

MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT made the _____ day of _____ 2017 (“Effective Date”)

B E T W E E N:

Tbaytel
(hereinafter called the Company)

- and -

TOWN OF FORT FRANCES
(hereinafter called the City)

WHEREAS the Company is a “Canadian carrier” as defined in subsection 2(1) of the *Telecommunications Act* (Canada), S.C. 1993, c. 38, as amended;

AND WHEREAS, in order to operate as a Canadian carrier, the Company requires to construct, maintain, operate and remove its transmission facilities, including wires, fibre-optic cables, ducts, conduits, manholes and other accessories, structures and equipment (collectively the “Equipment”) in, on, over, under, along or across highways, streets, road allowances, lanes, bridges, tunnels, viaducts and other ways open to public use within the jurisdiction of the City (“Service Corridors”) and uses such Equipment in the provision of “telecommunications services”, as defined in subsection 2(1) of the *Telecommunications Act*;

AND WHEREAS the City is the public authority having jurisdiction over the Service Corridors, except in those instances and to the extent that jurisdiction lies elsewhere;

AND WHEREAS the City exercises such jurisdiction for *bona fide* municipal purposes;

AND WHEREAS, pursuant to section 43 of the *Telecommunications Act*, the Company requires the City's consent to construct, maintain and operate its Equipment in, on, over, under along, or across the Service Corridors;

AND WHEREAS the City is willing to grant its consent to the Company to construct, maintain, operate and remove its Equipment within the Service Corridors where such activity will not unduly interfere with the public use and enjoyment of the Service Corridors by others;

AND WHEREAS the City and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which said consent shall be provided by the City to the Company in the form of a non-exclusive right;

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the City and the Company each agree with the other as follows:

Scope of Municipal Consent

1. The City hereby consents to and grants a non-exclusive right to the Company to enter on, excavate, break up or otherwise breach the surface of any Service Corridor including all existing telecommunications easements for the purpose of constructing, operating, maintaining and removing its Equipment, in locations specified by the City within the Service Corridors (“Alignments”) and to remain there as long as is necessary for that purpose, subject to the terms and conditions hereinafter set forth and in accordance with all applicable federal, provincial and municipal statutes and laws or other applicable rules and regulations.

Authorization of Work

2. Notwithstanding section 1, the Company shall not excavate, break up or otherwise breach the surface of any Service Corridor or engage in any other work therein for the purpose of constructing, operating, maintaining or removing any of its Equipment in, on, over, under, along or across any Service Corridor (each of these activities hereinafter collectively called “Work”) without first:
 - a) providing plans to the City’s specified most senior municipal official responsible for overseeing such Work or his or her specified designate (“City Official”), setting out a proposal for an Alignment for the Company’s Equipment and such other information reasonably required by the City Official in a mutually agreed upon form; and
 - b) obtaining the written authorization of the City Official to an Alignment, which approval may not be unreasonably withheld or conditional.
3. The City shall process a proposal submitted by the Company under section 2 in a timely manner so as not to cause any undue delay. In any event, once the plans have been provided to the City Official, the written consent of the City Official shall be deemed to have been given if no written objection from the City Official has been received by the Company within twenty (20) days of transmission by the Company of its request for written consent.

4. Subject to section 14, the Company shall provide all information reasonably required and obtain all required municipal construction and/or other permits normally required by the City in the circumstances prior to commencing any Work.
5. Notwithstanding sections 2 and 4, the Company may, without the prior written consent of the City, carry out routine maintenance, field testing, subscriber connections and installation or removal of Equipment where there is no need to excavate, break up or otherwise breach the surface of any Service Corridor or other City property. Provided, however, in the event that such work activity will result in disruption of traffic, the Company will comply with such notification procedures as may be reasonably prescribed by the City.

