

MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT MADE this ___ of _____ 20_____,

BETWEEN the following, collectively referred to as: “the Parties”

BRUCE TELECOM (hereinafter referred to as “**the Company**”)

-and-

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE,

(hereinafter referred to as “**the Municipality**”)

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 or is a “distribution undertaking” as defined in subsection 2(1) of the *Broadcasting Act*, S.C. 1991, c. 11, as amended; and

WHEREAS in order to operate as a Canadian carrier or a distribution undertaking, the Company requires to construct, maintain and operate its transmission facilities including but not limited to 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 Municipality (“Service Corridors”); and

WHEREAS the Municipality is the public authority having jurisdiction over the Service Corridors; and

WHEREAS the Municipality exercises such jurisdiction for *bona fide* municipal purposes; and

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

WHEREAS the Municipality is willing to consent to the occupancy and use of the Service Corridors by the Company where such use will not unduly interfere with the public use and enjoyment of the Service Corridor by others; and

WHEREAS the Municipality 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 Municipality to the Company in the form of a non-exclusive right;

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the Municipality and the Company mutually agree as follows:

Scope of Municipal Consent

1. The Municipality hereby consents and grants a non-exclusive right to the Company to enter upon, occupy and use locations specified by the Municipality within the Service Corridors (“Alignments”) for the purpose of constructing, operating, maintaining, repairing and removing its Equipment for use only in the provision of “telecommunications services” (as defined in subsection 2(1) of the *Telecommunications Act*) or “distribution undertaking” (as defined in the *Broadcasting Act*) subject to the terms and conditions hereinafter set forth and in accordance

with all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations.

2. The Company may access the Service Corridors in accordance with the terms of this Agreement for the purpose of exercising its rights under section 1 of this Agreement.

Authorization of Work

3. The Company shall not excavate, break up or otherwise breach the surface of any Service Corridors 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 Corridors (each of these activities thereafter collectively called "Work") without first:
 - a) Providing plans to the Municipality's specified most senior municipal official responsible for overseeing such Work or his specified designate (the "Commissioner"), setting out a proposal for an Alignment for the Company's Equipment and such other information reasonably required by the Commissioner in a mutually agreed upon form, and
 - b) Obtaining the written authorization of the Commissioner to an Alignment; such approval not to be unreasonably withheld or conditional, and

the Municipality shall process the Company's proposal in a timely manner so as not to cause any undue delay. In any event, once the plans have been provided to the Commissioner, the written consent of the Commissioner shall be deemed to have been given if no written objection from the Commissioner has been received by the Company within thirty (30) days of transmission by the Company of its request for written consent.

4. Subject to section 15, the Company shall provide all reasonable required information and obtain all required municipal construction and/or other permits normally required by the Municipality in the circumstances prior to commencing any Work.
5. Notwithstanding section 3 and 4, the Company may, without the prior written consent of the Municipality, carry out routine repair, 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 Municipal 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 Municipality.

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, laws and by-laws or other applicable rules and regulations, including, but not limited to the reasonable terms of any authorizations granted by the Commissioner, permits issued by the Municipality and the provisions of this Agreement;
 - b) the Work shall be conducted and completed to the reasonable satisfaction of the Commissioner;
 - c) the Work shall be performed in a manner that would not unduly harm or interfere with other support structures, transmission lines, equipment, facilities and improvements of any kind ("**Improvements**") present in the Service Corridors;

