

AGENDA

SPECIAL MEETING OF COUNCIL



Friday, April 30, 2021
9:15 a.m.
Via Zoom Meeting
9 James Street, Parry Sound, Ontario

To ensure the practice of proper social distancing measures, and to help prevent the spread of COVID-19 in the community, Council Meetings will be held electronically in accordance with section 238 of the Municipal Act, 2001. All Meetings will be recorded, and posted on the Township website for members of the public to view.

1. CALL TO ORDER

- i) National Anthem
- ii) Approval of Agenda
- iii) Traditional Land Acknowledgement Statement
- iv) Announcement of Public Meetings

2. DISCLOSURE OF PECUNIARY INTEREST

3. MINUTES OF THE PREVIOUS MEETING

4. DEPUTATIONS

5. CLOSED MEETING

- 21- NOW THEREFORE BE IT RESOLVED** that Council move into a CLOSED MEETING at _____ a.m./p.m., pursuant to Section 239(2) (c) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, to deal with a proposed or pending acquisition or disposition of land by the municipality.”

- i) **Land negotiations within the Township**

OPEN MEETING

- 21- NOW THEREFORE BE IT RESOLVED** that Council move out of a CLOSED MEETING at _____ a.m./p.m.

6. UNFINISHED PLANNING BUSINESS

7. OFFICIAL PLAN/ZONING AMENDMENTS

8. CONSENT APPLICATIONS

9. SITE PLAN CONTROL

10. SHORE/CONCESSION ROAD ALLOWANCES

11. CAO REPORT ON COUNCIL DIRECTIONS

12. REPORT OF TASK FORCES/COMMITTEES

**i) Agreements with Vianet Inc. – Connectivity Interests, Tower Build
Pointe au Baril**

Pages: 1-8

13. CORRESPONDENCE

14. OTHER BUSINESS

i) Vianet Inc. - Mutual Non-Disclosure Agreement

Pages: 9-11

21- NOW THEREFORE BE IT RESOLVED that the Chief Administrative Officer be authorized to sign the Mutual Non-Disclosure Agreement between the Township of The Archipelago and Vianet Inc.

15. BY-LAWS

i) Vianet Inc. - Strategic Partnership Alliance Agreement

Pages: 12-80

21- Being a By-law to Being a By-law to authorize the execution of a Strategic Partnership Alliance Agreement between the Corporation of the Township of The Archipelago and Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago.

ii) Vianet Inc. - Construction Agreement

Pages: 81-93

21- Being a By-law to Being a By-law to authorize the execution of a Construction Agreement between the Corporation of the Township of The Archipelago and Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago.

iii) **Vianet Inc. - Lease Agreement**

Pages: 94-103

- 21- Being a By-law to Being a By-law to authorize the execution of a Lease Agreement between the Corporation of the Township of The Archipelago and Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago.
16. **QUESTION TIME**
17. **NOTICES OF MOTION**
18. **CONFIRMING BY-LAW**
- 21- Being a By-law to Confirm the Proceedings of the Special Meeting of Council held on April 30, 2021.
19. **ADJOURNMENT**

The Township of The Archipelago

Recommendation Report to Council

Report No.: Corp Services-2021-05

Date: April 26th, 2021

Originator: J Villeneuve, Manager of Corporate Services

Subject: Agreements with Vianet – Connectivity Interests, Tower Build Pointe au Baril

RECOMMENDATION

1. That Council accept the recommendations of the Connectivity Ad-hoc Committee and pass the appropriate by-laws to authorize the signing of the four (4) agreements with Vianet regarding various connectivity projects and interests.
-

BACKGROUND / HISTORY

On September 17th, 2020 Council passed Resolution #20-133 - attached. This resolution laid a pathway for several future undertakings to advance Council's interest in addressing connectivity interests in the township. Specifically, the resolution is:

- That Council approve the use of single sourcing to select Vianet for two internet connectivity projects (the Parry Sound Area Industrial Park tower extension and the Pointe au Baril tower construction) to improve connectivity;
 - That Council approve funding in the amount of approximately \$177,000 for the construction of a 260-foot tower by Vianet in Pointe au Baril, to improve internet connectivity;
 - That Council endorse a position of striving for municipal land ownership for new Township based towers; and
 - That staff be directed to negotiate and sign the final terms of an appropriate Letter of Intent and all related Agreements with Vianet for the two proposed tower projects.
-

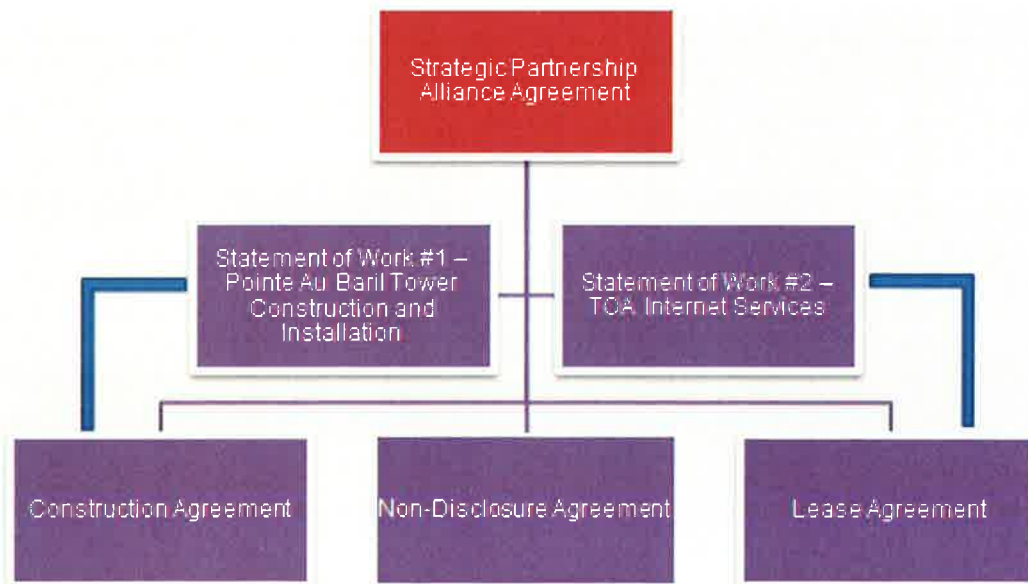
ANALYSIS/OPTIONS

The Township's solicitor has addressed the township's interests in the proposed undertakings with Vianet via 4 (4) agreements. A summary of the agreements and their connection to one another are depicted below.

Summary of TOA/Vianet Agreements

No.	Agreement	Purpose	Relation to Other Agreements
1.	Strategic Partnership Alliance Agreement ("SPA Agreement")	This Agreement sets out the general terms and conditions that govern the partnership relationship between the TOA and Vianet, in which Vianet has agreed to build an internet tower infrastructure and provide internet services to the TOA.	This is the master agreement that governs and incorporates by reference all of the other agreements described in this summary.
2.	Statement of Work #1 – Pointe Au Baril Tower Construction and Installation ("SOW #1")	This Statement of Work describes the installation of the telecommunications tower by Vianet, which will be built in accordance with the Construction Agreement.	This Statement of Work is made pursuant to, and governed by, the SPA Agreement.
3.	Statement of Work #2 – TOA Internet Services ("SOW #2")	This Statement of Work describes the free internet services that Vianet has agreed to provide to the TOA in exchange for a waiver of a lease fee, in accordance with the Lease Agreement.	This Statement of Work is made pursuant to, and governed by, the SPA Agreement.
4.	Construction Agreement	This Agreement sets out the terms and conditions of the construction of the Pointe au Baril Tower.	This Agreement is made pursuant to, and governed by, the SPA Agreement and SOW #1.
5.	Lease Agreement	This Agreement sets out the terms and conditions that the TOA will lease the relevant site to Vianet for the purposes of the construction of the Pointe au Baril Tower.	This Agreement is made pursuant to, and governed by, the SPA Agreement and SOW #2.
6.	Non-Disclosure Agreement	This Agreement protects the confidential information disclosed from one party to the other party.	This Statement of Work is made pursuant to, and governed by, the SPA Agreement.

Visual Contract Map



The Connectivity Ad-Hoc Committee has reviewed the agreements and provided recommendation to Council. Draft minutes from April 21st, 2021 are attached. Specifically, the following resolution:

Connectivity Ad-Hoc Committee Resolution #2021-012

"THAT the Connectivity Ad Hoc Committee hereby recommends the Statement of Work #1 Pointe Au Baril Tower Construction and Installation Agreement, Statement of Work #2 TOA Internet Services Agreement, Construction Agreement with Vianet, Lease Agreement with Vianet, and the Vianet Strategic Partnership Alliance Agreement, as presented, to Council for their approval."

CARRIED

FINANCIAL IMPLICATIONS

The monies for these projects have been allocated within the operating budget.

CONCLUSION

Staff have worked with the Connectivity Ad-Hoc Committee and concur with recommendation to Council that authorize staff to execute the agreements with Vianet.

Respectfully Submitted,

I concur with this report
and recommendation



Joe Villeneuve
Manager of Corporate Services



John Fior
Chief Administrative Officer

Enc. Council Resolution #20-133;
Connectivity Ad-Hoc Committee – draft Minutes April 21st, 2021;
Agreements with Vianet:

- Strategic Partnership Alliance Agreement
- Construction Agreement with Vianet;
- Lease Agreement with Vianet;
- Non-Disclosure Agreement



Township of The Archipelago

9 James Street, Parry Sound ON P2A 1T4

Tel: 705-746-4243/Fax: 705-746-7301

www.thearchipelago.on.ca

September 17, 2020

20-133

**Moved by Councillor Sheard
Seconded by Councillor Zanussi**

RE: Internet Connectivity

WHEREAS Council for the Corporation of the Township of the Archipelago wants to ensure that internet connectivity to the residents of our community is improved;

AND WHEREAS Council has established a Connectivity Committee to advise and make recommendations to Council about how to ensure that stable, dependable and affordable high speed internet service is available to the residents and businesses of the Township of The Archipelago;

AND WHEREAS the Connectivity Committee has conducted research, which has included discussions with WPS SMART and Vianet regarding an initial phase of connectivity work, and is recommending certain actions be taken;

THEREFORE BE IT RESOLVED THAT Council approves the following:

1. That Council approve the Terms of Reference for the Connectivity Committee;
2. That Council support the proposed information content on connectivity/internet being added to the Township webpage;
3. That Council approve the use of single sourcing to select Vianet for two internet connectivity projects (the Parry Sound Area Industrial Park tower extension and the Pointe au Baril tower construction) to improve connectivity;
4. That Council approve funding in the amount of approximately \$78,000 (an additional 100 feet to a proposed 90-foot tower by Vianet) for a tower project being the construction of a 200-foot tower in the Parry Sound Area Industrial Park located in Carling Township, that will support advancing internet connectivity interests in the north portion of The Archipelago;
5. That Council approve funding in the amount of approximately \$177,000 for the construction of a 260-foot tower by Vianet in Pointe au Baril, to improve internet connectivity;

6. That Council endorse a position of striving for municipal land ownership for new Township based towers;
7. That staff be directed to negotiate and sign the final terms of an appropriate Letter of Intent and all related Agreements with Vianet for the two proposed tower projects; and
8. That staff be authorized to locate and negotiate the purchase of an appropriate property in the Pointe au Baril area to facilitate the construction of a tower, subject to the approval of Council.

Carried.



DRAFT

MINUTES
CONNECTIVITY Ad Hoc COMMITTEE
Tuesday, April 21, 2021
Via Zoom Meeting
9 James Street, Parry Sound, Ontario

Committee Members Present: Chair: Bert Liverance
Ian Mead, Councillor Ward 5
Scott Sheard, Councillor Ward 3

Staff Present: Joe Villeneuve, Manager of Corporate Services
John Fior, Chief Administrative Officer
Glen Barnden, ToA Connectivity Project
Consultant
Alana Torresan, Executive Assistant

1. Call to Order and Approval of the Agenda

Chair Liverance called the meeting to order at 2:06 p.m.

RESOLUTION NO. 2021-011

Moved by: Scott Sheard

Seconded by: Ian Mead

"THAT the April 21st, 2021 Connectivity Ad Hoc Committee Agenda be approved."

CARRIED

No conflicts of interest declared.

2. Other Business

ToA Vianet Collective Agreements

The Committee reviewed each of the five documents which form the collective agreements for the Vianet / Township of The Archipelago Connectivity Project for Pointe au Baril. No concerns were raised with any of the documents as presented.

RESOLUTION NO. 2021-012

Moved by: Ian Mead

Seconded by: Scott Sheard

“THAT the Connectivity Ad Hoc Committee hereby recommends the Statement of Work #1 Pointe Au Baril Tower Construction and Installation Agreement, Statement of Work #2 TOA Internet Services Agreement, Construction Agreement with Vianet, Lease Agreement with Vianet, and the Vianet Strategic Partnership Alliance Agreement, as presented, to Council for their approval.”

CARRIED

Guiding Principles

Scott Sheard provided a summary of the draft guiding principles.

The Committee discussed the importance of having a Guiding Principles document and supported having Council accept and endorse such a document for use in our Connectivity activities.

The Committee directed staff to develop a 2 phase neighbourhood connectivity provision plan for the Township. Phase 1 will consist of anecdotal research project establishing connectivity market demand among the Township of the Archipelago residents. Phase 2 will include the creation of a Township of The Archipelago Connectivity Profile Brochure that will be used as a sales tool to recruit Wireless Internet Services Providers (WISPs) to invest in providing connectivity services and infrastructure within the Township.

RESOLUTION NO. 2021-013

Moved by: Ian Mead

Seconded by: Scott Sheard

“THAT the Connectivity Ad Hoc Committee hereby recommends the Guiding Principles, as presented, to Council for their approval.”

CARRIED

3. Closed Meeting

RESOLUTION NO. 2021-014

Moved by: Ian Mead

Seconded by: Scott Sheard

“THAT Committee move into a CLOSED MEETING at 2:45 p.m., pursuant to Section 239(2)(c)(d)(f) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, to deal with a proposed or pending acquisition or disposition of land by the municipality; and advice that is subject to solicitor-client privilege, including communications necessary for that purpose.”

i) Land negotiations within the township

CARRIED

OPEN MEETING

RESOLUTION NO. 2021-015

Moved by: Ian Mead

Seconded by: Scott Sheard

“THAT the Connectivity Ad Hoc Committee move out of a CLOSED MEETING at 2:58 p.m.”

RESOLUTION NO. 2021-016

Moved by: Ian Mead

Seconded by: Scott Sheard

“THAT the Connectivity Ad Hoc Committee hereby recommends that Council approve the Letter of Intent to Purchase for the land acquisition, as presented.

CARRIED

4. Next Meeting

The next meeting will be scheduled at the call of the Committee Chair.

Joe Villeneuve reported that he will be arranging a geotechnical survey to be conducted on the soil beneath the SMART tower to determine what type of foundation the tower is built upon. This information will be beneficial for future engineering reports conducted on the tower.

Reeve Bert Liverance requested that a draft application form for telecommunication companies interested in utilizing Township of The Archipelago towers be developed and presented at the next meeting committee meeting. The Committee was in agreement.

Councillor Scott Sheard recommended staff create a report outlining the monetary value of broadband services being realized by the other municipalities in the region from the township's investments to date in the various broadband infrastructure and connectivity segments. The Committee was in agreement.

5. Adjournment

RESOLUTION NO. 2021-017

Moved by: Ian Mead

Seconded by: Scott Sheard

“THAT the Connectivity Ad Hoc Committee does hereby adjourn at 3:23 p.m.”

CARRIED

Bert Liverance, Chair

Joe Villeneuve, Deputy Clerk

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("**NDA**") dated April 1, 2021 ("**NDA Effective Date**") is made by and between The Corporation of the Township of The Archipelago ("**TOA**"), having a place of business at 9 James Street, Parry Sound, ON P2A 1T4 and Vianet Inc. ("**Vianet**"), having its principal executive office at 128 Larch Street, Suite 502, Sudbury, ON P3E 5J8, pursuant to the Strategic Partnership Alliance Agreement ("**SPA Agreement**") entered into by and between TOA and Vianet with an Effective Date of April 1, 2021, the terms of which are incorporated herein by reference. Each of Vianet and TOA will be referred to as a "**Party**", and together, the "**Parties**". All capitalized terms used in this NDA and not otherwise defined will have the meaning set out in the SPA Agreement.

1. **Purpose.** The Parties wish to explore a potential business opportunity of mutual interest and benefit (the "**Purpose**"). In connection with the Purpose, each Party may disclose to the other Party certain confidential, technical, and business information that the Disclosing Party desires to treat as confidential.
2. **Confidential Information.** "**Confidential Information**" means any information disclosed by either Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), either directly or indirectly in writing, orally, or by inspection of tangible objects including, without limitation, business plans, customer data, customer lists, customer names, designs, documents, drawings, engineering information, financial analysis, forecasts, hardware configuration information, ideas, inventions (whether patentable or not), know-how, market information, marketing plans, processes, products, product development plans, research, schematics, services, specifications, software, source code, strategies, trade secrets, or any other information that the Disclosing Party identifies as confidential or proprietary or that reasonably appears to be confidential or proprietary because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. Confidential Information also includes: (w) any information the Receiving Party knows or has reason to know is confidential, trade secret, or Confidential Information of the Disclosing Party; (x) information disclosed to the Disclosing Party by third parties; (y) all tangible materials containing Confidential Information including, without limitation, written or printed documents and computer disks or tapes, whether machine or user readable; and (z) the manner in which any such information may be summarized, compiled, combined with other information, or synthesized or used by the Disclosing Party.
3. **Exceptions.** Notwithstanding Section 2 of this NDA, Confidential Information shall not include any information which (i) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public without breach of this NDA by the Receiving Party; (ii) was acquired by the Receiving Party without restriction as to use or disclosure before receiving such information from the Disclosing Party, as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iii) is obtained by the Receiving Party without restriction as to use or disclosure by a third party authorized to make such disclosure; or (iv) is independently developed by the Receiving Party without the use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession.
4. **Permitted Use.** The Receiving Party may only use the Disclosing Party's Confidential Information in connection with the Purpose for the mutual benefit of both Parties. The Receiving Party shall not reverse engineer, disassemble, or de-compile any prototypes, software, or other tangible objects that embody the Disclosing Party's Confidential Information unless written consent for such actions is received from the Disclosing Party. If such a prohibition is not permitted pursuant to Applicable Law, the Receiving Party shall provide the Disclosing Party written notice prior to undertaking any such reverse engineering, and shall give the Disclosing Party a reasonable amount of time to provide any interface information required by law prior to commencing such reverse engineering. Neither Party shall make any copies of the other Party's Confidential Information unless the Disclosing Party previously approves the same in writing. Each Party shall reproduce the other Party's proprietary

rights and confidentiality notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

5. **Maintenance of Confidentiality.** The Receiving Party will maintain the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but in no event less than a reasonable degree of care under the circumstances. The Receiving Party will not disclose any of the Disclosing Party's Confidential Information to employees or to any third parties except to the Receiving Party's employees who have a need to know such information in connection with the Purpose and have agreed to abide by non-disclosure terms at least as protective of the Disclosing Party's Confidential Information as those set forth herein.
6. **Disclosure Required by Law.** In the event the Receiving Party is required by law or a valid and effective subpoena or order issued by either a court of competent jurisdiction or a Governmental Authority to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall promptly, where legally permissible, notify the Disclosing Party in writing of the existence, terms, and circumstances surrounding such required disclosure so that the Disclosing Party may seek a protective order or other appropriate relief from the proper authority. The Receiving Party shall cooperate with the Disclosing Party in seeking such order or other relief. If the Receiving Party is nonetheless required to disclose the Disclosing Party's Confidential Information, it will furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that such Confidential Information will be treated confidentially to the extent possible.
7. **Duration of Protection.** The obligations set forth herein with respect to the Disclosing Party's Confidential Information shall be protected by this NDA until such information is no longer Confidential Information because it is covered by an exception set forth in Section 3.
8. **Term.** This NDA shall be effective as of the NDA Effective Date and will apply to disclosures made during the Term of the SPA Agreement. Thereafter, the NDA shall automatically renew for additional automatic one (1) year terms if any Confidential Information has been exchanged within three (3) months preceding the renewal date. Otherwise, the NDA shall expire. Upon expiration or termination of this NDA, this NDA shall survive to the extent necessary to protect Confidential Information exchanged during the Term of the SPA Agreement, pursuant to Section 7 of this NDA.
9. **No Obligation.** Nothing herein shall obligate either Party to purchase, sell, license, transfer, or otherwise dispose of any technology, services, or products, or to engage in any other business transaction. Each Party reserves the right, in its sole discretion, to terminate the discussions concerning the Purpose at any time.
10. **Ownership and No License.** All of the Disclosing Party's Confidential Information shall remain the sole property of the Disclosing Party. Nothing in this NDA is intended to grant any rights to either Party under any patent, copyright, trademark, or other Intellectual Property Right of the other Party, nor shall this NDA grant either Party any rights in or to the other Party's Confidential Information except as expressly set forth herein.
11. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION, AND EACH PARTY EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
12. **Return of Materials.** All documents and other tangible objects containing or representing the Disclosing Party's Confidential Information and all copies thereof that are in the possession of the Receiving Party shall be promptly returned to the Disclosing Party upon the Disclosing Party's request.

13. Remedies. Each Party agrees that its obligations hereunder are necessary and reasonable in order to protect the Disclosing Party and the Disclosing Party's business, and expressly agrees that monetary damages may be inadequate to compensate the Disclosing Party for any breach by the Receiving Party of any covenants and agreements set forth herein. Accordingly, each Party agrees and acknowledges that any such violation or threatened violation may cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity, or otherwise, the Disclosing Party shall be entitled to seek injunctive relief against the threatened breach of this NDA or the continuation of any such breach.

14. Miscellaneous. This NDA shall be governed by the laws of the Province of Ontario and the federal laws of Canada without reference to conflict of laws principles. Any suit to enforce this NDA shall be brought exclusively in Parry Sound, Ontario and the Parties hereby submit to the exclusive jurisdiction of such courts and waive any venue objection. This NDA contains the entire agreement between the Parties with respect to the subject matter hereof. Any failure to enforce any provision of this NDA shall not constitute a waiver thereof or of any other provision hereof. This NDA may not be amended, nor any obligation waived, except in writing signed by both Parties. In the event any term of this NDA is found by any court to be void or otherwise unenforceable, the remainder of this NDA shall remain valid and enforceable as though such term were absent upon the date of its execution. Neither Party may assign this NDA without the express written consent of the other Party, not to be unreasonably withheld, and any prohibited assignment shall be void; provided that either Party may assign this NDA pursuant to a merger, acquisition, or sale of all or substantially all of such Party's assets except in the event that the proposed assignee is a competitor of the other Party. This NDA shall bind and inure to the benefit of the Parties and their successors and permitted assigns. This NDA may be executed in two identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the NDA when a duly authorized representative of each Party has signed a counterpart.

IN WITNESS WHEREOF the Parties have executed this NDA as of the NDA Effective Date.

**THE CORPORATION OF THE TOWNSHIP OF
THE ARCHIPELAGO**

By: _____
Name: _____
Title: _____
Date: _____

VIANET INC.

By: _____
Name: _____
Title: _____
Date: _____

**THE CORPORATION OF
THE TOWNSHIP OF THE ARCHIPELAGO
BY-LAW NO. 2021 –**

Being a By-law to authorize the execution of a Strategic Partnership Alliance Agreement between the Corporation of the Township of The Archipelago and Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago

WHEREAS pursuant to the Municipal Act, 2001, S.O. 2001, c.25, S. 9, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

WHEREAS Council has passed Resolution #20-133 to, in part, address their goal to ensure that stable, dependable and affordable high speed internet is available to the residents and businesses of the Township of The Archipelago; and

WHEREAS Township staff was directed to negotiate and sign the final terms of an appropriate letter of intent and all related Agreements with Vianet for the two proposed tower projects; and to locate and negotiate the purchase of an appropriate property in the Pointe au Baril; and

WHEREAS Council deems it necessary and expedient to enter into a Strategic Partnership Alliance Agreement with Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago;

NOW THEREFORE BE IT ENACTED as a By-law of the Council of the Corporation of the Township of The Archipelago, as follows:

1. That Chief Administrative Officer is hereby authorized to execute and affix the Corporate Seal to the Strategic Partnership Alliance Agreement between The Corporation of the Township of The Archipelago and Vianet Inc., in a form the same or substantially the same as attached hereto marked as Schedule "A"; and to the satisfaction of the CAO and the Township Solicitor;
2. That this By-law shall come into force and take effect on the day of the final passing thereof.

READ and FINALLY PASSED in **OPEN COUNCIL** this 30th day of April, 2021.

Bert Liverance, Reeve

Maryann Weaver, Clerk

STRATEGIC PARTNERSHIP ALLIANCE AGREEMENT

THIS STRATEGIC PARTNERSHIP ALLIANCE AGREEMENT (the "**Agreement**") is made as of April 1, 2021 (the "**Effective Date**")

BETWEEN: **THE CORPORATION OF THE TOWNSHIP OF THE ARCHIPELAGO ("TOA")**
9 James Street
Parry Sound, ON P2A 1T4

AND:

VIANET INC. ("Vianet")
128 Larch Street, Suite 201
Sudbury, ON P3E 5J8

(Each, a "**Party**", and together, the "**Parties**".)

WHEREAS:

- A. Vianet and WPS SMART submitted a 2020 Shovel-Ready Project Pointe au Baril, Ontario Proposal (the "**Proposal**") to the TOA to provide internet tower infrastructure and internet services to the TOA;
- B. In response to the Proposal, the Parties entered into a Letter of Intent dated October 9, 2020;
- C. Vianet: (i) has thoroughly reviewed and analyzed TOA's needs and requirements for the Services; (ii) fully understands TOA's objectives in entering into this Agreement and obtaining the Services; and (iii) based on such review and understanding, agrees that it has, and undertakes to maintain, the capability to meet those needs and requirements and meet those objectives; and
- D. On the basis of, and in reliance upon, the representations, warranties, and covenants made by Vianet herein, TOA desires to engage Vianet to perform the Services, and Vianet has agreed to provide the Services to TOA on the terms set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, unless the context otherwise requires, capitalized terms will have the meanings given to them in Schedule D
Proposal

Schedule E **Letter Of Intent**

1.2 Interpretation

- (1) **Currency**. Except as otherwise specifically provided in this Agreement, all references to money refer to Canadian funds.

- (2) Time.
- (a) Time will be of the essence under this Agreement. No modification of the dates, timelines, or schedules in this Agreement shall be effective unless the Parties agree to such modification in writing.
 - (b) Unless otherwise specified, time periods for payment or performance are calculated by excluding the day on which the period commences and including the day on which the period ends, and by extending the period to the next Business Day if the last day of the period is not a Business Day.
- (3) Headings. The division of the Agreement Documents into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (4) Assurances. The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.
- (5) Interpretation. The phrase "includes", "include", or "including" means "includes, without limitation" or "including" or "include, without limitation,".
- (6) Priority of Documents. In the event of any conflict or inconsistency between the provisions of any of the following documents (the "**Agreement Documents**") then, unless the Parties expressly agree otherwise, the following descending order of priority will apply, to the extent of such conflict or inconsistency:
- (a) TOA Policies;
 - (b) the applicable Change Order (to the extent it expressly states that it is intended to amend this Agreement and identifies the specific amendments), in reverse chronological order, and any attachments to such Change Order;
 - (c) the applicable Statement of Work, where the applicable Statement of Work clearly contemplates the intention of deviating from the provisions of the Main Terms and Conditions, and any attachments to the Statement of Work, in the order that such attachments are listed;
 - (d) the terms of any duly executed Amendment to this Agreement, including any Schedules to the Amendment;
 - (e) the main terms and conditions of this Agreement, excluding the Schedules, Statement of Works, and Change Orders (the "**Main Terms and Conditions**"); and
 - (f) the Schedules, with equal priority.
- provided, however, that the terms and conditions of the applicable Statement of Work will prevail over the Main Terms and Conditions, but only for the purposes of the specific Statement of Work that contains such express reference.
- (7) Schedules. The Schedules attached to these Main Terms and Conditions form an integral part of the Agreement and are as follows:

Schedule A	Definitions
Schedule B	Termination Assistance
Schedule C	Change Order Template
Schedule D	Proposal

Schedule E	Letter of Intent
Schedule F	Vianet Acceptable Use Policy

1.3 Incorporation of Proposal and Letter of Intent

The Proposal and Letter of Intent will be attached as Schedule D and Schedule E, respectively, and form an integral part of the Agreement.

ARTICLE 2 **TERM**

2.1 Term

The term of this Agreement will commence as of the Effective Date and continue until twenty (20) years from the Effective Date (the "**Term**"), unless this Agreement is extended by mutual written agreement of the Parties or terminated earlier in accordance with its terms or renewed by TOA pursuant to Article **Error! Reference source not found.**

2.2 SOW Term

Each Statement of Work will set out the SOW effective date, the initial term of the Statement of Work, and any terms and conditions relating to the renewal of the Statement of Work (the "**SOW Term**"). Termination or expiration of this Agreement does not automatically result in the termination of Statements of Work in effect at the time of such termination or expiration. Such Statements of Work will continue to be governed by the terms of this Agreement until such time as they are terminated or expire in accordance with this Agreement or such Statement of Work.

ARTICLE 3 **SERVICES**

3.1 Scope of Services

(1) **Statement of Work.** Subject to the terms and conditions of this Agreement, Vianet shall provide to TOA, and TOA shall purchase from Vianet, the Services described in any SOW entered into by the Parties in accordance with the terms of this Agreement. SOWs shall be in a form substantially similar to the form of the SOWs entered into concurrently with the execution and delivery of this Agreement. No SOW shall be effective until signed by authorized representatives from both Parties. Each executed SOW shall constitute a part of this Agreement. All Services to be performed by Vianet for TOA will be pursuant to a SOW. Each SOW shall describe the specific Services to be performed, the SOW Term, and the Performance Schedule.

(2) Performance of Services

- (a) Vianet shall, and shall cause its Subcontractors to, perform the Services in accordance with the Agreement Documents and comply with the Agreement Documents.
- (b) Vianet shall furnish all labour, supervision, Materials, Vianet Equipment, water, heat, light, power, transportation, and other facilities and services necessary for the complete performance of the Services. Unless otherwise specified in this Agreement, all Materials shall be new and free from defects and deficiencies and shall be of merchantable quality and fit for their intended purpose as described in this Agreement. All Vianet Equipment used by Vianet shall, at all times: (i) be in safe working condition; (ii) comply with all Applicable Laws applicable to such Vianet Equipment; and (iii) be operated by suitably qualified and competent Personnel.
- (c) Vianet shall familiarize itself with and secure all Permits, Licenses, and Approvals that are necessary for the complete performance of the Services and pay all

charges and fees necessary or incidental to the delivery of the Services. Vianet shall provide copies of the Permits, Licenses, and Approvals to TOA, upon request.

- (d) Vianet shall confine Vianet Equipment, waste products, debris, and its operations to limits indicated by Applicable Laws, this Agreement, or the instructions of the TOA. Vianet shall not unreasonably encumber the Site.
- (e) Vianet shall, at all times and as part of the Services, fully assist, co-operate, consult, and co-ordinate with TOA and any other persons or entities retained or identified by TOA which are performing work at or near the Site.
- (f) Vianet acknowledges that during the SOW Term, the applicable TOA Site and the area in the vicinity of such Site may be occupied by TOA, the residents of TOA, and other persons, and that, if so occupied, such persons will continue to carry out their normal occupation, use, and enjoyment of the Site. Vianet shall perform the Services in the least intrusive manner possible so as to avoid interfering with, or disrupting, any such occupation, use, and enjoyment in the vicinity of the Services.
- (g) If TOA determines, in its sole and absolute discretion, that there is an emergency situation, then TOA may instruct Vianet to take action to remedy the situation verbally or in writing. If the emergency situation is the fault of Vianet, the remedial Services shall be performed at the cost of Vianet and without any extension of the Term of the applicable SOW.

(3) Pointe au Baril Tower

- (a) As part of the Services, Vianet will build a fixed wireless broadband project for Pointe au Baril. The installation in Pointe au Baril will involve constructing a new 260' guyed tower ("**Pointe au Baril Tower**"). The construction of the Pointe au Baril Tower, and other matters, will be in accordance with a construction agreement, to be entered into concurrently with the execution and delivery of this Agreement ("**Construction Agreement**").
- (b) Vianet will own and operate the Pointe au Baril Tower. TOA is the owner of the real property on which the Pointe au Baril Tower will be constructed, which is municipally known as 126B North Shore Road, Pointe au Baril, Ontario, and is further described in the Lease Agreement ("**Real Property**"). For greater certainty, TOA is the owner of all other buildings, structures, erections, improvements, appurtenances, and fixtures (including fixed machinery and fixed equipment) situated on or forming part of the Real Property. During the Term, Vianet shall lease the Real Property from TOA in accordance with a lease agreement, to be entered into concurrently with the execution and delivery of this Agreement ("**Lease Agreement**").

3.2 Cooperation and Coordination with Third Party Service Providers

- (1) TOA has entered or may enter into agreements with third party service providers for applications, systems, or other software, hardware, products, or services ("**Other Service Providers**") that integrate, interface, or operate in conjunction with the Services or any hardware or software provided or to be provided by Vianet or in respect of which Vianet is providing or will provide the Services. The performance by such Other Service Providers may require the cooperation and assistance of Vianet and the Subcontractors. For clarity, Other Service Providers includes other Telecommunications service providers.
- (2) TOA will require that the applications, systems, or other software, hardware, products, or services of the Other Service Providers: (i) be in safe working condition and good working order; (ii) comply with all Applicable Laws applicable to such applications, systems, or other software, hardware, products, or services; and (iii) not interfere with or disrupt any Vianet Equipment or the Services. TOA will require that the Other Service Providers provide Vianet with a structural analysis and design plan with respect to the interfaces that will be integrated with the Services, at the Other Service Providers' cost, which will be conducted by a third-party engineering firm selected by Vianet for Vianet's approval, acting reasonably.

- (3) At the request of TOA, and provided that the Other Service Providers agree in writing to preserve the confidentiality of Vianet's Confidential Information, Vianet shall cooperate with and assist, and shall cause each of the Subcontractors to cooperate with and assist such Other Service Providers, including providing information about the Services, attending meetings, and cooperating to develop interfaces to integrate with applicable third party materials.
- (4) In the event that Vianet is required to cooperate or coordinate with Other Service Providers with respect to the Services, Vianet will propose a collaboration process that meets the following criteria ("**Collaboration Process**"):
 - (a) the Collaboration Process will be completed within ninety (90) days of TOA's Approval of the Collaboration Process;
 - (b) the fees associated with the Collaboration Process will be made available to TOA for review and Approval;
 - (c) the TOA will be notified regarding any requests from Other Service Providers that may impact the Services, and such requests will be subject to the mutual agreement of the Parties prior to implementation; and
 - (d) Vianet and Other Service Providers will provide any other details reasonably requested by TOA.

3.3 **Transition Out Obligations**

In addition to the Services set out in the applicable SOW, in connection with any termination or expiration of this Agreement or any Statement of Work, Vianet shall provide TOA the Termination Services set out in Schedule A
Definitions

"Acceptance" Means As To Any Test Component, Vianet's Receipt Of Toa's Confirmation Of Approval That Such Test Component Has Satisfied The Applicable Acceptance Criteria And Specifications For The Applicable Test Component.

"Affiliate" Means, With Respect To Any Person, Any Other Person Who Directly Or Indirectly Controls, Is Controlled By, Or Is Under Direct Or Indirect Common Control With, Such Person, And Includes Any Person In Like Relation To An Affiliate. A Person Will Be Deemed To "**Control**" Another Person If Such Person Possesses, Directly Or Indirectly, The Power To Direct Or Cause The Direction Of The Management And Policies Of Such Other Person, Whether Through The Ownership Of Voting Securities, By Contract, Or Otherwise; And The Term "**Controlled**" Will Have A Similar Meaning.

"Agreement" Means This Agreement, Together With All Schedules, Appendices, And Other Attachments Attached Hereto, As Amended, Restated, Or Supplemented From Time To Time.

"Applicable Law" Means All Applicable Laws, Including: (A) Any Constitution, Treaty, Statute, Regulation, Code (Including Building Codes), Ordinance, Directive, Principle Of Common Law, Rule, By-Law (Including Municipal By-Law), Order, Ruling, Judgment, Injunction, Award, Decree, Or Other Requirement (Including A Requirement Arising At Common Law) Having The Force Of Law Of Any Governmental Authority; (B) Any Policy, Practice, Protocol, Directive, Standard, Guideline, Or Other Requirement Of Any Governmental Authority Which, Although Not Necessarily Having The Force Of Law, Is Regarded By Such Governmental Authority As Requiring Compliance As If It Had The Force Of Law; And (C) Privacy Law.

"Approved" Or "Approval" Means, With Respect To Any Document, Budget, Or Action To Be Taken, That Such Document, Budget, Or Action Has Or Requires The Prior Written Approval Of An Authorized Representative Of Toa.

"Business Continuity Plan" Has The Meaning Given To It In Article Error! Reference Source Not Found..

"Business Day" Means A Day Other Than Saturday, Sunday, Or A Statutory Holiday In Ontario, Commencing At 8:30 A.M. And Ending At 5:00 P.M., Eastern Time, On Any Such Day.

"Change" Has The Meaning Given To It In Article 11.1(1).

"Change Order Request" Has The Meaning Given To It In Article 11.2(1).

"Change Process" Has The Meaning Given To It In Article 11.1(1).

"Change Order Response" Has The Meaning Given To It In Article 11.2(2).

"Claim" Has The Meaning Given To It In Article 15.1.

"Commodity Taxes" Means All Commodity Taxes, Including All Sales, Retail, Use, Goods And Services, Harmonized Sales, Value Added, Excise, And Similar Taxes Imposed, Levied, Or Assessed By Any Governmental Authority, But Excluding Any Taxes In The Nature Of A Tax On Income Or Capital.

"Confidential Information" Means Any Information Disclosed By Either Party (The **"Disclosing Party"**) To The Other Party (The **"Receiving Party"**), Either Directly Or Indirectly In Writing, Orally, Or By Inspection Of Tangible Objects, That The Disclosing Party Identifies As Confidential Or Proprietary Or That Reasonably Appears To Be Confidential Or Proprietary Because Of Legends Or Other Markings, The Circumstances Of Disclosure, Or The Nature Of The Information Itself. Confidential Information Shall Not Include Any Information Which (i) Is Now, Or Hereafter Becomes, Through No Act Or Failure To Act On The Part Of The Receiving Party, Generally Known Or Available To The Public Without Breach Of Its Confidentiality Obligations By The Receiving Party; (ii) Was Acquired By The Receiving Party Without Restriction As To Use Or Disclosure Before Receiving Such Information From The Disclosing Party, As Shown By The Receiving Party's Files And Records Immediately Prior To The Time Of Disclosure; (iii) Is Obtained By The Receiving Party Without Restriction As To Use Or Disclosure By A Third Party Authorized To Make Such Disclosure; Or (iv) Is Independently Developed By The Receiving Party Without The Use Of Or Reference To The Disclosing Party's Confidential Information, As Shown By Documents And Other Competent Evidence In The Receiving Party's Possession.

"Contract Representative" Has The Meaning Given To It In Article 9.1.

"Dispute" Has The Meaning Given To It In Article 20.1(1).

"Effective Date" Has The Meaning Given To It On The First Page Of This Agreement.

"Encumbrance" Means Any Lien, Mortgage, Charge, Hypothec, Pledge, Security Interest, Prior Assignment, Option, Warrant, Lease, Sublease, Right To Possession, Encumbrance, Claim, Right, Or Restriction Which Affects, By Way Of A Conflicting Ownership Interest Or Otherwise, The Right, Title, Or Interest In Or To Any Particular Property, Including Claims Of Any Governmental Authority.

"Fees" Means The Amounts Payable In Consideration Of The Services As Set Out In Any Given Sow.

"Force Majeure Event" Means The Occurrence Of An Event Or Circumstance Beyond The Reasonable Control Of A Party. Force Majeure Events Will Include, Without Limitation: (i) Explosions, Fires, Flood, Earthquakes, Catastrophic Weather Conditions, Or Other Elements Of Nature Or Acts Of God; (ii) Acts Of War (Declared Or Undeclared), Acts Of Terrorism, Insurrection, Riots, Civil Disorders, Rebellion, Or Sabotage; (iii) Acts Of Federal, State, Provincial, Local, Or Foreign Governmental Authorities Or Courts; (iv) Epidemics, Pandemics, Quarantine Restrictions; (iv) Labor Disputes, Lockouts, Strikes, Or Other Industrial Action, Whether Direct Or Indirect And Whether Lawful Or Unlawful; (v) Failures Or Fluctuations In Electrical Power Or Telecommunications Service Or Equipment; And (vi) Delays Caused By The Other Party Or Third Party Non-Performance; Which Could Not Have Been Prevented By Commercially Reasonable Business Continuity And Disaster Recovery Measures.

"Good Industry Practice" Means Using Standards, Practices, Methods, And Procedures To A Good Commercial Standard, Conforming To Applicable Law And Exercising That Degree Of Skill, Care, Diligence, Prudence, And Foresight Which Would Reasonably And Ordinarily Be Expected From A Qualified, Skilled, And Experienced Service Provider In Vianet's Industry Engaged In A Similar Type Of Undertaking In North America Under The Same Or Similar Circumstances.

"Governmental Authority" Means:

- (a) Any Domestic Or Foreign Government, Whether National, Federal, Provincial, State, Territorial, Municipal, Local, Or Other Political Jurisdiction (Whether Administrative, Legislative, Executive. Or Otherwise);

- (b) Any Agency, Authority, Ministry, Department, Regulatory Body, Court, Central Bank, Bureau, Commission, Board, Or Other Instrumentality Having Legislative, Judicial, Taxing, Regulatory, Prosecutorial, Or Administrative Powers Or Functions Of, Or Pertaining To, Government;
- (c) Any Court, Commission, Individual, Arbitrator, Arbitration Panel, Or Other Body Having Adjudicative, Regulatory, Judicial, Quasi-Judicial, Administrative, Or Similar Functions;

In Each Case, Whether Now Or In The Future Constituted Or Existing And Having Or Purporting To Have Jurisdiction Over A Party, Any Aspect Of The Performance Of This Agreement, The Services, Or The Business That Is The Subject Of The Services.

"Indemnitees" Means The Toa Indemnitees And The Vianet Indemnitees (As Defined In Article 15.1), As Applicable.

"Intellectual Property" Means Discoveries, Research, Developments, Designs, Improvements, Innovations, Inventions, Software, Computer Programs, And Code Of All Types, Layouts, Interfaces, Applications, Tools, Databases, Hardware, Methods, Concepts, Processes, Works Subject To Copyright, Trade-Marks, And Other Technologies, Works, And Creations Now Existing Or Developed In The Future, Whether Or Not Registered Or Registrable, Patentable Or Non-Patentable, Or Confidential Or Non-Confidential.

"Intellectual Property Rights" Means, In Connection With A Specified Subject Matter, On A Worldwide Basis: (A) All Registered Or Unregistered Trade-Marks, Trade Names, Patents, Copyrights, Trade Secrets, Designs, Rights Of Publicity, Mask Work Rights, Utility Models, And Other Industrial Or Intangible Property Rights Of A Similar Nature, All Grants And Registrations Worldwide In Connection With The Foregoing And All Other Rights With Respect Thereto Existing Other Than Pursuant To Grant Or Registration; All Applications For Any Such Grant Or Registration, All Rights Of Priority Under International Conventions To Make Such Applications And The Right To Control Their Prosecution, And All Amendments, Continuations, Divisions, And Continuations-In-Part Of Such Applications; And (B) All Corrections, Reissues, Patents Of Addition, Extensions, And Renewals Of Any Such Grant, Registration, Or Right.

"Losses" Means All Damage, Losses, Liabilities, Penalties, Fines, Assessments, Claims, Actions, Costs, Expenses (Including The Cost Of Legal Or Professional Services, Legal Costs Being On A Full Indemnity Basis), Proceedings, Demands, And Charges Whether Arising Under Statute, Contract, Or At Common Law.

"Materials" Means Materials, Products, Goods, Machinery, Devices, Equipment, And Fixtures Forming The Services Or Any Part Thereof, But Does Not Include Vianet Equipment.

"Mfippa" Means The *Municipal Freedom Of Information And Protection Of Privacy Act*, Rso 1990, C M56, As Amended From Time To Time Or Superseded.

"Modification" Means To Add To, Enhance, Adapt, Reduce, Change, Replace, Update, Upgrade, Create Fixes, Or Enhancements For, Revise, Transform, Or Improve, Or To Develop Or Create Derivative Works.

"Other Service Providers" Has The Meaning Given To It In Article 3.2.

"Performance Schedule" Means The Timelines Within Any Given Sow That Vianet Shall Perform The Services As Specified In Each Sow.

"Permits, Licenses, And Approvals" Means All Permissions, Consents, Approvals, Certificates, Permits, Licences, Statutory Agreements, And Authorizations To Be Obtained By Vianet In Accordance With This Agreement And As Required By Applicable Law, And All Necessary Consents And Agreements From Any Third Parties Needed To Perform The Services In Accordance With This Agreement.

"Personal Information" Means All Information Captured By The Definition Of "Personal Information" Contained In Privacy Laws, Regardless Of Whether Privacy Laws Are Applicable To Such Information. All Toa Personal Information Is Confidential Information.

"Pipeda" Means The *Personal Information Protection And Electronic Documents Act*, Sc 2000, C 5, As Amended From Time To Time Or Superseded.

"Privacy Obligations" Means The Privacy Obligations Set Out In This Agreement, Including Those Set Out In Toa Policies And Those Set Out In Applicable Laws.

"Privacy Laws" Means Pipeda, Mfippa, And Any Other Applicable Canadian, Federal, Provincial, Or Other

Governmental Authority Personal Information Protection Legislation, As From Time To Time Enacted Or Amended.

"Proposal" Means The Document Submitted By Vianet Regarding The Pointe Au Baril Project And Attached Hereto As Schedule D.

"Regulatory Requirements" Has The Meaning Given To It In Article 4.3(1).

"Services" Means, Collectively, All Of The Functions, Responsibilities, Obligations, Tasks, And Services Performed Or To Be Performed By Vianet For Toa Under This Agreement. For Clarity, "Services" Does Not Include The Commercial Services Offered By Vianet To Its General Customer Base.

"Site" Means The Toa Location(S) Where The Services Are To Be Performed By Vianet, As Set Out In Each Statement Of Work Or As Defined In The Lease Agreement.

"Sow Term" Means, In A Statement Of Work, The Sow Effective Date, The Initial Term Of The Statement Of Work, And Any Terms And Conditions Relating To The Renewal Of The Statement Of Work.

"Statement Of Work" Or **"Sow"** Means The Mutually Agreed Upon Plan And Delineation Of Activities, Events, And Services To Be Performed By Vianet Pursuant To This Agreement.

"Subcontract" Means A Contract Entered Into Between Vianet And A Subcontractor.

"Subcontractor" Means A Person That Vianet Engages To Perform Certain Services That Vianet Is Responsible For Performing.

"Tariffs" Means The Rates, Terms, And Conditions Relating To A Service Of Vianet That Is Regulated By A Telecommunications Regulator.

"Taxes" Means Any And All Taxes, Fees, Levies, Or Other Assessments, Including Federal, Provincial, Local, Or Foreign Income, Capital, Profits, Excise, Real Or Personal Property, Sales, Retail, Use, Goods And Services, Harmonized Sales, Value Added, And Withholding, Together With Any Interest, Penalties, Fines, Or Additions To Tax And Additional Amounts Imposed With Respect Thereto (Including Any Fee Or Assessment Or Other Charge In The Nature Of Or In Lieu Of Any Tax) In Each Case, Whether Imposed By Law Or Otherwise, And Any Liability In Respect Of Any Tax As A Result Of Being A Member Of Any Affiliated, Consolidated, Combined, Unitary, Or Similar Group.

"Telecommunications" Means The Emission, Transmission, Or Reception Of Intelligence By Any Wire, Cable, Radio, Optical, Or Other Electromagnetic System, Or By Any Similar Technical System.

"Telecommunications Regulator" Means Any Governmental Authority Which, Pursuant To Applicable Law, Customs, Or Practice Regulates, Monitors, Or Oversees Telecommunications In Any Country In Which The Services Are Performed, Including The Canadian Radio-Television And Telecommunications Commission (Canada) Or Any Replacement, Substitute, Or Successor Thereof.

"Term" Has The Meaning Given To It In Article ~~Error!~~ **Reference Source Not Found.**, And Includes The Transition Out Period. Upon Any Renewal Of This Agreement All References To "Term" Will Mean The Term As Renewed.

"Terminated Services" Means: (A) If This Agreement Has Expired Or Been Terminated, All Services Being Provided Under This Agreement On The Termination Date; Or (B) If A Service Has Been Terminated (As A Result Of Termination Of This Agreement), The Terminated Service.

"Termination Assistance" Has The Meaning Given To It In Article 3.3.

"Termination Date" Means, With Respect To The Termination Of This Agreement Or A Service (As A Result Of Termination Of This Agreement), The Effective Date Of Termination Or Expiry Of This Agreement Or The Service, Which In The Case Of Expiry, Is The Last Day Of The Term, Or In The Case Of Termination, Is The Day Upon Which This Agreement Or The Service, As Applicable, Is Terminated Pursuant To Article 18 Or Any Other Termination Right Under This Agreement.

"Termination Notice" Means A Written Notice Terminating This Agreement, In Whole Or In Part, Given By One Party To The Other In Accordance With This Agreement.

"Test Component" Means Any Service Or Part Of A Service, Which Is Subject To User Acceptance Testing In Accordance With This Agreement.

"Transition Out" Has The Meaning Given To It In Schedule B.

"Transition Out Period" Has The Meaning Given To It In Schedule B.

"Transition Out Plan" Means An Approved Transition-Out Plan Developed By Vianet In Accordance With Schedule B.

"Toa Information" Means Any And All Information Relating To Toa, Its Business, Assets, Operations, Any Staff Of Toa, Or Any Other Service Provider Of Toa That:

- (a) Was Provided, Collected, Or Generated As Part Of The Provision Of The Services Or In Order To Comply With Any Applicable Law; Or
- (b) Otherwise Became Known To Either Party As A Result Of The Provision By Vianet Of The Services, Including All Toa Records, All Toa Personal Information, And All Other Toa Confidential Information.

"Toa Data" Shall Include: (A) Toa's Data Collected, Used, Processed, Stored, Created, Derived, Generated, Or Otherwise Placed In The Custody Or Control Of Vianet In Connection With Or As The Result Of The Use Of The Services; And (B) Toa Personal Information Collected, Used, Processed, Stored, Or Generated In Connection With Or As The Result Of The Use Of The Services, Including, Without Limitation, Any Information That Identifies An Individual, Such As A Government-Issued Identification Number, Date Of Birth, Address, Telephone Number, Biometric Data, Mother's Maiden Name, Email Address, Credit Card Information, An Individual's Name In Combination With Any Other Of The Elements Listed Herein, Or Contact Information.

"Toa Policies" Means The Requirements, Regulations, Codes, Policies, Procedures, And Standards Of Toa Listed In Schedule C, And Any Additional Requirements, Policies, Procedures, And Standards Of Toa Otherwise Communicated To Vianet By Toa, As Such Requirements, Policies, Procedures, And Standards May Be Amended, Restated, Or Replaced From Time To Time By Toa.

"Toa Works" Has The Meaning Given To It In Article 6.1(1)(1).

"Vianet Equipment" Means All Tools, Machinery, And Equipment, Either Operated Or Not Operated, That Is Required For Preparing, Fabricating, Conveying, Erecting, Or Otherwise Performing The Services But Is Not Incorporated Into The Services.

"Vianet Personnel" Means Individuals (Including All Relevant Grades Of Supervisory Staff) Employed By, Engaged As Independent Contractors, Or Otherwise Engaged By Vianet In The Provision Of The Services, Or Such Individuals When Employed By Or Engaged By A Subcontractor In The Provision Of The Services.

Schedule B to facilitate TOA's repatriation of the applicable Services or the orderly transition and migration of the Terminated Services to a third party provider (the "Designee"), as the case may be, in an orderly, effective, and efficient manner, and with minimal disruptions or adverse effect to the delivery of the Services. The quality and level of performance of the Services by Vianet during such Transition Out Period shall meet the specifications set out in the applicable SOW. Vianet shall continue to provide the Services during the Transition Out Period unless TOA expressly requests the permanent or temporary discontinuation thereof (or a portion thereof) (the "Termination Assistance").

3.4 Incidental Services

If any services, functions, responsibilities, or tasks not specifically described in this Agreement are: (a) required for the proper performance of any one or more of the categories of Services; and (b) are inherent in or incidental to the performance of, or are normally and customarily performed by a prudent manager as part of, the Services, such additional services, functions, responsibilities, and tasks are deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement.

3.5 Resources

- (1) Vianet will provide, at its expense, all facilities, equipment, tools, software, hardware, systems, consumables, materials, parts, supplies, services, and other resources necessary to provide the Services. Vianet will not implement any action or decision regarding such resources that would have an adverse effect on the Services (including changes in equipment, software, hardware, systems, and systems configurations), the amounts payable to Vianet, or other TOA costs and expenses, without the Approval of TOA, in its sole discretion.
- (2) Vianet will provide all labour (using Vianet Personnel), Permits, Licenses, and Approvals, designs, additional security, and any other requirements of the Services unless otherwise specified in this Agreement.

3.6 Non-Exclusive Relationship

Vianet acknowledges and agrees that: (i) Vianet is a non-exclusive provider of the Services; and (ii) this Agreement will not be interpreted to grant to Vianet exclusive rights or to bind TOA in any way to an exclusive relationship with Vianet. TOA reserves the right, at its sole and absolute discretion, to enter into agreements directly or to retain a third party to enter into agreements on its behalf for any of the Services.

3.7 No Volume Commitment

By entering into this Agreement, Vianet is acknowledging that other than as may be expressly specified in a Statement of Work under this Agreement, TOA makes no representation, warranty, or covenant as to the timing, quantity, or volume of Services required from Vianet or the amount of Fees to be paid to Vianet based upon the volume of transactions or any other factor within the discretion of TOA.

ARTICLE 4 DUTIES AND RESPONSIBILITIES OF SERVICE PROVIDER

4.1 Standard of Care

Vianet will, and ensure that its Personnel and Subcontractors will, at all times, when providing the Services and discharging its obligations under this Agreement act diligently, prudently, honestly, faithfully, and in the best interests of TOA in accordance with Good Industry Practice.

4.2 Applicable Law

- (1) Compliance with Applicable Law. Vianet will comply with Applicable Laws in exercising all of its rights, powers, or authorities and in performing all of its obligations, duties, covenants, and responsibilities under this Agreement (including the performance of the Services). Vianet will fully inform itself of all Applicable Laws in effect and will implement all requirements as necessary to comply with Applicable Laws.

- (2) Assistance to TOA. Vianet will cooperate and assist TOA with TOA's compliance obligations with respect to Applicable Laws and TOA's Privacy Obligations, as requested by TOA from time to time.
- (3) Compliance with Specific Applicable Law. Without limiting Article 4.2(1), Vianet, at its sole expense, shall comply with all employment insurance, workers' compensation, income tax, pension plan, occupational health and safety, and environmental protection legislation.

4.3 **Regulatory Matters**

- (1) Regulatory Requirements. This Agreement is subject to all Applicable Law, including, Tariffs, ruling, decisions, order, or other requirements of any Governmental Authority, Telecommunications Regulators, board, or commission of competent jurisdiction with respect to Telecommunications services (the "**Regulatory Requirements**"), as those Regulatory Requirements may be modified or superseded. Vianet will at all times comply with any applicable Regulatory Requirements in discharging its obligations under this Agreement. Nothing in this Agreement is to be construed as being in contravention of any Regulatory Requirements. The Parties acknowledge and agree that the charges for, and availability of, Services that are non-regulated or forborne are in no way contingent or conditional on TOA subscribing for the provision of any Tariffed or Tariffable service from Vianet and that any Services that include non-forborne Telecommunications services, and bundled services that include non-forborne Telecommunications services, are required to be provided, and will only be provided, in accordance with Tariffs approved by the applicable Telecommunications Regulator.
- (2) Telecommunications Regulator Approval. Notwithstanding any other term or condition of this Agreement, where any Services or part thereof is or becomes a regulated service, the affected Service (or part thereof, as applicable) will be subject to all applicable Tariffs or other Regulatory Requirements affecting the price of the Services provided by Vianet to TOA, and any amendments thereto that have been or will be filed and approved by any Telecommunications Regulator and to all decisions, rulings, or orders of the applicable Telecommunications Regulator that are issued or rendered pursuant to the *Telecommunications Act* (Canada) or other Applicable Law. Should a Service or part thereof being provided by Vianet to TOA become subject to a new Tariff filed with any Telecommunications Regulator, Vianet will notify TOA of the Tariff within fifteen (15) Business Days of Vianet's receipt of notice from the Telecommunications Regulator of such Tariff and:
 - (a) if the Tariff price is lower than the Fees which TOA is then paying under this Agreement, TOA will receive the lower pricing effective on the date the Tariff price is effective; and
 - (b) if the Tariff price is higher than the Fees that TOA is then paying under this Agreement by a factor of at least five (5) percent, then TOA and Vianet will consult in good faith with a view to determining whether there is a mutually agreeable resolution to those issues arising from the circumstances described in this section and the required modifications to the pricing for the affected Service.

4.4 **Privacy and Freedom of Information Obligations**

- (1) At all times, Vianet will, and will cause all other Vianet Personnel to, comply with the requirements of this Agreement pertaining to privacy compliance, including MFIPPA and PIPEDA (as such statutes are amended or superseded from time to time), and any other Applicable Laws now in force or that may in the future come into force governing the collection, use, disclosure, protection of, and access to Personal Information, including any regulations and common law. Vianet will include in every Subcontract an obligation of its Subcontractor or Vianet, as the case may be, to at all times comply with and ensure that Subcontractor's personnel comply with Privacy Obligations.
- (2) Vianet shall provide, and shall cause each of its professional advisors and Subcontractors to provide, in a timely manner, all necessary and reasonable information and co-operation to TOA and to any Governmental Authority with jurisdiction or oversight over Applicable

Laws governing the collection, use, disclosure, and protection of Personal Information in connection with any investigations, audits, or inquiries made by any such bodies or authorities under such legislation.

- (3) This Agreement is subject to the provisions of MFIPPA. Accordingly, this Agreement and any materials or Personal Information provided to TOA through the performance of its obligations or as otherwise acquired or developed may be subject to disclosure or protection pursuant to the MFIPPA and TOA cannot guarantee that the confidentiality of any information in TOA's custody or control will be preserved if a request for access to it is made under MFIPPA. To the extent permitted under MFIPPA, the TOA will inform Vianet of any such request for any records related to this Agreement that may reveal a trade secret or scientific, technical, commercial, financial, or labour relations information supplied in confidence by Vianet to the TOA so that Vianet will have an opportunity to make representations to the TOA (or its delegate) with respect to the proposed disclosure.

4.5 Improvement of Services

Vianet will, throughout the Term, make commercially reasonable efforts to improve and enhance the delivery of the Services and will seek means to achieve cost savings for TOA through the implementation of improved technology, practices, and procedures. The Services will incorporate changes in standards and practices within the Telecommunications services industry and will stay current with all tax, accounting, and legislative requirements. The Parties shall meet bi-annually to discuss such potential improvement and enhancements, the implementation of any improvements that require additional cost shall be subject to TOA Approval.

4.6 TOA Policies

- (1) Compliance with TOA Policies. At all times during the Term, Vianet will provide the Services in compliance with all TOA Policies, attached hereto as Schedule C and available to Vianet upon request, which sets out TOA's rules, procedures, policies, and directives, including those relating to access to or use of TOA's premises, confidentiality, privacy, and security. TOA reserves the right to prohibit any of Vianet Personnel who do not comply with such rules, procedures, and policies from obtaining any physical or electronic access to the TOA's premises, infrastructure, or systems. Without limiting the generality of the foregoing, Vianet will cooperate and assist, and will cause all other Vianet Personnel to cooperate and assist, TOA to comply with TOA Policies.
- (2) Changes in TOA Policies. TOA may amend, add new requirements, policies, procedures, or standards, or make exceptions to, any TOA Policies, in its sole discretion, from time to time. In such an event, TOA will promptly provide notice of such amendment, addition, or exception to Vianet. If a Change is required as a result of an amendment to, addition of, or exception to a TOA Policy, such Change will be implemented in accordance with the Change Process.
- (3) TOA Property. Vianet shall not remove any property of TOA, including any proprietary or Confidential Information, from TOA's premises without the prior written consent of TOA.

4.7 Notice of Default or Delay

- (1) Vianet will give TOA prompt notice of any breach or default by Vianet or any other Vianet Personnel, where such breach may have a material adverse effect on the provision of the Services.
- (2) If Vianet is delayed in the performance of the Services, then Vianet shall give notice in writing to TOA no later than five (5) calendar days after the start of the delay. Vianet shall take all reasonable steps to mitigate the impact of the delay.

ARTICLE 5 **VIANET RESOURCES**

5.1 Vianet Personnel

- (1) Vianet will ensure that:

- (a) there are at all times a sufficient number of Vianet Personnel with the requisite level of skill and experience to perform the Services in accordance with this Agreement. For clarity, this obligation will include ensuring that there are sufficient Vianet Personnel to cover any terminated Vianet Personnel, periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for the Services;
 - (b) it does not employ, in any capacity, any person who is a current employee of TOA;
 - (c) all Vianet Personnel assigned or contracted to perform the Services have, at all times, the training, qualifications, technical skills, levels of experience, and knowledge required, and all Permits, Licenses, and Approvals, if required, to discharge the functions to be performed by them in providing the Services in accordance with and pursuant to the terms of this Agreement; and
 - (d) all Vianet Personnel comply at all times with all applicable TOA Policies and perform their functions in a diligent, competent, and professional manner and in accordance with Applicable Law, including provincial health and safety laws and related regulations.
- (2) Removal and/or Replacement of Personnel. If TOA, in its sole discretion, determines that any particular individual among Vianet Personnel is lacking appropriate skills or qualifications, engages in misconduct, performs the Services inadequately, or is demonstrably incompetent or negligent, upon receipt of written notice from TOA to this effect, Vianet shall forthwith remove such individual from the performance of the Services. Additionally, Vianet must, at its own cost and without any extension of the SOW Term, replace this individual with a suitably qualified, competent, skilled individual, that is Approved by TOA. Vianet shall have no claim for additional costs arising out of or incidental to any removal, substitution, and/or replacement of any Vianet Personnel.

5.2 Subcontractors

Vianet will have the right to subcontract the performance of certain Services to Subcontractors. Vianet will, at all times, ensure that Subcontractors carry out their obligations in accordance with this Agreement. Vianet will assume all liability for all acts and omissions of any Subcontractors to whom it subcontracts the performance of the Services to, and will indemnify TOA from and against any Losses resulting from the use of any Subcontractor, including any breach by the Subcontractor of any Applicable Law. If requested by TOA in respect of any Subcontractor, Vianet will provide to TOA a copy of the Subcontract for that Subcontractor.

ARTICLE 6 INTELLECTUAL PROPERTY

6.1 TOA Works

- (1) Vianet agrees that all right, title, and interest in and to all Intellectual Property Rights of any and all work (including materials relating to the image of TOA or distinctive branding features of TOA, the form and content of reports regarding the Services, and any documentation or procedures developed specifically with respect to the Services) developed by Vianet, or acquired for TOA, as part of the Services, including all engineering and design work with respect to the construction or implementation of the Services, designs, plans, and reports (collectively, the "**TOA Works**"), and any and all Modifications to the TOA Works, that is provided under a SOW shall be transferred to and vest in TOA upon full payment of all applicable invoices.
- (2) Vianet will irrevocably waive, and cause all Vianet Personnel to irrevocably waive, its moral rights in and to TOA Works. Vianet will cooperate fully, and will cause all other Vianet Personnel to cooperate fully, at any and all times with respect to signing such documents and doing such acts and other things reasonably requested by TOA so as to give effect to the ownership of TOA Works in favour of TOA.

6.2 No Sale or Transfer

Except as otherwise expressly set out in this Article 6.1, this Agreement does not constitute a sale or license of any Intellectual Property Rights whatsoever (nor does it transfer ownership of any Intellectual Property exchanged between the Parties). Each Party retains full and exclusive title and, except as otherwise expressly provided herein, all rights and interest to their respective Intellectual Property Rights.

ARTICLE 7 ACCEPTANCE TESTING

7.1 Testing Provisions

- (1) Each SOW shall set out the testing activities to be performed by the Parties on any identified Test Component, including, without limitation, any user Acceptance testing, pilot testing, or cutover testing, and shall include provisions dealing with:
 - (a) the roles and responsibilities of each Party for such testing;
 - (b) the expected and possible test scenarios;
 - (c) required outcomes of the testing; and
 - (d) any milestones to be met and testing required before cutover and go live.

7.2 Deployment Approval

Notwithstanding the participation of TOA in any such testing, Vianet acknowledges that Vianet is ultimately responsible for determining whether a Test Component complies with and operates in accordance with its specifications and is appropriate for use.

7.3 Acceptance Testing Process

- (1) The following shall be the process for Acceptance testing:
 - (a) Testing. Upon receipt from Vianet of an applicable Test Component, TOA will review it against the Acceptance criteria and agreed to specifications for the Test Component set out or provided for in the applicable Statement of Work. Vianet will provide reasonable assistance, upon request, with the testing process.
 - (b) Acceptance. Where TOA validates that the Test Component satisfies the applicable Acceptance criteria and agreed to specifications, it shall provide its Acceptance in writing. Acceptance will not be unreasonably delayed, conditioned, or withheld.
 - (c) Rejection. Where the Test Component fails Acceptance testing, unless a longer period for Acceptance is specified in the applicable Statement of Work, TOA shall, within one week following delivery of a Test Component for Acceptance, or a longer period of time if reasonably required by TOA, deliver a written document to Vianet setting out the reasons why the Test Component cannot be accepted, and such written document will set out sufficient detail to allow Vianet to fully understand the nature of the issue(s). Vianet will make all necessary corrections or adjustments to the Test Component in question, at Vianet's expense, and will resubmit it for testing in accordance with this Article 7.3.
- (2) The above process will be repeated until the Test Component receives Acceptance from TOA.

7.4 Specifications Compliance

Acceptance by TOA of any Test Component does not constitute TOA's agreement that the Test Component complies with applicable specifications nor release Vianet from its obligations under this Agreement to ensure that the Test Components comply with the provisions of this Agreement and are appropriate for use and deployment.

7.5 Performance Monitoring

- (1) **Performance Monitoring.** TOA may, during the Term, monitor the quality of Vianet's performance of the Services, including the performance of the Services in accordance with the specifications set out in the applicable SOW. TOA, or any other persons authorized by TOA, may at any reasonable time and with prior written notice to Vianet, inspect, survey, or otherwise review the Services performed by Vianet under this Agreement.
- (2) **Assistance.** Vianet will take any and all action necessary or required to permit the inspection of the Services, including making available or, at TOA's request, providing to TOA for review any pertinent routine reports and substantiating data produced in connection with the Services.

ARTICLE 8

PRIVACY, SECURITY, AND CONFIDENTIALITY

8.1 TOA Data

- (1) As between TOA and Vianet, TOA Data is and shall remain the sole and exclusive property of TOA and all right, title, and interest in TOA Data shall be reserved by TOA. TOA Data shall also be known and treated by Vianet as Confidential Information. Vianet is provided limited access to TOA Data for the sole and exclusive purpose of providing the Services, including access to collect, process, store, generate, and display TOA Data only to the extent necessary to provide the Services. Vianet shall: (a) keep and maintain TOA Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and Applicable Law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose TOA Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement and Applicable Law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available TOA Data for Vianet's own purposes or for the benefit of anyone other than TOA and/or its authorized users without TOA's prior Approval.
- (2) Vianet shall, within one (1) Business Day of TOA's request, provide TOA, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any Fees due to Vianet), an extract of TOA Data in the format specified by TOA.

8.2 Processing, Transmission, or Storage of Data Outside Canada

Except as otherwise agreed to by TOA, Vianet will not process, transmit, permit access to, or store any data or information entered into, used with, or generated by the Services provided by Vianet (including any TOA Information, which includes TOA Personal Information and other TOA Confidential Information) outside of Canada without the prior written consent of TOA, which consent may be withheld in TOA's sole discretion.

8.3 Privacy Obligations

Each Party will comply with all Applicable Laws related to the collection, storage, use, and disclosure of Personal Information with respect to its activities under this Agreement and shall protect Personal Information from unauthorized use, access, or disclosure. Each Party will cooperate with the other Party to reasonably assist in such other Party's compliance with Applicable Laws.

8.4 Security Obligations

Vianet will comply with TOA's security policies, procedures, and standards, as identified by TOA from time to time, when performing the Services. In addition, Vianet represents and warrants that it has implemented current industry-recognized standard practices and policies to maintain appropriate organization, physical, and technical measures to: (i) safeguard TOA Data and TOA

Confidential Information; (ii) protect Vianet's systems against unauthorized use and access of Personal Information; and (iii) to comply with Applicable Laws.

8.5 Confidentiality

The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence and will not disclose or publish any part of the Confidential Information without the Disclosing Party's consent. The Receiving Party will use the Confidential Information solely for the purpose of performing its obligations under this Agreement. The Receiving Party will take all necessary precautions in handling the Confidential Information and limit disclosures to its personnel and permitted subcontractors on a strict need-to-know basis. However, the Receiving Party may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Receiving Party gives reasonable prior notice to the Disclosing Party to contest such order or requirement, where legally permissible.

ARTICLE 9 **GOVERNANCE FRAMEWORK**

9.1 Contract Representatives

Where applicable, each of TOA and Vianet will appoint a representative identified in a SOW (the "**Contract Representative**") who will: (i) be familiar with this Agreement; (ii) be responsible for the ongoing management of this Agreement; and (iii) act as the primary point of contact for such Party.

9.2 Status Meetings

At least twice annually (during which there are one or more active SOWs) and upon the request of TOA, the Contract Representatives will meet to review the status of all active SOWs and any outstanding concerns relating to the Services. The meetings may take place in person at a mutually agreeable location or by any virtual means agreed to by the Contract Representatives. Vianet's Contract Representative will produce minutes for each meeting, and promptly provide them to TOA's Contract Representative. If the TOA's Contract Representative chooses to add anything to the minutes for any meeting, the updated copy of the minutes with the additions will be promptly provided to Vianet's Contract Representative.

ARTICLE 10 **CONFLICT OF INTEREST**

10.1 Disclosure of Conflict of Interest

A conflict of interest includes any situation or circumstance that, in relation to the Services, this Agreement, Vianet, the Subcontractors, or Vianet Personnel: (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of the independent judgment by any personnel of TOA; or (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of Vianet's obligations under this Agreement ("**Conflict of Interest**"). A Conflict of Interest includes the performance of a service for or provision of advice to any person where the performance of the service or the provision of the advice may or does, in the reasonable opinion of TOA, give rise to a conflict of interest between the obligations of Vianet to TOA under this Agreement and the obligations of Vianet to such other person. If Vianet prior to or during the Term of this Agreement, discovers any perceived, potential, or actual Conflict of Interest that Vianet may have with TOA, or where Vianet is uncertain as to whether or not a Conflict of Interest could exist in a particular situation, Vianet shall promptly disclose the perceived, potential, or actual Conflict of Interest to TOA.

10.2 Breach and Waiver of Conflict of Interest

- (1) A breach of this Article 10 by Vianet shall entitle TOA to terminate this Agreement and/or Vianet's right to provide Services under one or more SOWs for cause, in addition to any other remedies that TOA has in law or in equity. Vianet will take all necessary steps to ensure that Vianet Personnel and Subcontractors do not violate this Article 10, and will be responsible for any such violation.
- (2) TOA may, in its sole discretion, waive any and all perceived, potential, or actual Conflicts of Interest of Vianet, the Subcontractors, and Vianet Personnel. A waiver shall be upon

such terms and conditions as TOA, in its sole discretion, requires to satisfy itself that the perceived, potential, or actual Conflict of Interest has been appropriately managed, mitigated, or minimized.

ARTICLE 11 **CHANGE PROCESS**

11.1 Changes

- (1) All changes, modifications, additions, or deletions to, in, or from the nature or scope of the Services or changes to the manner of delivery of the Services (each a "**Change**"), will be initiated, implemented, and documented in accordance with the provisions of the contract change process (the "**Change Process**") set out in this Article 11.
- (2) No Change will be implemented by Vianet except in accordance with the provisions of a Change Order executed by TOA. Vianet will not be entitled to charge for a Change unless the Change Order expressly entitles Vianet to do so.

11.2 Requests for Changes

- (1) TOA may request a Change by delivering to Vianet a written document (a "**Change Order Request**") in a form similar to Schedule C, describing the proposed Change, the reason that TOA is requesting the proposed Change, and any specific requirements of TOA relating to the Change.
- (2) Vianet will deliver to TOA a response (a "**Change Order Response**") that includes the information set out below (i) within one (1) Business Day after Vianet's receipt of the Change Order Request for any Change requested by TOA to resolve an urgent matter (including confidentiality, privacy, security, internal control issues, or as needed to comply with Applicable Law); and (ii) within ten (10) Business Days after Vianet's receipt of the Change Order Request for any other Change requested by TOA, unless otherwise agreed by the Parties, acting reasonably. The Change Order Response will include:
 - (a) a description of how and when the proposed Change would be implemented;
 - (b) a description of the effect, if any, that implementation of the Change would have on the ability of Vianet to perform its obligations in accordance with the Agreement;
 - (c) an analysis of the risk, if any, that implementation of the Change would interfere with the operation of any hardware, software, or systems of TOA or would otherwise have an adverse effect on TOA;
 - (d) a statement of the fees which Vianet proposes to charge TOA to implement the Change (detailed separately with reference to one-time fees and ongoing fees, if any), determined in accordance with the pricing requirements set forth in this Agreement, along with supporting documentation detailing Vianet's calculation of the proposed fees and justifying Vianet's conclusion that it is entitled to charge the proposed fees and that such Services are not already paid for as part of the Fees payable hereunder; and
 - (e) any other details reasonably requested by TOA to enable TOA to assess the anticipated impact of the Change.
- (3) Vianet may request a Change by delivering a Change Order Request and a Change Order Response to TOA, each of which contains the information required to be included in such documents as described above. "**Change Order**" means a document setting out the particulars of a Change that is agreed to by the Parties in writing in accordance with the Change Process, which comprises a Change Order Request together with a Change Order Response.

11.3 Approval of Changes: Amendment to Agreement

- (1) Vianet acknowledges that TOA will be highly dependent on Vianet for the provision of the Services, and consequently, Vianet agrees that:

- (a) it will not be entitled to reject any request by TOA for a Change that is required to comply with Applicable Law; and
 - (b) it will not be entitled to reject any other request for a Change by TOA unless it is not technically feasible to carry out the proposed Change.
- (2) If TOA and Vianet are unable to agree upon the fees or other amounts payable in respect of a Change requested by TOA, then: (i) the Dispute will be resolved in accordance with Article 20; and (ii) at TOA's request, Vianet will immediately begin to make the Change pending the resolution of the Dispute and, once the Dispute is resolved, the Parties will execute a Change Order reflecting the agreed upon resolution.
- (3) In the event that TOA submits more than one Change Order Request to Vianet, the Changes requested by TOA will be made by Vianet in the order determined by TOA.

11.4 Determination of Pricing for Changes

- (1) Vianet will prepare Change Order Responses for Changes requested by TOA at no charge to TOA.
- (2) For any Change to the Services introduced by Vianet or any other Change required to enable Vianet to comply with its obligations under this Agreement, Vianet will make such Change at no charge to TOA.
- (3) If a Change is required as a result of a change in Applicable Law impacting the Services (each a "**Change in Law**"), then the reasonable cost and expense of implementing such Change will be borne by Vianet if the Change:
 - (a) relates to Vianet's delivery of services to its customers in general;
 - (b) relates to the legal status or internal business operations and procedures of Vianet, including any Change to corporate or other Taxes, excluding Commodity Taxes applicable to the Services;
 - (c) relates to the Services required to be provided by Vianet as part of the Fees; or
 - (d) relates to Vianet's compliance with Applicable Laws or Permits, Licenses, and Approvals specifically identified in the applicable SOW as Applicable Laws with which Vianet must comply or Permits, Licenses, and Approvals which Vianet must obtain.
- (4) For any Change requested by TOA other than those described above, Vianet will charge TOA as agreed to by the Parties.
- (5) Vianet will deal transparently with TOA throughout the process of preparing its Change Order Response until a Change Order is executed, and will consult with TOA in establishing the assumptions regarding the scope of the Change and TOA's requirements for the Change. Without limiting the foregoing, Vianet will make available to TOA all supporting information and documentation reasonably requested by TOA that relates to the pricing of the proposed Change.

11.5 Change Order Formation

Once the terms of any Change Order Request are approved and executed in writing by both Parties, it becomes a Change Order. The changes set out in any Change Order will constitute an amendment to the applicable Statement of Work insofar as it applies to the Services. If a Change Order Request is not approved in writing by both Parties within thirty (30) calendar days of the date on which a Change Order Request is submitted to the other Party, the request for a Change Order is deemed to be rejected, unless the Parties agree in writing to extend such time period.

11.6 No Claims

Vianet shall not be entitled to any payment for additional services performed unless such additional services have been authorized expressly in a Change Order prior to the performance of such additional services. Vianet shall not perform any Change in the Services without a Change Order, and if Vianet does perform a Change in the Services without a Change Order, Vianet will be held

liable for any costs TOA incurs as a result. If Vianet performs any work outside the scope of the Services without a Change Order, Vianet shall have no right to Claims for unjust enrichment to TOA and no right to make a claim for an extension of the Term of the applicable Statement of Work, regardless of any enrichment to TOA that has occurred or extra time that is required to complete the Services. For clarity, Changes to the Services may not be accepted by TOA implicitly nor may any course of conduct or dealing between the Parties imply acceptance of alterations or additions to the Services.

ARTICLE 12 **FEES AND INVOICING**

12.1 Payment of Fees and Certain Costs

As the sole and entire financial consideration for all of the Services to be performed under this Agreement and for all of the other tasks, services, assignments, representations, warranties, indemnities, and obligations of Vianet, TOA will pay to Vianet the Fees, as set out in the applicable SOW during the SOW Term.

12.2 Estimates

- (1) Where applicable, at any time during the Term of this Agreement, TOA may ask Vianet for an estimate for additional tasks, services, deliverables, or work product beyond the Services and TOA Works ("**New Tasks**"). Upon such request for an estimate, Vianet shall:
 - (a) provide TOA with a written estimate of the total fees or charges for such New Tasks;
 - (b) not proceed with the New Tasks until TOA Approves the charges, in writing;
 - (c) notify TOA if, in the course of providing the New Tasks, it becomes apparent to Vianet that the Approved cost estimate may be exceeded, and provide a revised estimate of charges for Approval by TOA; and
 - (d) upon TOA Approval of the New Tasks, perform the New Tasks according to the terms and conditions of this Agreement and the applicable SOW under which the New Tasks are being performed, unless and to the degree specifically otherwise agreed in writing.
- (2) Any and all hourly rates set out in the Agreement Documents shall be fixed, without escalation, for the duration of this Agreement, at \$85/hour, unless otherwise agreed by the Parties. All labour rates shall be all-inclusive, and for the avoidance of doubt, shall include the following:
 - (a) vacation, statutory holidays, sick, and other leave with pay;
 - (b) allowances, workers' compensation dues, employment insurance contributions, other taxes and insurances measured by payroll, employee benefits such as pension, health and life insurances, disability insurance, bonus programs, union assessments, training funds, industry, and administration funds;
 - (c) small tools and personal protective equipment; and
 - (d) overhead, profit, including off-site support employees, and off-site facilities.

12.3 No Additional Costs or Expenses

Except as otherwise expressly stated in this Agreement, TOA will not be obligated to pay Vianet any additional fees, assessments, reimbursements, costs, or expenses for the Services or any other tasks, services, licenses, assignments, representations, warranties, and obligations of Vianet under this Agreement, including, for clarity, labour expenses and general business expenses (including travel, meals, and overhead expenses).

12.4 Invoicing

- (1) Unless an invoicing and payment structure is set out in an applicable SOW (in which case the provisions therein shall apply), the following shall govern the invoicing and payments:

- (a) Prior to the 25th day of each month, Vianet shall prepare and submit to TOA a detailed invoice of the Fees. The invoice shall include a work summary broken down by category of Services, and include columns for the amount, percentage of the Services completed, the previous month's invoice amount, the total amount invoiced to date, the amount remaining, and the current invoice amount. All invoices must include evidence substantiating time spent on the Services and the invoice amount. Applicable Harmonized Sales Taxes shall be set out as a separate line item.
 - (b) Following the receipt of an invoice from Vianet, TOA will review in order to determine and Approve the amount payable. For invoices received prior to or on the 25th of a month, payment will become due on the last day of the following month. Invoices received after the 25th of a month will not be processed for payment until the following month and payment will become due on the last day of the second month after receipt of the invoice.
 - (c) Vianet agrees that TOA will make all payments via electronic funds transfer (EFT). Vianet shall provide TOA with all information required by TOA to make EFT payments to Vianet.
- (2) No payment made in respect of the Services will constitute a waiver of any terms of the Agreement or other rights at law or in equity.
 - (3) All prices, values, and payments shall be in Canadian dollars, unless agreed otherwise.
 - (4) Unless otherwise agreed by the Parties, TOA shall not pay any charge or interest for late payments.
 - (5) If Vianet is in any way indebted to TOA under the terms of the Agreement Documents, in the event TOA has overpaid for the Services, or for any other reason, TOA shall have the right of set-off to the extent of such debt against future invoices. TOA's right of set-off is in addition to any other rights and remedies it may have.
 - (6) TOA will only pay for Services if they are invoiced within one hundred eighty days (180) days from the date that the specific Services were performed (the "Invoice Deadline"). The Invoice Deadline shall apply notwithstanding any limitation period, statutory, or otherwise, and regardless of any alternative invoicing schedule set forth in any SOW. For greater certainty, Vianet agrees that it forfeits all Claims and remedies otherwise available to it under law or equity, including but not limited to Claims for unjust enrichment or *quantum meruit* in the event that it fails to invoice before the Invoice Deadline.

12.5 Disputed Amounts

TOA may withhold full or partial payment of any Vianet invoice that it in good faith Disputes as due or owing, without interest, until such Dispute is resolved. In such case, TOA will pay any undisputed amounts and provide to Vianet a written explanation of the basis for the Dispute as to the disputed amounts. The failure of TOA to pay a disputed invoice, or to pay the disputed part of an invoice, will not constitute a breach or default by TOA.

12.6 Most Favoured Customer Adjustment

Vianet agrees that the Fees and performance of the Services will, at all times during the Term, be competitive with the fees and performance of services similar to the Services provided by comparable internet service providers. TOA reserves the right, from time to time, to retain an independent third party to benchmark the Fees and costs and performance of the Services, in whole or in part, against the costs and performance of services similar to the Services provided by internet service providers comparable to Vianet, to determine whether Vianet is delivering such Services at competitive pricing and levels of service. Based upon the results of such benchmarking, Vianet will meet with TOA to investigate unfavourable variances and negotiate, in good faith, appropriate adjustments to the costs and performance of the Services.

ARTICLE 13 **TAXES**

13.1 Taxes

TOA will pay to Vianet all Commodity Taxes which Vianet is required by Applicable Law to collect from TOA with respect to the Services provided under this Agreement ("**Applicable Commodity Taxes**"). Unless otherwise expressly provided in this Agreement, Applicable Commodity Taxes will apply in addition to any Fees or other charges payable under this Agreement, including any compensation for termination.

13.2 Right to Challenge Assessments

TOA will be entitled, with the full co-operation of Vianet, to challenge any Taxes or level of tax imposed or assessed on the Services or on any Fee or any other costs and charges. In the event TOA determines that it will undertake any such challenge, TOA will notify Vianet of such intention and the basis for it and, upon agreement by Vianet, the Parties will jointly undertake such challenge with TOA bearing the costs and expenses, provided that Vianet will use its existing resources, unless the use of external resources is Approved by TOA.

13.3 Withholding Tax

TOA may deduct from payments any Taxes or other amounts required to be withheld under Applicable Laws (including the portion of any payment which is subject to Section 105 of the *Income Tax Regulations* (Canada) for services performed in Canada by a non-resident of Canada) and will remit the withheld amounts directly to the applicable taxing authority on or before their due date, and all portions and amounts so withheld and remitted will be deemed to have been paid by TOA on behalf of Vianet in full payment and satisfaction of TOA's obligation under this Agreement to pay the portions or amounts so withheld and remitted.

ARTICLE 14 **REPRESENTATIONS AND WARRANTIES**

14.1 Representations and Warranties of Vianet

- (1) Vianet represents and warrants, as of the Effective Date and throughout the Term (except where expressly specified otherwise), that:
 - (a) Vianet has, and will have, the skills, training, qualifications, expertise, and technical experience necessary to perform and manage the Services in accordance with this Agreement, and it acknowledges that TOA is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to TOA;
 - (b) Vianet has all necessary rights to grant to TOA the rights and permissions granted pursuant to this Agreement, and is the lawful licensee or owner of the Services and has all the necessary rights in the Services to grant the use of the Services to TOA;
 - (c) Vianet has not engaged and will not engage in any activity where such activity creates a Conflict of Interest with the provision of the Services pursuant to the Agreement;
 - (d) the Services and any other work performed by Vianet hereunder shall not infringe upon any Canadian or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or Intellectual Property Right that would conflict with its obligations under this Agreement;
 - (e) it shall maintain in-force written agreements with any third party (including without limitation Subcontractors) whose Intellectual Property is incorporated into the Services or who is necessary for the performance of the Services, if any, for the Term of this Agreement;
 - (f) it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;

- (g) it will use its best efforts to ensure that no computer viruses, malware, or similar items are introduced into TOA's computing and network environment by the Services;
 - (h) the Services will be free from defects in material, workmanship, and any design or engineering, and conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Agreement;
 - (i) the name of Vianet as set out in the Agreement is the full legal name of Vianet; Vianet is a corporation amalgamated under the laws of Ontario and is a valid and subsisting corporation under such laws; Vianet has been registered as an extra-provincial company under the *Ontario Business Corporations Act*, if required, and is in compliance with said act; and Vianet has filed all tax, corporate information, and other returns required to be filed by the laws of Ontario and Canada and has complied with all workers compensation legislation and other similar legislation to which it may be subject and has paid all Taxes, fees, and assessments calculated to be due by it under those Applicable Laws as of the date of this Agreement;
 - (j) Vianet has the requisite corporate power, authority, and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver, and perform all other agreements, instruments, undertakings, and documents as are required by this Agreement to be done, executed, delivered, or performed;
 - (k) there are no lawsuits, actions, applications, arbitration, other proceedings, or governmental investigations pending or threatened against or relating to Vianet or Vianet's properties or business that may in any way impact the ability of Vianet to perform the Services;
 - (l) Vianet has accurately disclosed all material information to TOA;
 - (m) Vianet has not paid, given, promised, or offered to TOA a bribe, kickback, payment, gift, or other inducement in exchange for entering into the Agreement or any other agreement with TOA, and no third party person or agency has been employed or retained to solicit or obtain this Agreement or any SOW for a contingent fee;
 - (n) Vianet has obtained all authorizations, approvals, or orders by, consents of, notices to, filings with, or other acts by or in respect of any Governmental Authority or any other person for the operation of its business that pertains to the provision of the Services; and
 - (o) it has no knowledge of any untrue or incorrect representation or assurance, whether verbal or written, given by it to TOA in connection with this Agreement; and all information, statements, documents, and reports furnished or submitted by Vianet to TOA in connection with this Agreement, including the Proposal and Letter of Intent, are true and correct to the best of Vianet's knowledge.
- (2) Vianet covenants and agrees to take all steps necessary to cause each of its representations and warranties contained in this Agreement to remain true and correct throughout the Term.

14.2 Warranty Period

- (1) Vianet agrees to correct promptly, at its own expense and without extension of the applicable SOW Term, all defects or deficiencies in the Services which appear prior to and during the period of two (2) years from the later of the end of the applicable SOW Term and the date of total completion of the Services (the "**Warranty Period**"). TOA shall give Vianet written notice of such defects or deficiencies within a reasonable time, and in any event within the Warranty Period.
- (2) Vianet shall promptly make good any damage or destruction to the Services or other contractors' work or any other property as a result of defects or deficiencies in the Services or the correction of such defects or deficiencies, at Vianet's cost and without any extension of the applicable SOW Term.

- (3) If Vianet fails to promptly carry out the correction of defects or deficiencies as required by Article 14.12(1), or make good any damage or destruction to the Services or other contractors' work or any other property as required by Article 14.12(1), TOA may correct such defects or deficiencies or make good such Services or other contractors' work or any other property and hold Vianet responsible for all costs thereof (including costs to retain other contractors, consultants, costs of materials and equipment, administrative and supervisory costs, and the cost of TOA's own forces).
- (4) In addition to the warranty provided to TOA under Article 14.12(1), Vianet shall assign to TOA any warranties by manufacturers or suppliers on individual Materials supplied by Vianet to TOA. This section shall not limit any warranties on any Materials contemplated elsewhere in the Agreement or any other rights or remedies of TOA, and shall not limit the time period within which TOA may bring a claim against Vianet in respect of such other rights or remedies.

ARTICLE 15

INDEMNIFICATION

15.1 Indemnification by Vianet

- (1) Vianet agrees to indemnify, defend, and hold harmless TOA and its directors, officers, appointees, employees, advisors, contractors, representatives, and agents (each, a "**TOA Indemnatee**") from and against any and all liabilities, causes of action, costs, damages, Losses, expenses, claims, demands, suits, fines, or judgments (each, a "**Claim**", and collectively, the "**Claims**"), including reasonable legal fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any TOA Indemnatee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Vianet, its officers, directors, agents, employees, Personnel, and Subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to:
- (a) bodily injury (including death) or damage to tangible personal or real property;
 - (b) any payment required to be paid to Subcontractors, if any, of Vianet;
 - (c) fraud, theft (including misappropriation of funds), other crime, bad faith, willful misconduct, or gross negligence of Vianet or any other Vianet Personnel or their respective representatives in the performance or non-performance of the Services, or otherwise in connection with this Agreement;
 - (d) Vianet Personnel engaged by Vianet, including any Claim that TOA is an employer of any Vianet Personnel;
 - (e) the failure of Vianet or any other Vianet Personnel to comply with Applicable Law;
 - (f) any breach of Vianet's confidentiality, security, or privacy representations, warranties, or covenants under this Agreement, including, as result of any such breach, any disclosure of TOA Confidential Information (including TOA Personal Information), or any access to property or information of TOA contrary to any such provisions;
 - (g) any material misrepresentation or breach of any representation or warranty set forth in this Agreement; or
 - (h) any material breach of any covenant set forth in this Agreement not expressly mentioned above;
- provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of a TOA Indemnatee.
- (2) Vianet agrees to indemnify, defend, and hold harmless TOA Indemnitees from and against any and all Claims, including reasonable legal fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any TOA Indemnatee, by reason of any Claim arising out of or relating to the Services infringing or misappropriating any Canadian or foreign patent, copyright, trade secret,

trademark, or other proprietary right. In the event that Vianet is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that TOA is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Vianet shall, at its expense: (a) obtain for TOA the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by TOA; or (c) in the event that Vianet is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Vianet shall reimburse to TOA any prepaid fees and the full cost associated with any Transition Out Plan.

15.2 Indemnification by TOA

- (1) TOA agrees to indemnify, defend, and hold harmless Vianet and its directors, officers, appointees, employees, advisors, contractors, representatives, and agents (each, a "**Vianet Indemnitee**") from and against any and all Claims, including reasonable legal fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Vianet Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of TOA, its officers, directors, agents, and employees during the performance of this Agreement, including, without limitation, Claims arising out of or relating to:
 - (a) use of the Services in violation of Applicable Laws; or
 - (b) use of the Services in violation of Vianet's Acceptable Use Policy set out in Schedule F;

provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of a Vianet Indemnitee.

15.3 Indemnification Procedure

- (1) Promptly after receipt by the indemnified party of a threat, notice, or filing of any Claim against an Indemnitee, the indemnified party shall give notice thereof to the indemnifying party, provided that failure to give or delay in giving such notice shall not relieve the indemnifying party of any liability it may have to the Indemnitee except to the extent that the indemnifying party demonstrates that the defense of the Claim is prejudiced thereby. The indemnifying party shall have sole control of the defense and of all negotiations for settlement of a Claim and the indemnified party shall not independently defend or respond to a Claim; provided, however, that: (a) the indemnified party may defend or respond to a Claim, at the indemnifying party's expense, if the indemnified party's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and (b) the indemnified party shall have the right, at its own expense, to monitor the indemnifying party's defense of a Claim. At the indemnifying party's request, the indemnified party shall reasonably cooperate with the indemnifying party in defending against or settling a Claim; provided, however, that the indemnifying party shall reimburse the indemnified party for all reasonable out-of-pocket costs incurred by the indemnified party (including, without limitation, reasonable legal fees and expenses) in providing such cooperation. In no event shall the indemnifying party by its action or inaction, or by default, concede or admit liability, or enter into any judgment or settlement regarding any indemnified Claim without the indemnified party's prior written consent. The indemnified party reserves the right, at its own expense, to participate in the defence of any matter otherwise subject to indemnification by the indemnifying party.
- (2) For the purposes of this Article 15.1 and the indemnifying party's obligations hereunder, non-party Indemnitees are third party beneficiaries of this Agreement in accordance with its terms. Any action or consent taken by the indemnified party on its own behalf is binding upon the non-party Indemnitees for the purposes of this provision. Other than as provided for in this provision, this Agreement is for the sole benefit of the signatories hereto and their permitted successors and assigns. Nothing, express or implied, in this Agreement is

intended to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor non-party Indemnitees.

ARTICLE 16

LIMITATION OF LIABILITY

16.1 No Liability for Certain Damages

In no event, whether in contract or tort (including negligence), as a result of breach of warranty, strict liability, indemnity, or under any other theory of liability whatsoever, shall either Party be liable for: (i) any indirect, consequential, incidental, exemplary, punitive, or special damages; or (ii) any damages, whether direct, indirect, consequential, incidental, exemplary, punitive, or special, characterized as loss of revenue, loss of profits, loss of reputation, loss of use of revenue, loss of savings, or losses by reason of the cost of capital, even if such Party has been advised of the possibility of such damages in advance.

16.2 Liability for Direct Damages

The maximum aggregate liability of either Party under this Agreement in contract or tort (including negligence), as a result of a breach of warranty, strict liability, indemnity, or under any other theory of liability whatsoever, shall be limited to an amount which is the greater of: (i) twice the total of all Fees paid by TOA under this Agreement and any SOW in the twelve (12) months immediately preceding the date of the act or omission or circumstance giving rise to the liability hereunder, provided that if the event giving rise to liability occurs during the first twelve (12) months after the Effective Date, liability will be limited to an amount equal to twice the total Fees that would be payable to Vianet pursuant to this Agreement in the twelve (12) month period after the Effective Date; and (ii) \$500,000 CAD.

16.3 Exclusions

The limitations of liability set out in Article 16.1 and Article 16.2 do not apply to:

- (1) Losses resulting from gross negligence or willful misconduct;
- (2) claims arising in respect of personal injury including death and property damage;
- (3) infringement claims with respect to Intellectual Property Rights of a third party;
- (4) breach of the provisions of this Agreement dealing with security, confidentiality, and privacy;
- (5) Losses suffered or incurred as a result of any deliberate cessation by Vianet of the Services, or Vianet's refusal to provide any of the Services including any Termination Assistance, where applicable, except in accordance with this Agreement; or
- (6) indemnity claims with respect to indemnities provided in Article 15.1.

16.4 Duty to Mitigate

Each Party has a duty to mitigate its damages and the Parties agree that the limitations of liability and recovery described above are agreed allocations of risk.

ARTICLE 17

INSURANCE

17.1 General Insurance Requirements

- (1) Vianet Insurance. Without limiting any of Vianet's obligations or liabilities under this Agreement and prior to commencing the Services, Vianet will obtain and maintain during the Term of this Agreement, at its own expense, and with insurance providers acceptable to TOA, acting reasonably, the following insurance:
 - (a) workers' compensation coverage for all employees engaged in working on the Services in accordance with the *Workplace Safety and Insurance Act*, 1997, SO 1997, c 16, Sched A and the Workplace Safety & Insurance Board;

- (b) property insurance coverage and business interruption insurance against all risks in respect of damage to hardware, systems, and other tangible property of either Party located on listed premises and used to provide the Services;
 - (c) employer's liability insurance with a limit of no less than \$1,000,000 per occurrence;
 - (d) comprehensive commercial general liability insurance with inclusive limits of not less than \$5,000,000 per occurrence covering liability arising from premises, operations, independent contractors, products/completed operations, personal injury, advertising injury, and liability assumed under an insured contract, with a deductible of not more than \$1,000, and an annual aggregate limit of \$5,000,000 or, if stipulated by TOA in its sole discretion, a greater amount; and
 - (e) professional liability insurance with a minimum coverage of \$5,000,000 per occurrence covering liability arising from negligent delivery of professional services, including network/cyber security and privacy liability for the failure or breach of network security, failure to safeguard against breach caused by hacking or viruses, unauthorized release of and/or failure to protect private, personal, or corporate information, and costs to restore and/or recreate lost data;
 - (f) commercial crime insurance (coverage for employee dishonesty, computer or electronic fraud, and loss or damage arising out of or in connection with fraudulent or dishonest acts, acting alone or in collusion with others); and
 - (g) automobile liability insurance covering the ownership, operation, and maintenance of all owned, non-owned, and hired motor vehicles with a minimum bodily injury (including death) and property damage (including loss of use) with a limit of \$2,000,000 per occurrence.
- (2) Requirements for Vianet Insurance. Certificates of insurance coverage evidencing all of the above coverage, including all special requirements specifically noted above, shall be provided to TOA prior to commencement of the Services, and in accordance with the following terms and conditions:
- (a) Vianet will immediately notify TOA in writing of any change or cancellation of its workers' compensation coverage;
 - (b) Vianet shall provide TOA with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution;
 - (c) the commercial general liability insurance shall name as additional insureds: "The Township of The Archipelago, as well as its related entities, partners, members, managers, directors, officers, employees, agents, mortgagees, property managers, and representatives", shall provide for a waiver of any right of subrogation of the insurers against TOA, and the required insurance may not be cancelled without thirty (30) days prior written notice to TOA; and
 - (d) all certificates will be in a form acceptable to TOA. The approval or non-approval of any such certificate by TOA will in no way relieve Vianet of its obligations to provide the insurance required by this Agreement. TOA may request, at any time, certified copies of Vianet's insurance policies and Vianet will provide such certified copies to TOA within five (5) days of such request.
- (3) Minimum Amount No Limit on Recovery. All policy limits and types of insurance specified by this Agreement to be obtained and maintained by Vianet are the minimum policy limits and types of insurance that are to be provided. Vianet will be solely responsible for determining whether the policy limits and types of insurance are adequate and for placing any excess insurance and any additional insurance which it considers necessary to protect and indemnify itself. Vianet will be liable to TOA for all Claims and Claim costs excluded by, or in excess of, the policy limits of the applicable insurance policies.

- (4) Reputable Insurers. All insurers must be reputable and financially creditworthy insurers with an A.M. best financial strength rating of "A-" or higher.
- (5) Subcontractor Insurance. Vianet will require all Subcontractors to enter into subcontracts containing provisions in the same form as those found in this Article 17, as applicable to the Services being undertaken by such Subcontractors.

17.2 Additional Insured; Other Requirements

Vianet shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policy shall be primary without right of contribution from any insurance by TOA. Such policies shall require that TOA be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. TOA shall have the right to request an adjustment of the limits of liability for commercial general liability and professional liability insurance as Vianet's exposure to TOA increases.

17.3 Additional Insurance

Vianet will provide, maintain, and pay for, any additional insurance which it is required by Applicable Law to carry, or which it considers necessary to cover risks under this Agreement not otherwise covered by insurance specified in this Article 17 in its sole discretion. Such insurance will include TOA as additional insureds.

ARTICLE 18
TERMINATION

18.1 Termination for Convenience

- (1) TOA, without prejudice to any other rights or remedies it may possess, may terminate this Agreement, in whole or in part, for convenience upon twenty (20) Business Days' written notice identifying the scope of the termination and specifying the date upon which such termination will be effective, for any reason ("**Termination for Convenience**").
- (2) The sole claim of Vianet against TOA and the sole liability of TOA for Termination for Convenience shall be payment of (i) all undisputed invoices for Services provided up to the effective date of termination; and (ii) any reasonable and auditable cancellation expenses incurred by Vianet, to the extent documented and provided to TOA within thirty (30) calendar days of the notice of Termination for Convenience.
- (3) Vianet acknowledges that the payment made pursuant to this Article is in complete and final satisfaction of any and all TOA liabilities to Vianet related to the Termination for Convenience. Vianet will have no further claim under this Agreement, nor any other claim at Applicable Law whether in contract or in tort, against TOA for TOA's exercise of its right of early termination of this Agreement, in whole or in part, under this Article 18.1.

18.2 Termination for Breach

- (1) Either Party may terminate this Agreement or a Statement of Work in whole or in part for cause, effective upon notice:
 - (a) if the other Party commits a breach of this Agreement, including any obligations set out in a SOW, which breach is not cured within thirty (30) days after the receipt of a notice of such breach;
 - (b) if (i) the other Party makes a general assignment for the benefit of its creditors or a proposal or arrangement under any applicable bankruptcy or insolvency legislation (or gives notice of its intent to make such a proposal); (ii) a petition is filed against the other Party under any applicable bankruptcy or insolvency legislation, and the other Party is not disputing such petition diligently and in good faith within ten (10) Business Days of such petition being received; (iii) the other Party is declared or adjudicated insolvent or bankrupt; (iv) a liquidator, trustee in bankruptcy, custodian, receiver, and manager or any other officer with similar powers is appointed for the other Party; or (v) the other Party proposes a compromise or arrangement or institutes proceedings to be adjudged bankrupt or

insolvent or consents to the institution of such appointment or proceedings or admits in writing its inability to pay debts generally as they become due and payable.

- (2) For clarity, in the event that TOA exercises its termination right under this Article 18.2, no fees, charges, penalties, or other amounts will be payable by TOA to Vianet.

18.3 Partial Termination

Following termination by TOA in respect of part (but not all) of this Agreement, the Fees payable to Vianet hereunder for Services will be equitably adjusted to take into account the Services not being provided. Any partial termination will be deemed to be a Change and subject to the Change Process. For clarity, where TOA has the right to terminate this Agreement, it has the right to terminate the provision of one or more Services or any component or part of one or more Services.

18.4 Effects of Termination

- (1) If TOA terminates this Agreement under Article 18.11, then in addition to any other legal remedy or recourse in law or in equity available to TOA, TOA shall be entitled to: (i) withhold any amounts due to Vianet to cover the costs of Disputes arising from or in connection with the termination; and (ii) complete or have a third party complete the Services and, at the sole discretion of TOA, either (A) charge any costs associated with such completion (including costs of delay) to Vianet; or (B) set-off the costs of such completion of Services (including costs of delay) from and against any payment due to Vianet, to the extent such costs are over and above the Fees that would have been payable to Vianet.
- (2) Upon termination for any reason, Vianet shall immediately deliver to TOA:
- (a) all TOA Works, whether complete or in progress, and all documents, media, or items containing, in whole or part, any TOA Confidential Information; and
 - (b) all equipment, tools, identification cards, security passes, and other materials owned by TOA and furnished to Vianet to facilitate the performance of Services by Vianet.

ARTICLE 19 **FORCE MAJEURE**

19.1 Force Majeure

The Parties will be excused from the consequences of any breach of this Agreement if and to the extent that such breach was caused in whole or in part by a Force Majeure Event, provided that (i) the affected Party will not in any material way have caused or contributed to such Force Majeure Event; and (ii) the Force Majeure Event could not have been prevented by reasonable and ordinary precautions (as would be employed by a reasonable person in the position of the affected Party), including, in the case of Vianet, proper planning and execution of any applicable disaster recovery plan or Business Continuity Plan, provided that if a Force Majeure Event continues to prevent or delays the performance of a Party after thirty (30) calendar days, either Party may terminate this Agreement by written notice to the other Party having immediate effect.

19.2 Force Majeure Exclusions

In no event shall any of the following constitute a Force Majeure Event: (a) failure, inadequate performance, or unavailability of Vianet's Subcontractors, if any; or (b) configuration changes, other changes, viruses, or other errors or omissions introduced, or permitted to be introduced, by Vianet that result in an outage or inability for TOA to access or use the Services.

ARTICLE 20 **DISPUTE RESOLUTION**

20.1 Dispute Resolution Principles

- (1) Disputes. The Parties agree to meet, negotiate, and attempt to resolve in good faith, amicably and without litigation, any disagreement, question, or difference of opinion between the Parties as to the interpretation, application, or administration of this Agreement, including any invoice (a "**Dispute**").

- (2) **Dispute Escalation Process.** The following procedure will be followed with respect to any Dispute:
- (a) **Level 1:** When a conflict arises between TOA and Vianet, the project team member(s) will first strive to work out the problem internally.
 - (b) **Level 2:** If the project team cannot resolve the conflict within five (5) Business Days, the Contract Representatives will meet to resolve the issue.
 - (c) **Level 3:** If the conflict remains unresolved after Level 2, the issue can be escalated to the senior representatives of TOA and Vianet.
 - (d) **Level 4:** If the conflict remains unresolved after ten (10) Business Days following escalation to Level 3, the Dispute Resolution Process set out in Article 20.1(3) shall be used.
- (3) **Dispute Resolution.** This section sets out the process (the "**Dispute Resolution Process**") for resolving all Disputes, issues, controversies, and/or Claims arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, which remain outstanding after the process described in Article 20.1(2). Either Party may initiate the Dispute Resolution Process by sending a notice of a Dispute to the other Party. All Disputes shall be arbitrated and finally resolved, with no right of appeal, even on questions of law, pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. The place of arbitration shall be in Parry Sound, Ontario, Canada. The language of the arbitration shall be English. Notwithstanding anything contained in the Agreement to the contrary, either Party shall be entitled to seek injunctive or other equitable relief from a court of competent jurisdiction whenever the facts or circumstances would permit a Party to seek such relief. The Dispute Resolution Process may be conducted by any means of telecommunication mutually agreed to by the Parties.
- (4) During any Dispute Resolution Process, Vianet agrees to provide Services relating to items not in Dispute.

ARTICLE 21 **ASSIGNMENT**

21.1 Assignment by Vianet

Vianet will not assign, transfer, charge, dispose of, or otherwise alienate any interest in this Agreement or any agreement entered into in connection with this Agreement without the prior written consent of TOA, which consent may not be unreasonably withheld. Any attempt by Vianet to assign this Agreement or any of Vianet's rights, duties, liabilities, obligations, or interests under this Agreement without the prior written consent of TOA will be without effect.

21.2 Assignment by TOA

TOA may assign this Agreement, in whole or in part, without the consent of Vianet, but shall provide written notice to Vianet of any such assignment prior to the date of assignment.

21.3 Successors and Assigns

Subject to Article 21.1 and Article 21.2, all of the representations, warranties, covenants, obligations, rights, and agreements contained in this Agreement will be binding upon the Parties and their respective successors and permitted assigns and will enure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns pursuant to the terms and conditions of this Agreement.

ARTICLE 22 **GENERAL PROVISIONS**

22.1 Independent Contractors

Vianet will perform its obligations under this Agreement as an independent contractor of TOA. Nothing in this Agreement will be deemed to constitute Vianet and TOA as partners, joint venturers, or agents of the other Party. Vianet has no authority to represent TOA as to any matters or to

contract for or bind TOA in any manner and shall not represent itself as an agent of TOA or as otherwise authorized to act for or on behalf of TOA.

22.2 Entire Agreement.

This Agreement, all Schedules hereto, and all Exhibits attached thereto, and any written amendments made in accordance with the terms of this Agreement constitute the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, negotiations, understandings, and discussions, whether written or oral, of the Parties. There are no representations, warranties, or conditions including any that may be implied by statute, law, or equity, except as specifically set out in this Agreement.

22.3 Amendments

No modification or amendment of this Agreement will be binding unless made by Approved Change Order Request or other mutual written agreement that: (i) is executed in writing by the duly authorized representatives of all Parties; and (ii) expressly states that it is intended to modify or amend this Agreement.

22.4 Severability

If any provision contained in this Agreement or its application to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected, and each provision of this Agreement will be separately valid and enforceable to the fullest extent permitted by law.

22.5 Waiver

No waiver of any default, breach, or non-compliance under this Agreement will be effective unless in writing and signed by the Party to be bound by the waiver.

22.6 Survival

The provisions of Article 1 (Interpretation), Article 4.2 (Applicable Law), Article 4.3 (Regulatory Matters), Article 4.4 (Privacy and Freedom of Information Obligations), Article 6 (Intellectual Property), Article 8 (Privacy, Security, and Confidentiality), Article 14 (Representations and Warranties), Article 15 (Indemnification), Article 16 (Limitation of Liability), Article 18.4 (Effects of Termination), and Article 22 (General Provisions), including all Schedules referenced in the foregoing provisions, will survive the Termination Date, as applicable, including to the extent necessary or desirable for Vianet to provide Termination Assistance. In addition, any liabilities or obligations of either Party arising before termination of this Agreement or arising out of the events causing such termination, and any damages or other remedies to which a Party may be entitled under this Agreement, whether at law or in equity, arising from any breach of such obligations of a Party and any other provisions herein, the nature and intent of which is to survive termination of this Agreement, will survive and will not be affected by the expiration or termination of this Agreement.

22.7 Notices

(1) Addresses for Notice. Any notice, certificate, consent, determination, or other communication required or permitted to be given or made under this Agreement will be in writing and will be effectively given and made if: (i) delivered personally, (ii) sent by prepaid courier service, or (iii) sent by email or other similar means of recorded electronic communication with acknowledgement of receipt, in each case to the applicable address(es) set out below:

(a) in the case of TOA, addressed to it at:

Township of The Archipelago
9 James Street
Parry Sound, ON
P2A 1T4

Attention: Joe Villeneuve

Email: jvilleneuve@thearchipelago.on.ca

(b) in the case of Vianet, addressed to it, at:

128 Larch Street, Suite 201
Sudbury, ON P3E 5J8

Attention: Brian McCullagh, Director of Business Development, Business Solutions

Email: brian.mccullagh@vianet.ca

- (2) **Receipt of Notice.** Any such communication so given or made will be deemed to have been given or made and to have been received on the day of actual delivery thereof or, if sent by email or other similar means of recorded electronic communication, on the day acknowledgement of receipt is received, provided that such day in either event is a Business Day and the communication is so delivered or sent prior to 4:30 p.m. on such day. Otherwise, such communication will be deemed to have been given and made and to have been received on the next following Business Day.
- (3) **Change of Address.** Any Party may from time to time change its address under this Article by notice to the other Party given in the manner provided herein.

22.8 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended to confer upon any person (other than the Parties and their successors and permitted assigns, and the indemnified parties who are expressly indemnified pursuant to the provisions of this Agreement) any rights, benefits, or remedies of any kind or character whatsoever and no person will be deemed to be a third party beneficiary under or by reason of this Agreement.

22.9 Governing Law and Attornment

- (1) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and applicable federal laws of Canada. Vianet agrees that it will comply with the terms of this Agreement despite any conflicting laws of any jurisdiction outside of Canada.
- (2) The Parties irrevocably agree to and hereby accept and attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any and all claims that they may relate in any way to this Agreement and its renewal, non-renewal, or termination, and all Disputes relating hereto or arising hereunder.

22.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed in original, faxed, or electronic form and the Parties adopt any signatures so received as original signatures of the Parties; provided, however, that any Party providing its signature in such manner will promptly forward to the other Party an original of the signed copy of this Agreement.

- Signature page follows -

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date of this Agreement.

**THE CORPORATION OF THE TOWNSHIP OF THE
ARCHIPELAGO**

BY:

NAME:

TITLE:

DATE:

VIANET INC.

BY:

NAME:

TITLE:

DATE:

SCHEDULE A **DEFINITIONS**

"Acceptance" means as to any Test Component, Vianet's receipt of TOA's confirmation of Approval that such Test Component has satisfied the applicable acceptance criteria and specifications for the applicable Test Component.

"Affiliate" means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person will be deemed to **"control"** another person if such person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities, by contract, or otherwise; and the term **"controlled"** will have a similar meaning.

"Agreement" means this Agreement, together with all Schedules, Appendices, and other attachments attached hereto, as amended, restated, or supplemented from time to time.

"Applicable Law" means all applicable laws, including: (a) any constitution, treaty, statute, regulation, code (including building codes), ordinance, directive, principle of common law, rule, by-law (including municipal by-law), order, ruling, judgment, injunction, award, decree, or other requirement (including a requirement arising at common law) having the force of law of any Governmental Authority; (b) any policy, practice, protocol, directive, standard, guideline, or other requirement of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law; and (c) Privacy Law.

"Approved" or **"Approval"** means, with respect to any document, budget, or action to be taken, that such document, budget, or action has or requires the prior written approval of an authorized representative of TOA.

"Business Continuity Plan" has the meaning given to it in Article **Error! Reference source not found.**

"Business Day" means a day other than Saturday, Sunday, or a statutory holiday in Ontario, commencing at 8:30 a.m. and ending at 5:00 p.m., Eastern time, on any such day.

"Change" has the meaning given to it in Article 11.1(1).

"Change Order Request" has the meaning given to it in Article 11.2(1).

"Change Process" has the meaning given to it in Article 11.1(1).

"Change Order Response" has the meaning given to it in Article 11.2(2).

"Claim" has the meaning given to it in Article 15.1.

"Commodity Taxes" means all commodity taxes, including all sales, retail, use, goods and services, harmonized sales, value added, excise, and similar taxes imposed, levied, or assessed by any Governmental Authority, but excluding any taxes in the nature of a tax on income or capital.

"Confidential Information" means any information disclosed by either Party (the **"Disclosing Party"**) to the other Party (the **"Receiving Party"**), either directly or indirectly in writing, orally, or by inspection of tangible objects, that the Disclosing Party identifies as confidential or proprietary or that reasonably appears to be confidential or proprietary because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. Confidential Information shall not include any information which (i) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public without breach of its confidentiality obligations by the Receiving Party; (ii) was acquired by the Receiving Party without restriction as to use or disclosure before receiving such information from the Disclosing Party, as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iii) is obtained by the Receiving Party without restriction as to use or disclosure by a third party authorized to make such disclosure; or (iv) is independently developed by the Receiving Party without the use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession.

"Contract Representative" has the meaning given to it in Article 9.1.

"Dispute" has the meaning given to it in Article 20.1(1).

"Effective Date" has the meaning given to it on the first page of this Agreement.

"Encumbrance" means any lien, mortgage, charge, hypothec, pledge, security interest, prior assignment, option, warrant, lease, sublease, right to possession, encumbrance, claim, right, or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title, or interest in or to any particular property, including claims of any Governmental Authority.

"Fees" means the amounts payable in consideration of the Services as set out in any given SOW.

"Force Majeure Event" means the occurrence of an event or circumstance beyond the reasonable control of a Party. Force Majeure Events will include, without limitation: (i) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (ii) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion, or sabotage; (iii) acts of federal, state, provincial, local, or foreign governmental authorities or courts; (iv) epidemics, pandemics, quarantine restrictions; (v) labor disputes, lockouts, strikes, or other industrial action, whether direct or indirect and whether lawful or unlawful; (vi) failures or fluctuations in electrical power or Telecommunications service or equipment; and (vii) delays caused by the other Party or third party non-performance; which could not have been prevented by commercially reasonable business continuity and disaster recovery measures.

"Good Industry Practice" means using standards, practices, methods, and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill, care, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a qualified, skilled, and experienced service provider in Vianet's industry engaged in a similar type of undertaking in North America under the same or similar circumstances.

"Governmental Authority" means:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal, local, or other political jurisdiction (whether administrative, legislative, executive, or otherwise);
- (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, commission, board, or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial, or administrative powers or functions of, or pertaining to, government;
- (c) any court, commission, individual, arbitrator, arbitration panel, or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative, or similar functions;

in each case, whether now or in the future constituted or existing and having or purporting to have jurisdiction over a Party, any aspect of the performance of this Agreement, the Services, or the business that is the subject of the Services.

"Indemnitees" means the TOA Indemnitees and the Vianet Indemnitees (as defined in Article 15.1), as applicable.

"Intellectual Property" means discoveries, research, developments, designs, improvements, innovations, inventions, software, computer programs, and code of all types, layouts, interfaces, applications, tools, databases, hardware, methods, concepts, processes, works subject to copyright, trade-marks, and other technologies, works, and creations now existing or developed in the future, whether or not registered or registrable, patentable or non-patentable, or confidential or non-confidential.

"Intellectual Property Rights" means, in connection with a specified subject matter, on a worldwide basis:

- (a) all registered or unregistered trade-marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models, and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions, and continuations-in-part of such applications; and
- (b) all corrections, reissues, patents of addition, extensions, and renewals of any such grant, registration, or right.

"Losses" means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a full indemnity basis), proceedings, demands, and charges whether arising under statute, contract, or at common law.

"Materials" means materials, products, goods, machinery, devices, equipment, and fixtures forming the Services or any part thereof, but does not include Vianet Equipment.

"MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M56, as amended from time to time or superseded.

"Modification" means to add to, enhance, adapt, reduce, change, replace, update, upgrade, create fixes, or enhancements for, revise, transform, or improve, or to develop or create derivative works.

"Other Service Providers" has the meaning given to it in Article 3.2.

"Performance Schedule" means the timelines within any given SOW that Vianet shall perform the Services as specified in each SOW.

"Permits, Licenses, and Approvals" means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, and authorizations to be obtained by Vianet in accordance with this Agreement and as required by Applicable Law, and all necessary consents and agreements from any third parties needed to perform the Services in accordance with this Agreement.

"Personal Information" means all information captured by the definition of "personal information" contained in Privacy Laws, regardless of whether Privacy Laws are applicable to such information. All TOA Personal Information is Confidential Information.

"PIPEDA" means the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, as amended from time to time or superseded.

"Privacy Obligations" means the privacy obligations set out in this Agreement, including those set out in TOA Policies and those set out in Applicable Laws.

"Privacy Laws" means PIPEDA, MFIPPA, and any other applicable Canadian, federal, provincial, or other Governmental Authority personal information protection legislation, as from time to time enacted or amended.

"Proposal" means the document submitted by Vianet regarding the Pointe au Baril Project and attached hereto as Schedule D.

"Regulatory Requirements" has the meaning given to it in Article 4.3(1).

"Services" means, collectively, all of the functions, responsibilities, obligations, tasks, and services performed or to be performed by Vianet for TOA under this Agreement. For clarity, "Services" does not include the commercial services offered by Vianet to its general customer base.

"Site" means the TOA location(s) where the Services are to be performed by Vianet, as set out in each Statement of Work or as defined in the Lease Agreement.

"SOW Term" means, in a Statement of Work, the SOW effective date, the initial term of the Statement of Work, and any terms and conditions relating to the renewal of the Statement of Work.

"Statement of Work" or **"SOW"** means the mutually agreed upon plan and delineation of activities, events, and Services to be performed by Vianet pursuant to this Agreement.

"Subcontract" means a contract entered into between Vianet and a Subcontractor.

"Subcontractor" means a person that Vianet engages to perform certain Services that Vianet is responsible for performing.

"Tariffs" means the rates, terms, and conditions relating to a Service of Vianet that is regulated by a Telecommunications Regulator.

"Taxes" means any and all taxes, fees, levies, or other assessments, including federal, provincial, local, or foreign income, capital, profits, excise, real or personal property, sales, retail, use, goods and services,

harmonized sales, value added, and withholding, together with any interest, penalties, fines, or additions to tax and additional amounts imposed with respect thereto (including any fee or assessment or other charge in the nature of or in lieu of any tax) in each case, whether imposed by law or otherwise, and any liability in respect of any tax as a result of being a member of any affiliated, consolidated, combined, unitary, or similar group.

"Telecommunications" means the emission, transmission, or reception of intelligence by any wire, cable, radio, optical, or other electromagnetic system, or by any similar technical system.

"Telecommunications Regulator" means any Governmental Authority which, pursuant to Applicable Law, customs, or practice regulates, monitors, or oversees Telecommunications in any country in which the Services are performed, including the Canadian Radio-television and Telecommunications Commission (Canada) or any replacement, substitute, or successor thereof.

"Term" has the meaning given to it in Article **Error! Reference source not found.**, and includes the Transition Out Period. Upon any renewal of this Agreement all references to "Term" will mean the Term as renewed.

"Terminated Services" means: (a) if this Agreement has expired or been terminated, all Services being provided under this Agreement on the Termination Date; or (b) if a Service has been terminated (as a result of Termination of this Agreement), the terminated Service.

"Termination Assistance" has the meaning given to it in Article 3.3.

"Termination Date" means, with respect to the termination of this Agreement or a Service (as a result of Termination of this Agreement), the effective date of termination or expiry of this Agreement or the Service, which in the case of expiry, is the last day of the Term, or in the case of termination, is the day upon which this Agreement or the Service, as applicable, is terminated pursuant to Article 18 or any other termination right under this Agreement.

"Termination Notice" means a written notice terminating this Agreement, in whole or in part, given by one Party to the other in accordance with this Agreement.

"Test Component" means any Service or part of a Service, which is subject to user Acceptance testing in accordance with this Agreement.

"Transition Out" has the meaning given to it in Schedule B.

"Transition Out Period" has the meaning given to it in Schedule B.

"Transition Out Plan" means an Approved transition-out plan developed by Vianet in accordance with Schedule B.

"TOA Information" means any and all information relating to TOA, its business, assets, operations, any staff of TOA, or any Other Service Provider of TOA that:

(c) was provided, collected, or generated as part of the provision of the Services or in order to comply with any Applicable Law; or

(d) otherwise became known to either Party as a result of the provision by Vianet of the Services, including all TOA records, all TOA Personal Information, and all other TOA Confidential Information.

"TOA Data" shall include: (a) TOA's data collected, used, processed, stored, created, derived, generated, or otherwise placed in the custody or control of Vianet in connection with or as the result of the use of the Services; and (b) TOA Personal Information collected, used, processed, stored, or generated in connection with or as the result of the use of the Services, including, without limitation, any information that identifies an individual, such as a government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, an individual's name in combination with any other of the elements listed herein, or contact information.

"TOA Policies" means the requirements, regulations, codes, policies, procedures, and standards of TOA listed in Schedule C, and any additional requirements, policies, procedures, and standards of TOA otherwise communicated to Vianet by TOA, as such requirements, policies, procedures, and standards

may be amended, restated, or replaced from time to time by TOA.

"TOA Works" has the meaning given to it in Article 6.1(1)(1).

"Vianet Equipment" means all tools, machinery, and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the Services but is not incorporated into the Services.

"Vianet Personnel" means individuals (including all relevant grades of supervisory staff) employed by, engaged as independent contractors, or otherwise engaged by Vianet in the provision of the Services, or such individuals when employed by or engaged by a Subcontractor in the provision of the Services.

SCHEDULE B
TERMINATION ASSISTANCE

Upon receipt by Vianet of notice from the TOA requesting that Vianet commence the provision of Termination Assistance, Vianet will provide the Termination Assistance set out in this Schedule B for the Transition Out Period.

1. Transition Out Period

- (1) The "**Transition Out Period**" for this Agreement or any SOW shall commence on the first to occur of: (i) delivery of a Termination Notice for the applicable Services; and (ii) delivery of a notice from TOA to Vianet setting out the start date of the Transition Out Period, which notice shall not be delivered earlier than twelve (12) months before the expiration of the Term or later than the end of the Term or SOW Term. The Transition Out Period shall end on the earlier of completion of the Transition Out Plan or twelve (12) months after the completion of the Term or the SOW Termination Date, unless extended in accordance with Section 1(2) of this Schedule below.
- (2) TOA may elect by notice in writing delivered to Vianet at least sixty (60) days prior to the end of the Transition Out Period, to extend any applicable Transition Out Period by up to six (6) months.

2. Transition Out Planning

- (1) Preparation of Transition Out Plan. After Vianet has received notice referred to above, Vianet will make available Vianet Personnel to work with TOA to develop a detailed plan for: (i) the cessation or wind-down of any Services; or (ii) the transition by or for TOA from any Service to a new, alternative service to be provided by or for TOA (the plan for which being the "**Transition Out Plan**", and the activity of transitioning being the "**Transition Out**"). The Transition Out Plan will include, as applicable, detailed requirements relating to the following:
 - (a) a governance structure for Transition Out;
 - (b) Vianet Personnel that will be responsible for the performance of the obligations set out in the Transition Out Plan, along with each such Vianet Personnel's role and responsibilities;
 - (c) a plan and timeline for the performance of all Termination Assistance to be performed by Vianet as part of the Transition Out, including a list of all activities to be performed by Vianet and any Designee assigned to take over the Services, with Vianet Personnel and Designee resources assigned to each activity;
 - (d) the steps to be taken by Vianet to retain Vianet Personnel required to perform the Services and the Termination Assistance until the end of the Transition Out Period;
 - (e) the steps that Vianet is required to take with respect to the return of TOA Data (or its destruction, at the TOA's option), including the processes, methodologies, timing, form, and format requirements therefor;
 - (f) details relating to the transfer to TOA or to Designee of any hardware, or the licensing to TOA or to Designee of any software, required for the Transition Out;
 - (g) details relating to any incremental reporting to be provided as part of the Termination Assistance, including reporting with respect to the status of the Transition Out (e.g. work completed to date); and
 - (h) details relating to the delivery by Vianet to TOA of any final documentation and information provided by Vianet in accordance with Section 2(2) below.
- (2) Delivery of Documentation and Information Relating to the Services. At TOA's request and at no charge to the TOA, Vianet will prepare and deliver to TOA the following

documentation and information relating to the Services, in a form and format reasonably requested by TOA:

- (a) a current listing and status of all Subcontracts relating to the Services, if any;
- (b) any user manuals, user guides, operations manuals, and training materials with respect to the Services;
- (c) a consolidated, up-to-date description of the Services that reflects all Change Orders and Modifications;
- (d) all TOA Data or other TOA property in the possession or control of Vianet (whether in tangible or intangible form) and all other TOA Data relating to the Services; and
- (e) detailed lists, descriptions, and details of all Services which are then being provided (including volumes, up-to-date process maps, workflow charts, and other available policy and procedure documentation), technical information, and technical descriptive documentation including run books and libraries, schemas and network diagrams, engineering and design work, and documentation of current configurations.

3. Continued Provision of Services During Transition Out Period

Vianet will continue to provide the Services and perform its other obligations under this Agreement until the end of the applicable Transition Out Period, for the Fees set out in the Agreement.

4. Implementation of Transition Out Plan

In addition to performing its obligations set out in the Transition Out Plan, Vianet will: (a) ensure that all then-current Vianet Personnel identified in the Transition Out Plan are available to the extent specified or as otherwise required to enable Vianet to perform the Termination Assistance; and (b) cooperate, coordinate with, and assist any Designee with the Transition Out in the same manner that Vianet would be required to do such things directly for or with TOA in accordance with this Schedule B.

5. Additional Termination Assistance

On a time and materials basis, or as otherwise agreed, Vianet will perform the following additional Termination Assistance:

- (1) Vianet will provide to TOA or to Designee such technical and operational support, and other assistance as set out in the Transition Out Plan.
- (2) Vianet will cooperate with TOA to reduce the potential transfer fees or Taxes associated with the performance of the Termination Assistance and the implementation of the Transition Out Plan, and conduct such Termination Assistance implementation in an efficient manner.

6. Fees for Termination Assistance

Fees payable by TOA in respect of the provision of Termination Assistance by Vianet will be set out in the applicable Transition Out Plan, unless otherwise indicated above.

7. Equitable Remedies

Vianet acknowledges that TOA will be irreparably harmed if Vianet breaches (or attempts or threatens to breach) its obligation to provide Termination Assistance to TOA in accordance with and pursuant to the terms of the Agreement. In such event, TOA may proceed directly to a court of competent jurisdiction without having to exhaust or utilize the dispute resolution procedures set out in Article 20 of the Agreement. If such court finds that Vianet has breached (or attempted or threatened to breach) any such obligations, Vianet will not, without any additional findings of irreparable injury or other conditions to injunctive relief, oppose the entry of an appropriate order compelling performance by Vianet and restraining it from any further breaches (or attempted or threatened breaches).

SCHEDULE C
CHANGE ORDER TEMPLATE

CHANGE ORDER REQUEST FORM			
Change Order Request Form		Reference Number:	
Part A: Initiation (Identify any attachments as A1, A2, A3, etc.)			
Change Order Request Title			
Name of Initiator			Contact Information
Business Organization Initiating Change Order Request			Contact Information
Timeline			
Initiation Date			
Priority (Urgent, Moderate Ordinary) ¹			
Description of Proposed Change			
Authorized by TOA		Received by Vianet	
Name		Name	
Signature		Signature	
Date		Date	
Name		Name	
Signature		Signature	
Date		Date	

¹ Include any requested or required completion dates for the implementation of the Change or dates for Vianet to respond to the Change Order Request Form.

CHANGE ORDER RESPONSE			
Change Order Request		Reference Number:	
Part B : Vianet Response (Identify any attachment as B1, B2, B3, etc.)			
Name of Vianet Contact		Contact Information	
Specifications for Proposed Change ²			
Change Schedule ³			
Initiation Date			
Expected Completion Date			
Services or Other Items Required from TOA ⁴			
Impact ⁵			

² Include the specifications (e.g. for hardware and software) for the Change and a description of how the proposed Change will be implemented.

³ Provide a description of when the proposed Change will be implemented, including a schedule for the implementation of the Change.

⁴ Describe any services, hardware, software, assistance, information, or other items required from TOA or any Other Service Provider, including a schedule for a provision of the required items.

⁵ Describe the potential business effect or impact, if any, of implementing the proposed Change, including any changes on the ability of Vianet to perform its contractual obligations, including any effect on the scope of Services being provided to TOA.

Risk Analysis and Mitigation Plans⁶			
Fees/Credits⁷			
Amendments to SPA Agreement⁸			
Other Relevant Information			
Authorized by Vianet		Approved by TOA	
Name		Name	
Signature		Signature	
Date		Date	
Name		Name	
Signature		Signature	
Date		Date	

⁶ Provide an analysis of the risk, if any, that implementation of the proposed Change would interfere with the Services or operations of TOA. Include any associated contingency or risk mitigation plans.

⁷ Describe any fees/credits that Vianet proposes to charge/credit TOA for implementing the Change. Indicate whether the fee will be: (i) a one-time fee; (ii) an ongoing fee; (iii) a subcontractor pass through fee; (iv) a termination for convenience fee.

⁸ Identify specific amendments to any terms or conditions in the Agreement as a result of the Change.

SCHEDULE D
PROPOSAL

Schedule D is attached at the end of the agreement

SCHEDULE E
LETTER OF INTENT

Letter of Intent is attached at the end of the agreement

SCHEDULE F

VIANET ACCEPTABLE USE POLICY

Introduction

Vianet and its various affiliates and subsidiaries (collectively "we", "us", "our") are committed to being responsible network citizens. To assist us in protecting the usefulness and enjoyment of the internet, you agree to abide by the terms of this Acceptable Use Policy (the "AUP"). Any violation of this AUP will constitute a violation of the terms of the Terms and Conditions of Service ("Terms of Service"), which may be viewed here in English and here in French and form part of your End-User Service Agreement ("Agreement") with us, and such violation may result in the termination of such Agreement and/or suspension of your Service thereunder.

IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF SERVICE and THIS AUP, AS AMENDED FROM TIME TO TIME, YOU SHOULD IMMEDIATELY STOP USING THE SERVICES and NOTIFY VIANET THAT YOU ARE TERMINATING THE SERVICES.

General

Your Service is solely for your personal use; without limitation, you may not use the Service or any equipment provided in connection with the Service for operation of an internet service provider's business. You may also not use it for any commercial purpose, unless specifically authorized pursuant to a written agreement between us and you, and where such authorization exists, the commercial use must conform to all of the terms of any such agreement.

Harassing or abusive language or actions, whether verbal, written or otherwise, of our employees, suppliers, agents and representatives is strictly prohibited and will not be tolerated.

You are prohibited from using the Service for activities that include, but are not limited to:

- Invading another person's privacy;
- Access or attempt to access any internet host, computer, software or data belonging to any other person without that person's authorization, or use any tools designed to facilitate such access, such as "packet sniffers";
- Transmitting unsolicited messages that, in our sole judgment, cause significant disruption or elicit complaints from other internet users.
- Restricting or inhibiting any other user from using or enjoying the internet, impairing the operations or efficiency of the Service or creating an unusually large burden on our networks.
- Exceeding any bandwidth or data storage caps or other limitations of the Service or any applicable and lawful requirement imposed by another provider of telecommunications services providing underlying high-speed, internet or other services to us.
- Harassing users or groups in any way including but not limited to defaming, abusing, stalking, threatening or otherwise violating the legal rights of others.
- Impersonating other subscribers of ours or of other internet service providers or any other person or entity in any way, or engaging in any other fraudulent activities, including but not limited to, forging anyone's digital or manual signature.
- Uploading or downloading, transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to information, software, files or other material that: (i) are protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) are defamatory, obscene, child pornography or hate literature; (iii) constitute invasion of privacy, appropriation of personality, or unauthorized linking or framing; or (iv) are otherwise unlawful.
- Falsifying or deleting any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file.
- Transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any files, programs or information designed to assist

users in defeating copy-protection, registration and any other anti-theft mechanisms associated with commercial or shareware programs.

- Transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any files, programs or information (including, without limitations, guessing programs, cracking tools or network probing tools) designed to assist users in compromising the security of the Service, our network or telecommunications services.
- Transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any files, programs or information designed to assist in the fraudulent use of telecommunications services.
- Interfering with computer networking or telecommunications systems and/or service to or from any internet user, host, server or network, including but not limited to compromising the security of or tampering with system resources or accounts, denial of service attacks, overloading a service, improper seizure and abuse of operator privileges ("hacking") or attempting to "crash" a host, disrupting sessions of other internet users or consuming excessive amounts of central processing unit time, memory or disk space;
- Using an internet host's resources in a manner which is not authorized by its administrators. This includes mail relaying, transmitting chain letters, make-money-fast or pyramid style schemes of any sort.
- Posting or transmitting any information or software which contains a virus, "cancelbot", "trojan horse", "worm" or other harmful or disruptive component.
- Unless you have purchased Services that are specifically designed and authorized to support such functionalities, operating a server in connection with the Services including but not limited to mail, news, file, gopher, telnet, chat, web, or host configuration servers, multimedia streamers, or multi-user interactive forums.
- Reselling any of the Services or using the Services other than for your own personal purposes. Without limiting the foregoing, you agree that you will not use the Services to provide internet access or any other feature of the Services to any third party.
- Transmitting, posting, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to any program or information constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability.
- Violating or breaching any applicable laws and/or regulations.

Electronic Mail

Our email service, as further described in your Agreement, is for your personal use. You may not sublicense, distribute, transfer, or sell the email service or any portion thereof.

You agree to use the email service only to send and receive messages and material that are proper. In addition to the general terms set out above, and by way of example, and not as a limitation, you agree that when using the email service, you will not:

- Use such service in connection with pyramid schemes, spamming or any unsolicited messages (commercial or otherwise).
- Restrict or inhibit any other user from using or enjoying such service.
- Create a false identity for the purpose of misleading others or forge the headers of your email messages in any way.
- Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of such service or other user or usage information or any portion thereof.
- Promote or facilitate the transmission of unsolicited email messages.
- Attach an excessively long signature to your messages.
- Send messages to disrupt or cause difficulties in receiving other email.
- In the event that you maintain one or more bulk "opt-in" email lists, you must have a method of confirmation of subscriptions and be able to provide such information when requested by us. At our discretion, if no such evidence is available, such bulk emailings may be considered unsolicited.
- We reserve the right, in our sole discretion, to set an upper limit on the number of recipients of customer initiated email, the number of subscribers on a customer's bulk "opt-in" email lists, and the number of messages a customer may send or receive through our email service.

- Neither we nor any of our suppliers have any obligation to monitor the email service. However, we and our suppliers reserve the right to review materials sent through such service, and to remove any materials in our/their sole discretion. We, in our sole discretion, may terminate your access to the email service at any time, without notice.
- We, and our suppliers, reserve the right at all times to disclose any information as we/they, in our/their sole discretion, deem necessary to satisfy any applicable law, regulation, legal process or governmental request. We and our suppliers further reserve the right at all times to edit, refuse to post or to remove any information or materials, in whole or in part, in our/their sole discretion.

Newsgroups / Discussion Forums

In addition to the general terms set out above, while posting to newsgroups or any other discussion forum, you are prohibited from conducting activities that include, but are not limited to:

- Posting advertisements, commercial or unsolicited messages of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum.
- Posting binary or excessively large files of any kind, unless expressly permitted by the charter or FAQ of the applicable newsgroup or discussion forum.
- Posting substantially identical messages to more than ten newsgroups.
- Attaching an excessively long signature to your messages.
- Forging the headers of your postings in any way.
- Newsgroup and forum postings must comply with each newsgroup's or discussion forum's respective charter or FAQ.

Internet Relay Chat / Chat

In addition to the general terms set out above, while using IRC or any other chat service, you are prohibited from conducting activities that include, but are not limited to:

- Sending messages that include advertisements or commercial content of any kind in an unsolicited matter.
- Attempting a "denial of service" attack either automated via a bot or conducted manually.
- Additionally, while using an IRC Server or any other chat service, you must be in full compliance with the rules and regulations set out by the server administrator.

Network / Security

In addition to the general terms set out above, you are prohibited from using the Service for activities that include, but are not limited to:

- Sharing of your Account userid(s) and password(s) for the purpose of concurrent login sessions from the same Account.
- Causing an internet host to become unable to effectively service requests from other hosts.
- Analyzing or penetrating an internet host's security mechanisms.
- Forging any part of the TCP/IP packet headers in any way.
- Committing any act that may compromise the security of your internet host in any way.
- As further set out in your Agreement, you are solely responsible for the security of your system and Account. We will offer full co-operation with law enforcement agencies in connection with any investigation arising from a breach of this AUP.
- In the event that numerous complaints are received by our staff in regards to any breaches of this AUP, at our discretion a processing fee per complaint received, in addition to an administration fee, may be applied to your Account. This remedy is in addition to any other remedy that we may apply for any single or repeated complaints or while we are investigating any such complaint(s), and such additional remedies may include, without limitation, suspension or termination of the provision of the Service or any part thereof to you and/or terminating the Agreement, which may be done at any time and without prior notice to you.

Miscellaneous

We may at any time and from time to time amend this AUP by posting notice of the amended AUP on our website(s) or by sending you notice via email to the primary email account associated with your Account,

2020

Shovel-Ready Broadband Project

Pointe au Baril, Ontario

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Page 6:	Contacts

This project has been developed and is submitted by Vianet Inc. and the WPS SMART Community Network Inc. The project is enabled by the CENG pilot in Carling Township. The pilot project contemplated expansion of internet through similar projects. This Shovel-Ready project has been submitted to CENG as well who have agreed to pass it on to Federal and Provincial Governments in anticipation of attracting funding.

CONFIDENTIAL DOCUMENT

This document contains confidential budgetary and scheduling details on a shovel-ready broadband project, including the name of the corresponding technology company proposing the project. These details are only for limited internal distribution and are not intended for public disclosure or release without the explicit written permission of CENG and the technology company proposing the project.

Introduction

CENGN is Canada's Centre of Excellence in Next Generation Networks. CENGN's mission is to drive technology innovation and industry growth through our test beds, technical expertise, talent development, and partner ecosystem, to enable economic strength and prosperity as well as innovation and competitiveness for Canada in the high-growth global multi-trillion dollar Information and Communications Technology (ICT) industry.

Part of CENGN's mandate is to fund broadband access projects that promote technology and business innovation and define blueprints to reduce broadband costs, provide greater access coverage, and improve broadband performance for rural and northern communities. CENGN is working to drive at least 8 residential broadband projects over the next 2 years that will solve real technology challenges and help northern and rural communities get high-quality, high-performance broadband access. The organization currently has 3 northern and 2 rural projects underway scheduled to be rolling out in 2020.

One of these projects is in Carling Township, Ontario, near Parry Sound, where CENGN is working with Vianet, a Wireless Internet Service Provider (WISP) headquartered in Sudbury, Ontario. Vianet have put together a highly innovative hybrid fixed wireless and Fibre-to-the Home (FTTH) broadband project for Carling township, a community of about 250 homes within the West Parry Sound region north of Parry Sound on Georgian Bay. This community was selected as a host community for a project that included a number of technology innovations including:

- 85% cost saving for broadband point-of-presence extension using 15GHz licensed microwave radio link instead of 25km fibre optic terrestrial link
- 4 km of FTTH to avoid fixed wireless performance challenges issues due to dense forest
- Plowing fibre conduit into road shoulders instead of hanging on poles to reduce costs and reduce installation times

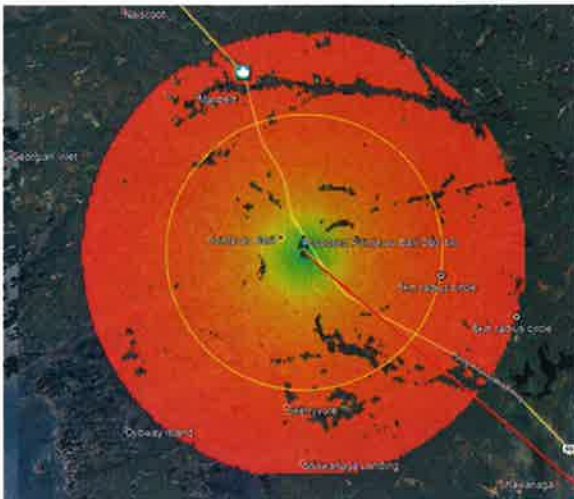
There is a nearby community called Pointe au Baril, north of Parry Sound, where the same technology solution will be used to provide local internet access services with backhaul connection to the new tower at PSAIP. This project could be started as early as July or August of 2020 if support funding is available.

Project Overview

There are 6 underserved municipalities within the West Parry Sound area, the Township of Archipelago, Carling Township, the Municipality of Whitestone, the Municipality of McDougall, McKellar Township, and Seguin Township. All are severely underserved when it comes to broadband services. Point au Baril is 42.6 km north of the Town of Parry Sound. The Township of Archipelago has recently invested \$250,000 for acquisition of the existing 270' tower (referred to as the SMART tower) located in the Town of Parry Sound. Archipelago has made this tower available for the benefit of the West Parry Sound community and to WPS SMART for internet distribution projects such as CENGN's project in Carling.



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The hamlet of Pointe au Baril has over 50 permanent residences, with an additional 600+ seasonal residences within an 8 km radius. The seasonal residences will be candidates for the fixed wireless solution. Many of these residences are prepared to build small towers if required to enable a line-of-sight signal.

Proposed Budget

Description	Quantity	Unit Cost	Pointe au Baril, ON	Comments
Tower & Radio Equipment Costing				
Site/POP setup	1	\$ 75,052.00	\$ 75,052.00	
Towers/mounts/cabling	1	\$ 185,000.00	\$ 185,000.00	
Antennae	1	\$ 8,000.00	\$ 8,000.00	
Radios/maint. Sparing	1	\$ 21,820.00	\$ 21,820.00	
Shipping/Transportation	1	\$ 10,736.00	\$ 10,736.00	
Tower and Shed Subtotal			\$ 300,608.00	
Fibre Ring or Distribution Costs				
Installation and Fibre Costs			\$ -	
FWA Subtotal			\$ -	
FTTH Equipment				
Fibre Distribution Equipment			\$0.00	
Customer Fibre ONT box			\$ -	
FTTH Subtotal			\$ -	
Engineering, Network Design, and Installation Charges				
Labour/install/engineering	1	\$ 53,680.00	\$ 53,680.00	
Engineering, Network Design, and Support Subtotal			\$ 53,680.00	
Project Total			\$ 354,288.00	

Confidential

Proposed Installation Schedule.

Description	Start Date	End Date	Comments
Transport Canada/NavCan applications	Jun 15/20	Aug 21/20	Risk: long process (twr lighting)
Funding application/secured	Jun 15/20	Jul 31/20	Risk: approval lead-time
ISED Public Consultation	Aug 4/20	Oct 5/20	Risk, unknown complaints/municipal issues
Site clearing prep completed/site accessible	Aug 4/20	Aug 14/20	Critical re: soils study access
Site Soils Study ordered/drilling/report issued	Aug 4/20	Aug 21/20	Risk: drill truck availability
Tower specified (based on soils study)/ordered	Aug 24/20	Aug 28/20	Risk: soils study scheduling
Equipment specified/ordered	Aug 4/20	Aug 7/20	Usually delivery not a problem
Site shelter/electrical install	Aug 17/20	Sep 4/20	Risk: Hydro One process
Tower foundation install	Sep 28/20	Oct 2/20	Risk: tower provider scheduling
Tower installation	Oct 5/20	Oct 9/20	Risk: tower provider scheduling
Radio/router, etc. equipment installation	Oct 13/20	Oct 16/20	Risk: Vianet tech scheduling
Final commissioning & verification	Oct 19/20	Oct 23/20	Risk: Vianet tech scheduling
CPE Equipment Installation	Oct 26/20	Nov 6/20	Risk: Vianet tech scheduling

Technology Partner

Vianet Inc., the technology partner designing & installing the Carling and proposed PSAIP solution, is also interested in extending that network to Pointe au Baril if additional support funding is made available from a government source.

Summary

The Pointe au Baril project is currently unfunded, but available as a fast shovel-ready fully-defined and understood project. This community is desperate for improved broadband services as their existing services are very marginal at best.

This proposed project is intended to provide broadband service via fibre optic cable to more than 50 permanent homes in the community of Pointe au Baril, with an additional 600+ seasonal residences within an 8 km radius that could

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receive Vianet Inc. fixed wireless service, with speeds of up to 50 Mbps download and 10 Mbps upload. Many of the present waterfront/seasonal residents attempt to run their businesses from late spring to autumn but are severely limited due to the poor and costly internet service currently available. This project is intended to address this problem.

Vianet Inc. is willing to move forward with this project, based on a 50/50 split of project costs with a government funding agency, starting this summer (2020).

For More Information

Please direct any questions with respect to this project to either of the following contacts:

Brian McCullagh
Director of Business Development
Vianet Inc.
brian.mccullagh@vianet.ca
1-705-222-9996x5259

Lis McWalter
Chair
West Parry Sound Community Network Inc.
lis@smartnow.ca
1-416-402-4190

Confidential

CONFIDENTIAL LETTER OF INTENT

October 9, 2020

Vianet Inc.

128 Larch Street, Suite 502

Sudbury, ON P3E 5J8

Attention: Brian McCullagh, Director of Business Development, Business Solutions

Email: brian.mccullagh@vianet.ca

Telephone: 705-222-9996 (ext. 5259)

Re: Pointe au Baril Shovel-Ready Project ("Project")

This Letter of Intent ("LOI") sets out the provisions relating to the Project.

Vianet Inc. ("**Vianet**") agrees to provide the infrastructure and services to the Township of Archipelago ("**TOA**" or "**Township**"), as set out in the "2020 Pointe au Baril Shovel-Ready Project Pointe au Baril, Ontario" proposal, attached as Appendix A to this LOI ("**Pointe au Baril Proposal**"), and the "2020 Shovel-Ready Broadband Project Parry Sound Area Industrial Park, Ontario" proposal, attached as Appendix B to this LOI ("**Industrial Park Proposal**") (collectively, the "**Proposals**"). This LOI will be deemed to incorporate by reference the terms and conditions of the Proposals, except to the extent otherwise expressly stated. The parties agree that in the event of any conflict between the terms and conditions of this LOI and the Proposals, the terms and conditions of this LOI shall govern with respect to such conflict.

This LOI is intended to constitute a letter of intent only. The parties agree to negotiate, in good faith, toward the completion and signing of one or more definitive agreements to fulfill the objectives set out in the Proposals with respect to the Project (individually, a "**Definitive Agreement**"; collectively, the "**Definitive Agreements**"). Any Definitive Agreement contemplated by this LOI will also contain terms, conditions, representations, and warranties that are customary for agreements of this nature.

This LOI expresses an intention to enter into a Definitive Agreement but is not itself an enforceable agreement, nor shall it be relied on to create binding obligations or liabilities on the part of either party or their respective officers, employees, or agents.

A. Business Agreement Terms

The following provisions apply only to the tower at Pointe au Baril ("**Pointe au Baril Tower**"):

1. **Tower Maintenance and Ownership.** Vianet will own and operate the Pointe au Baril Tower. Vianet will build the Pointe au Baril Tower and share 50% of the construction cost with the Township, subject to paragraph 7. Vianet will maintain and manage the Pointe au Baril Tower at its own expense for the life of the tower, including all costs to maintain the tower to be compliant with all applicable laws, including Federal, Provincial, and Municipal standards.
2. **Lease and Land Ownership.** The Township will own the land on which the Pointe au Baril Tower is built. The Township will lease the land to Vianet at commercially reasonable rates (approximately \$2,000/month for twenty years), subject to the following. The Township will waive the lease fee to Vianet in exchange for meeting the conditions and providing the consideration set out in this LOI, including providing the services described in paragraph 6 and paragraph 3. This exchange of the waiver for services, or adherence to the conditions, will be evaluated by the Township on an annual basis and, in the event that the Township determines that the conditions are not met, the lease fee will be owed by Vianet to the Township, on reasonable notice to Vianet. If the Township desires to obtain services described in paragraph 6 from a different service provider than Vianet, the Township will waive the lease fee to Vianet.
3. **Timing and Quality of Service.** Vianet will, as soon as commercially reasonable following the completion of the Pointe au Baril Tower's construction, commence offering fixed wireless service to commercial and residential customers that are reachable from the Pointe au Baril Tower, within at least an 8km radius of the Pointe au Baril Tower. Vianet will deliver the quality of service under the same conditions of

installation and support that Vianet now delivers to its other 35,000 customers across Ontario and in accordance with the provisions in their subscriber agreements. Vianet will offer subscribers three options: (i) 10Mbps Down/2Mbps Up, (ii) 25Mbps Down/2Mbps Up, or (iii) 50Mbps Down/10Mbps Up, at rates that are the same or less than Vianet's posted fixed wireless or similar service rates across Ontario, and which are, in any event, competitive rates. Vianet will offer services that are in compliance with all applicable laws, including CRTC, Federal, and Provincial guidelines as they change over time.

4. **Responsibility to Upgrade.** Vianet will upgrade at their expense the equipment as needed to deliver the best service available to its customers and aligned with CRTC's broadband standards.
5. **Open Access to Other Carriers.** Vianet does presently have open access and is obligated to make the Pointe au Baril Tower open access to other carriers (i.e. will offer space on the Pointe au Baril Tower), on commercially reasonable terms, and as is Vianet's standard practice, will sell bandwidth to other carriers. Vianet will provide the TOA their Internet Service Provider ("ISP") open access policy and procedure for evaluating ISP proposals.
6. **Free Service for TOA Facilities.** Vianet will give to the TOA free internet service and managed WiFi service to the following TOA facilities, in an amount and of a quality that is necessary to meet the needs of the Township: Nursing Station, Community Centre, Transfer station, and TOA Chamber of Commerce building on Hwy 69. The cost sharing of the internet service equipment inside the TOA facilities will be determined by the parties upon mutual agreement.
7. **Construction Cost.** The Township will contribute 50% of the construction cost for the Pointe au Baril Tower, up to a maximum of \$177,144, on the understanding that the Township in no way acquires any ownership in the Pointe au Baril Tower or in any future revenue stream derived from the Pointe au Baril Tower. The Township will contribute up to a maximum of \$78,000, of the construction cost for the Industrial Park Tower, on the understanding that the Township in no way acquires any ownership in the Industrial Park Tower or in any future revenue stream derived from the Industrial Park Tower. In the event that the construction costs exceed the caps set out above, Vianet will be responsible for all such excess costs. This contribution is specific to the Pointe au Baril Tower and the Industrial Park Tower.
8. **Payment & Invoicing.** Vianet will invoice the Township from time to time based on actual costs incurred under the Project, subject to: (a) the cap set out in paragraph 7; and (b) a small percentage (less than 10%) holdback amount (to be determined by the Township) which will be paid to Vianet on completion and Acceptance (defined below) of the Project. Vianet will provide supporting documentation along with the invoices, or any additional documents requested by the TOA, as proof of costs incurred under the Project. Amounts invoiced to the TOA will be payable to Vianet within thirty (30) days of the date the TOA receives an invoice from Vianet that complies with this paragraph 8. "**Acceptance**" of the Project occurs when: (i) internet service is made available to commercial and residential customers that are reachable from the Pointe au Baril Tower, in accordance with the terms and conditions set out in this LOI and any other Acceptance criteria that may be agreed upon by the parties; and (ii) the Township validates that the internet services satisfy the applicable Acceptance criteria, if any, and the agreed to specifications, by providing its Acceptance to Vianet in writing.
9. **Public Consultation.** Vianet will conduct all necessary public consultation meetings to meet its requirements under all applicable laws, including any Industry Canada requirements.
10. **Project Timeline.** Vianet will give its best efforts to complete the Project in accordance with the timeline provided in the Pointe au Baril Proposal.
11. **Monthly Status Meetings.** Vianet agrees to participate in monthly status meetings with the Township as arranged and hosted by WPS SMART. Vianet agrees to provide to the Township all information reasonably required by the Township, in relation to the Project and the services provided by Vianet at the Pointe au Baril Tower.
12. **Industrial Park Tower:** This LOI is contingent upon an agreement being reached between Vianet and the Industrial Park Tower board to move forward with the construction of a tower of sufficient height in Carling that will support the backhaul to the Pointe au Baril Tower.

The following provisions apply only to the tower at Carling ("Industrial Park Tower"):

13. **Construction Cost.** The construction costs for the Industrial Park Tower are set out in paragraph 7 of this LOI and will be subject to the same conditions set out in paragraphs 8 to 11.
14. **Industrial Park Tower Line of Sight.** The TOA will contribute to the construction of the Industrial Park

Tower in Carling, in accordance with paragraph 13. Vianet will be responsible for ensuring that the Industrial Park Tower provides a line of sight to the TOA Pointe au Baril Tower and that it backhauls to the WPS SMART tower via the Carling tower.

15. **Industrial Park Tower Height.** It is understood and the parties agree that back haul for this Project and select others may be established from the Industrial Park Tower located in the Carling Township. The TOA is contributing to the Industrial Park Tower to ensure the height can service the Pointe au Baril Tower.
 - a. The additional height will enable a fixed wireless service that otherwise would not be available to residents in Carling and McDougall.
 - b. The additional height may facilitate future hop and drop to easterly municipalities of McKeller and Whitestone.

The following provisions apply only to the SMART Tower:

16. **SMART Tower Services.** It is understood and the parties agree that back haul for this Project and select others will be established from the tower located at Tower Hill on George Street in Parry Sound, Ontario ("SMART Tower"). This tower was recently acquired by the Township. The Township will retain all ownership and rights in the SMART Tower. Vianet agrees to:
 - a. Immediately commence offering fixed wireless service to customers (including in Sequin, TOA, Parry Sound, and McDougall) that are reachable from the SMART Tower.
 - b. Provide compensation to the Township in the form of either free internet services, management, support and maintenance of the SMART Tower at Vianet's expense, or lease payments. Vianet and the Township agree to establish their mutually acceptable compensation prior to the end of October 2020.

Future Projects:

17. **Funding Applications.** Vianet agrees to complete the engineering and ICON funding applications and/or Provincial/Federal funding applications for future phases of the Project in the TOA, in order to support the overall Township objective set out in paragraph 18 below. This investment does not preclude future investments by both Vianet and the TOA to support internet access for the residents of the TOA.
18. **Comprehensive Strategy for Internet Coverage.** Vianet agrees to work with the TOA, WPS SMART, other municipalities, and, if necessary, other telecommunications companies, to develop a strategy and comprehensive plan for TOA's review with respect to "Phase 2 Shovel Ready Projects" by spring of 2021, which will ensure that the residents of the TOA have access to affordable and accessible internet. This will be part of the WPS SMART strategic plan for WPS District to ensure commercially reasonable coverage for all of the WPS District. Prior to construction, the plan for the "Phase 2 Shovel Ready Projects" will include all of the engineering and cost estimates required for construction.

B. Assumptions

During the course of any further due diligence, each party will cooperate in providing any reasonable and relevant information and validation for all areas of the proposed Definitive Agreement.

During the period from the date hereof to the execution of the Definitive Agreement(s), each party and their respective officers, directors, employees, agents, consultants, and other advisors, including any third party professional and technical advisors (collectively, "**Representatives**") shall work together in a commercially reasonable manner to effectuate the Definitive Agreement.

C. Fees

Each of the parties will be responsible for and bear its own respective fees and expenses incurred at any time in connection with pursuing, abandonment, or completing the proposed transaction.

D. Confidentiality

Vianet and the TOA agree to treat as confidential the existence and terms of this LOI including the fact that the parties

are discussing a proposed transaction. All information provided to any party by the other or its Representatives shall be kept in the strictest confidence and not be disclosed to any third party or used by the party receiving such information save and except for the consummation of the proposed transaction contemplated by this LOI, or except as required by a Court of competent authority. Notwithstanding the foregoing, TOA may share the existence and terms of this LOI to related municipalities, WPS SMART, and Blue Sky for the purposes of the Project.

E. Publicity

All public notices to third parties and all other publicity concerning the transactions contemplated by this LOI shall be jointly planned and coordinated by Vianet, WPS SMART, and the TOA, and no party shall act unilaterally in this regard without the prior approval of the other party (such approval not to be unreasonably withheld or delayed).

F. Governing Law

This LOI shall be governed by the laws of the Province of Ontario, Canada.

If the foregoing accurately reflects your intention, please sign and date two copies of this letter of intent and return one to the undersigned.

The Township of Archipelago

Signature

John B. Fior, CAO

Print Name, Title

October 9, 2020

Date

Vianet Inc.

Signature

Print Name, Title

Date

**STATEMENT OF WORK #1
POINTE AU BARIL TOWER CONSTRUCTION AND INSTALLATION**

This Statement of Work ("SOW") dated April 1, 2021 ("SOW Effective Date") is made by and between The Corporation of the Township of The Archipelago ("TOA"), having a place of business at 9 James Street, Parry Sound, ON P2A 1T4 and Vianet Inc. ("Vianet"), having its principal executive office at 128 Larch Street, Suite 201, Sudbury, ON P3E 5J8, pursuant to the Strategic Partnership Alliance Agreement ("Agreement") by and between TOA and Vianet with an Effective Date of April 1, 2021, the terms of which are incorporated herein by reference. This SOW sets forth the details of the Services described herein.

WHEREAS Vianet has agreed to provide broadband internet service via fixed wireless to the residents in the community of Pointe au Baril, and to install a telecommunications tower to achieve the foregoing, and TOA desires to obtain such services, all in accordance with the provisions of this SOW.

WHEREAS, pursuant to the Agreement, the Parties have entered into a Construction Agreement, with an Effective Date of April 1, 2021 ("**Construction Agreement**").

NOW THEREFORE, in consideration of the mutual covenants and conditions in this SOW and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties covenant and agree as follows:

1. General

- (1) All capitalized terms used herein and not otherwise defined will have the meaning set out in the main body of the Agreement.
- (2) This Statement of Work will be deemed to incorporate by reference the terms and conditions of the Agreement except to the extent otherwise expressly stated. For the purposes of this Statement of Work, all such terms and conditions incorporated by reference herein will survive until the termination or expiry of this Statement of Work, as applicable.

2. Description of Services

- (1) Vianet will build the Pointe au Baril Tower in accordance with the Construction Agreement. The Pointe au Baril Tower will enable establishment of an advanced high capacity 5.8 GHz 17.5 km back-haul to the proposed Parry Sound Area Industrial Park 190' tower, as well as advanced fixed wireless 5.8 GHz local coverage (with possible use of additional 2.4 GHz or 900 MHz frequencies). The hamlet of Pointe au Baril has over 50 permanent residences, with an additional 600+ seasonal residences within an 8km radius. The seasonal residences will be candidates for the fixed wireless solution.
- (2) Vianet will own and operate the Pointe au Baril Tower. Vianet will maintain and manage the Pointe au Baril Tower at its own expense for the SOW Term, including all costs to maintain the Pointe au Baril Tower to be compliant with all Applicable Laws.
- (3) Vianet will, as soon as commercially reasonable following the completion of the Pointe au Baril Tower's construction, commence offering fixed wireless service to commercial and residential customers that are reachable from the Pointe au Baril Tower, within at least an 8km radius of the Pointe au Baril Tower.
- (4) Vianet will deliver internet services to the residents of Pointe au Baril in accordance with the terms and conditions set out in Exhibit A. Vianet will offer such services at rates that are the same or less than Vianet's posted fixed wireless or similar service rates across Ontario, and which are, in any event, competitive rates.

3. Term and Termination

- (1) Term and Renewal. The term of this SOW shall commence on the SOW Effective Date and shall continue until twenty (20) years from the Effective Date ("**SOW Term**").
- (2) Termination for Convenience. TOA shall have the right to terminate this SOW for convenience upon twenty (20) Business Days' advanced written notice to Vianet. Upon termination for convenience, TOA shall be obligated to pay fees for the Services rendered up to the effective date of termination.

4. Performance Schedule

- (1) Milestones. The milestone delivery dates for the construction and installation of the Pointe au Baril Tower (each, a "**Milestone**") are set out in the Pointe au Baril Project Status Review attached hereto as Exhibit B.
- (2) Failure to Meet Milestones. In addition to the remedies available in this Agreement and at law, without limiting the foregoing, in the event that Vianet fails to meet the Milestones set out in Exhibit B or any extension that has been approved by TOA in writing, the parties will meet, negotiate, and discuss in good faith mutually agreeable revised Milestones.

5. Acceptance Criteria

The Acceptance testing process in Article 7.3 of the Agreement shall apply. Upon completion of each Milestone set out in Exhibit B, Vianet will provide TOA written confirmation to certify completion of the applicable Milestone. TOA may, at its sole discretion, perform additional Acceptance testing.

6. Fees

- (1) Fixed Fees. The TOA will contribute 50% of the construction cost for the Pointe au Baril Tower, up to a maximum of \$177,144 ("**Cap**"). TOA shall have no obligation under this SOW for payment of Fees, including the supply of Materials and any Services, in excess of the Cap, unless a higher amount is authorized by TOA in writing.
- (2) Holdback. There will be a holdback of 10% on the total Fees, to be paid by TOA to Vianet on completion of the Pointe au Baril Tower and Acceptance of the Services.

7. Contract Representative

The following is the designated TOA Contract Representative and the designated Vianet Contract Representative for the Parties. Either Party may change its designated Contract Representative at any time upon written notice to the other Party's Contract Representative.

TOA Contract Representative	Vianet Contract Representative
Name and Title: Joe Villeneuve, Manager of Corporate Services	Name and Title: Brian McCullagh, Director of Business Development
Phone: 705.746.4243 x320	Phone: 705-222-9996 ext 5259
Email: jvilleneuve@thearchipelago.on.ca	Email: brian.mccullagh@corp.vianet.ca

8. Site(s)

Vianet shall perform the Services at the following location(s): 126B North Shore Road, Pointe au Baril, Ontario.

EXHIBIT A **VIANET INTERNET SERVICES TERMS AND CONDITIONS**

TEMPLATE 3R: LAST-MILE INTERNET SERVICE OFFERINGS

This template is part of Step 2 of the Application Process.
 This table will be used to compile a list of service plans and pricing to be offered over the network to subscribers.
 Only provide independent internet service offerings plans (e.g. not part of a bundle).
 1) Advertised name of each service plan that will be offered through the proposed project.
 2) Select from the drop-down menu the type of subscriber: residential or business. At least one must be residential.
 3) Advertised Download speed in Mbps.
 4) Advertised Upload speed in Mbps.
 5) Select from the dropdown the access technology of the package.
 6) Indicate the standalone monthly price of service, which does not include the customer premise equipment (CPE) lease price.
 7) One-time installation and activation fees including any equipment charges for first-time customers subscribing to the service plan.
 8) Monthly CPE lease price. If not applicable, indicate a zero value.
 9) One-time CPE purchase price. If not applicable, indicate a zero value.
 10) Indicate if there is an unlimited or limited monthly usage cap by using the drop down menu.
 11) Indicate the monthly usage cap if Column 10 was specified as "Limited".
 12) Indicate the additional coverage charges for exceeding the usage cap for the download if Column 10 was specified as "Unlimited".
 13) Minimum contract length in years, if applicable. If there is no minimum contract, indicate a zero value.
 14) Once the Applicant has completed the template, the Applicant should verify that all the information is "Complete" and resolve any incomplete information by viewing Column 14. The template can then be saved and uploaded to the USF Applicant Portal.
 Failure to provide the requested information may result in the application being deemed incomplete.
 USF may share application information with provincial and territorial governments or other federal funding partners to improve national coordination and bilateral decision making related to connectivity projects funding.
 Once projects are approved, as part of Open Government, USF is required to proactively disclose certain information about a project.

This template is ready to be uploaded to be attached to Rapid Response Stream application form

Appendix A													
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Name of Service Plan (include name of last-mile provider if applicable)	Type of Subscriber	Advertised Download Speed (Mbps)	Advertised Upload Speed (Mbps)	Type of Access Technology	Standalone Monthly Price of Service (\$) Not including CPE lease price	One-Time Installation Activation Fee (\$)	Monthly CPE Lease Price (\$)	One-time CPE Purchase Price (\$)	Monthly Usage Cap (if applicable, unlimited)	Monthly Usage Cap (if applicable, \$/GB)	Additional Coverage Charges for Exceeding Usage Cap for Download (Cost per GB) (\$/GB)	Minimum Contract Length (Years)	Information Complete
1. Business 10Mbps plan	Business	10.00 Mbps	1.00 Mbps	Fiber Optics	\$68.00	\$188.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
2. Business 10Mbps plan	Business	10.00 Mbps	1.00 Mbps	Fiber Optics	\$75.00	\$188.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
3. Business 25Mbps plan	Business	25.00 Mbps	2.50 Mbps	Fiber Optics	\$88.00	\$188.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
4. Business 50Mbps plan	Business	50.00 Mbps	5.00 Mbps	Fiber Optics	\$175.00	\$188.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
5. Business 100Mbps plan	Business	100.00 Mbps	10.00 Mbps	Fiber Optics	\$339.00	\$188.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
6. Business 25Mbps plan	Business	25.00 Mbps	2.50 Mbps	Fiber Optics	\$188.00	\$220.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
7. Business 50Mbps plan	Business	50.00 Mbps	5.00 Mbps	Fiber Optics	\$198.00	\$220.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
8. Business 100Mbps plan	Business	100.00 Mbps	10.00 Mbps	Fiber Optics	\$1,000.00	\$220.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete
9. Business 200Mbps plan	Business	200.00 Mbps	20.00 Mbps	Fiber Optics	\$1,000.00	\$220.00	\$0.00	\$0.00	Unlimited	\$0.00	\$0.00	0	Complete

SOW#1 - Points au Baril Tower Construction and
 Installation Confidential

**SCHEDULE B
POINTE AU BARIL PROJECT STATUS REVIEW**

Date: April 15, 2021

Participants: Bert Liverance, Ian Mead, Dan Regaudie, Brian McCullaugh, Joe Villeneuve, Peter Mallette, Bruce Clements, Lis McWalter

Regrets: Scott Sheard

Project: Pointe au Baril Shovel-Ready Project

A.	Description	Resp	Proposal Due Date	Status	Planned Completion Date (if different than due date)
1	ToA resolution & funding Confirmation. Final agreement between Vianet and ToA	ToA & V	July 31	LOI executed, working on final agreement Brian to send Vianet comments on draft agreement no later than Apr 7	Final Agreement – Apr 30 ToA will call a Special Council Meeting to meet Apr 30 date to pass resolution to approve agreement
2	Tower Site Selection	V & ToA		Site identified Site location no longer at 45 Railroad Lane. New location has been identified and owned by a Developer (R. Morel). Property is along a new street to be developed – site is off North Shore Rd. (no Municipal Property address available yet).	Complete
3	Tower Site – contract/final Arrangements for use of property	ToA		Discussions with land developer ongoing and positive. Expect lease agreement to be completed Confirming size of parcel required for tower. Formalized list of items to be included in a formal offer of purchase. In the meantime, the Permission to Enter agreement has been approved by Council and is in effect	Apr 30 ToA will call a Special Council Meeting to meet Apr 30 date and to pass resolution to approve land acquisition agreement
4	Transport Canada/Nav/Can application	V	Aug 21	Based on Transport Canada report (July 2019) – no lighting or painting is required	Complete

				Dan has submitted the modified submission with new coordinates for tower base and guy wire coordinates Expect response by end of April	
5	Site Prep - Clearing, prep, accessible	V	Aug 14	Start May 3 Note – need to coordinate location of road with planned municipal road.	Jun 4
6	Site soil study- ordered/drilling report issued	V	Aug 21	Core drilling & report Start June	July 2
7	Equipment specified & ordered	V	Aug 7	Mostly in stock and available	Aug 27
8	Tower specified, ordered	V	Aug 28	Order placement	May 14
9	Site Shelter install	V	Sept 4	Start Sept 27	Oct 12
10	Electrical install	V	Sept 4	Start April 15 Note – will need to coordinate with ToA for exact road location in order to allow for future hydro pole installation along road ToA and Vianet are looking at potential synergies to accommodate hydro to the tower site and land developer needs if possible	Oct 12
11	Tower foundation install	V	Oct 2	Start Aug 30	Sep 7
12	Tower installation	V	Oct 9	Start Sep 27	Oct 12
13	Radio/router etc. equipment installation – local and back haul links	V	Oct 16	Start Oct 18	Oct 22
14	Final commissioning & verification	V	Oct 23	Start Oct 25	Nov 5
15	CPE Equipment Installation	V	Nov 6	Start Nov 8	Ongoing

B. Public Consultation

1	ISED Public Consultation	V			
2	Notice to Public	V		Vianet to prepare information pkg. Vianet to run ad in local paper to provide notice and send notice by mail to those within a specific range of tower (570')	April 19 (prep), May 6 (posted in medial) -June 7
3	Respond to inquiries/input	V & ToA		A 30 day period for residents to make inquiries	May 6 -June 7
4	Vianet Report to Council	V		If required depending on pubic consultation process Need Apr 8 for package to Council	June 11
5	Issue Letter of Concurrence	ToA		Following Council Meeting	June 18

C. Vianet Information

1.	Conduct Public Information Session - Zoom	V & ToA		Depending on limitations (Covid-19). Will use video link and possibly Zoom session to answer questions Will do a joint communication to the community and press release	Target May 6
2.	Subscriber communication (project website, etc.)	V		Will develop and post once land is secured	Same as above

D. Permits – non anticipated ?? – Not for tower build

1					
2					

E. Key Milestones and critical path actions for next period:

1. ToA: Resolution to pass resolution to execute land transfer agreement and execution of agreement between Vianet and ToA .

F. Next Meeting – May 6, 2021@ 10:00

STATEMENT OF WORK #2 TOA INTERNET SERVICES

This Statement of Work ("SOW") dated April 1, 2021 ("SOW Effective Date") is made by and between The Corporation of the Township of The Archipelago ("TOA"), having a place of business at 9 James Street, Parry Sound, ON P2A 1T4 and Vianet Inc. ("Vianet"), having its principal executive office at 128 Larch Street, Suite 201, Sudbury, ON P3E 5J8, pursuant to the Strategic Partnership Alliance Agreement ("Agreement") by and between TOA and Vianet with an Effective Date of April 1, 2021, the terms of which are incorporated herein by reference. This SOW sets forth the details of the Services described herein.

WHEREAS Vianet has agreed to free internet service to TOA in exchange for a waiver of a lease fee and TOA desires to obtain such services, all in accordance with the provisions of this SOW.

WHEREAS, pursuant to the Agreement, the Parties have entered into a Lease Agreement, with a Commencement Date of April 1, 2021 ("Lease Agreement").

NOW THEREFORE, in consideration of the mutual covenants and conditions in this SOW and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties covenant and agree as follows:

1. General

- (1) All capitalized terms used herein and not otherwise defined will have the meaning set out in the main body of the Agreement.
- (2) This Statement of Work will be deemed to incorporate by reference the terms and conditions of the Agreement except to the extent otherwise expressly stated. For the purposes of this Statement of Work, all such terms and conditions incorporated by reference herein will survive until the termination or expiry of this Statement of Work, as applicable.

2. Description of Services

- (1) TOA agrees to waive the rental obligation set out in the Lease Agreement, for the term set out in the Lease Agreement, provided that Vianet continues to provide the internet services to the TOA community at commercially reasonable rates and terms for similar sized municipalities.
- (2) Vianet will provide internet services and managed WiFi services in particular locations in the TOA, as further detailed in Exhibit A.

3. Term and Termination

- (1) Term and Renewal. The term of this SOW shall commence on the SOW Effective Date and shall continue until twenty (20) years from the Effective Date ("SOW Term").
- (2) Termination for Convenience. TOA shall have the right to terminate this SOW, in part or in whole, for convenience upon twenty (20) Business Days' advanced written notice to Vianet. Upon termination for convenience, TOA shall be obligated to pay fees for the Services rendered up to the effective date of termination.

4. Performance Schedule

- (1) Milestones. The following are the estimated milestone delivery dates for the Services described in this SOW (each, a "Milestone").

Item	Services Milestone	Estimated Completion/Delivery Date
M1	Product description (work order) of each location's service package, including equipment on site and anticipated internet speed.	March 2021
M2	Operation of Pointe au Baril Tower.	June 2021
M3	Installation of internet at each facility.	June 2021

- (2) TOA Dependencies. The TOA dependencies below include functions and responsibilities of the TOA that are inherent, necessary, customarily provided, or reasonably required for the proper performance of the applicable Milestone.

No.	TOA Dependency	Milestone Affected	Dependency Deadline
1.	Secure Pointe au Baril Tower Site.	M2	April 2021
2.	Provide access to each location/facility set out in Exhibit A.	M3	June 2021
3.	Provide necessary resources (equipment shed/shelf, power), as reasonably required, for the internet services set out in Exhibit A.	M3	June 2021

- (3) Failure to Meet Milestones. Without limiting the foregoing, in the event that Vianet fails to meet the timelines set out in the table in Section 4(1) or any extension that has been approved by TOA in writing, and the failure is not cured within two (2) months after receiving written notice from TOA, the failure will be deemed a material breach of this SOW and TOA may terminate this SOW without penalty by giving written notice to Vianet at any time before the breach is cured.

5. Acceptance Criteria

The Acceptance testing process in Article 7.3 of the Agreement shall apply. Upon completion of each Milestone set out in the table in Section 4(1) of this SOW, Vianet will provide TOA written confirmation to certify completion of the applicable Milestone. TOA may, at its sole discretion, perform additional Acceptance testing.

6. Contract Representative

The following is the designated TOA Contract Representative and the designated Vianet Contract Representative for the Parties. Either Party may change its designated Contract Representative at any time upon written notice to the other Party's Contract Representative.

TOA Contract Representative	Vianet Contract Representative
Name and Title: Greg Mariotti, Manager of Operational Services	Name and Title: Brian McCullagh, Director of Business Development

Phone: 705.746.4243 x311	Phone: 705-222-9996 ext 5259
Email: <u>gmariotti@thearchipelago.on.ca</u>	Email: brian.mccullagh@corp.vianet.ca

EXHIBIT A
DESCRIPTION OF INTERNET SERVICES

The following is a map that describes the locations and the internet services required at each location: <https://storymaps.arcgis.com/stories/cfd5b675bb4d484497dce3189cee1732>. The information is also summarized in the table below.

No.	Location	Address	Description of Internet Services
1.	Pointe au Baril Community Centre	70 South Shore Road	<ul style="list-style-type: none">• Static IP required for security cameras (ethernet connection) on the building.• Internet service required in: (i) the library to connect several computers (requires a router hard patch 3 computers and also WiFi & Guest WiFi setup); and (ii) meeting room adjacent to library (WiFi & Guest WiFi).
2.	Pointe au Baril Nursing Station and EMS	70 South Shore Road	<ul style="list-style-type: none">• Static IP required.• EMS tenant (half of building) requires internet feed (router with WiFi that tenant can utilize).
3.	Pointe au Baril Transfer Station (Office Building)	27 South Shore Road	<ul style="list-style-type: none">• Requires a static IP for security cameras (ethernet connection).
4.	Pointe au Baril Chamber Building	1650 Highway 69	<ul style="list-style-type: none">• Requires home/business internet service with static IP (ethernet connection) and also WiFi & Guest WiFi.

Note: Power is available at all locations and lockable indoor space for equipment is available.

**THE CORPORATION OF
THE TOWNSHIP OF THE ARCHIPELAGO
BY-LAW NO. 2021 –**

Being a By-law to authorize the execution of a Construction Agreement between the Corporation of the Township of The Archipelago and Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago

WHEREAS pursuant to the Municipal Act, 2001, S.O. 2001, c.25, as amended, a municipality may pass by-laws respecting matters within its jurisdiction; and

WHEREAS Council has passed Resolution #20-133 to, in part, address their goal to ensure that stable, dependable and affordable high speed internet is available to the residents and businesses of the Township of The Archipelago; and

WHEREAS Township staff was directed to negotiate and sign the final terms of an appropriate letter of intent and all related Agreements with Vianet for the two proposed tower projects; and to locate and negotiate the purchase of an appropriate property in the Pointe au Baril; and

WHEREAS Council deems it necessary and expedient to enter into a Construction Agreement with Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago;

NOW THEREFORE BE IT ENACTED as a By-law of the Council of the Corporation of the Township of The Archipelago, as follows:

1. That Chief Administrative Officer is hereby authorized to execute and affix the Corporate Seal to the Construction Agreement between The Corporation of the Township of The Archipelago and Vianet Inc, in a form the same or substantially the same as attached hereto marked as Schedule "A"; and to the satisfaction of the CAO and the Township Solicitor;
2. That this By-law shall come into force and take effect on the day of the final passing thereof.

READ and FINALLY PASSED in **OPEN COUNCIL** this 30th day of April, 2021.

Bert Liverance, Reeve

Maryann Weaver, Clerk

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made as of April 1, 2021 (the "**Effective Date**")

BETWEEN: THE CORPORATION OF THE TOWNSHIP OF THE ARCHIPELAGO ("TOA")

9 James Street
Parry Sound, ON P2A 1T4

AND:

VIANET INC. ("Vianet")
128 Larch Street, Suite 502
Sudbury, ON P3E 5J8

(each, a "**Party**", and together, the "**Parties**".)

WHEREAS:

- A. TOA owns the Real Property described in **Schedule A** attached hereto (the "**Lands**");
- B. Vianet submitted a Proposal to TOA to provide internet tower infrastructure and internet services to TOA;
- C. TOA and Vianet intend to enter into a lease concurrently with the execution and delivery of this Agreement, pursuant to which Vianet will lease the Lands from TOA (the "**Lease**");
- D. This Agreement is made pursuant to the Strategic Partnership Alliance Agreement ("**SPA Agreement**") entered into by and between TOA and Vianet with an Effective Date of April 1, 2021, the terms of which are incorporated herein by reference; and
- E. Vianet has agreed to construct a telecommunications tower on the Lands in accordance with the terms set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, the payment of two dollars (\$2.00) from TOA to Vianet, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties covenant and agree as follows:

SECTION 1 INTERPRETATION

1.1 Definitions

All capitalized terms used herein and not otherwise defined will have the meaning set out in the SPA Agreement. Capitalized terms used in this Agreement will have the meaning set out below or defined in line:

"**Agreement**" means this construction agreement, including any Schedules and Appendices attached hereto, as amended, restated, or supplemented from time to time.

"**Approvals**" has the meaning given to it in Section 2.1.1.

"**Authorities**" means all federal, provincial, municipal, and other governmental authorities (including suppliers of public utilities), departments, boards, and agencies having or claiming jurisdiction over TOA, Vianet, the Lands, or the performance of any work in, on, or under the Lands or use of the Lands, and "**Authority**" has a corresponding meaning.

"Construction Act" means the *Construction Act*, R.S.O. 1990, c. C.30.

"Construction Plans and Specifications" means the plans, specifications, and drawings for the Tower, copies of which are attached hereto at **Schedule B**.

"Construction Contract" has the meaning given to it in Section 2.3.1.

"Construction Contractor" has the meaning given to it in Section 2.3.1.

"Effective Date" has the meaning given to it on the first page of this Agreement.

"Lands" has the meaning given to it in the recitals of the Agreement.

"Lease" has the meaning given to it in the recitals of the Agreement.

"OHSA" means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

"Parties" means Vianet and TOA and **"Party"** means Vianet or TOA.

"SPA Agreement" has the meaning given to it in the recitals.

"Substantial Completion" means when the construction of the Tower has been completed in accordance with the terms of the Agreement and the Construction Contract has been substantially performed pursuant to section 2(1) of the Construction Act.

"Tower" means the telecommunications tower (and all associated, connected, and auxiliary facilities, fixtures, and equipment related to the use and operation of the Tower) that is intended to be constructed on the Lands and which is further described in the Construction Plans and Specifications.

"Work" means the total design, permitting, construction, and related services to construct the Tower in accordance with the Construction Plans and Specifications, Approvals, and the terms of this Agreement.

1.2 **Interpretation**

In the Agreement:

- (a) the singular shall include the plural and vice versa;
- (b) the word "including" shall mean "including, without limitation";
- (c) references "Sections" and "Schedules" shall be to sections and schedules hereof and "Sections" shall mean and include sections, subsections, and paragraphs;
- (d) the words "herein", "hereof", and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof;
- (e) the division of the Agreement into separate sections, subsections, and Schedules, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (f) all reference to currency herein is to lawful money of Canada;
- (g) the recitals to this Agreement form an integral part of the Agreement;

- (h) any reference to a statute in this Agreement shall be deemed to refer to the statute as it is amended from time to time and to also include reference to the regulations enacted under that statute; and
- (i) references to this Agreement shall include a reference to all Schedules hereto, as the same may be amended, modified, supplemented, or replaced from time to time.

SECTION 2

CONSTRUCTION OF THE TOWER

2.1 Approvals and Construction

- 2.1.1 Vianet shall use commercially reasonable efforts to obtain as expeditiously as reasonably possible the rezoning and all building and development permits, site plan approvals, road closures, and all other approvals and consents required to permit the construction of the Tower in accordance with the Construction Plans and Specifications (collectively, the "**Approvals**") and shall, forthwith following the obtaining thereof, diligently proceed with the construction of the Tower in accordance with the Construction Plans and Specifications and the Approvals. If the Approvals require any changes to the Construction Plans and Specifications, same shall be subject to TOA's approval, acting reasonably. After receipt of the Approvals, Vianet shall forthwith provide copies of same to TOA.
- 2.1.2 Vianet shall construct and complete the Tower: (i) in a good and workmanlike manner; (ii) in accordance with the provisions of this Agreement and the SPA Agreement (including the Construction Plans and Specifications); and (iii) in compliance with all construction-related Applicable Laws, requirements of Authorities, building codes, rules, orders, licences, zoning, and building requirements (including all Approvals and any applicable TOA bylaws, ordinances, or other requirements).
- 2.1.3 Vianet shall keep TOA regularly apprised on the status of the Work and promptly respond to any requests for status updates from TOA.

2.2 Liens and Encumbrances

- 2.2.1 As part of the Services or otherwise in accordance with this Agreement, Vianet shall ensure there are no notices of security interests or other such encumbrances registered against the Lands at and after Substantial Completion. In the event of any such notice or other encumbrance being registered whether before or after Substantial Completion, Vianet shall take whatever steps may be required to discharge forthwith the registration of it (and in no event later than ten (10) days after becoming aware of the existence of such notice or encumbrance).
- 2.2.2 If a construction lien is registered against the Lands or otherwise preserved (or if a written notice of lien is delivered to any person) that relates to or arises out of the Work, then Vianet shall, at its own expense within ten (10) calendar days of receiving notice of the lien or written notice of lien, cause the lien and any related certificate of action to be discharged, released, or vacated (or, in the case of a written notice of lien, cause it to be withdrawn) in accordance with the Construction Act and provide proof of same to TOA. If Vianet fails to comply with the foregoing requirements, TOA shall have the right (but not the obligation) to arrange for the discharge, release, or vacating of such lien (or withdrawal of a written notice of lien) without further notice to Vianet and Vianet shall indemnify TOA for all costs and associated expenses, including the costs of posting security and legal fees and disbursements incurred in connection with the foregoing and in connection with defending any related action or legal proceeding.

- 2.2.3 If any construction lien action or other legal proceeding arising out of the Work is commenced against TOA, Vianet shall take all reasonable steps to remove TOA from such action or legal proceeding and shall indemnify, defend, and hold TOA harmless in such action or legal proceeding.

2.3 Construction Contract

- 2.3.1 Vianet shall enter into a construction contract ("**Construction Contract**") with a construction contractor (the "**Construction Contractor**") for the construction of the Tower in accordance with the Construction Plans and Specification and Approvals. Prior to the commencement of the procurement, Vianet shall provide a copy of the draft form of the Construction Contract to TOA for its review and approval (such approval not to be unreasonably withheld).
- 2.3.2 Any requests from the Construction Contractor for change orders, requests for additional compensation, or other changes in respect of the Construction Contract shall be subject to the prior written approval of TOA, not to be unreasonably withheld or delayed, and will be reviewed at the status meetings between TOA and Vianet. Vianet shall not accept or approve any claims submitted by the Construction Contractor that would, if accepted, have the effect of altering the construction schedule or contract price of the Construction Contract, without TOA's approval (such approval not to be unreasonably withheld or delayed). Vianet shall not issue a change order or change directive under the Construction Contract without TOA's approval (such approval not to be unreasonably withheld or delayed).
- 2.3.3 Vianet acknowledges that it will be acting as "owner" (as that term is defined in the Construction Act) under the Construction Act with respect to the Work and the Construction Contract and will comply with the obligations of "owner" under the Construction Contract.
- 2.3.4 Vianet shall pay its Construction Contractor and any of its other contractors and consultants monies properly due and owing to them and shall comply with the provisions of the Construction Act and other construction-related Applicable Laws.

2.4 Health and Safety

Vianet shall be, or shall cause the Construction Contractor to be, solely responsible for occupational health and safety at the Lands and for compliance with the rules, regulations, and practices required by construction, health, and safety Applicable Laws with respect to the Work. Without limiting the foregoing, Vianet shall perform and fulfil, or cause its Construction Contractor to perform and fulfil, the obligations of "constructor" under the OHSA with respect to the Work. Vianet shall indemnify and save harmless TOA and its directors, officers, council members, board members, partners, agents, and employees from and against the consequences of any and all safety infractions under the OHSA committed by Vianet or its contractors or personnel.

2.5 Substantial Completion

Subject to delays caused by a Force Majeure Event pursuant to Article 19 of the SPA Agreement, or delays to the construction of the Tower caused by TOA, Vianet shall achieve Substantial Completion in accordance with the Performance Schedule. There will be a holdback of 10% on the total Fees, as set out in the SPA Agreement, to be paid by TOA to Vianet upon Substantial Completion.

SECTION 3
MAINTENANCE AND REPAIR

3.1 Maintenance and Repair

- 3.1.1 Vianet shall ensure any damage or destruction to the Lands caused by the Work is promptly repaired and rectified. In the event that TOA first discovers the damage or destruction to the Lands caused by the Work, TOA will promptly notify Vianet of such damage or destruction. If Vianet fails to promptly repair or rectify any such damage or destruction, TOA may perform such repairs or rectification and Vianet shall indemnify TOA for the costs it incurs as a result.
- 3.1.2 Vianet shall be responsible for all necessary repair and maintenance required to the Tower during and after its construction.

SECTION 4
INDEMNITY

4.1 Indemnity

Vianet shall indemnify and save harmless TOA and its directors, officers, council members, board members, partners, agents, and employees from and against any claims, demands, damage, expense, injury, or death arising out of or in connection with the construction of the Tower, Vianet's performance of or failure to perform the Work, or Vianet's breach of its obligations under this Agreement.

SECTION 5
TERMINATION

5.1 Termination

This Agreement may be terminated in accordance with the termination rights set out in Article 18 of the SPA Agreement.

5.2 Effects of Termination

In the event this Agreement is terminated and provided the SPA Agreement remains in force, Vianet's obligations as to quality, correction, and warranty of the Work performed by Vianet up to the time of termination shall continue after such termination.

SECTION 6
DISPUTE RESOLUTION

6.1 Dispute Resolution

Any dispute, disagreement, controversy, question, or claim (including a claim for indemnification) arising out of, in relation to, or in connection with this Agreement, which cannot be settled by amicable negotiation between the Parties, shall be resolved in accordance with the Dispute Resolution Process set out in Article 20 of the SPA Agreement.

SECTION 7 **INSURANCE**

7.1 Insurance

- 7.1.1 In addition to the insurance requirements set out in Article 17 of the SPA Agreement, Vianet shall ensure that the Lands and the Work are properly insured. Without limiting the foregoing, Vianet shall ensure that:
- (a) it and its Construction Contractor carry appropriate commercial general liability insurance with reasonable limits as agreed upon by TOA and as set out in the SPA Agreement;
 - (b) it or the Construction Contractor maintain a builder's risk and wrap-up liability insurance policy with reasonable limits agreed upon by TOA; and
 - (c) any contractors or consultants performing professional design services in connection with the Work carry a professional liability insurance policy with reasonable limits agreed upon by TOA.
- 7.1.2 TOA shall be listed as an additional insured on the above-referenced insurance policies, save and except for any professional liability insurance policies.
- 7.1.3 Vianet shall deliver to TOA certificates of insurance evidencing the required insurance coverage prior to the commencement of any services under this Agreement or upon any renewal of such insurance during the term of this Agreement, and otherwise from time to time upon request by TOA. TOA shall be given not less than thirty (30) days' notice prior to the cancellation of any insurance required by this Agreement.
- 7.1.4 The commercial general liability policies shall contain cross-liability clauses and contractual liability clauses. The above insurance policies shall not allow subrogation claims by the insurer against TOA.

SECTION 8 **LIMITATION OF LIABILITY**

8.1 Limitation of Liability

Subject to Articles 16.2 and 16.3 of the SPA Agreement, in no event, whether in contract or tort (including negligence), as a result of breach of warranty, strict liability, indemnity, or under any other theory of liability whatsoever, shall either Party be liable for: (i) any indirect, consequential, incidental, exemplary, punitive, or special damages; or (ii) any damages, whether direct, indirect, consequential, incidental, exemplary, punitive, or special, characterized as loss of revenue, loss of profits, loss of reputation, loss of use of revenue, loss of savings, or losses by reason of the cost of capital, even if such Party has been advised of the possibility of such damages in advance, arising from or in connection with this Agreement. The limitation of liability set out in this Section 8.1 does not apply to Vianet's indemnification obligations under Section 4.1 of this Agreement.

SECTION 9 **GENERAL**

9.1 Notice

All notices and approvals required or permitted by this Agreement shall be in writing and delivered personally, by courier, or by e-mail to:

- (a) in the case of TOA:

Township of The Archipelago
9 James Street
Parry Sound, ON
P2A 1T4

Attention: Joe Villeneuve, Manager of Corporate Services
Email: jvilleneuve@thearchipelago.on.ca

or such other address as TOA may from time to time advise by notice in writing.

- (b) in the case of Vianet:

128 Larch Street, Suite 201
Sudbury, ON P3E 5J8

Attention: Brian McCullagh, Director of Business Development, Business Solutions
Email: brian.mccullagh@corp.vianet.ca

or such other address as Vianet may from time to time advise by notice in writing.

9.2 Further Acts

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement.

9.3 Governing Law

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Each Party hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

9.4 Amendment

This Agreement may be amended only by written agreement of the Parties. The Parties agree that neither shall orally waive or modify this Section 9.49-4.

9.5 Waiver

No waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a Party shall constitute a waiver of such Party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

9.6 Time of the Essence

Time shall be the essence with respect to this Agreement.

9.7 No Agency, Partnership, or Joint Venture

Nothing in this Agreement shall be construed as creating an agency, partnership, or joint venture relationship between the Parties. Neither Party is authorized to represent, bind, obligate, or contract

on behalf of the other in any manner whatsoever, or represent to third parties that it is an agent of, or partner with, or in a joint venture relationship with the other.

9.8 Entire Agreement

This Agreement constitutes the entire agreement among the Parties pertaining to the matters herein. This Agreement supersedes all prior agreements, understandings, negotiations, representations, and discussions, whether oral or written, of the Parties.

9.9 Severability

If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable,

- (a) the remainder of this Agreement or the application of such provision or portion thereof to any other person or circumstance shall not be affected thereby; and
- (b) the Parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to and in accordance with Section 6.16.1. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.10 Counterparts

This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same Agreement. This Agreement shall not be binding upon any Party until it has been executed by each of the Parties and delivered to all other Parties.

9.11 Assignment

9.11.1 Vianet will not assign, transfer, charge, dispose of, or otherwise alienate any interest in this Agreement or any agreement entered into in connection with this Agreement without the prior written consent of TOA, which consent may not be unreasonably withheld. Any attempt by Vianet to assign this Agreement or any of Vianet's rights, duties, liabilities, obligations, or interests under this Agreement without the prior written consent of TOA will be without effect.

9.11.2 TOA may assign this Agreement, in whole or in part, without the consent of Vianet, but shall provide written notice to Vianet of any such assignment prior to the date of assignment.

9.12 Enurement and Binding Effect

This Agreement shall enure to the benefit of the Parties hereto and their respective permitted successors and assigns and be binding upon the Parties hereto and their respective successors and assigns.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date of this Agreement.

**THE CORPORATION OF THE TOWNSHIP OF
THE ARCHIPELAGO**

By: _____
Name:
Title:

VIANET INC.

By: _____
Name:
Title:

SCHEDULE A
LANDS

Teranet PIN#: 522460614

Description: PART BROKEN LOT 27 CONCESSION 5 HARRISON PART 5, 42R6083 EXCEPT PARTS 1 AND 2, 42R6130, PART 2, 42R6131, PARTS 1, 2, 3 AND 4, 42R9399, PARTS 1, 2, 3 AND 4, 42R9400, PART 1, 42R15917, PARTS 1 AND 2. 42R16212, PART 1, 42R18179, PART 1, 42R18180, PARTS 1, 2 AND 3, 42R18181, LOTS 5, 6, 7, 8, 9, 10, 11, 12, AND 13, 42M602 AND PART 1, 42R20126 AND EXCEPT PARTS 2 AND 3, 42R21075 SUBJECT TO AN EASEMENT OVER PART 1, 42R21075 IN FAVOUR OF PART 2, 42R21075 AS IN GB117948 SUBJECT TO AN EASEMENT OVER PART 1, 42R21075 IN FAVOUR OF PART 3, 42R21075 AS IN GB117955 TOWNSHIP OF THE ARCHIPELAGO

SECTION NO.	SECTION NAME	PANEL TYPE	PANEL HEIGHT (ft)	LEGS (350W)	DIAGONALS (300W)	HORIZONTALS
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						

EL. = 260.00'	
EL. = 250.00'	
EL. = 240.00'	
EL. = 230.00'	
EL. = 220.00'	
EL. = 210.00'	
EL. = 200.00'	
EL. = 190.00'	
EL. = 180.00'	
EL. = 170.00'	
EL. = 160.00'	
EL. = 150.00'	
EL. = 140.00'	
EL. = 130.00'	
EL. = 120.00'	
EL. = 110.00'	
EL. = 100.00'	
EL. = 90.00'	
EL. = 80.00'	
EL. = 70.00'	
EL. = 60.00'	
EL. = 50.00'	
EL. = 40.00'	
EL. = 30.00'	
EL. = 20.00'	
EL. = 10.00'	
EL. = 0.00'	

MAXIMUM BASE REACTIONS (FACTORED AS PER CSA-S37-18)

DOWNLOAD (kips): 116.1

SHEAR (kips): 2.1

TORSION (kip-ft): -1.9

ANCHOR REACTIONS

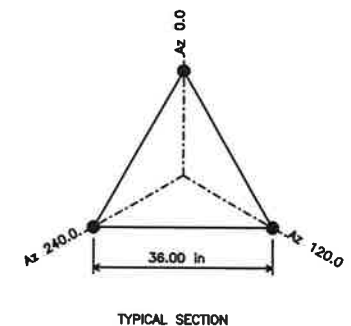
ANCHOR #	AZIMUTH (deg)	RADIUS (ft)	ELEVATION (ft)	HORIZ LOAD (kips)	VERT LOAD (kips)	AXIAL LOAD (kips)	ANGLE (deg)
1	0.0	180.00	0.00	38.74	38.96	54.94	45.16
2	120.0	180.00	0.00	37.24	37.09	52.58	44.89
3	240.0	180.00	0.00	38.58	38.10	54.22	44.64

ANTENNA LOADING CHART								
POS	DESCRIPTION	QTY	EL. (ft)	Tx LINE	QTY	AZIMUTH	COMMENTS	STATUS
1	HP6	1	255.00	LDF5P-50A	1	0		F
2	HP4	1	250.00	LDF5P-50A	1	0		F
3	HP6	1	245.00	LDF5P-50A	1	0		F
4	HP4	1	240.00	LDF5P-50A	1	0		P
5	HP6	1	235.00	LDF5P-50A	1	0		F
6	HP4	1	230.00	LDF5P-50A	1	0		F
7	5.8 GHz Antenna	1	225.00	LDF5P-50A	4	0		P
8	5.8 GHz Antenna	1	225.00			90		
9	5.8 GHz Antenna	1	225.00			180		
10	5.8 GHz Antenna	1	225.00			270		
11	MOUNT	1	225.00			0		
12	3.6 GHz Antenna	1	220.00	LDF5P-50A	4	0		P
13	3.6 GHz Antenna	1	220.00			90		
14	3.6 GHz Antenna	1	220.00			180		
15	3.6 GHz Antenna	1	220.00			270		
16	MOUNT	1	220.00			0		
17	HP4	1	215.00	LDF5P-50A	2	0		F
18	HP6	1	210.00	LDF5P-50A		0		F
STATUS: E-EXISTING, F-FUTURE, P-PROPOSED								

STATUS: E-EXISTING, F-FUTURE, P-PROPOSED

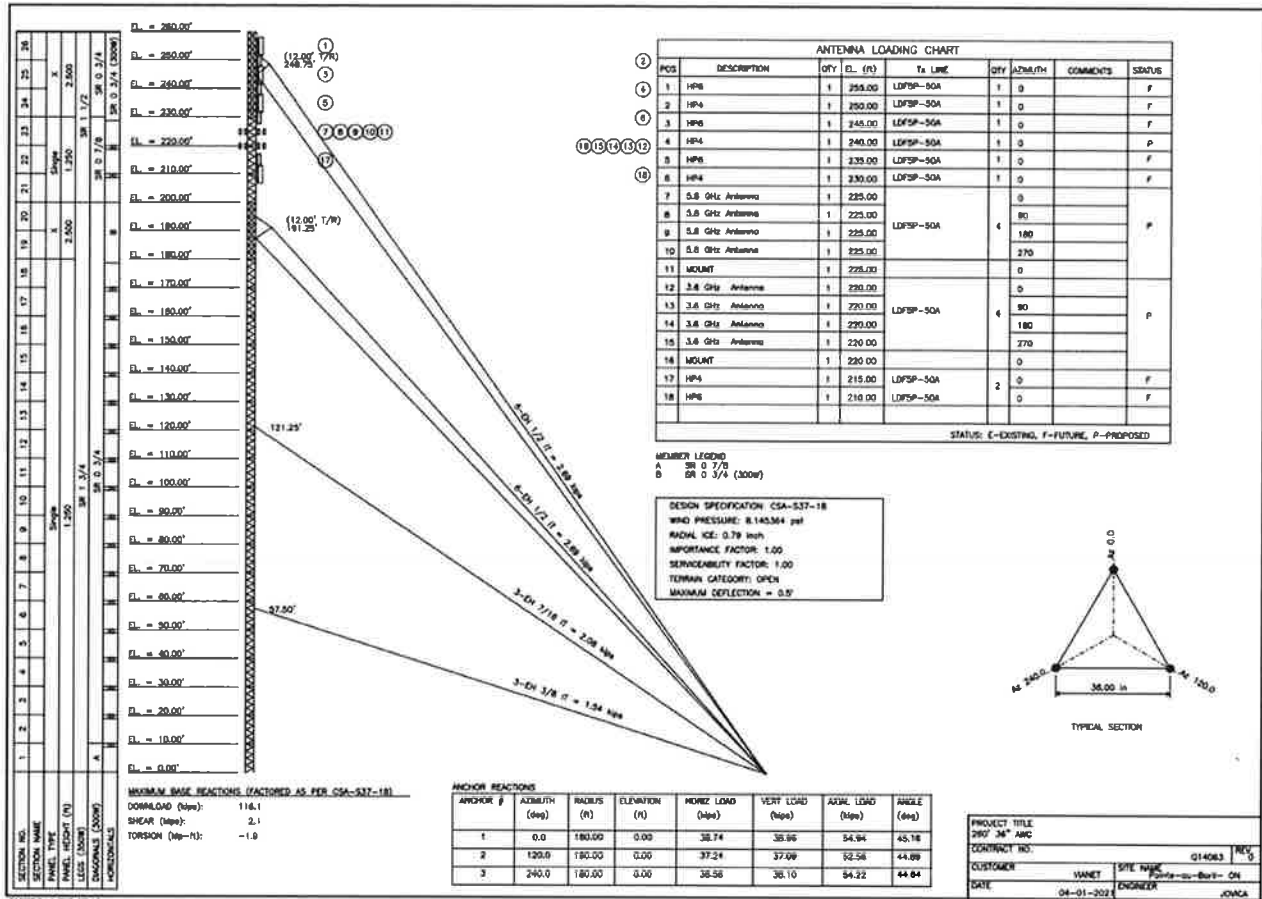
MEMBER LEGEND
A SR 0 7/8
B SR 0 3/4 (300W)

DESIGN SPECIFICATION: CSA-S37-18
WIND PRESSURE: 8.145384 psf
RADIAL ICE: 0.79 inch
IMPORTANCE FACTOR: 1.00
SERVICEABILITY FACTOR: 1.00
TERRAIN CATEGORY: OPEN
MAXIMUM DEFLECTION = 0.5"



PROJECT TITLE 280' 38" AWG		
CONTRACT NO.		Q14063
CUSTOMER	VIANET	SITE NAME Pointe-au-Baril- ON
DATE	04-01-2021	ENGINEER JOVICA

SCHEDULE B **CONSTRUCTION PLANS AND SPECIFICATIONS**



**THE CORPORATION OF
THE TOWNSHIP OF THE ARCHIPELAGO
BY-LAW NO. 2021 –**

Being a By-law to authorize the execution a Lease Agreement between the Corporation of the Township of The Archipelago and Vianet Inc., to provide internet tower infrastructure and internet services to the Township of The Archipelago

WHEREAS pursuant to the Municipal Act, 2001, S.O. 2001, c.25, S. 9, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

WHEREAS Council has passed Resolution #20-133 to, in part, address their goal to ensure that stable, dependable and affordable high speed internet is available to the residents and businesses of the Township of The Archipelago; and

WHEREAS Council directed staff to negotiate and sign the final terms of an appropriate letter of intent and all related Agreements with Vianet for the two proposed tower projects; and to locate and negotiate the purchase of an appropriate property in the Pointe au Baril; and

WHEREAS Council deems it necessary and expedient to enter into a Lease Agreement with Vianet Inc.;

NOW THEREFORE BE IT ENACTED as a By-law of the Council of the Corporation of the Township of The Archipelago, as follows:

1. That the Reeve and the Chief Administrative Officer is hereby authorized to execute and affix the Corporate Seal to the Lease Agreement between The Corporation of the Township of The Archipelago and Vianet Inc., in a form the same or substantially the same as attached hereto marked as Schedule "A"; and to the satisfaction of the CAO and the Township Solicitor;
2. That this By-law shall come into force and take effect on the day of the final passing thereof.

READ and FINALLY PASSED in **OPEN COUNCIL** this 30th day of April, 2021.

Bert Liverance, Reeve

Maryann Weaver, Clerk

THIS LEASE AGREEMENT is dated the 1st day of April, 2021.

B E T W E E N :

THE CORPORATION OF THE TOWNSHIP OF THE ARCHIPELAGO
(the "Landlord")

OF THE FIRST PART

- and -

VIANET INC.
(the "Tenant")

OF THE SECOND PART

(each, a "Party", and together, the "Parties")

WHEREAS this Lease is made pursuant to the Strategic Partnership Alliance Agreement ("SPA Agreement") entered into by and between TOA and Vianet with an Effective Date of April 1, 2021, the terms of which are incorporated herein by reference.

WHEREAS TOA and Vianet intend to enter into a construction agreement concurrently with the execution and delivery of this Lease, pursuant to which Vianet has agreed to construct a telecommunications tower on the Premises ("**Construction Agreement**").

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

SECTION 1 **INTERPRETATION**

1.1 Definitions

- 1.1.1 All capitalized terms used herein and not otherwise defined will have the meaning set out in the SPA Agreement. Capitalized terms used in this Lease will have the meaning set out below or defined in line:

"**Commencement Date**" has the meaning set given to it in Section 5.1.

"**Environment**" includes air, land, groundwater, and surface water.

"**Environmental Laws**" means all federal, provincial, and municipal laws, regulations, by-laws, standards, requirements, ordinances, codes, policies, guidelines, orders, notices, Permits, and directives pertaining to the protection, conservation, utilization, impairment, or degradation of the Environment in effect from time to time.

"**Governmental Authority**" means any federal, provincial, or municipal parliament, legislature, or any regulatory body, agency, ministry, department, commission, or board, or any court or any other law, regulation, or rule-making entity, having or purporting to have jurisdiction, or any person purporting to act under the authority of any of the foregoing or any other authority charged with the administration or enforcement of Environmental Laws.

"Hazardous Substance" means any substance or material whose Release, transport, use, storage, or handling is regulated or prohibited by any Governmental Authority under any Environmental Laws, including, without limiting the generality of the foregoing, any contaminant, pollutant, deleterious substance, inflammable liquid, chemical, explosive material, or material which may impair life or health, any petroleum or other hydrocarbon and any derivative or by-product thereof, any dangerous substance or goods, asbestos, any gaseous, solid, or liquid waste, any special waste, toxic, or hazardous substance or chemical, any hazardous waste, material, or substance, either in fact or as defined in or pursuant to any Environmental Laws.

"Lease" means this Lease Agreement, together with all schedules, appendices, and other attachments attached hereto, as amended, restated, or supplemented from time to time.

"notice" means any citation, directive, order, inspection, proceeding, judgment, or other communication, written or oral, actual or threatened.

"order" means any order, decision, decree, judgment, ruling, claim, or the like from or by any Governmental Authority under any Environmental Laws.

"Permit" means any permit, certificate, authorization, licence, right, or exemption or the like issued or granted by any Governmental Authority pursuant to or under any Environmental Laws.

"Release" includes any release, discharge, emission, disposal, or dumping into or within the Environment.

"Rent" has the meaning given to it in Section 3.1.1.

"Tenant's Equipment" has the meaning given to it in Section 6.1.

SECTION 2 **LEASED PREMISES**

2.1 Site Description

The Landlord will lease to Tenant the premises described in Schedule "A" (the **"Premises"**) comprising of approximately 1.44 acres, located at 126B North Shore Road, Pointe au Baril, in the Province of Ontario (the **"Site"**), on the terms and conditions hereinafter set out. Tenant is taking the Premises "as is". It is understood that there are no utilities of any nature or kind at the Site.

2.2 Use of Premises

2.2.1 **Telecommunications Facilities and Equipment.** Use of the Premises by Tenant shall be for the purpose of installing, removing, replacing, insuring, maintaining, supplementing, and operating, at its sole expense in good condition, in accordance with applicable regulations and laws, telecommunications facilities and equipment for the provision of telecommunication services. Tenant shall not be permitted to relocate its telecommunications facilities and equipment at the Site without Landlord's prior written approval. Tenant will, before taking possession of the Premises, obtain whatever municipal or other governmental approvals, licences, or permits are needed to enable it to occupy and use the Premises in accordance with this Lease and will, upon request, provide Landlord with proof of having secured the same. Tenant shall use the Site in compliance with all Applicable Laws of the appropriate jurisdictions pertaining to the Environment, health, welfare, and occupational safety.

- 2.2.2 Letters of Concurrence. Letters of concurrence for the installation and operation of Tenant's telecommunications facilities and equipment at the Site shall be obtained by Tenant (such letters include, without limitation, the approval from any Government Authority having jurisdiction, any third party to operate the telecommunications facilities, and equipment or any rights, postponements, and approvals required from the senior management of Tenant) at its sole cost. Tenant shall provide copies of such letter of concurrence to Landlord upon request prior to construction.
- 2.2.3 Installation and Construction. Tenant agrees that all installation and construction shall be performed in accordance with the Construction Agreement and, without limiting the foregoing, in a diligent, safe, neat, responsible, and workmanlike manner and consistent with such reasonable requirements as shall be imposed by Landlord and with all Applicable Laws and other requirements. Tenant shall, at its sole cost and expense, repair any surface or other part of the Site that is damaged by, or as a result of, the installation of Tenant's Equipment and caused by Tenant or others for whom it is in law responsible. All construction, installation, and removal of the telecommunications facilities and equipment shall be subject to Landlord's prior written consent, and shall be co-ordinated in advance with Landlord, in accordance with the Construction Agreement.

2.3 Quiet Possession

Upon paying the Rent and performing its other obligations under this Lease, the Tenant shall have quiet possession of the Premises subject to the terms of this Lease. Tenant shall have 24 hours a day, 7 days a week access to the Premises subject to Landlord's reasonable security requirements.

SECTION 3 RENT

3.1 Rent

- 3.1.1 The rent shall be paid monthly in advance without deduction, setoff, or abatement, in the amount of **Two Thousand Dollars (\$2,000.00) plus HST**, if applicable, starting on the Commencement Date ("**Rent**"). Commercial realty taxes and any other property taxes attributed directly to the Premises shall be payable by Tenant where applicable. Prior to the Commencement Date, Tenant shall provide Landlord with a deposit equal to the first and last months' rent. Such deposit shall be held, without interest, by Landlord throughout the Term as security for Tenant's due performance of all its obligations hereunder.
- 3.1.2 The Rent may be waived in accordance with Statement of Work #2 (TOA Internet Services), Section 2(1).
- 3.1.3 Notwithstanding the foregoing, in the event Tenant subleases or licenses a portion of the Premises to an unrelated, third party telecommunications carrier, the monthly rent herein shall be increased by an amount based on market and site sharing rates, to be agreed upon between the Parties, for each additional telecommunications carrier. Such additional rent shall be payable on a pro-rata basis in advance from the date of installation and for only so long as such third party occupies the Site. Until such time as the additional rent payable by Tenant has been agreed upon, Tenant shall not permit any third party to connect its equipment on the Site.

SECTION 4
COMPLIANCE WITH LAWS

4.1 Compliance with Environmental Laws

- 4.1.1 Tenant will comply with the pertinent laws, regulations, and by-laws relating to the Premises, the Site, and its conduct of business therein and will comply also with the rules and regulations imposed by Landlord for the benefit of the Site, its licensees, occupants, and their customers and other invitees. Without limiting the generality of the foregoing, Tenant shall comply and cause its employees, agents, contractors, and those for whom it is responsible to comply with all Environmental Laws (including, without limiting the generality of the foregoing, obtaining any required Permits) relating to the Premises and the Site or the use thereof by Tenant or those acting under its authority or control. Tenant shall permit Landlord, its officers, employees, consultants, authorized representatives, and agents to: (i) inspect the Premises and Tenant's operations; (ii) conduct tests and Environmental assessments; (iii) remove samples from the Premises; (iv) examine and photocopy any documents or records relating to the Premises; and (v) interview Tenant's employees, agents, contractors, and those for whom it is responsible; all at such reasonable times and intervals as Landlord may desire, to assure compliance with the foregoing obligations.
- 4.1.2 Tenant shall not use the Premises, or permit them to be used, to utilize, manufacture, store, produce, or process any Hazardous Substance. Tenant shall promptly notify in writing both Landlord and, if required by Applicable Law, the proper Governmental Authority of any Release occurring upon the Premises or the Site or any adjoining property. Tenant shall, promptly on demand, remove all non-permitted Hazardous Substances used or Released by Tenant or brought onto the Premises or the Site by Tenant or those acting under its authority or control. For greater certainty, the foregoing obligation of Tenant shall include, without limitation, the responsibility to remove any Hazardous Substances which have, as a result of the operations of Tenant or any other person acting under its authority or control, become affixed to, permeated, or accumulated on or within any structures forming part of the Site or any adjoining property. Upon the demand by any Governmental Authority or Landlord requiring that removal, cleanup, remedial, or corrective action be undertaken either because of the presence, introduction, deposit, Release, emission, leak, spill or discharge of Hazardous Substances at the Premises or the Site or any adjoining property which were caused by Tenant's operations, occupation, or use of the Premises or the Site, Tenant shall promptly at its own expense take all action necessary to carry out a full and complete removal, cleanup, remedial, or corrective action. No action by Landlord and no attempt by Landlord to mitigate its damages under any law shall constitute a waiver or release of Tenant's obligations hereunder and Tenant shall indemnify and save harmless Landlord from all costs and expenses incurred by Landlord pursuant to this Lease and in respect of the Hazardous Substances, and from all other damages suffered by Landlord by reason of Tenant's actions or default hereunder. Tenant's obligations and liabilities hereunder shall survive the expiration or sooner termination of this Lease.

4.2 Planning Restrictions

This Lease is entered into subject to Tenant's compliance with the provisions of all Applicable Laws dealing with planning restrictions, at its cost. If the Term, including any extensions or renewals thereof, shall be expressed to extend for a period in excess of the maximum period for which a lease may be granted without the consent of the body having jurisdiction pursuant to such laws (the "Maximum Period") then, until any necessary consent is obtained by Tenant, at its cost, the Term together with any rights of extension or renewal pursuant hereto shall be conclusively deemed to extend for the Maximum Period less one (1) day from the Commencement Date.

SECTION 5
TERM & TERMINATION

5.1 Term

The Term of this Lease is for twenty (20) years beginning on the 1st day of April, 2021 (the "**Commencement Date**") and ending on the 1st day of April, 2041.

5.2 Termination

This Lease may be terminated in accordance with the termination rights set out in Article 18 of the SPA Agreement.

SECTION 6
TENANT'S EQUIPMENT

6.1 No Alterations to Premises or Site

Tenant will not make any alterations to the Premises or the Site, of any nature or kind, without Landlord's prior written consent, which may be unreasonably and arbitrarily withheld. Tenant's equipment, towers, poles, shelters, cabinets, pedestals, antennas, and mounts (the "**Tenant's Equipment**") shall remain the personal property of Tenant and shall be removed by Tenant upon expiration or termination of this Lease and the Premises shall be restored to its original condition. At the expiry or earlier termination of the Term, Tenant shall be required to remove conduits that are underground and not visible, and will be required to remove foundations, any roof piers, and any installations (structural or otherwise), and shall repair all damage that results from the installation or removal of same.

6.2 Maintenance and Operation of Tenant's Equipment

6.2.1 Tenant shall be solely responsible for the maintenance and care of Tenant's Equipment and the Premises, and shall maintain the same in a clean, tidy, sanitary, and safe condition and in good repair and free of any defects at all times during the Term of this Lease. Tenant shall, at its sole cost and expense, repair any damage to the Site, the Premises, and/or to any other property owned or operated by Landlord, by any tenant or licensee of Landlord, by any other occupant of the Site, or by any other person where such damage is caused by Tenant, its agents, contractors, employees, and those others for whom it is in law responsible, and/or its or their acts, omissions, property, and/or equipment.

6.2.2 Without limiting the generality of the foregoing, Tenant's Equipment shall not disrupt, adversely affect, or interfere with any other party's use or operation of communications or computer or other devices or systems. Tenant shall not operate any Tenant's Equipment of a type or frequency which may cause or will cause any interference to any systems or equipment of any other third party, including without limitation, any occupants of any other neighbouring property. Consent to the installation of Tenant's Equipment, or changes or additions thereto, may be withheld if such interference will occur. Following the installation of Tenant's Equipment, Tenant shall, at its own expense, prepare and conduct an evaluation of the potential for such interference within ten (10) days if requested to do so by Landlord, whether upon Landlord's own behalf or as a result of concerns expressed by any other persons. Landlord shall have the right to engage outside consultants to resolve interference issues arising between Tenant and Landlord or any other third party. Tenant shall reimburse Landlord for the costs of such consultants, plus an administration fee. Landlord shall have the absolute right to require Tenant to implement any such consultant's recommendations for the resolution of interference problems. Tenant shall correct such interference within twenty-four (24) hours after receiving notice of such interference.

Landlord reserves the right to disconnect power to Tenant's Equipment which Tenant fails to correct after proper notification and waiting period.

SECTION 7 **ADDITIONAL CHARGES**

7.1 Utilities

Any utilities required for the operation of the telecommunications facilities at the Premises shall be the sole responsibility of Tenant, and electrical consumption shall be determined by separate meter with direct invoices from the local utility, if available. Any separate meters with respect to utilities to the Premises shall be installed by Tenant, at its expense.

7.2 Expenses Incurred on Behalf of Tenant

Tenant shall promptly pay all charges incurred by or on behalf of Tenant for any work, labour, materials, or services furnished or supplied to Tenant in respect of the Site. If any lien is filed or registered against the Site (or any part thereof) as a result of any work done or materials, services, or labour furnished or supplied for the account of Tenant, Tenant shall promptly cause any such lien to be discharged.

SECTION 8 **WARRANTIES, INDEMNITY, LIMITATION OF LIABILITY**

8.1 Interpretation

In this section and in the Lease, "Landlord", "Owner", and "Mortgagee" include the directors, officers, employees (while in the ordinary course of their employment) and agents of Landlord, Owner, and Mortgagee, as the case may be, and Landlord, Owner, and Mortgagee, as the case may be, solely for the purpose of this section, is the agent or trustee of, and for the benefit of, each of them, respectively.

8.2 Indemnification

8.2.1 Notwithstanding anything in this Lease to the contrary, except to the extent any damage, claim, action, loss, injury, or death result from the negligence or willful misconduct of the Released Persons (as defined herein), Tenant will indemnify the Released Persons and save them harmless from all losses (including loss of the Rent payable by Tenant under this Lease), claims, actions, damages, liabilities, and expenses in connection with loss of life, personal injury, damage to property (including Landlord's reasonable costs of defending, negotiating, or settling any such suits, claims, demands, actions, causes of actions, or liens as Landlord may in their discretion deem so to do) arising from this Lease, or any occurrence in, on, or at the Premises, or the occupancy or use by Tenant of the Premises, or any part of it, or occasioned wholly or in part by any act or omission of Tenant or by anyone permitted to be in the Premises or the Site by Tenant. "**Released Persons**" means, collectively and individually, Landlord, its property manager, any owner ("**Owner**") of the property (if other than Landlord), any mortgagee or other security holder ("**Mortgagee**") of the property.

8.2.2 The indemnity in this section shall be deemed to be in addition to and not in lieu of any other indemnity provision herein, or in any contract of insurance for indemnity held by the Released Persons which may affect this Lease.

8.3 Limitation of Liability

Except to the extent any of same results from the negligence or willful misconduct of the Released Persons, the Released Persons shall not be liable for any: (i) death or injury arising from any occurrence in, upon, at, or relating to the Premises or the Site or damage to property of Tenant or of others located in the Premises or elsewhere; (ii) loss of or damage to, or loss of use of, the property of Tenant or others which is located in the Premises or on any other part of the Site, including Tenant's Equipment; (iii) death, injury, loss or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, flood, or snow from any part of the Premises or the Site; or (iv) any claim, loss, cost, damage, or expense from and of any people or their animals arising from the transmission of any signals from the Premises. Further, without limiting the generality of the foregoing, except to the extent any of same results from the negligence or willful misconduct of the Released Persons, no Released Person shall be liable for damage caused by another tenant, occupant, or persons in the Site or by occupants of property adjacent to the Site, or the public, or caused by construction or by any other private, public, or quasi-public work.

8.4 Representations & Warranties

Landlord and Tenant each represents and warrants that it has full authority to enter into and sign this Lease and bind itself accordingly.

SECTION 9 **GENERAL**

9.1 Notice

Any notice herein provided or permitted to be given by Tenant to Landlord shall be sufficiently given if delivered in person, mailed in Canada, registered and postage prepaid, or by courier addressed to Landlord at 9 James Street, Parry Sound, Ontario P2A 1T4, and any notice herein provided or permitted to be given by Landlord to Tenant shall be sufficiently given if delivered in person, mailed in Canada, registered and postage prepaid, or by courier addressed to Tenant at 128 Larch Street, Suite 201, Sudbury, Ontario P3E 5J8. Any such notice given as aforesaid shall be conclusively deemed to have been given on the day on which such notice is delivered or on the third day that there is postal delivery following the day on which such notice is mailed, as the case may be. Either Party may at any time give notice in writing to the other of any change of address of the Party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such Party for the giving of notices hereunder.

9.2 Assignment

All assignments or subleases or licenses of all or part of the Premises require Landlord's consent, acting reasonably. Tenant may permit the use of all or any portion of the Premises and access and utility rights by others for telecommunications purposes in accordance with the other terms of this Lease. Any assignment, sublease, or license, if consented to by Landlord, may at Landlord's option be documented by Landlord or its solicitor, and any and all reasonable legal costs and Landlord's then standard fee with respect thereto or to any documents reflecting Landlord's consent to the transfer shall be payable by Tenant within fifteen (15) days after of demand as Rent.

9.3 Entire Agreement

This Lease contains all agreements, promises, and understandings between Landlord and Tenant regarding the subject matter herein. All future Plans shall become schedules and form part of this Lease.

9.4 Enurement

The terms and conditions of this Lease shall extend to and bind the heirs, personal representatives, successors, and assigns of Landlord and Tenant.

9.5 Governing Law & Severability

9.5.1 This Lease shall be governed by the laws of the Province of Ontario. Landlord agrees to keep this Lease and its terms strictly confidential and not disclose them unless compelled by law.

9.5.2 Invalid provisions are severable and do not impair the validity of the balance of this Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first above written.

SIGNED, SEALED, AND DELIVERED

in the presence of

**THE CORPORATION OF THE TOWNSHIP OF
THE ARCHIPELAGO**

Per

[Name]
[Title]

Per

[Name]
[Title]

We have the authority to bind the Corporation

VIANET INC.

Per

[Name]
[Title]

Per

[Name]
[Title]

We have the authority to bind the Corporation

**SCHEDULE "A"
PREMISES**

Real Property Description

Teranet PIN#: 522460614

Description: PART BROKEN LOT 27 CONCESSION 5 HARRISON PART 5, 42R6083 EXCEPT PARTS 1 AND 2, 42R6130, PART 2, 42R6131, PARTS 1, 2, 3 AND 4, 42R9399, PARTS 1, 2, 3 AND 4, 42R9400, PART 1, 42R15917, PARTS 1 AND 2, 42R16212, PART 1, 42R18179, PART 1, 42R18180, PARTS 1, 2 AND 3, 42R18181, LOTS 5, 6, 7, 8, 9, 10, 11, 12, AND 13, 42M602 AND PART 1, 42R20126 AND EXCEPT PARTS 2 AND 3, 42R21075 SUBJECT TO AN EASEMENT OVER PART 1, 42R21075 IN FAVOUR OF PART 2, 42R21075 AS IN GB117948 SUBJECT TO AN EASEMENT OVER PART 1, 42R21075 IN FAVOUR OF PART 3, 42R21075 AS IN GB117955 TOWNSHIP OF THE ARCHIPELAGO

Site Plan

