

Municipal Access Agreement

Between

The Corporation of the County of Grey
(the “County”)

And

Xplornet Communications Inc.
(the “Company”)

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Municipal Access Agreement

This Municipal Access Agreement shall be effective as of the ____ day of _____, 2021 (the “Effective Date”) between:

The Corporation of the County of Grey

(the “County”)

- and -

Xplornet Communications Inc.

(“the Company”)

(each, a “Party” and, collectively, the “Parties”)

Whereas the Company is a “telecommunications common 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, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along (“Within”) the highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the County (collectively, “Rights-of-Way” or “ROWS”) as agreed to by the Parties;

And Whereas pursuant to Section 43 of the Telecom Act, the Company requires the County’s consent to construct its Equipment within the ROWs and the County is willing to grant the Company 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 privileges previously conferred or conferred after the Effective Date by the County on Third Parties to use or access the ROWs;

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

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

1.0 Definitions And Interpretation

1.1 Definitions:

- a) “Affiliate” means:
 - i) In the case of the Company, “affiliate” as defined in the Canada Business Corporations Act that is also a telecommunications common carrier or a Carrier; and
 - ii) In the case of the County, is not applicable.
- b) “County’s Costs” means the reasonable and verifiable costs and expenses of the County, including the cost of labour, equipment and materials, plus a reasonable overhead charge of 10%;
- c) “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;
- d) “Encroachment Permit” means a Permit issued by the County authorizing the Company to conduct Work, excluding Maintenance , that includes any activity that involves a deployment of its workforce, vehicles and other equipment in the ROWs when performing the Work (as more fully described in Schedule A);
- e) “Equipment” means the transmission and distribution facilities owned by the Company and 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;
- f) “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);
- g) “Maintenance” means Work which needs to be completed to the Equipment to prolong its life, and which may or may not involve invasive Work;
- h) “Municipal Consent” or “MC” means the written consent of the County, with or without conditions, to allow the Company to perform Work within the ROWs that requires the excavation or breaking up of the ROWs (as more fully described in Schedule A);
- i) “Municipal Engineer” means the Director of Transportation Services of the County or the individual designated by him or her;
- j) “Permit” means an Encroachment Permit, and may also include a Road Occupancy Agreement;

- k) "Road Occupancy Agreement" means a legal agreement between the County and another entity (in this case, the Company) established to identify the responsibilities of the other entity completing Work within the ROW;
- l) "Service Drop" means a cable that, by its design, capacity and relationship to other cables of the Company, can be reasonably considered to be for the sole purpose of connecting backbone of the Equipment to not more than one individual customer or building point of presence or property;
- m) -"Third Party" means any person that is not a party to this Agreement nor an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with the Company; and
- n) "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 the Company within the ROWs, including the excavation, repair and restoration of the ROWs.

1.2 Recitals and Schedules. The following schedules are annexed to this Agreement and are hereby incorporated by reference into this Agreement and form part hereof:

Schedule "A" – Permits Required by the County

Schedule "B" – Relocation Costs

2.0 Use of ROWs

2.1 Consent to use ROWs. The County hereby consents to the Company's use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable municipal rules, policies, standards, guidelines ("Municipal Guidelines"), by-laws and Encroachment Permits pertaining to the Equipment and the use of the ROWs. Notwithstanding the above, to the extent that any of the Municipal Guidelines are inconsistent with the express terms of this Agreement, the Company shall not be required to comply with such Municipal Guidelines.

2.2 Scope of Municipal Consent. The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with the public use and enjoyment of the ROWs, or with other existing installations on the ROWs.

2.3 No ownership rights. The Parties acknowledge and agree that:

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

2.4 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 the Company hereby agrees to accept the ROWs on an “as is” basis.

