

TELECOMMUNICATIONS LICENSE AGREEMENT

Appendix D to Report RS2021-013 File No. L17-20-RS047
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THIS AGREEMENT made effective as of the 1st day of November, 2020

BETWEEN:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

(the "Licensor")

- and -

XPLORNET COMMUNICATIONS INC.

(the "Licensee")

WITNESSETH WHEREAS the Licensor is the registered owner of the Property municipally identified as 50 Tower Road, Kirkfield, which is legally described as Part of Lot 43, Concession 3, Parts 1 and 4 to 7 on 57R-8184, in the Geographic Township of Eldon, City of Kawartha Lakes, being PIN: 63166-0087 (LT) (the "Property");

NOW THEREFORE in consideration of the rents, covenants and agreements herein contained and hereby assumed the parties for themselves and their respective successors and assigns do hereby covenant and agree with one another as follows:

1. USE OF LICENSED PREMISES

The Licensor hereby grants to the Licensee non-exclusive use of the Property to install and maintain a tower and associated electronic equipment on the Licensed Premises and all necessary cabling, antennas, antenna mounts and any other related equipment attachments (the "Equipment"), as shown in Schedule "A"; and permission to install, reconfigure, attach, operate, maintain and replace all of the initial and additional Equipment on the Property for wireless telecommunications in accordance with Schedule "A". The Licensee is granted a right of access to the Property at such times as in the sole judgment of the Licensee are necessary to maintain, repair and replace the Equipment from time to time, and to the extent reasonably necessary for purposes of the License herein granted. The Licensee shall repair the Property following both the installation and the removal of the equipment. The repair will be at the Licensee's expense and to the reasonable satisfaction of the Licensor.

2. TERM

The term of this License shall be five (5) years commencing on November 1, 2020 and ending on October 31, 2025 (the "Term").

3. LICENSE FEE

- a) The Licensee shall pay to the Licensor, its successors and assigns, a License Fee for the use of and access to the Property as granted by the Licensor herein. The License Fee shall be the sum of Thirteen Thousand Dollars (\$13,000.00), plus HST, per annum, indexed annually by the Consumer Price Index – All Items (the "License Fee").
- b) The first payment shall be payable upon execution of this License Agreement, and subsequent payments are due on or before the 1st day of August in each calendar year of the Term. The responsibility for providing timely payment prior to August 1st in each year of the terms is wholly that of the Licensee.

4. ASSIGNMENT

Neither party may assign any of its rights or obligations under this License without the prior written consent of the other party. Notwithstanding the foregoing, the Licensee may, without the consent of the Licensor:

- a) assign its rights or obligations under this Agreement to an affiliate or an entity acquiring all or substantially all of the assets of the Licensee;
- b) license all or any portion of the Equipment to an affiliate; and
- c) license all or any portion of the Equipment to a third party for use as a telecommunications site.

Whenever the Licensor's consent is required by virtue of this section, such consent is deemed granted if the Licensor does not respond within fifteen (15) days to the written request of the Licensee for such consent.

