

The Corporation of the City of Kawartha Lakes

By-Law 2024-____

A By-law to Authorize the Execution of a Telecommunications License Agreement Between the City of Kawartha Lakes and Shared Tower Inc. for 1 Duke Street, Bobcaygeon, in the City of Kawartha Lakes

Recitals

1. The City of Kawartha Lakes and Shared Tower Inc. agree to enter into a telecommunications license agreement allowing the installation and maintenance of a telecommunications tower on City land.
2. Section 5.03(2) of By-Law 2016-009, being a by-law regarding delegated authority to execute documents, required that proposed license agreements with a revenue or expense over \$10,000.00 per year and/or a term over 5 years must be approved by Council.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2024-__.

Section 1.00: Definitions and Interpretation

1.01 **Definitions:** In this by-law,

“**City**”, “**City of Kawartha Lakes**” or “**Kawartha Lakes**” means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

“**City Clerk**” means the person appointed by Council to carry out the duties of the clerk described in section 228 of the Municipal Act, 2001;

“**Council**” or “**City Council**” means the municipal council for the City;

1.02 **Interpretation Rules:**

(a) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.

(b) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.

1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.

1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

Section 2.00: Authorization

2.01 Authorization: The Mayor and Clerk are hereby authorized and directed to sign the license agreement between the City of Kawartha Lakes and Shared Tower Inc., appended to this By-Law as Schedule A, and affix the City of Kawartha Lakes' corporate seal.

Section 3.00: Administration and Effective Date

3.01 Administration of the By-law: The City Clerk is responsible for the administration of this by-law.

3.02 Effective Date: This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this 27th day of August, 2024.

Doug Elmslie, Mayor

Cathie Ritchie, City Clerk

Schedule A

DocuSign Envelope ID: FDD7C5A8-306D-41A3-BAED-9855BD327B32

TELECOMMUNICATIONS LICENSE AGREEMENT

THIS AGREEMENT made effective as of the 18th day of July, 2024

BETWEEN:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

(the "Licensor")

- and -

SHARED TOWER INC.

(the "Licensee")

1. Licensed Premises.

1.1. The Licensor hereby agrees to license to the Licensee 72 square metres of space depicted in Schedule A attached hereto (the "Licensed Premises") within the property located at 1 Duke Street, Bobcaygeon, and legally described as Part Block Y Plan 29 Part 1, 57R3037 & PT 1 57R7172; Kawartha Lakes, further described in Schedule A attached hereto (the "Property"). The Licensor also hereby grants to Licensee the right to survey the Licensed Premises at the Licensee's cost. The Licensed Premises and any access and utility rights described herein will be used to construct, support and operate a telecommunications facility, including a telecommunications tower, antennas, cables, and related structures and improvements (collectively the "Structures"), in accordance with the terms of this License, for the uses as permitted in this License, and for any other purpose with the Licensor's prior written consent which shall not be unreasonably withheld, conditioned or delayed.

1.2. Licensee will have quiet and peaceful possession of the Licensed Premises throughout the initial term and extension terms.

2. Term.

2.1. The initial term of this License will be five (5) years commencing on the earlier of (i) the date on which the installation of the Structures (as defined below) is completed and (ii) August 1st, 2026. This License shall automatically extend for up to three (3) additional terms of five (5) years each, unless the Licensee notifies the Licensor of its intention not to renew prior to the expiration of the then-current term. This License and all the terms, covenants, grants and agreements

contained herein shall be conditional upon compliance with the Planning Act (Ontario). Unless and until any required consents are obtained under the aforesaid subdivision control legislation (if applicable), which the Licensee may apply for at any time and the Licensor shall cooperate and assist the Licensee at no charge, the maximum term of this License, including any possible renewals or extension terms, shall be one (1) day less than the maximum term permitted under the aforesaid subdivision control legislation.

3. Fees

- 3.1. The Licensee shall pay an annual license fee ("License Fee") to the City in consideration for its use and occupation of the Licensed Premises. The License Fee shall be in accordance with By-Law 2018-234, as amended, enclosed as Schedule B, and shall be due upon the commencement date of this License and annually thereafter on each anniversary.
- 3.2. The License Fee is in addition to and separate from any other fees or payments being made to the City by the Licensee in relation to the Licensee's use or license of any other portion of the City Property not covered by this License.
- 3.3. The Licensee will pay for all utilities furnished to the Licensed Premises and used by the Licensee throughout the initial term or extension term hereof, and all other costs and expenses of every kind whatsoever in connection with the use, operation, and maintenance of the Licensed Premises and all activities conducted thereon.