3.0 Permits To Conduct Work

3.1 Where Permits are required,

- a) Subject to Section 3.2, Work within the ROWs by the Company is subject to the authorization requirements of the County as set out in Schedule “A”.
- b) For each Permit required above, the Company shall submit to the County a completed application, in a form specified by the County and including the applicable fee for such Permit.
- c) The County will issue the applicable routine Permits within 20 business days of receiving a complete and compliant application, or such other time as agreed to by the Parties having regard to the complexity of the Work covered by the application and the volume of Permit applications before the County at that time.

3.2 No Permits for Maintenance Work. Notwithstanding Section 3.1, the Company may, with advance notice as required by the County, but without first obtaining a Permit:

- a) Utilize existing ducts or similar structures of the Equipment;
- b) Carry out Maintenance and field testing to its Equipment; and
- c) Repair Service Drops;

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

3.3 Expiry of Permit. In the event that the Company has not commenced construction of the approved Work associated with a particular Permit within 6 months of the date of issuance of the Permit, and has not sought and received an extension to the Permit (which is required 60 days prior to termination) from the County, which extension shall not be unreasonably withheld, the Permit shall be null and void. In such circumstances, any fees paid by the Company in respect of the expired Permit shall not be refunded and the Company must obtain a new Permit for the Work before doing any Work.

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

- a) Construction plans of the proposed Work, showing the locations of the proposed and existing Equipment and other facilities, and specifying the boundaries of the area within the ROW within which the Work is proposed to take place;
 - b) All other relevant plans, drawings and other information as may be normally required by the Municipal Engineer from time to time for the purposes of issuing Permits; and
 - c) A traffic plan that conforms to the then current version of the Ontario Traffic Manual Book 7.
- 3.5 Refusal to issue Permits. In case of conflict with any *bona fide* municipal purpose, including without limitation, reasons of public safety and health, conflicts with existing infrastructure, the proposed installation is within the road structure, proposed road construction, or the proper functioning of public services, all as identified in writing to the Company by the County, the County may request amendments to the plans referred to in Section 3.4 or may choose to refuse to issue a Permit in accordance with Section 3.1.
- 3.6 Temporary connections will not be permitted unless approved by the Municipal Engineer.
- 3.7 Restoration of the Company's service during Emergencies. Notwithstanding Section 3.1, in the event of an Emergency, the Company shall be permitted, provided that the Company gives notice to the County as soon as reasonably practicable, to perform such remedial Work as is reasonably necessary to restore its services without complying with Section 3.1; provided that the Company does comply with Section 3.1 within five (5) business days of commencing the Work. All Work shall conform to the requirements of the then current version of the Ontario Traffic Manual Book 7.
- 3.8 Temporary changes by the County. Notwithstanding any other provision in this Agreement, the County reserves the right to set, adjust or change the approved schedule of Work by the Company for the purpose of coordinating or managing any events or activities, including the restriction of any Work during those restricted time periods; provided however, that any such adjustment or change shall be conducted so as to minimize interruption to the Company's operations. The County shall use reasonable efforts to provide to the Company forty-eight (48) hours advance written notice of any change to the approved schedule of Work, except that, in the case of any Emergency, the County shall provide such advance notice as is reasonably possible in the circumstances.
- 3.9 Road Occupancy Agreement. If, in the sole opinion of the County, the proposed Work is deemed significant or could disrupt traffic operations, in addition to an Encroachment Permit, the County may require the Company to

enter a Road Occupancy Agreement, the requirements of which will include the provision of adequate security by the Company to the County.

4.0 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) The applicable laws (and, in particular, all laws and codes relating to occupational health and safety);
- b) The Municipal Guidelines;
- c) This Agreement; and;
- d) The applicable Permit(s) and/or Road Occupancy Agreement(s) issued under Sections 3.1 and 3.9.

4.2 Stoppage of Work. The County may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health and safety. In such circumstances, the County will order the ongoing Work to be stopped until the unsafe condition is made safe or reason for the order is rectified. Such a work stoppage order by the County shall follow this procedure:

- a) The County shall provide the Company with a verbal order including the reason(s) for the Work stoppage, and the Company shall cease the ongoing Work immediately.
- b) If there is any excavation or any potentially dangerous condition, the Company shall take corrective action immediately to rectify such conditions.
- c) When the reasons for the Work stoppage have been resolved to the satisfaction of the County, the County shall advise the Company immediately that it can resume the Work.
- d) Within two (2) business days of the verbal order, the County shall provide the Company with a written stop work order with reasons.