5. LICENSEE'S WORK

- a) The Licensee shall, at its own expense, install, attach, repair, operate and maintain its Equipment in accordance with Scheduled "A" and in a good and workmanlike manner. All installation, reconfiguration, attachment, maintenance, repair and operation to be carried out under this License by the Licensee shall be done at the Licensee's expense and risk. Upon the expiration or earlier termination of this License, the Licensee agrees to repair at the Licensee's sole cost and expense to the reasonable satisfaction of the Licensor, all damages, structural or otherwise, save and except for reasonable wear and tear, that may be caused to the Licensor's property, including all buildings on the Property, by reason of the installation, reconfiguration, attachment, maintenance, operation or removal of the Licensee's Equipment.
- b) The Licensee shall remove the existing tower, as set out in Schedule "B", within six (6) months of the start of the term (by March 1, 2021) or by a later date as mutually agreed upon by both parties. Failure to do so will result in the Licensee being responsible for an additional Thirteen Thousand Dollars (\$13,000.00) per year, payable up front and in advance for the 1st year of the term and payable annually thereafter on the anniversary of the License.
- c) The Licensee and any Assignee may not make any alterations and/or improvements during the Term without requiring the consent of the Licensor. Such alterations and/or improvements may include, but are not limited to the expansion of existing, or the addition of new towers, equipment shelter(s), antennas, antenna mounts, apparatus, fixtures, cabling, attachments or any other equipment required by the Licensee or any Assignee.
- d) The Licensor agrees that the Equipment shall not become fixtures of the License but shall be and remain the property of the Licensee and may be removed from the Licensed Premises at any time from time to time by the Licensee during the Term or within a reasonable time after expiration or early termination of this License, so long as the Licensee makes good any damage caused by such removal, reasonable wear and tear excepted. This will encompass a complete removal up to and including three feet below grade. Failure by the Licensee to remove the Equipment after receipt of at least ninety (90) days prior written notice by the Licensor to remove same upon the expiration or early termination of this License will enable the Licensor to remove the Equipment at the expense of the Licensee.
- e) The Licensee is required to comply with the Licensor's installation and location restrictions for the Equipment on site, as set out in Schedule "A". Further restrictions may include, but are not limited to fastening equipment to the middle

of the bowl and wires being bundled with the existing bundle of wires extending down the column of the tower.

- f) The Licensee agrees and undertakes to provide the City with "as built" drawings within thirty (30) days of completion of construction of the Tower, or a later date as agreed to by both parties.
- g) The Licensee acknowledges that it is a member of Ontario One Call pursuant to section 5(1) of the *Ontario Underground Infrastructure Notification System Act*, 2012, S.O. 2012, C. 4, as amended (the "Act"), and is required to provide information to Ontario One Call as set out in section 5(2) of the Act. It is a requirement of the City that the Licensee provide Ontario One Call with as built engineering drawings of its infrastructure, as well as the location of its infrastructure with respect to distance from nearest intersection, in advance of execution of this License. The Licensee is required to provide written confirmation to the City that this has been done, as a precondition to the execution of this agreement.
 - a. The Licensee acknowledges its responsibilities pursuant to section 6 of the Act, specifically: if it receives a notification from Ontario One Call about a proposed excavation or dig that may affect underground infrastructure owned by it, it shall
 - i. mark on the ground the location of its underground infrastructure and provide a written document containing information respecting the location of the underground infrastructure; or
 - ii. state in writing that none of its underground infrastructure will be affected by the excavation or dig.
 - b. The Licensee shall make all reasonable attempts to do the things required above within five business days of the day it receives notification about the proposed excavation or dig, unless there is a reasonable expectation that the excavation or dig will not start within 30 business days of the day it receives the notification, The Licensee and the excavator agree to a different time limit; or the regulations under the Act set out a different time limit applicable to the circumstances.

6. ACCESS

- a) The Licensor grants to the Licensee, its agents, employees, contractors, or to an Assignee, all rights of direct access, between the hours of 8:30 am to 4:30 pm, Monday to Friday, to the Property, and such other rights as are reasonably necessary to enable the Licensee, its agents, employees, contractors or any Assignee to install, reconfigure, attach, operate, maintain and replace the Equipment, including but not limited to connecting its Equipment to the public telephone and utility networks, pursuant to the public telephone and utility's requirements or recommendations and any required right-of-ways, provided that such access is made upon notice to the Licensor of not less than five (5) business days and undertaken at the Licensee's sole risk. Access keys shall be provided by the Licensor to the Licensee if and when keys are requested by the Licensee.
- b) Where available, the Licensee, its agents, employees, contractors and any Assignee, shall have the non-exclusive use of and access to any existing access driveway and parking space located on the Property, during the times set out above. If required, the Licensor shall provide the Licensee with parking access cards and provide notice to any security personnel and contracted towing/tagging services. Unless previously approved in writing by the Licensor, the Licensee shall not hinder the use of or access to any existing access driveway or parking space by any other party at any time.