Conditions

6. All Work conducted by or on behalf of the Company is subject to the following conditions:
 - a) the Work shall conform to all applicable federal, provincial and municipal statutes and laws or other applicable rules and regulations, including, but not limited to, the reasonable terms of any authorizations granted by the City Official, permits issued by the City and the provisions of this Agreement;
 - b) the Work shall be conducted and completed to the reasonable satisfaction of the City Official;
 - c) the Work shall be performed in a manner that would not unduly harm or interfere with other support structures, transmission lines, equipment, facilities or similar improvements (“Improvements”) present in the Service Corridors;
 - d) after completion of any Work, the Company shall leave the Service Corridor in substantially the same condition in which it was before such Work was undertaken by the Company, free from nuisance and to the reasonable satisfaction of the City Official. If the Company fails to repair and restore any Service Corridors to the reasonable satisfaction of the City Official within thirty (30) days of being notified by the City, the City may effect such repairs and charge all reasonable costs related thereto to the Company;
 - e) if the City reasonably requires that any Work be stopped in the case of emergency, the Company shall cease such Work upon delivery of a notice to the Company to that effect by the City Official; and
 - f) the Company shall be responsible for all Work.

Representations and Warranties

7. The Company represents and warrants to, and covenants and agrees with the City that:
 - a) the Company shall not unduly interfere with the public use and enjoyment of the Service Corridors when exercising its rights under this Agreement;
 - b) this Agreement does not grant the Company any title to or other ownership or property interest in any Alignments or Service Corridors;
 - c) the Company shall not register or permit to be registered any instrument claiming an estate, interest or property right in the Service Corridors or other property of the City in any real or personal property registry by virtue of the Company's occupancy or use of the Service Corridors or this Agreement;
 - d) the Company shall not suffer or permit any lien to be filed or registered against any Service Corridors;
 - e) the City has made no representations or warranties as to the state of repair of the Service Corridors or the suitability of the Service Corridors for any business, activity or purpose whatsoever and the Company hereby agrees to take the Service Corridors on an "as is" basis;
 - f) the Company shall, subject to the intended purposes of and the rights and privileges granted to the Company herein, use reasonable efforts to schedule Work and share Alignments and support structures with other providers of service to the public ("Service Providers") occupying and using the Service Corridors, with the intent of minimizing the necessity for road cuts, construction and the placement of support structures in the Service Corridors;
 - g) the Company shall notify the City of any damage caused by the Company in connection with its Work, Equipment or enjoyment of its rights under section 1 of this Agreement; and
 - h) subject to the intended purposes of and the rights and privileges granted to the Company herein, the City may cross the Company's Equipment with its own improvements or otherwise, and may use the Service Corridors for any purpose, and may allow other parties to cross the Company's Equipment with their Improvements or otherwise and to use the Service Corridors.
8. The City represents and warrants to and covenants and agrees with the Company that it has jurisdiction over any Service Corridors for which the City grants consent to the Company and has the authority to grant such consent.

As-Constructed Drawings

9. The Company shall provide "as-constructed" drawings to the City in a mutually agreed upon form, within six (6) months of completing the construction of Equipment on any Service Corridor.

Utility Coordination

10. The Company agrees to maintain membership in any utility coordinating committees or forums as may be established by the City, and to pay its reasonable and proportionate share of the costs of the administration of such forums.
11. At no cost to the City, location requests will be performed in accordance with Bill 8, Ontario Underground Infrastructure Notification Systems Act, 2012, through Ontario One Call.

Emergencies

12. The Company shall provide to the City Official a list of twenty-four (24) hour emergency contact personnel and shall ensure that the aforementioned list is frequently updated.
13. The City shall provide to the Company a current list of twenty-four (24) hour emergency contact personnel for both its own personnel and those of the other Service Providers and shall ensure that the aforementioned list is frequently updated.
14. Despite section 2, in an emergency, the Company may enter in, on, over, under, along or across the Service Corridor to access its Equipment without the prior written consent of the City, provided that the Company shall notify the City Official at its earliest possible opportunity of the nature of the emergency and of the Company's activities in respect of it and, if excavation is involved, the Company shall restore the surface to its original condition, or as close as possible to its original condition, to the reasonable satisfaction of the City Official.

Relocation

15. If, for municipal purposes, and not at the request of a third party, the City requires that the Equipment to which this Agreement relates be relocated, then the Company shall, within 180 days of written notification by the City Official requiring relocation, or such time as mutually agreed to by the parties, relocate such Equipment.
16. If the Company fails to complete the relocation of the Equipment in accordance with section 15, the City may, but is not obligated to, at its sole option, complete such relocation or other work.
17. The allocation of costs associated with the relocation of cables, wires, and other facilities and equipment owned by third parties and attached to the Company's support structures shall be the responsibility of the City and such third parties. In no event shall the Company be responsible for costs incurred by or charged to such third parties to relocate their equipment attached to the Company's support structure.