- d) after completion of any Work, the Company shall leave the Service Corridors 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 Commissioner. Subject to section 6(g), if the Company fails to repair and restore any Service Corridors to the satisfaction of the Commissioner within twenty (20) days of being notified by the Municipality, or some other longer period of time as agreed to by both parties, the Municipality may affect such repairs and charge all reasonable costs related thereto to the Company, and the Company shall pay said costs within thirty (30) days of receipt of invoice;
 - e) if the Municipality 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 Commissioner;
 - f) The Company shall be responsible for all Work, including the cost of such Work (subject to the provisions of section 15 hereof); and
 - g) where weather conditions prevent a repair or restoration in accordance with section 6(d), the Company shall affect a temporary repair and restore the Service Corridor to the satisfaction of the Municipality. Final repair and restoration pursuant to section 6(d) shall be affected as soon as the weather conditions permit.
7. The Company represents and warrants to, and covenants and agrees with the Municipality that:
- a) the Company's occupancy and use of the Service Corridors shall not unduly interfere with the public use and enjoyment of the Service Corridors;
 - b) all Work performed by or on behalf of the Company shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations, including, but not limited to, the reasonable terms of any authorizations granted by the Commissioner, permits issued by the Municipality and the provisions of this Agreement;
 - c) after completion of any Work, the Company shall leave the Service Corridors in substantially the same condition they were before such Work was undertaken by the Company, to the reasonable satisfaction of the Commissioner;
 - d) the Company has no title to or other ownership or property interest in any Alignments or Service Corridors;
 - e) 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 Municipality in any real or personal property registry by virtue of the Company's occupancy or use of the Service Corridors or this Agreement;
 - f) the Company shall not suffer or permit any lien to be filed or registered against any Service Corridors;
 - g) the Municipality has made no representation 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;

- h) 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 service providers occupying and using the Service Corridors who have entered into an access agreement with the Municipality and who are in good standing with the Municipality as to the terms and conditions contained within such an agreement, with the intent of minimizing the necessity for road cuts, construction and the placement of support structures in the Service Corridors;
 - i) the Company shall notify the Municipality of any damage caused by the Company in connection with its Work, Equipment or enjoyment of its right to occupy and use Alignments under this Agreement;
 - j) subject to the intended purposes of and the rights and privileges granted to the Company herein, the Municipality 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, all at no charge to the Municipality; and
 - k) all of the covenants, representations, warranties, indemnities and outstanding obligations (including outstanding payment obligations) of the Company under this Agreement shall survive the termination of the Agreement, however caused.
8. The Municipality represents and warrants to and covenants and agrees with the Company that it has jurisdiction over any Service Corridors for which the Municipality grants consent to the Company and has the authority to grant such consent.

As-Construct Drawings

9. If required by the Municipality, the Company shall provide "as-construct" drawings to the Municipality in a mutually agreed upon form, within two (2) months of completing the construction of the Equipment on any Service Corridor.

Utility Coordination

10. The Company agrees to provide its own locating services to the same or better levels of any centralized utility location notification service.
11. The Company further agrees to participate in any utility coordinating committees or forums as may be established by the Municipality, and to pay its proportionate share of the costs of the administration of such forums.
12. Each party shall, at no cost to the other party, provide locations in the field of Equipment within seven (7) business days of receiving such requests, unless the request is an emergency, in which case the location shall be provided within three (3) hours of receipt of the request.

Emergencies

13. The Company shall provide to the Commissioner a list of twenty-four (24) hour emergency contact personnel and shall ensure that the aforementioned list is frequently updated.
14. The Municipality 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.

15. Despite section 3, in an emergency, the Company may enter in, on, under, along, across and over the Service Corridors to access its Equipment without the prior written consent of the Municipality provided that the Company shall notify the Commissioner 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 substantially the same condition that existed prior to the commencement of any emergency work, or as close as possible to its original condition, to the reasonable satisfaction of the Commissioner.
16. Where, in the case of an emergency as allowed under 6(e), the Municipality orders Work to stop, then within three (3) days of issuing the notice the Municipality shall supply a written report to the Company outlining the reasons for issuing such notice. If it is determined by the Municipality that the condition that caused the emergency has been rectified and that any further Work by the Company should not result in creating a subsequent emergency condition again by their presence in the Service Corridors, then the Municipality shall permit the Company to resume their Work under the existing approval. If the condition that caused the emergency can be rectified, and once rectified, the presence of the Company on the Service Corridor doing Work should not result in creating a subsequent emergency condition then the appropriate party shall take the necessary action to rectify the condition to the satisfaction of the Municipality and upon completion the Company shall be allowed to resume their Work under the existing approval.