4. Assignment.

- 4.1. 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:
 - 4.1.1. assign its rights or obligations under this Agreement to an affiliate or an entity acquiring at least five (5) of the tower assets of the Licensee; and
 - 4.1.2. license all or any portion of the Structures to a third party for use as a telecommunications site.
- 4.2. 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.
- 4.3. In the event Licensor transfers any interest in the Property during the term of this agreement, Licensor shall deliver a copy of this License to such transferee and as a condition of the transfer shall require the transferee to execute an

assumption agreement under which it assumes Licensor's covenants and obligations under this License. Upon delivery of the fully executed assumption agreement and a notice to Licensee directing future fees, Licensor shall be relieved of its obligations under this License.

5. Access.

- 5.1. The Licensor grants to the Licensee, its agents, employees, contractors, or to an Assignee, all rights of direct access 24 hours a day, 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 Structures, including but not limited to connecting its Structures to the public telephone and utility networks including the local hydro provider and installation of fibre to the site, pursuant to the public telephone and utility's requirements or recommendations and any required right-of-ways, provided that such access is 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.
- 5.2. 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.
- 5.3. If required by the applicable electrical distribution company (the "LDC"), an easement shall be granted by Landlord in favour of the LDC, and registered on title to the Property, for installation, construction, operation and maintenance of underground and above ground power lines as required to provide electrical service to the Licensed Premises.

6. Secured Parties.

Licensee may from time to time grant to certain lenders (the "Lenders") a lien on and security interest in Licensee's interest in this License and all assets and personal property of Licensee located on the Licensed Premises (the "Personal Property") as collateral security for the repayment of any indebtedness to the Lenders. Licensor hereby agrees to subordinate any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent, Licensor may have in or on the Personal Property, whether arising by

agreement or by law, to the liens and/or security interests in favor of the Lenders, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Licensor's assets. Should Lender exercise any rights of Licensee under this License, including the right to exercise any extension option(s), Licensor agrees to accept such exercise of rights by Lenders as if same had been exercised by Licensee, and Licensee, by signing below, confirms its agreement with this provision. If there shall be a default by Licensee under this License, Licensor shall accept the cure thereof by Lenders within fifteen (15) days after the expiration of any grace period provided to Licensee under this License to cure such default, prior to terminating this License. If the License is terminated as a result of a Licensee default or is rejected in any bankruptcy proceeding, Licensor will enter into a new license with Lenders or their designee on the same terms as this License within fifteen (15) days of Lenders' request made within thirty (30) days of notice of such termination or rejection, provided Lenders pay all past due amounts under this License. In the event Licensor gives Licensee any notice of default under the terms of this License, Licensor shall simultaneously give a copy of such notice to Lender at an address to be supplied by Licensee.

7. Notices.

7.1. 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 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: Shared Tower Inc.
 1300 Cornwall Road, Unit 101,
 Oakville ON
 L6J 7W5

8. Improvements and Use.

8.1. The Licensee is granted the right, at its sole expense, to undertake improvements on the Licensed Premises as deemed necessary for the installation and operation of its telecommunications equipment, including but not limited to, the construction of equipment shelters. All improvements made by the

Licensee, such as prefabricated structures, generators, and fencing, will remain the property of the Licensee and may be used for transmitting, receiving, and relaying communication signals. Upon the expiration or termination of this License, the Licensee is obligated to restore the Licensed Premises to its original state, reasonable wear and tear excepted, except for permanent structures like underground conduits, foundations, and footings, which are not required to be removed.

8.2. For greater clarity, it is understood and agreed by both parties that the Licensee will be decommissioning and removing the existing tower located upon the Property (the "Existing Tower"), disposing of it, and erecting the Structures within the Licensed Premises. The tower component of the Structures can be up to 125% of the height of the Existing Tower.

8.3. The Licensor shall have the opportunity to collocate its equipment on the Structures at no annual fee upon execution of the Licensee's form of collocation agreement.