18. For Equipment relocations in respect of Equipment authorized to be installed in accordance with section 2 after the execution by the Company and the City of this Agreement and within five (5) years of the authorization being granted for the installation of such Equipment, the City will be responsible for all relocation costs. After five (5) years of the authorization being granted, the percentage of costs assumed by the City will be reduced by 20% in each subsequent year. After nine (9) years of the permit approval being granted by the City, the Company will assume responsibility for all relocation costs.

Payments to City

19. The Company covenants and agrees to pay to the City:
- a) all of the usual permit fees associated with the permits that the Company requires in connection with its Work.

All amounts payable under this Agreement shall be made payable in Canadian currency.

Late Payment Charges

20. Payment terms are net thirty (30) days under this Agreement. Overdue accounts shall be charged interest at the current rate of ten and one half percent (10.5%) per annum compounded monthly and adjusted quarterly by the Ministry of Municipal Affairs or at the maximum lawful rate, whichever is lower.

Obsolete Equipment

21. The Company shall notify the City promptly when it ceases to use Equipment situated in, on, over, under, along or across the Service Corridors. Upon such notification, the City may thereafter, at any time, require the Company to remove the said Equipment or part thereof within a specified period of time, being no less than ninety (90) days from the date of written notification by the City, failing which the City may at its option remove the Equipment at the Company's expense. Any support structure of the Company containing only such abandoned Equipment shall be deemed to have been abandoned by the Company and, unless otherwise agreed by the parties, title thereto shall vest in the City two years after the Company notifies the City that it has ceased to use the Equipment.

Excess Capacity

22. Whenever the Company installs new conduits by open cut along or across any Service Corridors, and the new conduits are not employed for the sole purpose of connecting a single building or customer location to the Company's Equipment, the Company shall:
- a) unless otherwise waived by the City Official in writing, use commercially reasonable efforts to ensure that any conduits to be placed in the Service Corridors are sized so as to accommodate the total estimated future transmission capacity requirements of the Company in, on, over, under, along or across the Service Corridors as reasonably determined by the Company;
 - b) where the Company and the City mutually agree, make available to other Service Providers, on reasonable terms and conditions, such additional excess conduit capacity as the City Official may request in writing for the more efficient administration of the occupancy and use of the Service Corridors by all Service Providers; and

Subject to the intended purposes of the Company herein, the Company shall use commercially reasonable efforts to place its Equipment along routings previously assigned to Service Providers by the City and in or along any support structures situated therein.

Third Party Equipment

23. The Company may allow third parties to use its support structures subject to the associated rates, terms and conditions mutually agreed upon between the Company and the third party requesting the use of the Company's support structures, and further provided that:
- a) The Company's support structure license agreement requires the third party to comply, at the third party's sole expense, with all applicable laws, statutes, codes, ordinances, rules, orders and regulations of all governmental authorities in force, and that the third party shall obtain and maintain any and all permits, licences, official inspections or any other approvals and consents necessary or required for the placement or operation of the third party's equipment structures; and
 - b) the Company does not charge a fee for the third party's use of the Service Corridors.

Term of Agreement

24. Unless otherwise terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall commence on the Effective Date and shall be ten (10) years in duration. Unless the Agreement is otherwise terminated in accordance with its provisions, it may be extended for two (2) additional successive terms of five (5) year extension periods, such extensions shall take effect automatically and without further notice, unless the Company gives notice to the City at least 90 days prior to the expiration of the then current term that it shall not exercise such right of extension. The initial term and the subsequent terms to the extent applicable shall hereinafter be called the Term.

Default and Termination

25. This Agreement may be terminated at any time during the Term by the mutual written agreement of the City and the Company.
29. A party to this Agreement may terminate the Agreement upon one hundred and eighty (180) days written notice delivered to the other party if that other party defaults under any of its material obligations under this Agreement and fails to correct the default within one hundred and eighty (180) days of receiving written notice of the default.
30. Upon termination of the Agreement and in the absence of a new agreement, either party may submit an application to the Canadian Radio-television and Telecommunications Commission regarding such termination. Such termination shall not affect the use, operation or maintenance of any existing Equipment of the Company.
31. This Agreement may be terminated by the Company providing the City ninety (90) days written notice in the event the Company, at its sole discretion, determines that it no longer requires to enter on, excavate, break up or otherwise breach the surface of the Service Corridors.
32. All covenants, representations, warranties, indemnities and outstanding obligations (including payments to the City up to and including the effective date of termination) of the parties under this Agreement shall survive the termination of this Agreement, however caused.