Relocation

17. If for municipal purposes, and not at the request of a third party, the Municipality requires that the Equipment to which this Agreement relates be relocated, then the Company shall, within one hundred and eighty (180) days of notification by the Commissioner requiring relocation, or such other period as agreed to by the parties having regard to the nature of the relocation, relocate such Equipment subject to all of the following:
 - a) the Company shall have received from the Municipality a written notice requesting the relocation; and
 - b) if the date of receipt by the Company of the relocation notice referred to above is within five (5) years of the latest of: a) the date the Municipality issued a written authorization of the Commissioner to an Alignment referenced in section 3(a), above in relation to the Equipment contemplated in the relocation notice, or b) the date of execution of this Agreement the Municipality will be responsible for all of the Company's relocation costs.
 - c) if the date of receipt of the relocation notice is subsequent to the intervals set out in b), above, prior to the end of the sixteenth (16) year after the latest of a) the date the Municipality issued a written authorization of the Commissioner to an Alignment referenced in section 3(a), above in relation to the Equipment contemplated in the relocation notice, or b) the date of execution of this Agreement, the Municipality will refund to the Company a portion of the Company's relocation costs, as set out in the table below:

Year(s) After issuance of Alignment	Percentage of Relocation Costs Paid by Municipality
1	100%
2	100%
3	100%
4	90%
5	80%
6	70%
7	65%

Year(s) After issuance of Alignment	Percentage of Relocation Costs Paid by Municipality
8	60%
9	55%
10	45%
11	40%
12	35%
13	30%
14	20%
15	10%
16	5%
17 onwards	0%

- d) Where costs directly attributable to a Municipality-initiated requirement to relocate a Company facility are incurred by the Company as a result of work undertaken by or on behalf of the Municipality for beautification, aesthetics, or other similar purposes, such costs shall be entirely borne by the Municipality. Such costs shall include, but not be limited to, the depreciation, betterment and salvage costs.
- e) authorization of the Commissioner to an Alignment.

The Municipality and the Company agree that special circumstances may arise with respect to specific location approvals whereby it may be appropriate for the parties to mutually agree to waive the above-noted provisions and to negotiate alternative arrangements. These alternative arrangements shall be agreed upon in writing in advance of any work being commenced.

- 18. If the Company fails to complete the relocation of the Equipment in accordance with section 17, the Municipality may, but is at its sole option not obligated to complete such relocation or other Work. In such event, the Company shall pay a proportional share of the costs of such relocation to the Municipality in accordance with section 17(b)-(d), together with an administrative change of fifteen percent (15%) of such cost.
- 19. In the event that the relocation is required at the request of a third party, such relation shall be performed at the sole discretion and option of the Company, acting reasonably, and all relocation costs incurred by the Company shall be reimbursed by such third party. A written agreement prepared by the Company outlining the scope of work, a work schedule, cost estimates shall be executed between the Company and the requesting third party prior to any relocation work beginning.
- 20. The Municipality shall ensure that all relocations are conducted in a manner causing the least disruption to the Company's operations as is reasonably possible in the circumstances.
- 21. The allocation of costs associated with the relocation of cables, wires, and other facilities and equipment owned by third parties and attached to or installed on or in the Company's Support Structures shall be the responsibility of the Municipality 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 installed on or in the Company's Support Structure.

Security

- 22. The Company shall, if it has not previously established a satisfactory business relationship with the Municipality, where reasonably required by the Commissioner, be required to post security

with the Municipality for time-to-time in the amount of five thousand dollars (\$5,000.00), in the form of an irrevocable clean letter of credit to the Commissioner to guarantee the performance by the Company of its obligations in connection with Work performed under this Agreement.

Taxes and Utilities

23. The Company shall, in addition to other amounts specifically payable by it under this Agreement, be responsible for the payment of all taxes attributable to the Company, including, without limitation, those taxes properly attributable to the Company's Equipment, including without limitation, those taxes attributable to the Company's use and occupancy of the Service Corridors, and for the payment of the cost of all services and utilities consumed in respect of the Company's operations.
24. For the purpose of Section 23, "taxes" includes, without limitation, all taxes, duties, levies, assessments, rates, fees or charges of any kind whatsoever, imposed, levied, assessed or charged now or in the future by any government authority of any kind, and any payments that are levied in substitution, or in lieu, or in addition to any of the foregoing.