7. ADDITIONAL TAXES

The Licensee shall reimburse the Licensor for any new taxes, rates, fees or assessments of every description which may be charged or imposed, during the Term hereof, by a governmental authority (collectively, the "Taxes") upon or in respect of the privileges hereby granted provided that:

- a) it can be demonstrated that such Taxes have been assessed as a direct result of the Licensee's use of the Licensed Premises; and
- b) the Licensor delivers to the Licensee prompt written notice of the imposition of such Taxes (together with copies of all bills, invoices or statements relating to such Taxes) (the "Tax Notice"), which Tax Notice shall be delivered no later than eighteen (18) months following the due date for the Taxes set out in such Tax Notice (the "Taxes Due Date"). If the Licensor fails to deliver the Tax Notice on or before the date which is eighteen (18) months following the Taxes Due Date, then, notwithstanding anything to the contrary herein, the Licensee shall have no obligation or liability to pay any of the Taxes set out in such Taxes Notice and the Licensor shall be solely responsible for the payment of all such Taxes.

8. FAILURE TO PAY RENT

If the Licensee defaults at any time in any rental payment required under this License during the Term or any extension thereof, or fails, or neglects at any time to fully perform, observe and keep all the covenants, terms and conditions herein contained, the Licensor shall give the Licensee written notice of such default and the Licensee shall correct such default within fifteen (15) days after receipt thereof and if the default remains outstanding on the sixteenth (16th) day the Licensor may terminate this License forthwith, except in the event that such default reasonably requires more than fifteen (15) days to correct in which case the Licensee shall have a reasonable time to cure such default.

9. TERMINATION

It is agreed and understood that the Licensee or Licensor may terminate this License at any time, for any reason whatsoever, by twelve (12) months prior written notice to the Licensor or Licensee and the Licensee shall be entitled to remove the Equipment from the Licensed Premises within a reasonable time thereafter. At the end of the term of this License or any extension thereof, the Licensee will restore the land to the same condition that existed prior to the work and activities of the Licensee.

10. OPTION TO PURCHASE

It is agreed and understood that prior to the end of the term if the Licensee would like to continue to have their infrastructure remain, the Licensee is obligated to purchase at fair market value with all costs payable by the Licensee, or remove all equipment prior to the end of the term.

11. INTERFERENCE

The Licensee agrees to undertake such works as may be necessary to prevent any interference with other installations on the Licensed Premises and remedy the interference.

12. QUIET ENJOYMENT

The Licensor covenants with the Licensee for non-exclusive quiet enjoyment of the Licensed Premises without any interruption or disturbance from the Licensor provided the Licensee performs all of its covenants under this License Agreement; with the exception of any works, which may need to be completed by the Licensor. The

Licensee would be provided with as much notice as reasonably possible by the Licensor. The Licensee would be responsible, at their expense, to remove/relocate the equipment within a reasonable period of time.

13. INSURANCE

The Licensee shall, during the Term hereof, keep in full force and effect, with respect to each of the Licensed Premises and the Property:

- a) A policy of insurance, in which the limit of Commercial General Liability insurance shall not be less than Five Million Dollars (\$5,000,000.00) per occurrence and shall include the Licensor as an Additional insured with respect to the Licensee's operations, acts and omissions relating to its obligations under this License, such policy to include, but not be limited to, bodily injury, including death; 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. This policy shall not be invalidated with respect to the interests of the Licensor by reason of any breach or violation on any warranties, representations, declarations or conditions;
- b) Licensee's Legal Liability insurance equal to the actual cash value of each of the Licensed Premises, including any loss of use thereof;
- c) Property Insurance on All Risk basis for property of every description owned by the Licensee, or for which the Licensee is legally liable or any of the Equipment installed by or on behalf of the Licensee and which is located within or on the Premises, for the full replacement cost thereof, as well as Business Interruption insurance in such amount as will reimburse the Licensee for direct or indirect loss of revenue attributable to an insured peril. Coverage shall also extend to any machinery, equipment and tools that used by the Licensee for the installation of maintenance of the Equipment. This insurance shall contain a waiver of any subrogation rights, which the Licensee's insurers may have against the Licensor or those for whom the Licensor is in law responsible;
- d) Any other form of insurance as the Licensor, acting reasonably, may require from time to time in form, in amounts and for insurance risks against which a prudent Licensee would insure;
- e) Automobile Liability insurance (Standard OAP 1 Automobile Policy) with a limit not less than Two Million Dollars (\$2,000,000) per occurrence for all licensed motor vehicles owned or leased by the Lessee;
- f) The Licensee shall provide annually and prior to the inception of this License, Certificates of Insurance, or copies of the insurance policies if required by the Licensor, with provision for thirty (30) days' prior notice by registered mail to the Licensor in the event of cancellation or material change, which reduces or restricts the insurance as required under (a), (b), (c), (d) or (e) within this License, under Section 12, Insurance;
- g) The Licensee agrees that if it fails to take out or keep in force any such insurance referred to in this Paragraph, or should any such insurance not be approved by the Licensor, and should the Licensee not commence and proceed to diligently rectify the situation within forty-eight (48) hours after written notice by the Licensor, the Licensor has the right without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Licensee. The Licensor shall be reimbursed as set out under the terms of this License.

14. HEALTH AND SAFETY

The Licensee shall provide the Licensor with a WSIB Clearance Certificate issued by the WSIB with the WSIB number and proof of satisfactory standing before commencing

installation. An updated WSIB Clearance Certificate shall be provided to the City at any time upon request and on the anniversary of this Agreement thereafter. The Licensee shall provide the Licensor with health and safety related information in relation to the microwaves to identify the radius within which persons cannot be.

15. LIABILITY AND INDEMNITY OF LICENSOR

- a) The Licensor and the Licensee covenant and agree that the Licensor shall not be liable or responsible in any way for personal or consequential injury of any kind whatsoever that may be suffered or sustained by the Licensee, or any employee, agent or invitee of the Licensee, or any other person(s) who may be upon the Licensed Premises or for any loss, theft, damage or injury to any property upon the Licensed Premises however caused.
- b) The Licensee waives, releases, discharges and indemnifies the Licensor from and against all rights, claims, demands or actions of whatsoever kind or nature, direct or indirect, of any person whether in respect of damage to person or property arising out of or occasioned by the construction, maintenance, use or occupancy of the Property from any cause whatsoever. The Licensee agrees to look solely to its insurers in the event of loss whether the insurance coverage is sufficient to fully reimburse the Licensee for the loss or not.
- c) With the exception of claims arising as a result of the Licensor's negligence or arising as a result of the Licensor's failure to fulfill its obligations set out in this License, the Licensee covenants to indemnify the Licensor against all claims including construction lien claims by any person arising from any want of maintenance thereof or anything done or admitted on or in the vicinity of the Licensed Premises or any other thing whatsoever, whether arising from any breach or default or from any negligence by the Licensee, its agents, contractors, employees, invitees or licensees, or from any accident, injury or damage or any other cause whatsoever, and such indemnity shall extend to all costs, counsel fees, expenses and liabilities which the Licensor may incur with respect to any such claim.
- d) The Licensee further covenants to indemnify and save harmless the Licensor with respect to any encumbrance on or damage to the Property or the Corporation of the City of Kawartha Lakes occasioned by or arising from the act, omission, default, or negligence of the Licensee, its officers, agents, servants, employees, contractors, customers, invitees or Licensees.
- e) The foregoing indemnities shall be in addition to and not in lieu of any insurance to be provided by the Licensee and shall survive the termination of this License notwithstanding any provisions of this License to the contrary.

16. ENVIRONMENTAL

The Licensor makes no representation, warranties or guarantees as to the suitability of the Property for the purposes of the Licensee. The Licensed Premises are provided on an "as is" basis. All works necessary to make the Licensed Premises suitable for the Licensees purposes shall be the responsibility of the Licensee and it shall bear the cost of doing so.