4.3 Coordination of Work. The Company shall use its reasonable efforts to minimize the necessity for road cuts, construction and the placement of new Equipment within the ROW by coordinating its Work and sharing the use of support structures with other existing and new occupants of the ROWs.

4.4 Emergency contact personnel. The Company and the County 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.

4.5 Emergency Work by the County. In the event of an Emergency, the County shall as soon as reasonably practicable contact the Company and, as circumstances permit, allow the Company a reasonable opportunity to

remove, relocate, protect or otherwise deal with the 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 the Company shall pay the County's Costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.

- 4.6 "As-built" drawings. The Company shall, no later than 90 days after completion of any Work provide the Municipal Engineer with accurate "as-built" drawings, prepared in accordance with such standards as may be required by the Municipal Engineer, sufficient to accurately establish the plan, profile and dimensions of the Equipment installed within the ROWs. In the event that the Company fails to provide "as built" drawings or the drawings provided are inaccurate, the Company will pay the County for its reasonable and verifiable costs incurred as a direct result of the absence or inaccuracy of the "as-built" drawings.
- 4.7 Where Equipment is located incorrectly. Where the location of any portion of the Equipment in a ROW is located outside a distance of 0.5m horizontally (from 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 ROWs in the manner it expected based on the Permit or as-built drawings (the "Conflict"), the following shall apply: At its sole cost and expense, the Company shall relocate its equipment and shall be responsible for all costs incurred by the County as a result of the Conflict.
- 4.8 Agents and Sub-contractors. 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.

5.0 Remedial Work

- 5.1 General. Following the completion of any Work, the Company shall leave the ROW in a neat, clean, and safe condition free from nuisance and as close as possible to the condition of the ROW prior to the Work, all subject to the satisfaction of the County. Subject to Section 5.5, where the Company is required to break or otherwise disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to substantially the same condition it was in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the Municipal Engineer.
- 5.2 Permanent Road Restoration. If the Company has excavated, broken up or otherwise disturbed the surface of a ROW, the requirements for the Company to complete the road restoration work shall be specified by the County, shall

be completed by a person satisfactory to the County and the Company shall be responsible for all costs and expenses to complete the road restoration work.

5.3 Temporary repair. Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete a final repair to the ROW within the expected period of time, the Company may complete a temporary repair to the ROW; provided that, subject to Section 5.5, the Company replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by the Company shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the County. All repairs to a paved or surface treated driving lane shall be repaired within five (5) days.

If a temporary repair gives rise to an unsafe condition, then this shall be deemed to constitute an Emergency and the provisions of Section 4.5 shall apply.

5.4 Warranty for repairs. The Company warrants its temporary repair shall be safe for the intended use of the ROW, to the satisfaction of the County until such time as the final repair is completed by the Company, 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. The Company shall warrant its final repairs to be free from material defects in materials and workmanship for a period of two (2) years from the date of their completion.

5.5 Repairs completed by County. Where:

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

Then the County may effect such work necessary to perform the repair and the Company shall pay the County's Costs of performing the repair.

6.0 Locating Facilities in ROWs

6.1 Locates. The Company shall comply with the Ontario Underground Infrastructure Notification System Act 2012, S.O. 2012, c. 4, which requires all owners of buried infrastructure in the public right of way to register such infrastructure with Ontario One Call (ON1Call).

6.2 Provision of Mark-ups. The Parties agree to respond within 30 days to any request from the other Party for a mark-up of municipal infrastructure or

Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment, as the case may be, located within the portion of the ROWs shown on the plans (the “Mark-ups”), and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.