Late Payment Charges

25. Payment terms under this Agreement are net thirty (30) days. Overdue accounts payable to the Municipality shall be charged interest at the current rate of [ten percent (10%) per annum] compounded monthly and adjusted quarterly by the Ministry of Municipal Affairs or at the maximum lawful rate, whichever is lower. Overdue accounts payable to the Company shall be charged interest at a rate of [ten percent (10%)] per annum compounded monthly or at the maximum lawful rate, whichever is lower.

Excess Capacity

26. 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 Commissioner in writing, use its best 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 reasonable determined by the Company;
 - b) where the Company and the Municipality mutually agree, make available to other Service Providers and the Municipality, on reasonable terms and conditions including charging a proportionate share of the actual costs of the installation including any additional engineering costs plus an overhead of [fifteen percent (15%)] of such costs, such additional excess conduit capacity as the Commissioner 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 its best efforts to place its Equipment along routings previously assigned to Service Providers by the Municipality and in or along any support structures situated therein.

Third Party Equipment

27. 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 required the third party to comply, at the third parties' sole expense, with all laws, statutes, by-laws, 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, licenses, 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

28. Unless otherwise terminated in accordance with its provisions, 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 renewed for two (2) additional successive terms of five (5) years in duration each, by the Company at its sole option, providing written notice to the Municipality, no later than ninety (90) days prior to the expiry of the applicable term of its intention to renew. The initial term and the subsequent terms to the extent applicable shall hereinafter be called the "Term".
29. If at any time, subsequent to the entering into this Agreement, the provincial or federal government or a regulatory authority, acting within its jurisdiction, enacts or repeals any legislation or regulation, or orders, direct or mandates anything which pertains to the subject matter of this Agreement, or there is rendered any decision of a court of final appeal or tribunal which pertains to the subject matter of this Agreement, then either party may notify the other of its intention to require the other party to enter into good faith negotiations to amend this Agreement or to enter into a new Agreement reflecting such legislative or regulatory action or court or tribunal decision, as the case may be, within thirty (30) days after written notice (the "Notice") from the notifying party and any newly permitted changes or fees pursuant to such new or amended agreement will take effect from the date upon which the Notice expires.
30. If the parties are unable to renegotiate the terms and conditions of this Agreement then the unresolved matters may, within thirty (30) days prior written notice from the requesting part, be referred by the party to arbitration or to the Canadian Radio-Television and Telecommunications Commission (CRTC), as the case may be for resolution in accordance with section 31 below. Subject to the right to request arbitration, if an amendment or new agreement is not reached within ninety (90) days from the date on which Notice was received, either party may terminate this Agreement without further notice and both parties shall fulfill their respective obligations thereafter in accordance with this Agreement.
31. Subject to either party's right to seek recourse before the CRTC or the courts, arbitration pursuant to this Agreement shall be governed by the *Municipal Arbitration Act*, R.S.O. 1990, c.M.48 and the arbitration shall be referred to the Official Arbitrator appointed pursuant to the said *Arbitrations Act*.

Default and Termination

32. This Agreement may be terminated at any time during the Term by the mutual written agreement of the Municipality and the Company.

33. 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 and the default within one hundred and eighty (180) days of receiving written notice of the default.
34. 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 and maintenance of any existing Equipment of the Company.

Occupational Health and Safety and Traffic

35. 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 installation of safety devices or appliances, and any applicable traffic laws or regulations. The Municipality 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, 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 correct.

Environmental Responsibility

36. The Company agrees to assume all environmental liability to its occupancy and use of the Service Corridors, 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 occupation and 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 Municipality, or by any other person with the express or implied consent of the Company without the authorization of the Municipality.
37. Subject to section 36, the Municipality 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, licenses 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 Municipality with all applicable environmental legislation.
38. For the purpose of section 36 and 37, "hazardous substance" means any hazardous substance and includes, but not limited to, electromagnetic or other radiation, petroleum products and by products, 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

39. The Company shall indemnify and save harmless the Municipality 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 Municipality, and from and against all losses, costs, damages or expenses suffered or incurred by the Municipality and its officers, directors, employees, agents, servants, licensees and invitees, by reason of any damage to property, including property of the Municipality, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the Municipality to the extent 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.
40. The Municipality 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 demand 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 resulting in death, to persons, including employees, servants, agents, licensees and invitees of the Company, caused by, resulting from or attributable to the negligent act or omission of the Municipality or any of its employees, servants, agents, licensees or invitees in the performance of this Agreement.
41. Notwithstanding anything contained in this Agreement, the Municipality and the Company shall not be liable to each other 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 Corridors governed hereby.

Successors and Assigns

42. The Agreement shall be binding upon and shall enure to the benefit of the Company and the Municipality 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. The Company may not otherwise assign this Agreement without the advance written consent of the Municipality, which consent may not be unreasonable withheld, conditioned, or delayed.
43. 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 or negotiates a new agreement with the Municipality, in which case the Company shall have no further liability under this Agreement.
44. Despite section 42, the Company may pledge the rights granted by this Agreement as security without the consent of the Municipality 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

45. 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 Municipality's legal authority.

No Property Rights

46. No occupancy or use of the Service Corridors 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 occupant and user of the Service Corridors.
47. Placement of the Equipment in the Service Corridors shall not create or vest in the Municipality any ownership or property rights to the Equipment, except as specifically provided herein.

Workers' Compensation Coverage

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

Insurance

49. The Company shall maintain insurance in a sufficient amount as to satisfy the Company's obligations under this Agreement to protect the Municipality for 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 or operation of the Equipment in, on, under, over, along and across the Service Corridors or any act or omission of the Company's employees, agents, contractors or licensees.
50. In addition to the foregoing, the Company covenants and agrees that with respect to the insurance coverage described in section 49:
 - a) the limits of liability for personal injury, bodily injury and property damage combined shall be for not less than five million dollars (\$5,000,000.00) 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 to adversity of the Municipality, without at least thirty (30) days notice to the Municipality by registered mail.

General

51. **Independent Contractors** - The relationship of the Company and the Municipality 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 ventures, 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 purposes whatsoever.

52. **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).

If to the Municipality:

The Municipality of Kincardine

1475 Concession 5, R.R. # 5
Kincardine, ON N2Z 2X6
Attention: Jillene Bellchamber-Glazier
Email: jbellchamber-glazier@kincardine.ca¹

If to the Company:

Bruce Telecom

3145 Hwy 21 North
Tiverton, ON N0G 2T0
Attention: President and CEO
Fax: 519-368-3743
Email: regulatory@brucetelecom.com

53. **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.
54. **Waiver** - The failure of either party to insist upon strict adherence to any terms or conditions 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.
55. **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.
56. **Counterparts; Original Signature Copies** - This Agreement may be executed in counterparts, each of which shall be deemed an original.
57. **Time** - Time is of the essence in this Agreement.
58. **Governing Law** - This Agreement shall be governed by and interpreted in accordance with the laws of the province or territory in which the Municipality is situated and the laws of Canada applicable therein, excluding the conflict of laws provisions thereof.
59. **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.
60. **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.

¹ NTD: Sellers to confirm.

61. **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 forgoing. Words importing person shall include firms and corporations and vice versa. Words importing the singular shall include the plural and vice or versa.
62. **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.
63. **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.
64. **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.
65. **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.
66. **Acknowledgement** - Each party acknowledges that it has read this Agreement, including any Schedules, if applicable, attached hereto and forming part hereof, and each party understands and agrees to be bound by its terms and conditions.

SIGNATURE PAGE FOLLOWS

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

BRUCE TELECOM ONTARIO INC.

Per: _____

I have authority to bind the Corporation

**THE CORPORATION OF THE MUNICIPALITY
OF KINCARDINE**

Per: _____

Mayor

Per: _____

Clerk

We have authority to bind the Corporation