

Vermilion Project Earnings and Growth Sharing Agreement

THIS AGREEMENT dated as of this 27th day of June, 2022

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, 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 and Project Co have entered into a Revised and Restated Project Agreement dated as of the 25th day of January, 2022, which sets out the terms and conditions upon which Project Co shall perform the Project.
- B. Vermilion has agreed pursuant to Section 4.2 of the Project Agreement to undertake certain responsibilities in respect of the Project.
- C. The Project Agreement also provides that the Parties shall enter into this Project Earnings and Sharing Agreement, which sets out the terms and conditions upon which Project Co shall pay to Vermilion an amount equivalent to (i) an agreed upon percentage of the retained earnings attributable to the Project and distributed to the Partners, within ninety (90) days after each such distribution; and (ii) an agreed upon percentage of the value of the Partners Interest in the Project, in a Sale Transaction, in cash, on the closing of any such Sale Transaction; and (iii) an agreed upon percentage of the Partners Interest attributable to the Project, on and IPO, in securities issued in such IPO, on the closing of such IPO.

NOW THEREFORE in consideration of the responsibilities that Vermilion has agreed to undertake pursuant to Section 4.2 of the Project Agreement and for 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:

1.1 Definitions

- (a) In this Project Earnings and Growth Sharing Agreement, all capitalized terms, except those defined herein, shall have the meaning given to them in the Project Agreement.
- (b) In this Project Earnings and Growth Sharing Agreement, the following terms shall have the following meanings:
 - a. “Initial Public Offering” or “IPO” shall mean an initial public offering resulting in the disposition of not less than twenty-five percent (25%) of the issued and outstanding

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Project Co Entity Shares, or a transaction giving rise to a stock exchange listing or over-the-counter quotation of Project Co Entity Shares, including an amalgamation, share exchange, take-over bid or other transaction involving Project Co or a Project Co Entity having a similar effect.

- b. "IPO Issuance Share" shall have the meaning ascribed thereto in Section 41.(b).
- c. "Partners" shall mean the partners, from time to time, of Project Co.
- d. "Partners Interest" shall mean the partnership interest of the Partners in Project Co.
- e. "Project Retained Earnings" shall have the meaning ascribed thereto in Section 3.1(a).
- f. "Project Retained Earnings Distribution Share" shall have the meaning ascribed thereto in Section 3.1(a).
- g. "Project Co Entity" shall mean a wholly owned subsidiary of Project Co which owns all or substantially all of the assets of the Project Co Projects.
- h. "Project Co Projects" means the broadband projects undertaken by Project Co or the Project Co Entity.
- i. "Project Co Entity Shares" shall mean issued and outstanding shares of the Project Co Entity.
- j. "Sale Transaction" shall mean: (1) any merger, amalgamation, arrangement, reorganization or similar transaction resulting in the disposition by the Partners of not less than fifty percent (50%) of the Partner Interests owned by them; or (2) the sale by Project Co of not less than fifty percent (50%) of the Project Co Entity Shares owned by it.
- k. "Sale Transaction Proceeds Share" shall have the meaning ascribed thereto in Section 4.1(a).

2.1 Representations and Warranties

- (a) Project Co represents and warrants to Vermilion that as of the date of this Project Earnings and Growth Sharing Agreement, the same representations and warranties in Section 3.1 of the Project Agreement are applicable to this Project Earnings and Growth Sharing Agreement.
- (b) Vermilion represents and warrants to Project Co that as of the date of this Project Earnings and Growth Sharing Agreement, the same representations and warranties in Section 3.2 of the Project Agreement are applicable to this Project Earnings and Growth Sharing Agreement.

3.1 Earnings Share

- (a) Project Co shall pay Vermilion an equivalent of five percent (5%) (the "**Project Retained Earnings Distribution Share**") of the retained earnings (the "**Project Retained Earnings**"), attributable to the Project and distributed to the Partners from time to time, in cash, within ninety (90) days after each such distribution. The Project Retained Earnings Distribution Share shall be

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adjusted to the same extent and at the same times as the Sale Transaction Proceeds Share is adjusted pursuant to Section 4.1(a).

- (b) Project Co shall maintain separate books and records for the Project and shall prepare separate annual unaudited financial statements for the Project, based on the premise that the Project is being carried on by a separate special purpose vehicle subsidiary of Project Co and that the Parties to the Project Agreement are Vermilion and such subsidiary.
- (c) The Project Retained Earnings shall be calculated, on a pre-tax basis, by attributing costs and expenses incurred by Project Co or the Project Co Entity, as the case may be, in respect of the Project, including financing and management costs and expense, to the Project.