6.3 Inaccurate Locates. Where the Company’s Locates do not accurately correspond with either the Mark-ups or physical location of the Equipment, 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 the Company (the “Error”), the County will notify the Company of the Error, following which the Company shall attempt to resolve the Error, in accordance with Section 4.7. If the Company is unable to resolve the Error in a reasonable time commensurate with the situation and to the County’s satisfaction, the Company will pay the County for its reasonable and verifiable costs incurred as a direct result of the Error.

7.0 Relocation of Equipment

7.1 General. Where the County requires and requests the Company to relocate its Equipment for bona fide municipal purposes, the County shall notify the Company in writing and, subject to Section 7.3, the Company shall, within 90 days thereafter 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 the Company’s customers. Once the Company has provided the County with all information the County requires to enable it to process a Permit application, the County shall provide, on a timely basis, all Permits required to allow the Company to relocate the Equipment.

7.3 Reimbursement by the County for the Company’s Relocation Costs. The County shall reimburse the Company for costs of completing a relocation requested by the County (the “Relocation Costs”) based upon the principles, methodologies and procedures set out in Schedule “B”.

8.0 Fees And Other Charges

8.1 General. The Company 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 the County’s most current Fees and Service Charges By-law.

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

8.3 Payment of taxes. The Company 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), that are attributable to the Company's use of the ROW.

9.0 Term and Termination

9.1 Initial term and renewal. This Agreement shall have an initial term of 20 years commencing on the Effective Date and may be renewed automatically for successive 20-year terms unless:

- a) This Agreement is terminated by either Party in accordance with this Agreement;
- b) A Party delivers a 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 (as defined below) between the Parties.

9.2 Termination by either Party. Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours' notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice. If, however, in the view of the non-breaching Party, it is not possible to remedy or cure the breach within such thirty (30) day period, then the breaching Party shall commence to remedy or cure the breach within such thirty (30) day period and shall complete the remedy or cure within the reasonable time period stipulated in writing by the non-breaching Party, in which case the Agreement shall not terminate.

9.3 Termination by the County. The County may terminate this Agreement by providing the Company with at least twenty-four (24) hours' written notice in the event that:

- a) The Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the Companies' Creditors Arrangement Act or the Bankruptcy and Insolvency Act;
- b) The Company assigns or transfers this Agreement or any part thereof other than in accordance with Section 18.7; or
- c) The Company ceases to be eligible to operate as a Carrier.

9.4 Obligations and rights upon termination or expiry of Agreement.

Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with Section 9.3 or expires without renewal, then, subject to the Company's rights to use the ROWs pursuant to the Telecom Act and, unless the Company advises the 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 (a "New Agreement") is executed by the Parties; and
- b) The Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.

9.5 Removing abandoned Equipment. Where the Company advises the County in writing that it no longer requires the use of certain of its Equipment, the Company shall, within one (1) year of the County's written request as agreed to by the Parties, act as follows at the Company's sole cost and expense:

- a) Remove the abandoned Equipment that is above ground;
- b) Subject to 9.5(c), 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 Municipal Engineer, the Abandoned Underground Structures will interfere with any municipally-approved project that will require excavation or otherwise disturb the portions of the ROWs in which the Abandoned Underground Structures are located, then the Company shall, at or about the time the excavation of such portions of the ROWs for said project commences, remove the Abandoned Underground Structures therein.
- d) 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 ROW to the condition in which it 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 satisfaction of the Municipal Engineer, the County may complete such removal and restoration and the Company shall pay the associated County's Costs.

10.0 Continuing Obligations

10.1 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.

