or electronic form and the parties adopt any signatures received by a receiving facsimile machine as original signatures of the parties; provided, however that any party providing its signature in such manner shall promptly forward to the other party an original signed copy of this Agreement which was so faxed.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by their duty authorized representatives.

SIGNED,

XPLORNET COMMUNICATIONS INC.



Christine J. Prudham
Chief Legal and Regulatory Officer

I have the Authority to Bind the Corporation

THE CORPORATION OF THE COUNTY OF BRUCE

Janice Jackson, Warden

Donna Van Wyck, Clerk

We have the Authority to Bind the Corporation

SCHEDULE A

PERMITS REQUIRED BY THE COUNTY

WORK ACTIVITY	MC ¹	EP ²	Notifica- tion only	No Permit or Notification
Any installation of Equipment that requires Excavation ³ in the ROW, including: <ul style="list-style-type: none"> – the installation of buried Equipment crossing a road; – the installation of new Above-ground Equipment⁴; – 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		
The installation of aerial Equipment (excluding aerial Service Drops)		X		
Tree trimming on ROWs		X		
The replacement of existing Above-ground Equipment without adding more Equipment or significantly increasing its size (pole replacements excluded)			X	
The installation of buried Service Drops that do not cross a road or break the hard surface of a ROW			X	
Pulling cable through existing underground duct			X	
The installation of or repair to aerial Service Drops				X
The maintenance, testing and repair of Equipment where there is minimal physical disturbance or changes to the ROW				X
Any other Work activity agreed to by the Municipality				X

1 "MC" means Municipal Consent.

2 "EP" means Encroachment Permit.

3 "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.

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