4.1 Growth Share

- (a) Project Co shall pay Vermilion an equivalent of five percent (5%) (the "**Sale Transaction Proceeds Share**") of the value of the percentage of the Partners Interest in the Project sold in a Sale Transaction, in cash, on the closing of such Sale Transaction, in full satisfaction of the percentage of the Sale Transaction Proceeds Share equal to the percentage of the Partners interest in the Project or the Project Co Interest in the Project Co Entity Shares, as the case may be, sold in the Sale Transaction, and the Sale Transaction Proceeds Share shall be adjusted accordingly. Upon payment of the Sale Transaction Proceeds Share to Vermilion in a Sale Transaction of 100% of the Partners Interest in the Partners Interests owned by them, this Agreement shall then automatically terminate.
- (b) Project Co shall pay Vermilion an equivalent of five percent (5%) (the "**IPO Issuance Share**") of the value of the Partners Interest in the Project, on an Initial Public Offering, in securities issued in such Initial Public Offering, on the closing of such Initial Public Offering, on a fully diluted basis, in full satisfaction of the obligations of Project Co to Vermilion pursuant to this Agreement and this Agreement shall then automatically terminate.
- (c) Prior to any sale by Project Co of all or substantially all of the assets of the Project owned by Project Co, Project Co shall, by notice in writing to Vermilion, grant to Vermilion a non-assignable right of first opportunity to purchase such assets for a purchase price payable in cash on closing within three months after the date of such notice and on commercially reasonable terms and conditions, open for acceptance by Vermilion within one month after the date of such notice, and failing acceptance by Vermilion within such one month period, Project Co may sell all or substantially all of such assets, at a purchase price and on terms and conditions no less favourable to Project Co than the purchase price and terms and conditions offered to Vermilion, at any time within one year after the date of such notice, without again granting Vermilion a right of first opportunity on any sale of such assets. On the closing of any such sale to Vermilion, it may set off against such purchase price the Sale Transaction Proceeds Share as defined in Section 4.1(a) of the purchase price of such assets. Upon closing of any such sale to Vermilion, this Agreement shall then automatically terminate.
- (d) Project Co shall maintain separate books and records for each broadband project undertaken by Project Co and shall prepare separate annual unaudited financial statements for each such project, based on the premise that each such project is being carried on by a separate special

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purpose vehicle subsidiary of Project Co and that the parties to each project agreement are the relevant municipality and such subsidiary.

- (e) The annual pre-tax earnings of each project shall be calculated by attributing costs and expenses incurred by Project Co or the Project Co Entity, as the case may be, in respect of each such project, including financing and management costs and expenses, to such project. The balance sheet of each project shall be prepared by attributing the assets and liabilities of Project Co, including financing, in respect of each such project to such project.
- (f) The value of the Partners Interest in the Project or the value of Project Co Interest in the Project Co Entity Shares, as the case may be, shall be calculated by utilizing substantially the same valuation methodology in determining the value of the Partners Interest in the Project and the value of the Partners Interest in Project Co or the value of the Project Co Interest in the Project Co Entity Shares, as the case may be, for the Sale Transaction or the Initial Public Offering.

5.1 Information and Audit

- (a) 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 Earnings and Growth Sharing Agreement, other than Sensitive Information.
- (b) 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. 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, inspection or monitoring costs incurred by Vermilion, not exceeding the amount due and payable.
- (c) In conducting an audit of Project Co under Section 5.1 (b) or as otherwise provided under this Project Earnings and Growth Sharing 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.
- (d) Vermilion's rights pursuant to this Section 5.1(d) shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

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6.1 Termination

- (a) This Project Earnings and Growth Sharing Agreement shall terminate upon the Termination of the Project Agreement by Project Co pursuant to Section 13.4, due to a Vermilion Event of Default, and in accordance with the provisions of Sections 4.1(a), (b) and (c) of this Agreement.

7.1 Confidential Information

- (a) The Parties agree that the provisions of Article 15 – Confidential Information of the Project Agreement shall apply to this Project Earnings and Growth Sharing Agreement, mutatis mutandis.

8.1 Dispute Resolution

- (a) The Parties agree that the provisions of Article 18 – Dispute Resolution of the Project Agreement shall apply to this Project Earnings and Growth Sharing Agreement, mutatis mutandis.

9.1 Miscellaneous

- (a) This Project Earnings and Growth Sharing Agreement shall not be assigned by Vermilion without the prior written consent of Project Co, which consent may be arbitrarily withheld.
- (b) The Parties agree that, except as otherwise provided in this Project Earnings and Growth Sharing Agreement, the provisions of Section 19.2 to 19.10 inclusive of the Project Agreement shall apply to this Project Earnings and Growth Sharing Agreement, mutatis mutandis.
- (c) For avoidance of doubt, except as otherwise provided in this Project Earnings and Growth Sharing Agreement, this Project Earnings and Growth Sharing Agreement shall survive the Termination and Expiry of the Project Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Project Earnings and Growth Sharing Agreement effective as of the date first written above.

**THE CORPORATION OF THE TOWN OF
VERMILION**

Signature:

[Redacted Signature]

Name (Print): Kevin Lucas

Title: Chief Administrative Officer

Date: as of June 30, 2022.

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

Meridium Infrastructure A-Net ULC

Signature:

[Redacted Signature]

Name (Print): Nick Phillips

Title: Authorized Signing Authority

Date: as of June 30, 2022.

DIG Alberta Limited Partnership

By its General Partner

DIG Alberta Holdings Inc.

Signature:

[Redacted Signature]

Name (Print): James Sanford

Title: President

Date: as of June 30, 2022.