11.0 Insurance

11.1 The Company shall during the entire term of this Agreement and any renewals thereof, at its own cost and expense, take out and keep in full force the following insurance coverage with respect to all activities arising from this Agreement. This insurance shall be primary, non-contributing with and not excess of any other insurance available to the County. The policies shall be underwritten by an insurer licensed to do business in the Province of Ontario. Such policies shall include but not be limited to:

- a) Commercial General Liability insurance on a per occurrence basis for an amount of not less than Two Million Dollars (\$2,000,000); such policy to include, but not be limited to, non-owned automobile liability; personal injury; broad form property damage; blanket contractual liability; owners and contractors protective liability; products and completed operations liability; contingent employers' liability; and, shall include cross liability and severability of interest clauses. The Corporation of the County of Grey shall be named as an Additional Insured thereunder, with respect to the Company's operations, acts and omissions relating to its obligations under this Agreement.
- b) Automobile Liability insurance for an amount not less than Two Million Dollars (\$2,000,000) on forms meeting statutory requirements covering third party property damage and bodily injury liability (including accident benefits) covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement, and/or as may be required by Applicable Laws.
- c) Commercially reasonable insurance upon property owned by the Company, or for which the Company is legally liable or installed by or on behalf of the Company and which is located within the ROW, on an All Risk basis for the full replacement cost thereof, as well as business interruption insurance in

such amount as will reimburse the Company for direct or indirect loss of earnings attributable to an insured peril.

- d) Any other form or limits of insurance as the County, acting reasonably, may require from time to time throughout the Term of the Agreement in form, in amounts and for insurance risks against which a prudent person would insure.
 - e) The parties agree that the insurance requirements shall be subject to review from time to time throughout the Term. In the event the County determines changes are appropriate based on then current recommended industry limits and coverage, the County shall provide notice to the Company and the Company shall obtain insurance to satisfy the new requirements.
- 11.2 As evidence of the required policies being in effect, the Company shall provide the County with Certificates of Insurance prior to the execution of this Agreement, and upon each subsequent annual renewal period of such policies throughout the Term of this Agreement.
- 11.3 In addition to the insurance required in this Agreement, the Company is responsible to ensure that it and/or its contractors and sub-contractors meet all insurance requirements of any Permits required by the County for Work related to this Agreement.
- 11.4 All required insurance policies shall provide that 30 days' prior written notice to the County is required in the event of any cancellation or change which reduces or restricts the insurance provided.
- 11.5 The Company agrees that if it fails to take out or keep in force any such insurance referred to in this Section, or should any such insurance not be approved by the County, and should the Company not commence and proceed to diligently rectify the situation within forty eight (48) hours after written notice by the County, the County has the right without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Company. The County shall be reimbursed as set out under the terms of this Agreement.

12.0 Liability and Indemnification

- 12.1 Definitions. For the purposes of this Section 12.0, the following definitions shall apply:
- a) "County" means the County and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns;
 - b) "Company" means the Company 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 and expenses; and;
- e) "Costs" means those costs (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) 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.

12.2 No liability, the County. Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the County, the County shall not:

- a) Be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused; and
- b) Be liable to the Company for any Losses whatsoever suffered or incurred by the Company,

on account of any actions or omissions of the County under this Agreement.

12.3 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 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.

12.4 Indemnification by the Company.

- a) The Company shall indemnify the County from Claims, Losses and Costs made by or awarded to any person, including but not limited to the Company's own employees, arising out of activities arising under this Agreement or in connection with the use and occupancy of the ROW by the Company, where such Claims, Losses and Costs are caused by the Company's negligence or willful misconduct, except to the extent they are caused by the negligence or wilful misconduct of the County. This indemnity shall extend to protect the County from construction liens by contractors, mechanics, and suppliers (which are expressly prohibited), which shall be deemed to include all purchases of expendables, consumables, and other merchandise.
- b) In the event of any Claims, the County shall give the Company timely written notice thereof, and the Company shall have the right to defend or settle the same to the extent of its interest hereunder. The Company shall promptly

accept all responsibility to defend or settle such matters. Further, in the event it is necessary for the County to incur any expenses whatsoever to enforce this provision, all such expenses shall in their entirety be paid by the Company.

13.0 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 the Company's occupation or use of the ROWs, unless such damage was caused directly by the negligence or willful misconduct of the County or those for which it is responsible in law.

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

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

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

14.0 WSIB, Health and Safety

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

14.2 The Company shall throughout the Term of the Agreement maintain a WSIB Clearance Certificate for the Company and its employees and ensure that each of its contractors and subcontractors similarly maintains a WSIB Clearance Certificate for itself and its employees.

14.3 The Company 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 legal obligations with respect to worker health, safety and treatment.

14.4 The Company shall notify the County as soon as practical of any workplace injuries reportable to WSIB or the Ministry of Labour.

15.0 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, 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").

15.2 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 upon delivery of notice to the other Party.

16.0 Dispute Resolution

16.1 General. The Parties hereby acknowledge and agree that:

- a) This Agreement has been entered into voluntarily by the Parties with the intention that it shall be final and binding on the Parties until it is terminated or expires in accordance with its terms;
- b) It is the intention of the Parties that all Disputes (as defined in Section 16.2) be resolved in a fair, efficient, and timely manner without incurring undue expense and, wherever possible, without the intervention of the CRTC; and
- c) The CRTC shall be requested by the Parties to consider and provide a decision only with respect to those matters which form the basis of the original Dispute as set out in the Dispute Notice described in Section 16.2.

16.2 Resolution of Disputes. The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement ("Dispute") promptly through discussions at the operational level. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the Dispute and the Parties shall attempt to resolve such Dispute between senior officers who have the authority to settle the Dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve the Dispute within thirty (30) days of the non-disputing Party's receipt of written notice, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

16.3 Continued performance. 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.

17.0 Notices

17.1 Method of Notice. Any notice required to be given, served or delivered must be in writing and sent to the other party at the address indicated below, or to such other address as may be designated by notice provided by either party to the other.

If to the County:

County Clerk
County of Grey Administration Building
595 9th Ave East
Owen Sound, ON N4K 3E3
Fax: 519-376-8998
countyclerk@grey.ca

If to the Company:

Xplornet Communications Inc.
Attn: Vice President, Legal
625 Cochrane Drive, Suite 1000
Markham, ON L3R 9R9
Email: Xplornet.Legal@corp.xplornet.com

With a copy to:

Xplornet Communications Inc.
Attn: Senior Manager, Fibre Construction
Address: 215 – 4000 4th Street SE,
Calgary, AB T2G 2W3
Email: german.figueroa@corp.xplornet.com

17.2 Delivery of notice. Any notice to be given by either party to the other shall, in the absence of proof to the contrary, be deemed to have been received by the addressee if:

- a) Delivered personally on a business day, then on the day of delivery;
- b) Sent by prepaid registered post, then on the second business day following the registration thereof;
- c) Sent by ordinary mail, then on the fifth business day following the date on which it was mailed; or

- d) Sent by facsimile or email on a business day, or the following business day, upon confirmation of successful transmission of the notice.

18.0 General

- 18.1 Entire agreement. This Agreement, together with the Schedules attached hereto, 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 or written, between the Parties.
- 18.2 Gender and number. In this Agreement, words importing the singular include the plural and vice versa, words importing gender, include all genders.
- 18.3 Sections and headings. The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and do not affect the interpretation of this Agreement. Unless otherwise indicated, references in this Agreement to a section, subsection or schedule are to the specified section or subsection of or schedule to this Agreement.
- 18.4 Statutory references. A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes the statute or the regulation.
- 18.5 Including. Where the word “including” or “includes” is used in this Agreement it means “including (or includes) without limitation as to the generality of the foregoing”.
- 18.6 Currency. Unless otherwise indicated, references in this Agreement to money amounts are to the lawful currency of Canada.
- 18.7 Assignment. This Agreement may not be assigned, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party shall have the right to assign this Agreement to an Affiliate without the consent of the other Party, or, in the case of the Company, a purchaser of all or substantially all of the assets of the Company, provided that:
- a) It is not in material breach of this Agreement;
 - b) It has given prompt written notice to the other Party;
 - c) Any assignee agrees to be bound by the terms and conditions of this Agreement; and
 - d) The assignee is not in direct competition with the other Party, in which case, prior written consent would be required.

Any permitted assignment shall not release the assigning party from its existing obligations and liabilities pursuant to this Agreement

- 18.8 Parties to act reasonably. Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
- 18.9 Amendments. Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the County and the Company.
- 18.10 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.
- 18.11 Governing law. This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.
- 18.12 Waiver. Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 18.13 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.
- 18.14 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, and may not be changed or modified except in writing, duly signed by the Parties hereto.
- 18.15 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.

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

The Company: Xplornet Communications Inc.

Christine J. Prudham, Chief Legal and Regulatory Officer

The Corporation of the County Of Grey:

Warden: Selwyn Hicks

Clerk: Heather Morrison

We, together, have the authority to bind the Corporation.

Schedule "A"

Permits/Permission Required By The County In Addition To This Municipal
Access Agreement

Work Activity	Encroachment Permit	Notification Only
Any installation of Equipment that requires Excavation in the ROW, including: <ul style="list-style-type: none"> – the installation of buried Equipment crossing a road; – the installation of new above-ground Equipment; – 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	
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

Work Activity	Encroachment Permit	Notification Only
Any other Work activity agreed to by the County	X	

In some cases, in addition, the County may require that The Company enter into a Road Occupancy Agreement with the County, in accordance with Section 3.9 of this Agreement.

Schedule "B"

Relocation Costs

1. Reimbursement for Relocation Costs

Section 7 of this Agreement addresses the general terms and conditions around relocation costs. Other more specific situations are addressed within this Schedule as follows:

- a) Equipment installed within the County's Five-Year Capital Works Plan. If the Company chooses to install Equipment on a section of the ROW which has been identified in the County's Five-Year Capital Works Plan, and having been so advised by the County in writing, the Company shall be responsible for all costs to relocate conflicting Equipment prior to the County construction occurring.
- b) Equipment affected by the County's Capital Works Plan. If the County's construction activities require the relocation of Equipment installed in the ROW under Permit, the following labour and material allocation shall apply:

Year(s) After Installation of Equipment	Percentage of Relocation Costs Borne by the Municipality (Labour and Material Only)
1 to 5 years Only applicable for Equipment installations not addressed in Section 1(a) of this Schedule	100%
6 to 8 years	50%
9 to 11 years	25%
12 to 14 years	10%
15 years or more	0%

- c) 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:
- i. The costs of the Company to relocate Equipment at the request of a Third Party; or
 - ii. The costs of relocating the facilities of a Third Party installed on or in the Equipment.
- d) The Company not responsible for Third Party Relocation Costs. Unless otherwise agreed to between the Company and the Third Party, in no event shall the Company be responsible under this Agreement for:
- i. The costs of the Company to relocate Equipment at the request of a Third Party; or
 - ii. The costs of relocating the facilities of a Third Party installed on or in the Equipment.
- e) Where Equipment is located incorrectly. Where the location of any portion of the Equipment in a ROW is located outside a distance of 0.5m 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), then the County shall not be responsible for the costs of relocating such Equipment or portion thereof. Notwithstanding the foregoing, in circumstances where records of the approved 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.
- f) Equipment Upgrades. Unless otherwise agreed to by the Parties, relocation costs shall not include the installation of any Equipment by the Company for the purpose of providing an up-graded service, which shall be at the sole cost of the Company. The Parties agree that the Relocation Costs to be allocated between the parties shall be based on the use of the same approximate quantity, quality and type of Equipment and manner of construction for the new installation as was used for the original, subject to any adjustments required due to:
- i. Technological change or industry construction methods;
 - ii. The need for an installation of greater length or other modifications due to, for example, space constraints or the presence of third party equipment; or
 - iii. The undergrounding of aerial Equipment where required as part

of the relocation where cost sharing is permitted under this Agreement.

2. Relocation performed by the County. If the Company fails to complete the relocation in accordance with Section 7.1 of the Agreement, the County may, at its option, upon reasonable final notice to the Company, complete such relocation and the Company shall pay the County's Costs of the relocation.