9. Insurance.

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

9.1.1. 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; contingent employers' liability; and, shall include a cross liability and severability of interest clause. 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;

9.1.2. Licensee's Tenant's Legal Liability insurance equal to the actual cash value of each of the Licensed Premises, including any loss of use thereof;

9.1.3. 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 Structures installed by or on behalf of the Licensee and which is located within or on the Licensed Premises, for the full replacement cost thereof. Coverage shall also extend to any machinery, equipment and tools that used by the Licensee for the installation of maintenance of the Structures. 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;

- 9.1.4. 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;
- 9.1.5. 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 leased by the Lessee;
- 9.1.6. The Licensee shall provide annually and prior to the inception of this License, Certificates of Insurance, with provision for thirty (30) days' prior notice to the Licensor in the event of cancellation or material change, which reduces or restricts the insurance as required under this License;
- 9.1.7. 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.

10. Liability and Indemnity of the Licensor.

- 10.1. The Licensor and the Licensee covenant and agree that, notwithstanding anything to the contrary in this License, neither party shall be liable or responsible in any way for personal or consequential injury of any kind whatsoever that may be suffered or sustained by it, or any employee, agent or invitee of it.
- 10.2. The Licensee indemnifies the Licensor from and against all rights, claims, demands or actions of whatsoever kind or nature 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.
- 10.3. 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.
- 10.4. 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.

- 10.5. 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.

11. Taxes.

- 11.1. The Licensee will pay any taxes assessed on, or any portion of the taxes attributable to, the Structures. The Licensor will pay when due all real property taxes and all other fees and assessments attributable to the structure(s) installed within the licensed space.

12. Termination Rights.

- 12.1. The Licensee may terminate this License at any time upon providing at least thirty (30) days' written notice, without incurring further liability, if the Licensee is unable to secure all necessary rights, postponements, and approvals required from senior management, any governmental authority, and/or any third party to operate the telecommunications equipment under conditions satisfactory to the Licensee. This includes situations where any such right or approval fails to be obtained, expires, is cancelled, or terminated, or if for any other reason the Licensee decides, at its discretion, that it will no longer utilize the Licensed Premises for its intended purpose.

- 12.2. The Licensor may terminate this License, at its option, in the event of a material breach by the Licensee, including but not limited to, failure to comply with the terms of the License or failure to make any payments when due. Such termination is subject to a cure period of sixty (60) days following the Licensee's receipt of written notice of such breach or failure, or such longer period as may reasonably be necessary to remedy the breach, provided that the Licensee is actively working towards a resolution.

13. Environmental.

- 13.1. 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.

14. General.

- 14.1. Confidentiality. The Licensor agrees to keep the terms of this License and any related information strictly confidential, disclosing them only when required by law.
- 14.2. 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.
- 14.3. Entire Agreement. This License constitutes the entire agreement between the parties. No modification, waiver, or amendment will be valid unless in writing and signed by both parties.
- 14.4. Severability. If any provision of this License is found to be invalid, this does not affect the validity of the remaining provisions.
- 14.5. Force Majeure. Neither party will be held liable for delays or failures in performance resulting from acts beyond their control, including but not limited to strikes, lockouts, natural disasters, or emergencies.
- 14.6. Holdover. If the Licensee remains in possession of the property beyond the term, they will do so as a month-to-month licensee under the terms then applicable.

15. Electronic Signatures.

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

Signatures on the following page.

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

DATED at Lindsay, this _____ day of _____, 20__

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

PER: _____
Name: Doug Elmslie
Title: Mayor

PER: _____
Name: Cathie Richie
Title: City Clerk

We have authority to bind the Corporation

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

SHARED TOWER INC.

DocuSigned by:

PER: _____
Name: Daniel Gibbons
Title: President 7/19/2024

I have the authority to bind the corporation

Schedule A Licensed Premises

The Leased Premises shall consist of approximately 72 square metres ground space along with rights of way for access to the Leased Premises by vehicle or foot from the nearest public way and for the installation of utility wires, poles, cables, conduits and pipes on the Property in the approximate locations as depicted below:



Schedule B
Fee Schedule:

Service Description	Unit	Additional Fees	Rate Effective January 1, 2023	Rate Effective January 1, 2024	Reference
Tower	Annual	\$0	\$13,000.00	\$13,470.00	By-Law 2018-017

Every year proceeding shall follow By-Law 2018-017 Rates.