Occupational Health and Safety and Traffic

33. The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all applicable health and safety laws including any regulations requiring the installation of safety devices or appliances, and any applicable traffic laws or regulations. The City may, on twenty-four (24) hours written notice to the Company, suspend Work performed by or on behalf of the Company on that portion of the Equipment located in, on, over, under, along or across

Service Corridors if there appears to be a material failure to install such devices or because conditions of immediate danger exist that would likely result in injury to any person. Such suspension shall continue until the default or failure is corrected.

Environmental Responsibility

34. The Company agrees to assume all environmental liability relating to its operations under this Agreement, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around Service Corridors which results solely from:
- a) the operations of the Company in, on, under, along, across or around the Service Corridors; or
 - b) any products or goods brought in, on, under, along, across or around the Service Corridors by the Company without the authorization of the City, or by any other person with the express or implied consent of the Company without the authorization of the City.

Notwithstanding section 8(i), this section shall cease to apply five years following the termination of this Agreement, however such termination is caused.

35. The City shall indemnify and hold the Company and its officers, directors, employees, servants, agents, licensees and invitees harmless from and against any and all claims, suits, actions, costs, damages, penalties, expenses and losses suffered and incurred by the Company or any of its officers, directors, employees, servants, agents, licensees and invitees as a result of or arising from the presence of any hazardous substances in, on, under, over, along and across the Service Corridors or the non-compliance of the City with all applicable environmental legislation.
36. For the purpose of sections 34 and 35, "hazardous substance" means any hazardous substance and includes, but is not limited to, electromagnetic or other radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any applicable law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.

Liability and Indemnification

37. The Company shall indemnify and save harmless the City and its officers, directors, employees, agents, servants, licensees and invitees, from and against all actions, causes of action, proceedings, claims and demands brought against the City, and from and against all losses, costs, damages or expenses suffered or incurred by the City and its officers, directors, employees, agents, servants, licensees and invitees, by reason of any damage to property, including property of the City, or injury, including injury

- resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the City, caused by, resulting from or attributable to the negligent act or omission of the Company or any of its employees, servants, agents, licensees or invitees in the performance of this Agreement.
38. The City shall indemnify and save harmless the Company and its officers, directors, employees, agents, servants, licensees and invitees, from and against all actions, causes of action, proceedings, claims and demands brought against the Company, and from and against all losses, costs, damages or expenses suffered or incurred by the Company and its officers, directors, employees, agents, servants, licensees and invitees, by reason of any damage to property, including property of the Company, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the Company, caused by, resulting from or attributable to the negligent act or omission of the City or any of its employees, servants, agents, licensees or invitees in the performance of this Agreement.
39. Notwithstanding anything contained in this Agreement, the City and the Company shall not be liable to each other or any third party in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Equipment or Service Corridor governed hereby.

Successors and Assigns

40. This Agreement shall be binding upon and shall enure to the benefit of the Company and the City and their respective successors and assignees. For the purposes of this Agreement, “successors” of a party shall include any person, firm, corporation, or other entity which at any time, whether by merger, acquisition, purchase, or otherwise, shall acquire all or substantially all of the assets of that party. The Company may assign this Agreement during the Term to a successor or to an “affiliate”, as that term is defined in the *Canada Business Corporations Act* (Canada). The Company may not otherwise assign this Agreement without the advance written consent of the City, which consent may not be unreasonably withheld, conditioned, or delayed.
41. In the event of any assignment of the Agreement by the Company, the Company shall remain jointly and severally liable under this Agreement in all respects unless the assignee agrees to be bound by the provisions of this Agreement in which case the Company shall have no further liability under this Agreement.
42. Despite section 40, the Company may pledge the rights granted by this Agreement as security without the consent of the City to any person directly or indirectly providing financing to the Company but such pledge shall not release the Company from its obligations and liabilities under this Agreement.

Non Parties to Agreement

43. Subject to the intended purposes of the rights and privileges granted to the Company herein, nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Service Corridors in accordance with the City's legal authority.