17. MODIFICATION

No change or modification to this License shall be valid unless it is in writing and is duly executed by both parties hereto.

18. NOTICE

Any notice required by this License shall be made in writing and shall be considered given or made on the day of delivery if delivered before 4:30 p.m. by facsimile, email or by personal delivery upon any officer of the party for whom it is intended, or three (3)

business days after the day of delivery if sent by prepaid registered mail. The addresses for notice are as follows:

To the Licensor: The Corporation of the City of Kawartha Lakes
 Attention: Clerk
 26 Francis Street
 P.O. Box 9000
 Lindsay, Ontario, K9V 5R8
 Fax: 705-324-8110
 Email: clerks@kawarthalakes.ca

To the Licensee: Xplornet Communications Inc.
 Attention: Site Acquisition and Management
 300 Lockhart Mill Road
 Woodstock, New Brunswick, E7M 5C3
 Fax: 506-324-6676
 E-mail: VRE@corp.xplornet.com

Either party hereto may change its aforesaid address for notices in accordance with the provisions of this notice.

19. PLANNING ACT

It is an express condition of this License that the provisions of Section 50 of the Planning Act, R.S.O. 1990, as amended, be complied with.

20. GOVERNING LAW

This License shall be governed by the laws of the Province of Ontario. Should any provisions of this License and/or its conditions be illegal or not enforceable under the laws of such Province it or they shall be considered severable and the License and its conditions shall remain in full force and effect and be binding upon the parties as though the said provision or provisions had never been included.

21. BINDING AGREEMENT

The Licensor covenants that it has good right, full power, and absolute authority to grant this License to the Licensee and this License shall be binding on and enforceable by the parties and their respective successors, personal representatives and permitted assigns and no assignee or successor of the Licensor shall challenge the validity or enforceability of any provision of this License and every assignee or successor of the Licensor shall be bound by the obligations of the Licensor hereunder.

22. FORCE MAJEURE

Notwithstanding anything to the contrary in this License contained, if either party hereto shall be bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes; labour troubles; an inability to procure materials or services; failure of power; restrictive governmental laws or regulations; riots; sabotage; rebellion; war; or act of God; which are not the fault of the party delayed in performing the work or doing the act required under the terms of this License, then the performance of such term, covenant or act shall be excused for the period of the delay and the period for the performance of any such term, covenant or act shall be extended for a period equivalent to the period of such delay.

23. EXECUTION

This License shall not be in force or bind either of the parties hereto until executed by all the parties named herein.

24. CONFIDENTIALITY

The terms of this License and all information issued, disclosed or developed in connection with this agreement are to be held in strict confidence between the parties hereto subject to the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*.

25. ENTIRE AGREEMENT

This License contains the entire agreement between the parties hereto with respect to the Licensed Premises and there are no prior representations, either oral or written, between them other than those set forth in this License. This License supersedes and revokes all previous negotiations, arrangements, options to License, representations and information conveyed, whether oral or written, between the parties hereto. The Licensor acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except such as are expressly set out in this License.

26. INDEPENDENT LEGAL ADVICE

The Licensee acknowledges that is has either received or waived the benefit of its own legal advice with respect to the execution of this License.

27. ELECTRONIC SIGNATURES

This License may be executed and delivered by facsimile or other electronic means, which electronic copies shall be deemed to be original.

IN WITNESS WHEREOF the said parties hereto have duly executed this License on the dates noted below.

DATED at Lindsay, this _____ day of _____, 2020

**THE CORPORATION OF THE CITY OF
KAWARTHA LAKES**

PER: _____
Name: Andy Letham
Title: Mayor

PER: _____
Name: Cathie Ritchie
Title: City Clerk

We have authority to bind the Corporation.

We hereby accept the above License on the terms and conditions contained therein

DATED at _____, this _____ day of _____, 2020.

XPLORNET COMMUNICATIONS INC.

PER: _____
Name: C.J. Prudham
Title: Executive VP - General Counsel

I have authority to bind the Corporation.

Schedule "A"

Schedule "B"