

Vermilion Broadband as a Utility Project Agreement

THIS REVISED AND RESTATED PROJECT AGREEMENT dated as of this 27th day of January, 2022 (the "**Effective Date**").

BETWEEN:

THE CORPORATION OF THE TOWN OF VERMILION, a municipal corporation under the *Municipal Government Act* (Alberta) with its principal place of business at 5021 - 49 Ave, Vermilion, AB, T9X 1X1

hereinafter referred to as "**Vermilion**"

AND

ALBERTA BROADBAND NETWORKS GP, a general partnership formed under the laws of the Province of Alberta with its principal place of business at Suite 100, 9304 41 Avenue NW, Edmonton, AB, T6E 6G8

hereinafter referred to as "**Project Co**".

RECITALS

- A. Vermilion wishes to enable the construction and operation of a new broadband network across Vermilion as described in the Project Scope.
- B. Project Co shall undertake and perform the Project, which includes the D&C Works and the O&M Activities.
- C. Vermilion and Project Co wish to enter into this Project Agreement, which sets out the terms and conditions upon which Project Co shall perform the Project.
- D. It is the intent that Vermilion and Project Co shall work collaboratively, cooperatively and responsibly throughout the Project Term.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained 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 — DEFINITIONS AND INTERPRETATION**1.1 Definitions**

- (a) In this Project Agreement all capitalized terms defined in Schedule A attached hereto have the meaning given to them in Schedule A attached hereto.
- (b) This Project Agreement is comprised of this executed agreement and the following schedules, all of which are hereby incorporated by reference into and form part of this Project Agreement:

Schedule No.	Description
A	Definitions
B	Project Scope

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- (c) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of either party, no consent, approval or satisfaction of a party or its Representative shall be unreasonably withheld or delayed.

1.2 Principles of Interpretation

- (a) The Article numbers, clause numbers, headings and marginal headings in this Project Agreement are solely for the purpose of facilitating reference and shall not impact the construction or interpretation of this Project Agreement.
- (b) Words importing Persons or Parties shall include firms, companies, corporations, trusts, associations, and any organizations having legal capacity to sue and be sued in their names.
- (c) Words importing the singular also include the plural and vice-versa where the context requires.
- (d) Words importing one gender also include other genders.
- (e) In case of ambiguities or discrepancies in this Project Agreement, the following shall apply:
 - (i) between two Articles of this Project Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
 - (ii) between the Sections of this Project Agreement and its Schedules, the provisions of the Sections shall prevail;
 - (iii) between the written description on the Drawings and the Project Scope, the latter shall prevail;
 - (iv) between the dimensions scaled from the Drawings and their specific written dimensions, the latter shall prevail;
 - (v) between any value written in numerals and in words, the latter shall prevail. Any word not specifically defined herein shall have the same meaning as is given in the standard Oxford Dictionary, with reference to the context in which it is used.

ARTICLE 2— SCOPE OF AGREEMENT; PROJECT TERM; COMMENCEMENT DATE**2.1 Scope of Agreement**

- (a) Project Co shall undertake and perform the Project, including the **D&C** Works and the O&M Activities, in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to Vermilion, except as otherwise expressly provided in this Agreement.

2.2 Project Term

- (a) Subject to the terms of this Project Agreement, the term of this Project Agreement shall commence on the Effective Date and shall expire on the twentieth (20th) anniversary of the Commencement Date, provided that the term shall automatically renew for successive periods of five (5) years, unless and until either Party notifies the other Party in writing at least six (6) months prior to any expiration date, that it does not wish to renew this Project Agreement.

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2.3 Commencement Date

- (a) The "**Commencement Date**" shall be the later of the date on which:
- (i) Project Co confirms to Vermilion in writing that each of the following conditions have been satisfied or waived:
 - (A) Project Co has secured the assets, facilities and services provided for in Section 4.2.3, or is otherwise satisfied it will secure such assets, facilities and services promptly following the Commencement Date, sufficient to enable Project Co to commence to carry out the Project Co Operations, and otherwise perform its obligations under the Project Agreement;
 - (B) Project Co has entered into all Ancillary Agreements, or is otherwise satisfied that all Ancillary Agreements will be entered into promptly following the Commencement Date, necessary to enable Project Co to commence to carry out the Project Co Operations, and otherwise perform its obligations under the Project Agreement; and
 - (C) Project Co has achieved Financial Close; and
 - (ii) Vermilion confirms to Project Co in writing that each of the following conditions have been satisfied or waived:
 - (A) Project Co has delivered to Vermilion a document setting forth Project Co's plan and schedule to complete the D&C Works on or before the Scheduled D&C Completion Date (the "**D&C Plan**"), and such D&C Plan is reasonably satisfactory to Vermilion;
 - (B) Project Co has delivered to Vermilion a document setting forth the procedures, mechanisms and protocols which will be followed for the purposes of determining D&C Completion (the "**D&C Completion Procedures**"), and such D&C Completion Procedures are reasonably satisfactory to Vermilion;
 - (C) Project Co has delivered to Vermilion an abstract of all Ancillary Agreements (redacted of Sensitive Information) necessary to enable Project Co to commence to carry out the Project Co Operations, and otherwise perform its obligations under the Project Agreement, and such Ancillary Agreements, based on such abstracts, are reasonably satisfactory to Vermilion;
 - (D) Project Co has delivered and Vermilion has approved Key Performance Indicators, which approval shall not to be unreasonably delayed or withheld; and
 - (E) the Parties have entered into the Project Earnings and Growth Sharing Agreement in a form mutually satisfactory to the Parties.

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- (b) If Project Co and Vermilion do not confirm that the conditions set forth in Sections 2.3(a)(i) and 2.3(a)(ii), as applicable, have been satisfied or waived by the date which is six (6) months following the Effective Date or such later date as may be agreed to by the Parties in writing, then notwithstanding anything to the contrary set forth herein this Project Agreement will automatically be null and void.

ARTICLE 3 — REPRESENTATIONS AND WARRANTIES**3.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to Vermilion that:
- (i) Project Co is a general partnership duly organized, validly existing and in good standing under the laws of the Province of Alberta and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) as of the date of this Project Agreement, the only partners of Project Co are currently Meridiam Infrastructure A-Net ULC, a British Columbia unlimited liability corporation, and DIG Alberta Limited Partnership, an Alberta limited partnership;
 - (iii) each of Project Co and the Partners has the requisite power, authority and capacity to execute and deliver and perform its obligations under this Project 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 Project Agreement to be done, executed, delivered or performed;
 - (iv) this Project Agreement has been duly authorized, executed, and delivered by each of Project Co and the Partners and constitutes a legal, valid, and binding obligation of Project Co and the Partners, enforceable against Project Co and the Partners in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
 - (v) the execution, delivery and performance of this Project Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of Project Co's or the Partners' governing documents or any Applicable Law or any covenant, agreement, understanding, decree or order to which they are a party or by which it or any of their properties or assets is bound or affected;
 - (vi) there are no actions, suits, proceedings, or investigations pending or, to Project Co's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach

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of or constitute a default of Project Co under this Project Agreement or which individually or in the aggregate may result in any Material Adverse Effect;

- (vii) each of Project Co and the Partners has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Authority which may result in any Material Adverse Effect or impairment of Project Co's ability to perform its obligations and duties under this Project Agreement
- (viii) no sums, in cash or kind, have been paid or will be paid, by or on behalf of Project Co or the Partners, to any Person by way of fees, commission or otherwise for the purposes of entering into of this Project Agreement or for influencing or attempting to influence any officer or employee of Vermilion in connection therewith; and
- (ix) to the knowledge of Project Co and the Partners, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against Project Co or the Partners at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate, in Project Co's opinion, would result in any impairment of Project Co's ability to perform its obligations under this Project Agreement, and each of Project Co and the Partners has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that, in Project Co's opinion, would result in any such impairment.

3.2 Vermilion Representations and Warranties

- (a) Vermilion represents and warrants to Project Co that as of the date of this Project Agreement:
 - (i) Vermilion is a municipal corporation incorporated and validly existing under the laws of the Province of Alberta and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) Vermilion has the requisite power, authority and capacity to execute and deliver and perform its obligations under this Project 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 Project Agreement to be done, executed, delivered or performed;
 - (iii) this Project Agreement has been duly authorized, executed, and delivered by Vermilion and constitutes a legal, valid, and binding obligation of Vermilion, enforceable against Vermilion in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;

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- (iv) the execution, delivery and performance of this Project Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of Vermilion's governing documents or any Applicable Law or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (v) there are no actions, suits, proceedings, or investigations pending or, to Vermilion's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of Vermilion under this Project Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (vi) Vermilion has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Authority which may result in any Material Adverse Effect or impairment of Vermilion's ability to perform its obligations and duties under this Project Agreement; and
- (vii) to the knowledge of Vermilion, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against Vermilion at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate, in Vermilion's opinion, would result in any impairment of Vermilion's ability to perform its obligations under this Project Agreement, and Vermilion has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that, in Vermilion's opinion, would result in any such impairment.

ARTICLE 4 — GENERAL OBLIGATIONS OF THE PARTIES**4.1 Project Co Responsibilities****4.1.1 General**

- (a) Subject to and in accordance with the terms and conditions set forth in this Project Agreement, Project Co shall, at its own cost and risk:
 - (i) design, build, install, own, operate and maintain the Broadband Network Infrastructure throughout the Project Term, and otherwise perform all of its obligations in accordance with the provisions of this Project Agreement, Good Industry Practice and Applicable Law;
 - (ii) be responsible for the financing of the Broadband Network Infrastructure and the Project Co Operations in accordance with the provisions of Article 9;
 - (iii) obtain all Applicable Licences and all Applicable Permits in conformity with Applicable Law and comply with the terms thereof during the Project Term;
 - (iv) ensure that infrastructure adjacent to the Broadband Network Infrastructure is not damaged as a result of the Project Co Operations and, if so damaged, promptly repair and make good such adjacent infrastructure at its cost;
 - (v) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, and systems used in or incorporated into the Broadband Network Infrastructure;

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- (vi) provide all assistance to Vermilion and Vermilion's Designated Representative as reasonably required for the performance of their duties under this Project Agreement;
- (vii) provide to Vermilion's Designated Representative, reports on a regular basis during the D&C Period and the O&M Period in accordance with the provisions of this Project Agreement;
- (viii) adhere to the provisions of Applicable Law in connection with the D&C Works and the O&M Activities;
- (ix) appoint, supervise, monitor, and control the activities of Contractors under their respective Ancillary Agreements as may be necessary;
- (x) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of Project Co's obligations under this Project Agreement;
- (xi) not place, create or permit any Contractor or other Person claiming through or under Project Co to create or place any Encumbrance over all or any part of the Project Locations;
- (xii) be responsible for safety, soundness and durability of the Broadband Network Infrastructure including all structures forming part thereof and their compliance with the Project Scope; and
- (xiii) operate and maintain the Broadband Network Infrastructure at all times during the O&M Period in conformity with this Project Agreement including but not limited to the Project Scope, the O&M Program and Good Industry Practice.

(b) Project Locations

Project Co shall consider existing site constraints when determining the Broadband Network Infrastructure design locations and work to optimize the design build and ensure the integrity of the Project Locations in accordance with Applicable Licences, Applicable Permits and Good Industry Practice.

4.2 Vermilion Responsibilities**4.2.1 General**

- (a) Subject to and in accordance with the terms and conditions set forth in this Project Agreement, Vermilion shall, at its own cost and risk:
 - (i) perform all of its obligations in accordance with the provisions of this Project Agreement and Applicable Law, and
 - (ii) cooperate with Project Co in the fulfillment of this Project Agreement, provided, however, that Vermilion shall not, except as may be otherwise set forth in any Ancillary Agreement entered into between Project Co and Vermilion, be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) Vermilion shall take reasonable steps to minimize undue interference with the performance of the Project by Project Co or any Project Co Party.

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- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Vermilion in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude Vermilion's Council from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law.

4.2.2 Exclusivity

- (a) Vermilion hereby grants Project Co the exclusive right, during the Project Term, to construct the D&C Works and to carry out the O&M Activities, the whole as contemplated by the Project Scope, except as may be required by Applicable Law including any federal law regulating telecommunications. Without limiting the extent of the foregoing, subject to Applicable Law, Vermilion shall not enter into any agreement with any Person, other than Project Co, to facilitate the construction or installation of infrastructure similar to the Broadband Network Infrastructure or to facilitate activities similar to the Project Co Activities.
- (b) Subject to Applicable Law, Vermilion hereby acknowledges and agrees that Project Co shall have the exclusive right to use the Broadband Network Infrastructure and to collect revenue using the Broadband Network Infrastructure.

4.2.3 Assets, Facilities and Services

- (a) Vermilion shall, at its own cost and risk, throughout the Project Term:
- (i) make available to Project Co, upon request, on commercially reasonable terms, to the extent available, infrastructure owned or controlled by Vermilion, including conduit, fibre, poles, substations, rack space, nodes, buildings, facilities, central office or switch locations, and available land;
 - (ii) make available to Project Co, upon request, on commercially reasonable terms, to the extent available, other assets and services owned or controlled by Vermilion that will assist Project Co in reducing the overall risk of the Project by reducing the cost structure and shortening the design and construction schedule, including access to GIS data relevant to the Project;
 - (iii) use commercially reasonable efforts to support Project Co and its Contractors to expeditiously obtain all Applicable Licenses; and
 - (iv) use commercially reasonable efforts to support Project Co and its Contractors to expeditiously obtain all Applicable Permits

required by Project Co and its Contractors for the purposes of (i) the D&C Works during the D&C Period; and (ii) the O&M Activities during the O&M Period,

- (b) Vermilion shall, throughout the Project Term:
- (i) in good faith and on commercially reasonable terms, negotiate long-term contracts to purchase Broadband Network Infrastructure services required for all Vermilion operations, such as transmission capacity, Internet access, voice, video, security monitoring, cloud computing, and storage, from Internet service providers utilizing the Broadband Network Infrastructure and for which any transition costs are minimal;

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- (ii) use its commercially reasonable efforts to assist Project Co to identify other entities in Vermilion that are candidates to enter into contracts of two (2) years or more for fibre or network services, including such entities as educational institutions, large employers, and other enterprises; and
- (iii) provide Project Co with information about and use its commercially reasonable efforts to assist Project Co in securing grants and loans available from Government Authorities for projects similar to the Project, provided that, for avoidance of doubt, Vermilion shall not be obligated to secure or provide any grants or loans to Project Co, save and except as provided in Section 9.1(a).

4.2.4 Peaceful Possession / Use

Vermilion warrants that:

- (a) Project Co shall have no obligation/liability as to payment of any fees in excess of commercially reasonable fees with respect to the Applicable Licenses required from Vermilion or the use of the Project Locations; and
- (b) Project Co shall, subject to complying with the terms and conditions of the Applicable Licences, remain in peaceful possession of the Project Locations during the Project Term. In the event that Project Co is obstructed in carrying on the Project Co Operations by any third party claiming any right, title or interest in or over any of the Project Locations, Vermilion shall, upon notice by Project Co, use commercially reasonable efforts to remove any such obstruction, as soon as reasonably possible, at its own expense, subject to Applicable Law.

ARTICLE 5 — OWNERSHIP

- 5.1 Vermilion acknowledges and agrees that Project Co shall own all right, title and interest in and to the Broadband Network Infrastructure.

ARTICLE 6 - DESIGNATED REPRESENTATIVES**6.1 Designated Representatives**

- (a) Vermilion, from time to time and at all times during the Project Term, shall designate a competent representative ("**Vermilion's Designated Representative**") who shall have authority to act in all respects with regard to this Project Agreement or Vermilion's activities related to this Project Agreement. Notice to Vermilion's Designated Representative shall be notice to Vermilion.
- (b) Project Co, from time to time and at all times during the Project Term, shall designate a competent representative ("**Project Co's Designated Representative**") at all times who shall have authority to act, in all respects with regard to this Project Agreement or Project Co's activities related to this Project Agreement. Notice to Project Co's Designated Representative shall be notice to Project Co.

ARTICLE 7 — DESIGN AND CONSTRUCTION**7.1 Obligations of Project Co during D&C Period**

- (a) Project Co shall achieve D&C Completion under and in accordance with this Project Agreement by the Scheduled D&C Completion Date;

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- (b) Project Co shall, at all times, afford access to the Project Locations, to the authorized representatives of Vermilion and officer of any Governmental Authority having jurisdiction over the Project Locations, including those concerned with safety, security or environmental protection, to inspect the Broadband Network Infrastructure and to investigate any matter within their authority and upon reasonable notice. Project Co shall provide to such Persons reasonable assistance necessary to carry out their respective duties and functions.

7.2 Reporting and Monitoring

- (a) During the D&C Period, Project Co shall furnish to Vermilion's Designated Representative monthly reports on actual progress of the D&C Works and furnish any other relevant information as may reasonably be required by Vermilion's Designated Representative.
- (b) If Vermilion determines, acting reasonably, that the rate of progress of the D&C Works is such that D&C Completion is not feasible on or before the Scheduled D&C Completion Date, it shall so notify Project Co. Thereupon, Project Co shall within thirty (30) days thereof notify Vermilion's Designated Representative on the steps it proposes to take, at its cost and expense, to expedite progress and the period within which it shall achieve D&C Completion.

7.3 D&C Works Completion

- (a) **Project Co** shall achieve D&C Completion in accordance with the provisions of this Project Agreement on a date not later than thirty-six (36) months after the Commencement Date (the "**Scheduled D&C Completion Date**"), the whole in accordance with the D&C Plan.
- (b) Project Co shall give Vermilion's Designated Representative at least ten (10) days prior notice of the date on which it intends to carry out the D&C Completion Procedures.
- (c) All D&C Completion Procedures shall be conducted in accordance with Applicable Law and Applicable Permits. Vermilion shall have the right to suspend or postpone the D&C Completion Procedures if it is reasonably anticipated or determined during their performance that the Broadband Network Infrastructure or any part thereof does not meet the Project Scope. Vermilion's Designated Representative may designate a representative with suitable qualifications and experience to witness and observe the D&C Completion Procedures.
- (d) Vermilion's Designated Representative shall monitor the results of the D&C Completion Procedures and shall determine, acting expeditiously and reasonably, the compliance of the Broadband Network Infrastructure with the Project Scope and shall provide to Project Co copies of all data pursuant thereto.
- (e) Upon determining the compliance of the Broadband Network Infrastructure with the Project Scope in accordance with the D&C Completion Procedures, Vermilion shall forthwith issue to Project Co a certificate confirming same (the "**D&C Completion Certificate**").
- (f) Vermilion may at the request of Project Co issue a provisional certificate of completion ("**Provisional Certificate**") if the D&C Completion Procedures are successful and all parts of Broadband Network Infrastructure can be legally, safely, and reliably opened for commercial operation though certain works or things forming part thereof are not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by Vermilion's Designated Representative and Project Cos Designated Representative ("**Punch List**"). All Punch List items shall be completed by Project Co within thirty (30) days of the date of issue of such Provisional Certificate. Upon completion of all Punch List items to the satisfaction of Vermilion's Designated Representative, it shall issue the D&C Completion

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Certificate to Project Co's Designated Representative with a copy marked to Vermilion. In the event of Project Co's failure to complete the Punch List items within the said period of thirty (30) days, Vermilion may, without prejudice to any other rights or remedy available to it under this Project Agreement, have such items completed at the risk and costs of Project Co. Project Co shall reimburse Vermilion on demand the entire costs incurred by Vermilion in completing the Punch List items.

- (g) If Vermilion certifies that it is unable to issue the D&C Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of Project Co's obligations in accordance with this Project Agreement and as a consequence thereof the D&C Completion Procedures could not be held or had to be suspended, Project Co shall re-schedule and hold them as soon as reasonably practicable.
- (h) Project Co shall bear all the expenses relating to the performance of the D&C Completion Procedures.

ARTICLE 8 — OPERATION AND MAINTENANCE**8.1 Obligations of Project Co during O&M Period**

- (a) Project Co shall operate the Broadband Network Infrastructure to comply with Project Scope, Good Industry Practice, Applicable Law and Applicable Permits, as set forth in this Project Agreement.
- (b) Project Co shall, as set forth in the O&M Program, maintain the Broadband Network Infrastructure and modify, repair, or otherwise make improvements to the Broadband Network Infrastructure to comply with Project Scope, and as set forth in this Project Agreement, Good Industry Practice, Applicable Law and Applicable Permits.

8.2 O&M Program

- (a) Not later than forty-five (45) days before the beginning of each Contract Year, Project Co shall provide to Vermilion's Designated Representative, its proposed or updated, as the case may be, program of preventive and other scheduled maintenance of the Broadband Network Infrastructure (the "**O&M Program**") for approval of Vermilion, not to be unreasonably delayed or withheld. Such O&M Program shall set forth:
 - (i) intervals and procedures for the carrying out of inspection of all elements of the Broadband Network Infrastructure;
 - (ii) criteria to be adopted for deciding maintenance needs;
 - (iii) preventive maintenance schedule;
 - (iv) intervals at which Project Co shall carry out periodic maintenance; and
 - (v) intervals for major maintenance and the scope thereof.

8.3 Rectification of Defects

- (a) Save and except as otherwise expressly provided in this Project Agreement, if the Broadband Network Infrastructure or any part thereof shall suffer any loss or damage during the Project Term, from any cause whatsoever, Project Co shall, at its cost and expense, rectify and remedy

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such loss or damage in a manner so as to make the Broadband Network Infrastructure conform to the Project Scope.

8.4 Key Performance Indicators

- (a) Not later than forty-five (45) days before the beginning of the O&M Period and thereafter before each Contract Year, Project Co shall provide to Vermilion's Designated Representative, its proposed or updated, as the case may be, the Key Performance Indicators for the next Calendar Year (or portion thereof in the case of the first and last year of the O&M Period) for approval of Vermilion, not to be unreasonably delayed or withheld.
- (b) During the O&M Period, Project Co shall furnish to Vermilion's Designated Representative monthly reports on actual achievement of the Key Performance Indicators and furnish any other relevant information as may reasonably be required by Vermilion's Designated Representative.

8.5 Meetings

- (a) At least once during each Calendar Year in the O&M Period, and at other times as requested by either Party, the Parties shall meet to discuss O&M Activities.

ARTICLE 9 — CONTRIBUTION, FINANCING, AND SHARING**9.1 Contribution**

- (a) Vermilion shall contribute two million four hundred thousand dollars (\$2,400,000) to Project Co for the Project Co Operations, in one instalment of one million six hundred thousand dollars (\$1,600,000), payable on or before the later of, the last day of December, 2022, and the D&C Completion Date, and in one instalment of eight hundred thousand dollars (\$800,000), payable on or before the later of, the last day of December, 2023, and the D&C Completion Date.

9.2 Financing

- (a) Project Co shall be responsible for arranging the financing of all other costs of the Project Co Operations in accordance with the Financial Documents, at Financial Close.

9.3 Earnings and Growth Sharing

- (a) Vermilion shall be entitled to be paid an amount equivalent to:
 - (i) an agreed upon percentage, which percentage shall be no less than 1% and no more than 9%, of retained earnings attributable to the Project, calculated and payable in accordance with the terms of the Project Earnings and Growth Sharing Agreement; and
 - (ii) an agreed upon percentage of the value of the equity attributable to the Project, on a sale or on an initial public offering of equity interests of Project Co, on the closing of any such sale or initial public offering,

pursuant and subject to the terms and conditions of a Project Earnings and Growth Sharing Agreement between Vermilion and Project Co (the "**Project Earnings and Growth Sharing Agreement**"), to be negotiated in good faith and entered into prior to the Commencement Date.

ARTICLE 10 — INFORMATION AND AUDIT**10.1 Information and General Audit Rights**

- 10.1.1** Project Co shall provide to Vermilion all information, reports, documents, records and the like in the possession of, or available to, Project Co as Vermilion may reasonably require from time to time for any purpose in connection with this Project Agreement and the Ancillary Agreements, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Contractors shall be available to Project Co and Project Co shall include relevant terms in all Ancillary Agreements to this effect.
- 10.1.2** Project Co shall also provide to Vermilion, and shall require all of its Contractors, including the Contractors, to provide to Vermilion (at Vermilion's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 10.1.1 which subsequently come into the possession of, or become available to, Project Co or the Contractors, as Vermilion may reasonably require from time to time to enable Vermilion to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Broadband Network Infrastructure, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources and related matters, other than Sensitive Information.
- 10.1.3** Project Co shall promptly after receipt provide Vermilion with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Project Co Party from any Governmental Authority in relation to any of the Project, the Broadband Network Infrastructure, the Project Co Operations and Project Co shall include relevant terms in all Ancillary Agreements to this effect.
- 10.1.4** Project Co shall promptly notify Vermilion of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- 10.1.5** All information, reports, documents and records in the possession of, or available to, Project Co, which are required to be provided to or available to Vermilion hereunder, shall be subject and open to inspection and audit by Vermilion at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless Vermilion and Project Co otherwise agree. Vermilion shall also have the right to monitor and audit the performance of any and all parts of the Project wherever located, and Project Co shall cooperate with, and shall require its Ancillary Agreement Contractors to cooperate with, and provide access to the representatives of Vermilion monitoring and auditing such parts of the Project, including providing them with access and copies (at Vermilion's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Project. Except as otherwise provided herein, all of Vermilion's costs for the inspections, audits and monitoring shall be borne by Vermilion, unless such inspection, audit or monitoring discloses any unpaid amount due and payable by Project Co to Vermilion, in which case Project Co shall be responsible for any audit,

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inspection or monitoring costs incurred by Vermilion, not exceeding the amount due and payable.

10.1.6 In conducting an audit of Project Co under Section 10.1.5 or as otherwise provided under this Project Agreement, Vermilion shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Vermilion's reasonable cost) of all books and records of Project Co required to be provided to or available to Vermilion hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with Vermilion and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Vermilion all matters arising from such audits, including the refunding of monies to Vermilion where applicable. At the reasonable request of Vermilion's auditors, Project Co shall provide such information, reports, documents and records as Vermilion's auditors may reasonably require, other than Sensitive Information.

10.1.7 Vermilion's rights pursuant to this Section 10.1 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.

10.1.8 Vermilion's rights pursuant to this Section 10.1 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable **Law**.

ARTICLE 11 — INSURANCE**11.1 Insurance during the D&C Period**

Project Co shall, at its cost and expense, purchase and maintain during the D&C Period such insurance as may be reasonably required to cover:

- (a) all risks course of construction insurance covering the property of every description including all equipment to be incorporated into the Broadband Network Infrastructure;
- (b) wrap-up commercial general liability covering all construction operations on an occurrence basis against claims for bodily injury (including death), personal injury, property damage (including loss of use); and
- (c) any other insurance that may be reasonably required to cover risks to its employees and its assets (against loss, damage, or destruction, at full replacement value), including all Force Majeure Events that are insurable and not otherwise covered in items (a) and (b).

11.2 Insurance during the O&M Period

Project Co shall, at its cost and expense, purchase and maintain during the O&M Period such insurance as may be reasonably required to cover:

- (a) all risks property insurance covering the Broadband Network Infrastructure in an amount of no less than required by the Project Lenders pursuant to the Financing Documents;
- (b) commercial general liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), broad property damage (including loss of use); and

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- (c) any other insurance that may be necessary to cover risks to its employees and its assets (against loss, damage, or destruction, at full replacement value), including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

11.3 Insurance Companies

Project Co shall insure all insurable assets comprised in the Broadband Network Infrastructure through rated insurance companies and if so, permitted by Vermilion, through foreign insurance companies backed by USA and Canadian companies, to the extent that insurances are necessary to be affected through them.

11.4 Evidence of Insurance Coverage

Project Co shall, from time to time, provide to Vermilion copies of all insurance policies (or appropriate endorsements, certifications, or other satisfactory evidence of insurance) obtained by Project Co in accordance with this Project Agreement (the **"Insurance Coverage"**).

11.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by Project Co towards construction, repair or renovation or restoration of the Broadband Network Infrastructure or any part thereof which may have been damaged or destroyed. Project Co may designate the Lenders as the loss payees under the insurance policies/assign the insurance policies in their favor as security for the financial assistance. Project Co shall carry out such repair or renovation or restoration or substitution to the extent possible and in such manner that the Broadband Network Infrastructure or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as it was before such damage or destruction, normal wear and tear excepted.

11.6 Validity of the Insurance Coverage

Project Co shall pay the premium payable on such insurance policy(ies) to keep the policy(ies) in force and valid throughout the Project Term and furnish copies of the same to Vermilion. Each insurance policy shall provide that the same shall not be cancelled or terminated unless fifteen (15) days' clear notice of cancellation is provided to Vermilion in writing.

ARTICLE 12 - FORCE MAJEURE

As used in this Project Agreement, a **"Force Majeure Event"** shall mean the occurrence of a Non-Political Event, Indirect Political Event and/or Political Event as defined in Sections 12.1, 12.2, and 12.3 respectively, which prevents the affected Party (the **"Affected Party"**) from performing its obligations under this Project Agreement and (i) is beyond the reasonable control and not arising out of the fault of the Affected Party and (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care.

12.1 Non-Political Event

- (a) As used in this Project Agreement, a **"Non-Political Event"** shall mean one or more of the following acts or events:
- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, fire, or landslide;

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- (ii) disease, epidemics and pandemics (including COVID-19);
- (iii) radioactive contamination or ionizing radiation;
- (iv) general strikes or boycotts (other than those involving Project Co, its Contractors, or their respective employees/representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Broadband Network Infrastructure;
- (v) any failure or delay of a Contractor but only to the extent caused by another Force Majeure Event; or
- (vi) Any event or circumstances of nature analogous to any of the foregoing.

12.2 Indirect Political Event

- (a) As used in this Project Agreement, an **"Indirect Political Event"** shall mean one or more of the following acts or events:
 - (i) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage;
 - (ii) any measures imposed by any Governmental Authority as a result of an outbreak of disease, an epidemic or a pandemic (including COVID-19);
 - (iii) any industry, provincial or national strike or industrial action affecting the obligations of a Party hereunder; or
 - (iv) any protest, trespass, vandalism or other form of public agitation which affected the Project Co Operations or the Broadband Network Infrastructure.

12.3 Political Event

- (a) As used in this Project Agreement, a **"Political Event"** shall mean one or more of the following acts or events by or on account of Vermilion (other than as required to comply with Applicable Law of general application):
 - (i) change in Applicable Law specifically directed to and impacting Project Co, a Contractor, the Broadband Network Infrastructure or the Project Co Operations;
 - (ii) expropriation or compulsory acquisition by Vermilion of any Broadband Network Infrastructure or rights of Project Co or of the Contractors;
 - (iii) with respect only to Project Co, any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, or failure to uphold without valid cause, an Applicable Licence;
 - (iv) with respect only to Project Co, any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew, grant without valid cause, or failure to uphold without valid cause, an Applicable Permit.

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12.4 Effect of Force Majeure Event

- (a) If the Affected Party is rendered wholly or partially unable to perform its obligations under this Project Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event provided that:
- (i) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
 - (ii) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
 - (iii) when the Affected Party can resume performance of its obligations under this Project Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.
- (b) Where the Force Majeure Event occurs before the D&C Completion Date, the Scheduled D&C Completion Date and the Project Term shall be extended by the period for which such Force Majeure Event shall subsist.
- (c) Where a Force Majeure Event occurs after the D&C Completion Date, Project Co shall continue to make all reasonable efforts to operate the Broadband Network Infrastructure and/or to collect revenue, but if it is unable or prevented from doing so, the Project Term shall, having due regard to the extent of the impact thereof as determined by Vermilion, be extended by the period for which collection of revenue remains affected on account thereof.
- (d) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Section 12.5.

12.5 Allocation of Costs during Subsistence of Force Majeure

Upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:

- (a) When the Force Majeure Event is a Non-Political Event or an Indirect Political Event the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such **Force** Majeure Event;
- (b) Where the Force Majeure Event is a Political Event, the Force Majeure Costs, to the extent actually incurred and certified by the Auditors of Project Co, shall be reimbursed by Vermilion to Project Co within ninety (90) days from the date of receipt of Project Co's claim; and
- (c) For avoidance of doubt, Force Majeure Costs shall not include loss of revenues or any debt repayment obligations but shall include interest payments on such debt, O&M Expenses, and all other costs directly attributable to the Force Majeure Event.

12.6 Liability for Other Losses, Damages etc.

Save and except as expressly provided in this Article 12, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any Losses relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article 12.

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12.7 Duty to Report

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- (a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within seven (7) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have on the performance of its obligations under this Project Agreement.
- (b) Any notice pursuant to this Section 12.7 shall include full particulars of:
 - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 12 with evidence in support thereof;
 - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Project Agreement;
 - (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
 - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Section 12.7 and such other information as the other Party may reasonably request the Affected Party to provide.

ARTICLE 13 — DEFAULT AND TERMINATION**13.1 Project Co Event of Default**

Any of the following events shall constitute an event of default by Project Co ("**Project Co Event of Default**") unless such event has occurred as a result of a (i) a Vermilion Event of Default, (ii) a Force Majeure Event, (iii) compliance with a written request from Vermilion, or (iv) a delay or a failure to obtain any Applicable License or to issue any Applicable Permit, but only to the extent Vermilion fails to use commercially reasonable efforts to support Project Co and its Contractors as set forth in Sections 4.2.3(a)(iii) and (iv):

- (a) Project Co fails to commence the D&C Works promptly following the occurrence of Financial Close;
- (b) Project Co fails to achieve D&C Completion within six (6) months following the Scheduled D&C Completion Date;
- (c) Any representation made or warranty given by Project Co under this Project Agreement is found to be materially false or misleading;
- (d) Project Co creates any Encumbrance on the Project Locations in favour of any Person save and except as otherwise expressly permitted under this Project Agreement;

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- (e) A resolution is passed by the partners of Project Co for the voluntary winding up of Project Co, save and except arising out of a reorganization of Project Co or the sale of all or substantially all of the assets of Project Co;
- (f) Project Co suspends or abandons the Broadband Network Infrastructure or the Project Co Operations without the prior consent of Vermilion;
- (g) Project Co repudiates this Project Agreement or otherwise evidences an intention not to be bound by this Project Agreement;
- (h) Project Co fails to use commercially reasonable efforts to achieve the Key Performance Indicators for two (2) consecutive Calendar Years; or
- (i) Project Co is otherwise in Material Breach of this Project Agreement (other than as a consequence of a breach by Vermilion of its obligations under the Project Agreement).

13.2 Vermilion Event of Default

Any of the following events shall constitute an event of default by Vermilion (a "**Vermilion Event of Default**") unless such event has occurred as a result of a Project Co Event of Default or a Force Majeure Event:

- (a) Any representation made or warranty given by Vermilion under this Project Agreement is found to be materially false or misleading;
- (b) Vermilion repudiates this Project Agreement or otherwise evidences an intention not to be bound by this Project Agreement;
- (c) An act or omission (subject to 4.2.1(c)) of Vermilion rendering it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement for any continuous period of more than ten (10) days or an aggregate of thirty (30) days during any Calendar Year; or
- (d) Vermilion is otherwise in Material Breach of this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under the Project Agreement).

13.3 Termination due to Project Co Event of Default

- (a) On the occurrence of a Project Co Event of Default, or at any time after Vermilion becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with the Dispute Resolution Procedure that a Project Co Event of Default has occurred, Vermilion may terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co.
- (b) Notwithstanding Section 13.3(a), in the case of a Project Co Event of Default referred to in Sections 13.1 (a), (b), (c), (d), or (h), Vermilion shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and Project Co shall within five (5) Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within thirty (30) days of

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the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Vermilion, acting reasonably, and where:

- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default; or
- (ii) Project Co fails to put forward a plan and schedule as contemplated above; or
- (iii) Project Co puts forward a plan and schedule as contemplated above and fails to perform its obligations thereunder,

then Vermilion may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co.

- (c) On a termination of this Project Agreement by Vermilion as a result of a Project Co Event of Default, if required by Vermilion, Project Co and Vermilion shall negotiate in good faith and on commercially reasonable terms for the remainder of the then current Project Term an indefeasible right of use ("IRU") of the fibre sufficient for Vermilion to replicate services enabled by the Broadband Network Infrastructure, including two feeder fibres from the central office to each distribution hub and one distribution/drop fibre from each distribution hub to each attached premises.

13.4 Termination due to Vermilion Event of Default

- (a) On the occurrence of a Vermilion Event of Default, or at any time after Project Co becomes aware of a Vermilion Event of Default, and, if the occurrence of a Vermilion Event of Default is disputed by Vermilion in good faith, then following confirmation in accordance with the Dispute Resolution Procedure that a Vermilion Event of Default has occurred, Project Co may terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Vermilion.
- (b) Notwithstanding Section 13.3(a), in the case of a Vermilion Event of Default referred to in Sections 13.2 (a), (c) or (d), Project Co shall, prior to being entitled to terminate this Project Agreement, give notice of default to Vermilion, and Vermilion shall within five (5) Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Vermilion Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Vermilion Event of Default is proposed to be remedied, which latest date shall, in any event, be within thirty (30) days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Project Co, acting reasonably, and where:
 - (i) Vermilion fails to immediately commence and thereafter diligently continue to remedy the Vermilion Event of Default; or
 - (ii) Vermilion fails to put forward a plan and schedule as contemplated above; or
 - (iii) Vermilion puts forward a plan and schedule as contemplated above and fails to perform its obligations thereunder,

then Project Co may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Vermilion.

ARTICLE 14— INTELLECTUAL PROPERTY**14.1 Acknowledgement and Agreement**

14.1.1 Vermilion acknowledges and agrees that Project Co shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights.

14.2 Representation and Warranty

14.2.1 Project Co represents and warrants to Vermilion and agrees that the Project Data and the Intellectual Property Rights do not infringe, and are not a misappropriation of, any third party Intellectual Property Rights, and, as of the date of this Project Agreement, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

14.3 Licence of Project Data and Intellectual Property Rights

14.3.1 Project Co shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Contractor, obtain an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes, provided that such licence may, in respect of the Contractor's Intellectual Property Rights that are proprietary and subject to trademark, be limited to the term of the relevant Ancillary Agreement.

14.3.2 In this Section 14.3.2, "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

ARTICLE 15 - CONFIDENTIAL INFORMATION**15.1 Use and Disclosure of Confidential Information**

- (a) Except as authorized hereunder and subject to Section 15.2, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 15.1 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Notwithstanding Section 15.1(a) and any other provision of this Project Agreement, Project Co shall not disclose and not permit any person any manner of access to, whether directly or indirectly, any Personal Information contrary to Applicable Law.
- (c) Project Co may:
 - (i) disclose in confidence to the Lenders and prospective Lenders and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project or which Project Co is obliged to supply by the terms of the Financing Documents; and

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- (ii) disclose in confidence to any Contractor and their professional advisors, such Confidential Information as is necessary for the performance by that Contractor of that Contractor's obligations pursuant to this Project Agreement.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as **permitted** by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.
- (f) Vermilion recognizes that the Confidential Information provided to Vermilion under this Project Agreement constitutes records that contain commercial and financial information that is supplied in confidence and contains commercial, financial and technical information that belongs **to** Project Co, has monetary value, and that the disclosure of such information would prejudice the economic interests of Project Co and the Project Co Parties. Pursuant to Section 16 of the *Freedom of Information and Protection of Privacy Act* (Alberta) , Vermilion recognizes that disclosure thereof would (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person or group of persons; (b) result in similar information no longer being supplied to Vermilion where it is in the public interest that similar information continue to be so supplied; and (c) result in undue loss or gain to any person or group of persons.

15.2 Exceptions

- (a) Information of a Party (as used in this Section 15.2, the "**Proprietor**") shall not be considered to be Confidential Information in the following circumstances:
 - (i) the Proprietor advises the other Party to whom the information has been disclosed (as used in this Section 15.2, the "**Confidant**") that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
 - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;

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- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information would not be exempt from disclosure under the *Freedom of Information and Protection of Privacy Act* (Alberta).

15.3 Survival of Confidentiality

- (a) The obligations in Sections 15.1 and Section 15.2 survive the Termination or Expiry of this Project Agreement in perpetuity.

ARTICLE 16 - PERSONAL INFORMATION**16.1 General**

16.1.1 Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.

16.1.2 Project Co shall, and shall require Ancillary Agreement Contractors to, only collect, hold, process, use, store and disclose Personal Information in accordance with Applicable Law.

16.1.3 Project Co shall, and shall require Ancillary Agreement Contractors to, at all times treat Personal Information as strictly confidential and shall comply with the requirements of Applicable Law, including the *Freedom of Information and Protection of Privacy Act* (Alberta).

16.1.4 Project Co shall take all necessary and appropriate action, and shall require Ancillary Agreement Contractors to take all necessary and appropriate action, against any person who fails to comply with this Article 16.

16.1.5 Project Co shall allow Vermilion on reasonable notice to inspect the measures of Project Co and the Ancillary Agreement Contractors to protect Personal Information.

16.2 Survival

16.2.1 The obligations in this Article 16 shall survive the termination of this Project Agreement.

ARTICLE 17 - INDEMNITIES**17.1 Indemnities**

- (a) Project Co shall indemnify, defend, and hold Vermilion harmless against any and all Losses and third party claims arising out of a breach by Project Co of any of its obligations under this Project Agreement, except to the extent that any such claim has arisen due to a Vermilion Event of Default.
- (b) Vermilion shall indemnify, defend, and hold Project Co harmless against any and all Losses and third party claims arising out of a breach by Vermilion of any of its obligations under this Project Agreement, except to the extent that any such claim has arisen due to a Project Co Event of Default.

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- (c) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Section 17.1 (the "**Indemnified Party**") it shall notify the other Party ("**Indemnifying Party**") within fourteen (14) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. If the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.
- (d) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and its reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of Losses to the full extent provided by this Section 17.1, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action suit or proceeding and the liabilities, payments, and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable costs and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the Losses to be indemnified hereunder to the extent so compromised or settled.
- (i) If the Indemnifying Party has exercised its rights under Section 17.1(c) above, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- (ii) If the Indemnifying Party has exercised its rights under Section 17.1(c) above, then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:
- (1) the employment of counsel by such Party has been authorized in writing by the Indemnifying Party; or
 - (2) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
 - (3) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action and shall have been so notified by the Indemnified Party; or
 - (4) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either
 - (a) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

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- (b) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Project Agreement,

provided that if sub-clauses (2), (3) or (4) of Section 17.1(d)(ii) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

- (e) Notwithstanding anything to the contrary contained in this Project Agreement, in no event shall either Party be liable to the other Party for indirect or consequential damages and for the following types of damages, whether or not they are considered as direct or indirect damages: loss of production, loss of use, loss of business, loss of data, loss of access, loss of market share, loss of revenue, loss of savings, and loss of profit, whether or not the possibility of such damages could have been reasonably foreseen and whether as a result of breach of this Project Agreement, warranty or in tort.
- (f) Vermilion or Project Co shall take all reasonable measures to mitigate any Losses.

ARTICLE 18 — DISPUTE RESOLUTION**18.1 Dispute Resolution Procedure**

Except for matters requiring immediate injunctive or similar equitable relief and except to the extent that circumstances clearly indicate that the time required for the process set forth in this section would cause irreparable harm to a Party, all claims, disputes or other matters in question between each Party arising out of or relating in any way to this Project Agreement (a "**Dispute**") shall be resolved pursuant to this Article 18 (the "**Dispute Resolution Procedure**").

18.2 Negotiation

Project Co and Vermilion shall attempt to internally resolve any dispute arising between them either during the Project Term or after Termination or Expiry thereof, as to any matter arising out of or related to this Project Agreement. For such purpose, except to the extent otherwise provided herein and except to the extent that an equitable remedy is sought or circumstances clearly indicate that the time required for the process set forth in this Article 18 would cause irreparable harm to a Party, either Party shall give to the other Party notice in writing that it considers such dispute should be submitted to the dispute resolution process described herein. At the expiration of the five (5) Business Days following the delivery of such notice, unless same shall have then been settled, such dispute shall be referred to the project managers of the Parties for resolution. If within an additional ten (10) Business Days such dispute shall not have been settled by these representatives, then the matter shall be further escalated to executives of each of Project Co and Vermilion. If within an additional ten (10) Business Days such dispute shall not have been settled by the executives, then the matter shall be referred for mediation and arbitration, as set forth hereafter.

18.3 Mediation

For mediation purposes, each Party shall mutually agree on a mediator within ten (10) Business Days following the expiry of the periods contemplated in paragraph (b) above, with such mediation to take place as directed by the mediator. All costs incurred shall be divided equally between the Parties. Each Party shall pay its own legal fees, expert witness fees and other such costs. If the dispute has not been resolved within thirty (30) Business Days after the mediator was appointed or within such further period

Vermilion Broadband as a Utility Project Agreement

agreed upon by each Party, the mediator shall terminate the mediation by giving notice in writing to each Party. Either Party may thereafter submit the dispute to final and binding arbitration, as set forth hereafter.

18.4 Arbitration

Any dispute unresolved pursuant to the above may be submitted to a panel of three (3) arbitrators, appointed as provided below, in accordance with the rules of the ADR Institute of Canada. Arbitration proceedings shall be held in Edmonton, Alberta, unless otherwise mutually agreed to by the Parties. The arbitrators sitting in any such proceedings shall have no power to alter or modify any provisions hereof or to render any award which by its terms affects any such provision. The expenses and fees of any such arbitration proceeding shall be borne equally by each Party, unless the arbitrators, in their sole discretion, decide otherwise. The award of the arbitrators shall be final and binding upon each Party, and judgment upon any such award may be entered in any court having competent jurisdiction, and each Party agrees that any process or notice of motion or other application to such court or to the judge thereof may be served by mail as provided herein. When either Party has given the other notice of its appointment of an arbitrator, within thirty (30) days of the giving of such notice, the recipient of the notice shall give the other Party notice of its appointment of an arbitrator, in default of which the arbitration shall be conducted by the single arbitrator appointed by the other Party. If two arbitrators have been so appointed, they shall designate a third arbitrator within ten (10) days after the giving of notice of the appointment of the second arbitrator, in default of which the third arbitrator shall be designated forthwith by the ADR Institute of Canada.

18.5 Performance during Arbitration

Pending the submission of and/or decision on a Dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all their obligations under this Project Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 19 - MISCELLANEOUS**19.1 Assignment**

This Project Agreement shall not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably delayed or withheld.

19.2 Governing Law and Jurisdiction

This Project Agreement shall be construed and interpreted in accordance with and governed by the laws of the Province of Alberta and federal laws applicable therein. The Courts of the Province of Alberta shall have jurisdiction over all matters arising out of or relating to this Project Agreement.

19.3 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Project Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Project Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Project Agreement in any manner.

Vermilion Broadband as a Utility Project Agreement

- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Project Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance or any variation or the relinquishment of any such right hereunder.

19.4 Survival

Termination of this Project Agreement (a) shall not relieve Project Co or Vermilion of any obligations hereunder which expressly or by implication survive Termination hereof, and (b) except as otherwise provided in any provision of this Project Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for Losses to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

19.5 Amendments

This Project Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

19.6 Notices

Unless otherwise stated, notices to be given under this Project Agreement including but not limited to a notice of waiver of any term, breach of any term of this Project Agreement and Termination of this Project Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, or email transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

Project Co	Vermilion
3500-855 2 ST SW, Calgary, AB, T2P 0B4	5021 - 49 Ave, Vermilion, AB, T9X 1X1
ATTN: Nick Phillips	ATTN: Kevin Lucas
TITLE: Authorized Signing Authority	TITLE: Chief Administrative Officer
TELEPHONE: 917-722-2129	TELEPHONE: 780-853-5358
EMAIL: n.phillips@meridiam.com	EMAIL: klucas@vermilion.ca

19.7 Severability

If for any reason whatever any provision of this Project Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure.

Vermilion Broadband as a Utility Project Agreement

19.8 No Partnership

Nothing contained in this Project Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

19.9 Exclusion of Implied Warranties etc.

This Project Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

19.10 Counterparts

This Project Agreement may be executed by all counterparts, each of which when executed and delivered shall constitute an original of this Project Agreement.

Signatures on following page

Vermilion Broadband as a Utility Project Agreement

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

**THE CORPORATION OF THE TOWN OF
VERMILION**

Signature:



Name (Print): Kevin Lucas

Title: Chief Administrative Officer

Date: as of June³⁰2022.

**ALBERTA BROADBAND NETWORKS GP,
by its partners,**

Meridiam Infrastructure A-Net ULC

Signature:



Name (Print): Nick Phillips

Title: Authorized Signing Authority

Date: as of June³⁰, 2022.

**DIG Alberta Limited Partnership
By its General Partner**

DIG Alberta Holdings Inc.

Signature:



Name (Print): James Sanford

Title: President

Date: as of June³⁰, 2022.

SCHEDULE A — DEFINITIONS

"Affected Party" has the meaning given in Article 12.

"Affiliate" has the meaning set out in the *Business Corporations Act* (Alberta) and any successor legislation thereto.

"Ancillary Agreement(s)" means any contract for the D&C Works, and the O&M Activities, (other than the Financing Documents and the Project Earnings and Growth Sharing Agreement) entered into by Project Co on or before the Commencement Date.

"Applicable Law" means:

- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws, and the Alberta Building Code;
- (b) any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority; or
- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Alberta,

in each case, in force in the Province of Alberta, or otherwise binding on Project Co, any Project Co Party, Vermilion or any Governmental Authority under Vermilion's direction and control.

"Applicable Licenses" means any right to access any location within the municipal boundaries of Vermilion, which is owned or controlled by Vermilion, required by Project Co or any of its Contractors for the D&C Works and the O&M Activities, as agreed upon by Project Co and Vermilion.

"Applicable Permits" means all approvals, authorizations, consents, permits or similar requirements imposed by any Governmental Authority pursuant to Applicable Law required by Project Co or any of its Contractors for the D&C Works and the O&M Activities, as agreed upon by Project Co and Vermilion.

"Approved Purposes" means, following termination of the Project Agreement, the performance of any obligations the same as, or similar to, the obligations under the Project Agreement.

"Auditors" means independent auditors appointed by Project Co from time to time.

"Business Day" means any day other than a Saturday, Sunday or a date on which banks are required to be closed, in the Province of Alberta.

"Broadband Network Infrastructure" means, collectively, the facilities, infrastructure and assets, designed, built, installed, erected, or provided by Project Co pursuant to this Project Agreement for the purposes of the Project Co Operations, including without limitation all physical and other assets relating to and forming part thereof, including civil works, foundations, embankments, pavements, drainage works, lighting facilities, sign boards, electrical works for lighting, optical and other communication systems, equipment and wayside amenities, the central office including fibre management frames, equipment racks, HVAC, redundant power, fire-suppression and all remediation to affected construction areas, the whole as more particularly described in the Project Scope.

Vermilion Broadband as a Utility Project Agreement

"Change in Applicable Law" means the coming into effect or repeal (without re-enactment or consolidation) in Alberta of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Alberta in each case after the date of the Project Agreement.

"Commencement Date" has the meaning given in Section 2.3.

"Confidential Information" means this Project Agreement and all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.

"Contract Month" means a calendar month, except:

(a) the first Contract Month shall be such period that commences on the Commencement Date and ends on the last day of the calendar month in which the Commencement Date falls; and

(b) the last Contract Month shall be such period that commences on the first day of the calendar month in which the Expiry Date falls and ends on the Expiry Date.

"Contract Year" means the period of 12 calendar months that commences on January 1st of each calendar year and ends on the next ensuing December 31st, provided that:

(d) the first Contract Year shall be such period that commences on the Commencement Date and ends on the next ensuing December 31st; and

(e) the final Contract Year shall be such period that commences on the January 1st that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.

"Contractor" means any person with whom Project Co has entered into an Ancillary Agreement.

"D&C Completion" means the point at which the D&C Works have been completed in accordance with the Project Agreement, including all fibre and electronic systems commissioned, as certified by the issuance of the D&C Completion Certificate by the Vermilion's Designated Representative in accordance with the provisions of Section 7.3(e).

"D&C Completion Certificate" means the certificate issued by the Vermilion's Designated Representative pursuant to Section 7.3(e).

"D&C Completion Date" means the date on which the Vermilion's Designated Representative has issued the D&C Completion Certificate.

"D&C Completion Procedures" has the meaning set forth in Section 2.3(a)(ii)(B).

"D&C Period" means the period beginning from the Commencement Date and ending on the D&C Completion Date.

Vermilion Broadband as a Utility Project Agreement

"D&C Plan" has the meaning given in Section 2.3(a)(ii)(A).

"D&C Works" means the design and construction of the Broadband Network Infrastructure in accordance with the requirements of the Project Scope and the D&C Plan.

"Design Data" means all drawings, reports, documents, plans, software, formulae, calculations and other data prepared by Project Co relating to the design, construction or testing of the Broadband Network Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction, and excluding commercial off-the-shelf software.

"Dispute" has the meaning given in Article 19.

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 19.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Broadband Network Infrastructure and shall include "as built" drawings of the Broadband Network Infrastructure.

"Effective Date" means the date of execution of this Project Agreement.

"Encumbrance" when applicable, means any encumbrance such as mortgage, charge, pledge, lien, security interest, assignment, privilege or priority of any kind.

"Expiry" means the expiry of the Project Term of the Project Agreement as contemplated in Section 2.2(a).

"Financial Close" means the date on which the Financing Documents providing for funding of the Project Co Operations have become effective and Project Co has access to such funding under the Financing Documents.

"Financing Documents" means the documents executed by Project Co in respect of the financing (including refinancing, equity or mezzanine, etc.) of the Project Co Operations to be provided by the equity investors or Lenders by way of loans, advances, subscription to debentures and other debt instruments and guarantees, risk participation, take-out financing or any other form of credit enhancement and shall include loan agreements, equity participation agreements, guarantee agreements, subscription agreements, notes and any documents providing security for such financial assistance or investment, and includes amendments or modifications made thereto.

"Force Majeure Costs" has the meaning given in Section 12.5(b).

"Force Majeure Event" has the meaning given in Article 12.

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

"Governmental Authority" means Vermilion and any other federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or

Vermilion Broadband as a Utility Project Agreement

other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Vermilion, any aspect of the performance of the Project Agreement, the design, construction, financing, operation or maintenance of the Broadband Network Infrastructure, or the Project Co Operations, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction. For clarity, Vermilion will not be considered a Governmental Authority to the extent it is exercising its rights pursuant to this Project Agreement.

"Indemnified Party" has the meaning given in Section 17.1(c).

"Indemnifying Party" has the meaning given in Section 17.1(c).

"Indirect Political Event" has the meaning given in Section 12.2.

"Insurance Coverage" has the meaning given in Section 11.4.

"Intellectual Property" means in connection with a specified subject matter, on a worldwide basis, 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 all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.

"Intellectual Property Rights" means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties' use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:

the D&C Works, including the design and construction of the Broadband Network Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);

the O&M Activities, including the operation, maintenance, improvement and testing of the Broadband Network Infrastructure; or

the Project Agreement,

but excluding commercial off-the-shelf software. For clarity, Intellectual Property Rights do not include rights regarding any marks, trade-marks, service marks, distinguishing guises, logos, insignias, seals, designs or symbols that have been or are developed by Project Co or Project Co Parties for uses that are not related to the performance of the Project.

"Key Performance Indicators" means those key performance indicators for the operation of the Broadband Infrastructure Network in the categories and classes agreed to by the Parties prior to the Commencement Date. For clarity, upon the Parties agreeing to the Key Performance Indicators, they will be appended to this Project Agreement.

Vermilion Broadband as a Utility Project Agreement

"Lenders" means the financial institutions, banks, equity funds, pension funds, endowments, private equity, private credit, trusts or trustees of the holders of debentures, equity or other securities, and their successors and assigns, who provide debt financing to Project Co under any of the Financing Documents.

"Losses" means all damages, losses, amounts paid in settlement, demands, claims, liabilities, assessments, judgments, awards, costs and expenses (including legal fees on a solicitor and his own client basis), interest (including prejudgment interest in any litigated matter), penalties and charges.

"Material Adverse Effect" means material adverse effect on (a) the ability of Project Co or Vermilion to observe and perform any of its rights and obligations under and in accordance with the provisions of this Project Agreement and/or (b) the legality, validity, binding nature or enforceability of this Project Agreement.

"Material Breach" means a breach by Project Co or Vermilion, as the case may be, of any of its obligations under this Project Agreement which has a Material Adverse Effect on the Broadband Network Infrastructure or the Project Co Operations.

"Non-Political Event" has the meaning given in Section 12.1.

"O&M Activities" means the operation and maintenance of the Broadband Network Infrastructure during O&M Period, as set forth in the Project Scope and detailed in the O&M Program.

"O&M Expenses" mean the expenses incurred by or on behalf of Project Co, duly certified by its Auditors for all regularly scheduled and reasonably anticipated O&M Activities during O&M Period, including, without limitation (a) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain **all** Applicable Permits necessary for the O&M Activities, (e) all repair, replacement, and maintenance costs of the Broadband Network Infrastructure, and (f) **all** other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Broadband Network Infrastructure according to the Project Scope at its full design capacity.

"O&M Period" means the period commencing on the day following the D&C Completion Date and ending at the Expiry or earlier Termination of the Project Agreement.

"O&M Program" has the meaning given in Section 8.2(a).

"Parties" means the parties to this Project Agreement collectively and **"Party"** shall mean either of the Parties to this Project Agreement individually.

"Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Governmental Authority or any other legal entity.

"Personal Information" means all personal information (as the term "personal information" is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or its Ancillary Agreement Contractors other than personal information of the employees of Project Co or its Ancillary Agreement Contractors and other than personal information that is wholly unrelated to the Project and not derived directly or indirectly from Vermilion in respect of the Project.

"Political Event" has the meaning given in Section 12.3.

"Project" means the construction and operation of the Broadband Network Infrastructure pursuant to this Project Agreement.

Vermilion Broadband as a Utility Project Agreement

"Project Agreement" means this Project Agreement including Schedules A and B hereto, and any amendments thereto made in accordance with the provisions of this Project Agreement.

"Project Data" means:

all Design Data;

all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the O&M Activities; and

any other materials, documents and or data acquired, brought into existence or used in relation to the Project or the Project Agreement,

other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction, and excluding commercial off-the-shelf software. For clarity, Project Data does not include marks, trade-marks, service marks, distinguishing guises, logos, insignias, seals, designs or symbols that have been or are developed by Project Co or Project Co Parties for uses that are not related to the performance of the Project.

"Project Earnings and Growth Sharing Agreement" means the agreement to be entered into between Vermilion and Project Co in accordance with Section 9.3.

"Project Location" means any location in respect of which an Applicable License is issued and **"Project Locations"** means all such locations.

"Project Term" means the period as applicable specified in Section 2.2(a).

"Project Scope" means the description of the Broadband Network Infrastructure and the Project Co Operations set forth in Schedule B hereof.

"Project Co" means Alberta Broadband Networks GP.

"Project Co's Designated Representative" has the meaning given in Section 6.1(b).

"Project Co Event of Default" has the meaning given in Section 13.1.

"Project Co Operations" means the D&C Works and the O&M Activities.

"Project Co Parties" means any of Project Co's affiliates, agents, contractors and Ancillary Agreement Contractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Project. but excluding Vermilion, and **"Project Party"** means any of the foregoing.

Vermilion Broadband as a Utility Project Agreement

"Provisional Certificate" has the meaning given in Section 7.3(f).

"Punch List" has the meaning given in Section 7.3(f).

"Scheduled D&C Completion Date" has the meaning given in Section 7.3(a).

"Sensitive Information" means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.

"Termination" means the termination of this Project Agreement, prior to the Expiry, pursuant to Sections 13.3 or 13.4.

"Vermilion" means The Corporation of the Town of Vermilion.

"Vermilion's Designated Representative" has the meaning given in Section 6.1(a).

"Vermilion Events of Default" has the meaning given in Section 13.2.

* * *

SCHEDULE B — PROJECT SCOPE

Definitions

In this Schedule B, the following terms have the following meanings:

"**FTTP**" means fibre to the premises.

"**Gbps**" means Gigabits per second.

"**IP**" means internet protocol.

"**ISP**" means internet service provider.

"**LAN**" means local area network.

"**MTBF**" means mean time between failure.

"**Network**" means Broadband Network Infrastructure.

"**NMSP**" means network management service provider.

"**NOC**" means network operations centre.

"**OEM**" means original equipment manufacturer.

"**OLT**" means optical line terminal.

"**ONT**" means optical network terminal.

"**OSI Layer**" means open systems interconnection.

"**OSS**" means operations support systems.

"**OTT**" means over the top.

"**PON**" means passive optical network.

"**POP**" means point of presence.

"**RCA**" means root cause analysis.

"**SLA**" means service level agreement.

"**SPP**" means service provider partner.

"**Tier 3**" means a carrier who gets 100% of its network through a tier-1 or tier-2 operator, with no direct-access of its own.

"**VLAN**" means virtual local area network.

Vermilion Broadband as a Utility Project Agreement

Project Description

The Town of Vermilion in partnership with Project Co will deploy fibre-based network infrastructure to address the high-speed broadband needs of businesses, public and social service institutions, and residents throughout the Town of Vermilion. The infrastructure will be operated by a single entity as a utility (Broadband as a Utility) that will, on a transparent, wholesale and non-discriminatory basis enable ISPs to deliver their broadband service portfolios to premises that subscribe to their services.

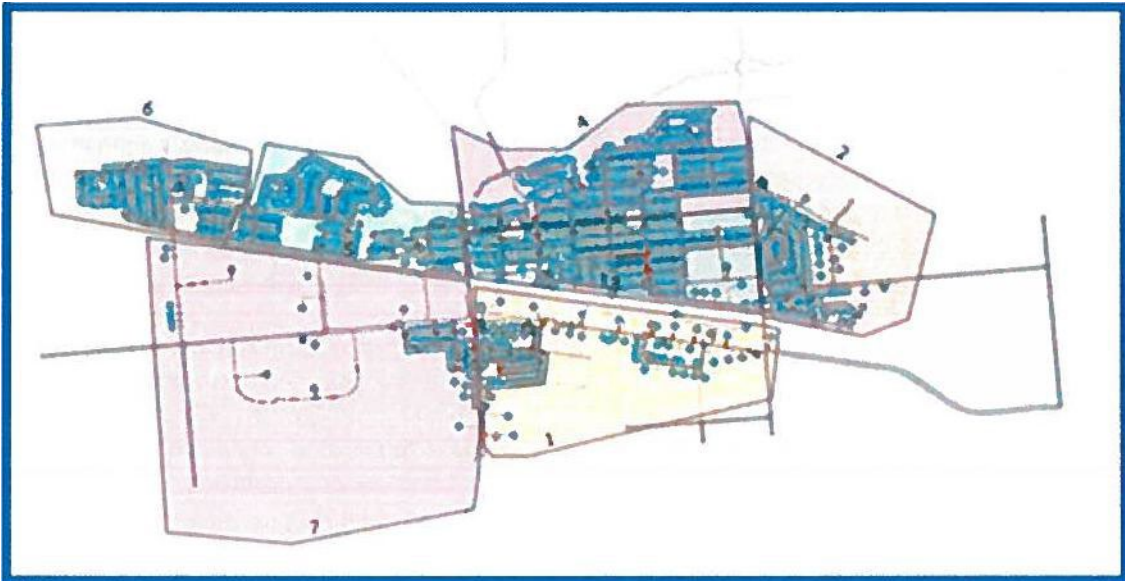
This Project Agreement provides for a co-operative arrangement between Vermilion and Project Co for the purpose of establishing a turnkey fibre-to-the-premise (FTTP) communications network that will initially pass all premises in Vermilion. Once businesses/homes/community institutions within Vermilion order service, Project Co will expeditiously deploy the drop connections required to connect them to the network and enable the ISPs to provide their next generation broadband service portfolios, typically including Internet, telephone, and/or television, to the subscribing premises.

This Project Agreement together with the Project Earnings and Growth Sharing Agreements: 1) allow Vermilion to retain an earnings and growth stake in the Project; 2) enable Project Co to assume all revenue risk for the Project.

Technological demands and advancements (consumer technologies/5G/SmartAG/Industry 4.0/the Internet of Things) require higher speeds, and with the exponential growth in broadband usage, as 50 Mb/s down and 10 Mb/s up are inadequate to participate in the digital economy. This initiative will initially enable symmetric wholesale access connection speeds of up to 10 Gbps available to all locations and connected ISPs in Vermilion using FTTP technology. A network management company will be contracted to manage the wholesale network and an initial anchor tenant ISP will be contracted by Project Co to ensure services delivery. The exclusivity period for the anchor ISP is for a defined time, not exceeding twelve years from the Commencement Date. Project Co will be prohibited from providing retail services in competition with the ISPs on the network.

Design & Construction

- Outside Plant (OSP) Architecture — Project Co will deploy a FTTP network with at least two fibres per home and with distribution hubs that will accommodate splitters. Conduit and fibre will initially be deployed to pass every premise in the Town of Vermilion. Once a premise orders service, the drop connection from the network to the premise will be deployed. For clarity, the final design will enable Project Co to provide Vermilion with an IRU on fibre sufficient to replicate services enabled by the Project Co network should Section 13.3(c) of the Project Agreement be exercised.
- The network will be deployed on a phased basis over three-years in general accordance with the Town of Vermilion priorities as illustrated in the figure below — priorities are labelled 1 (high) to 7 (low). Project Co and the Town will also work collaboratively to deploy the network to maximize network penetration and usage.



Technical Features

- Backhaul — the backhaul connection for the Vermilion broadband development will be leased from locally available fibre backhaul providers.
 - Non-redundant Backhaul Line Availability from the Vermilion network to the gateway service demarcation point is 99.925%. Future redundant line availability will increase this to a minimum of 99.99%.
- Core network — Core routers will support multiple telecommunications interfaces and manage network traffic. They support multiple routing protocols (OSI Layer 3), as well as traffic security and separation (OSI Layer 2).
 - OLT's will be provided as aggregation points located in a hub or POP facility of the PON network. OLT's control the bi-directional flow of traffic in the distribution and access networks between the hub or POP facility and the end-client premises. OLT's aggregate and convert standard optic signals from the ONT into standard networking protocols required so traffic can be managed by the core routers.
 - Passive optical splitters will be provided. Optical splitters enable multiple end-clients to share the aggregate bandwidth of a single connection back to the OLT. Typical split ratios range from 1:2 to 1:128.
 - To ensure alignment between the advertised and actual connection speeds delivered to end clients, over-subscription ratios will not exceed 10.
 - ONT's will be provided as the client termination points of the PON. The ONT resides at the customer's premise and interfaces with the customer's service provider gateway devices. The ONT's will be provided with battery backup.

Vermilion Broadband as a Utility Project Agreement

- Network Performance Specifications

Performance Requirement	Services Levels
Maximum available symmetric connection speed	10 Gb/s
Minimum network throughput including Ethernet overhead	99.900%
Maximum packet loss	0.100%
Maximum network delay (round-trip)	5 ms
Maximum network jitter	1 ms
Minimum availability	99.925% (CO) 99.90% (all other locations)
Maximum network response time	5 ms
Maximum over-subscription ratio	10

- Wholesale Services — Wholesale connectivity services will be provided to ISPs, larger enterprise clients, and the Town on an open-access, non-discriminatory basis. Open-access may be provided at layers 0, 1, 2 or 3 as appropriate. The network management company will not compete with the retail service providers using the network and will ensure that their wholesale pricing sheet enables the ISPs to price their services on a competitively reasonable basis.

- Future Network Support— in good faith and on a commercially reasonable cost-plus basis, negotiate long-term contracts to support Vermilion requirements for network access to support town-wide connectivity services required to enable wi-fi, highly secure management and control services, say for utility network or critical services (police, fire, ambulance) management, smart city Internet-of-things for sensor networks, autonomous vehicle support, and other future services. Ownership of data collected from IoT or related devices deployed in support of these services will reside with Vermilion.

- Service provider gateways - will be provided by the service provider selected by the end customer. These devices interface via standard Ethernet protocols and port types with the ONT and provide user level interconnection at the customer premise. All additional service-related devices, such as wi-fi routers, set-top boxes, and ATA devices, are the responsibility of the retail ISP

- Operational Support Systems - Support and Management Servers - will be provided and are used for the management of all active devices that are connected to the production network. These servers ensure all elements are functioning properly, are backed up accordingly, and collect alerts/notifications/alarms from all these devices for presentation to the operation team. The selected OSS will provide the ISPs using the network visibility into the network performance sufficient for them to address typical client trouble calls.

Vermilion Broadband as a Utility Project Agreement

Network Management

Summary

Network management will be done primarily by the OEM vendor's cloud-based tools. The NOC will train their team so all personnel working on the network will have the knowledge and ability to address the needs of the network. These tools will also be the cornerstone the OSS system and the NOC will integrate this management platform into the service desk platforms as indicated in the service desk section. The NOC will also provide current and supported monitoring and management platforms that will be integrated directly to the network equipment as an alternative management system in the event of a failure that makes the cloud-based tools unavailable. At a minimum, these tools will be capable of polling network devices, receiving traps from devices, log collection, and enabling remote access to the devices.

Performance Requirement	Service Levels
Operating hours	24/7 x 365 days/yr
Average time to respond – core network	15 – 30 minutes
– distribution network	1 – 2 hours
– individual access lines	4 – 8 hours
Average time to repair – peak hours, core network	4 hours or better

Service Provider Management

The network management company will manage the on-boarding and on-going monitoring of and support to all service providers using the network. They will facilitate processes to expeditiously address drop deployment and activation requests from the service providers as well as any required moves, adds, and changes needed to support the delivery of the ISP service portfolios.

Service Desk

The service desk is the foundation of the NOC serving as the entry point for all communications and the touchstone for all information. The service desk will have appropriate platforms and tools to support the functions of ticketing, reporting, workflow, and knowledge base. The NOC will provide the development and integration resources needed to establish custom reports, real-time dashboards, and automatically generated SLA reports. The NOC will also integrate these platforms with the apps to allow tickets, service orders and work orders to the equipment management tools provided by the OEM vendor, or other third party vendor, and work collaboratively with the vendors to develop automation that will enable automatic flow through provisioning for new services and new location activations. While the NOC will not be directly involved in the automated activation process, they may be required to open, manage, and resolve tickets for nonconforming orders. The NOC will establish a full operation manual in the knowledge base tool that outlines all procedures, processes and technical details need by the NOC. This document will be regularly updated on a quarterly basis as needed.

Problem Management

The NOC will be the single point of responsibility for the resolution of all complex ongoing problems focused on mitigating them and avoiding service affecting outages. This includes the creation of Change Requests (CRs) once a final resolution has been identified and then the initiation and management of actions by Project Co identified third party service providers and vendors to complete.

Performance Management

The NOC will also be the single point of responsibility for network performance management. This requires the collection of data and the analysis of trends to ensure that the Network continues to operate at the levels of performance expected. This is critical to avoiding degradations that can ultimately become service impacting and identifying corrective actions that are required.

Capacity Management

The NOC will also be the single point of responsibility for network capacity management. This requires the collection of data and the analysis of trends to ensure that the network maintains sufficient capacity to avoid congestion and service impacting events. Typically upgrade plans would begin when capacity hits 70% and be completed prior to the network hitting 80%.

Change Management

The NOC will also be the single point of responsibility for the change management process. This includes documenting the detailed technical actions required, the creation of official Change Requests (CR), obtaining all approvals, notifications of maintenance windows, coordinating with SPPs and the successful execution.

Configuration Management

The NOC will be the single point of responsibility for device configuration management. They will work with the OEM vendor's cloud-based tools to ensure all devices in the network have backups of configurations with multiple revisions. The NOC will also be responsible for ensuring there is a redundant copy of these device configurations stored separately from the primary tool's storage.

Standard Operational Changes and Service Provisioning

The NOC will be the single point of responsibility for standard day-to-day operation changes that are low risk of being service impacting. These changes will take place in standard weekend maintenance windows. The NOC will manage all aspects of the maintenance window work including the initiation, direction, and management of actions by Project Co identified third party service providers and vendors.

The NOC will work with Project Co and the OEM vendors to establish a service catalog including base configuration templates. The NOC will leverage the OEM vendor cloud software and working with the Project Co identified third party service providers and vendors to establish and maintain an accurate database of serviced address locations, fibre connectivity inventory, network port inventory, VLAN inventory and IP address inventory etc. The NOC will support the development of automation to enable flow through auto provisioning with validation checks.

HOT Recovery Site

The NOC will have a fully redundant hot stand-by site that will be used in the event of a disaster to ensure the constant and continued support of the Network. All systems, functions, and elements of both primary and the hot stand-by site must be housed in a data centres built to Tier 3 standards with more than 50km separation. The stand-by site should be tested monthly to ensure it is fully functional if a distributed workforce model is not being deployed.

Field Services Management***Technical Field Services Management***

The technical field services team will be contracted directly by Project Co and the NOC will be given the authority to initiate, direct, manage and oversee all aspects of the work they perform to support the Network.

Fibre Maintenance Contractor Management

The fibre maintenance contractor will be contracted directly by Project Co and the NOC will be given the authority to initiate, direct, manage and oversee all aspects of the work they perform to support the Network.