No Property Rights

44. Neither the entering on or breaking up of a Service Corridor by the Company, nor the Company's continuation in a Service Corridor for the purpose of constructing, operating, maintaining or removing its Equipment under this Agreement shall create or vest in the Company or any other party any ownership or property rights in any Alignments or in the Service Corridors, and the Company shall be and remain a non-exclusive rights-holder in respect of the Service Corridors.
45. Placement of the Equipment in the Service Corridors shall not create or vest in the City any ownership or property rights to the Equipment, except as specifically provided herein.

Workers' Compensation Coverage

46. The Company agrees that it shall, at its own expense, procure and carry, or cause to be procured and carried and paid for, full workers' WSIB coverage for itself and all workers, employees, and others authorized to engage in or upon any Work.

Insurance

47. The Company shall maintain insurance in sufficient amount and description as will satisfy the Company's obligations under this Agreement to protect the City from claims for damages, personal injury including death, and for claims from property damage which may arise under this Agreement, including but not limited to the construction, maintenance, operation or removal of the Equipment in, on, over, under, along or across the Service Corridors or any act or omission of the Company's employees, agents, contractors or licensees.
48. In addition to the foregoing, the Company covenants and agrees that with respect to the insurance coverage described in section 47:
- a) the limits of liability for personal injury, bodily injury and property damage combined shall be for not less than two million dollars (\$2,000,000.00) for each occurrence;
 - b) the comprehensive general liability insurance shall extend to cover the contractual obligations of the Company as stated within this Agreement; and

- c) all policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the City by registered mail.

General

49. **Independent Contractors.** The relationship of the Company and the City established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed:
- a) to give either party the power to direct or control the day-to-day activities of the other;
 - b) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or
 - c) to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.
50. **Notice.** All formal notices hereunder shall be in writing and shall be deemed effective upon receipt when delivered by hand, overnight delivery courier, by facsimile transmission (provided such notice is also given in any of the other manners set forth herein) or when mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses listed below (or at such other address for a party as shall be specified by like notice).

If to the City:

**The Town of Fort Frances
320 Portage Avenue
Fort Frances, ON P9N 3P9**

If to the Company:

**Tbaytel
Simone Laatu
VP, Chief Technology & Information Officer
1046 Lithium Dr.
Thunder Bay, ON P7B 6G3**

With a copy to:

**Tbaytel
1046 Lithium Drive
Thunder Bay, ON. P7B 6G3
Attn: Regulatory Affairs**

51. **Modifications.** No waiver of or changes to any provision of this Agreement shall be effective unless reduced to writing and signed by authorized representatives of both parties.
52. **Waiver.** The failure of either party to insist upon strict adherence to any term or condition of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon strict adherence to that term or condition or any other term or condition of this Agreement.
53. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court or regulator of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the parties shall use their best efforts to endeavour to give effect to the Agreement as originally contemplated before the provision was held to be invalid or unenforceable to the maximum extent permitted by law.
54. **Counterparts; Original Signature Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original.
55. **Time.** Time is of the essence in this Agreement.
56. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the province or territory in which the City is situated and the laws of Canada applicable therein, excluding the conflict of laws provisions thereof.
57. **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.
58. **Headings.** The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The term "section" refers to a section of this Agreement, unless explicitly otherwise stated.
59. **Gender, Number and Person.** Words importing the neuter gender shall include the masculine and feminine genders. In this Agreement, "person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative of any of the foregoing. Words importing person shall include firms and corporations and vice versa. Words importing the singular shall include the plural and vice versa.

60. **Treatment of Personnel.** Each party shall bear sole responsibility for payment of compensation (including applicable benefits) to its personnel assigned to perform that party's obligations under this Agreement, and shall also bear sole responsibility for any applicable source deductions required by law in respect of such personnel. Under no circumstances shall the other party be considered the employer of any such personnel.
61. **Cumulative remedies.** Except as otherwise expressly stated in this Agreement, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
62. **No Rules of Construction.** This Agreement shall not be interpreted in favour or against a party on the basis of the existence or absence of legal representation in the case of either party.
63. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior agreements, whether oral or written, relating to the subject matter hereof.
64. **Acknowledgement.** Each party acknowledges that it has read this Agreement, including the Schedules attached hereto and forming part hereof, and each party understands and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Tbaytel

Name: Simone Laatu
Title: VP, Chief Technology & Information Officer

THE TOWN OF FORT FRANCES

Name:
Title: