

10221

THIS AGREEMENT made in duplicate this 7th day of Sept. 2002.

BETWEEN:

O.N.TEL INC.

a corporation incorporated under the laws of the Dominion of Canada having its head office in the City of North Bay, District of Nipissing and carrying on business as **O.N.TELCOM**

(hereinafter referred to as "O.N.Telcom")

OF THE FIRST PART

AND: **CORPORATION OF THE TOWNSHIP OF CHAPLEAU**

(hereinafter referred to as the "CBN Host")

OF THE SECOND PART

LICENSE-BUILDING SPACE

WHEREAS the CBN Host desires to support the communities' efforts to facilitate the development of telecommunications infrastructure and application development for the community.

AND WHEREAS O.N.Telcom requires building space in order to operate its equipment which is required to provide its services to customers in and surrounding the community

AND WHEREAS the CBN Host is the owner of a certain building located in the Township of Chapleau, District of Sudbury, Province of Ontario and more particularly described in Schedule "A" attached hereto.

AND WHEREAS O.N.Telcom has requested the use of a portion of the building to house its telecommunications equipment on the terms and conditions contained in this Agreement (hereinafter referred to as "the "Licenced Premises").

IN CONSIDERATION OF the recitals and the provisions contained in this Agreement, the parties agree as follows:

1. LICENSE

Subject to the terms and conditions of this license, the CBN Host hereby grants a License to O.N.Telcom to:

- (a) Use and occupy the portion of the building as outlined in Schedule "A" attached hereto, to install, operate and maintain its telecommunications equipment required to provide high quality telecommunications infrastructure and access to customers in the community.

2. TERM

- (a) The Effective Date of this Agreement shall be the last date on which a Party has executed this Agreement.
- (b) The expiry date of this Agreement shall be 31 December 2005, after which it will be automatically renewed every year thereafter for one-year terms, subject to the provisions for termination hereafter contained.

3. CONSIDERATION

In consideration of the CBN Host allowing O.N.Telcom to use and occupy the Licensed Premises for those services provided to the CBN Host by O.N.Telcom, O.N.Telcom will waive any billable items that are normally assessed separately (not bundled with other billable items) for local loop connection (for example, if there was a separate billable item relating to a local cable pair loop, normally required from the local telephone company for the service to establish the service, but not required at the CBN Host location because the required connections can be completed with in-house wiring, that charge would be waived).

An O.N.Telcom sales representative shall provide information as to which services this applies on a request basis.

4. OBLIGATIONS OF THE CBN HOST

- (a) The CBN Host is required to maintain the technical and operational specifications for the Licensed Premises as outlined in Schedule "B" attached to this Agreement.
- (b) O.N.Telcom shall mutually agree with CBN Host upon any building and room renovations required to meet the technical and operational requirements in Schedule "B" attached; such Agreement by the CBN Host not to be unreasonably withheld.
- (c) The CBN Host shall provide and maintain the Licensed Premises and allow O.N.Telcom and O.N.Telcom authorized contractors and agents to access the Licensed Premises as outlined in Schedule "B" attached.
- (d) The CBN Host shall provide and maintain secure space for all O.N.Telcom provided cables and wire between the exterior property line of the building and the Licensed Premises.
- (e) Subject to regulatory approvals, each party shall at all times repair and keep in good order and condition all equipment and all buildings and related equipment owned by it and controlled by it and used in or in connection with the Licensed Premises, to a reasonable standard of usage taking into account the age of such building and the equipment and the uses to which they are put, and each party shall, in accordance with the usual practice and as reasonably required, repair and replace all and any of the same which may become worn out, dilapidated, unserviceable or destroyed, and which are necessary for the efficient operation of the Service Access Point site.
- (f) The CBN Host shall pay all hydro electricity costs, which are required in order to maintain the O.N.Telcom telecommunications equipment.

5. OBLIGATIONS OF O.N.TELCOM

- (a) O.N.Telcom shall comply with all statutes, regulations, by-laws, codes and requirements of all governments and governmental authorities and all boards and commissions applicable thereto with respect to the use of the Licensed Premises.
- (b) O.N.Telcom shall ensure that the installation, operation and maintenance of all O.N.Telcom provided equipment in the Licensed Premises is in accordance with generally accepted industry standards for such installations.
- (c) O.N.Telcom shall ensure that the installation, operation of maintenance of exterior cables and inside wiring or cables as outlined in Schedule "B" is in accordance with generally accepted industry standards for such operations.

6. LIABILITY

- (a) Each party agrees that the wrongdoer shall make full and complete compensation for any damage caused to the innocent party's physical property by the wrongdoer's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is in law responsible.
- (b) Each party agrees that the wrongdoer shall make full and complete compensation for any bodily injury or death to any person caused by the wrongdoer's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is in law responsible or for bodily injury or death attributable to the equipment owned or operated by the wrongdoer, its officers, employees, servants, agents, contractors or invitees or those for whom it is in law responsible.
- (c) Each party agrees that the wrongdoer shall indemnify the innocent party and save it harmless from and against any and all actions, suits, claims, damage, costs, liability and expenses in any manner based upon, connected with or arising out of any breach, violation or non-performance by the wrongdoer of any of the terms and conditions of this Agreement, including the effects of any applicable environmental legislation, unless caused by the negligent act or omission of the innocent party, its officers, employees, agents, contractors or those for whom it is in law responsible.
- (d) Each party agrees that the wrongdoer shall waive against the innocent party, its officers, employees, agents or contractors any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement or for any injury to or death of any person or for any loss of or damage to any property belonging to the wrongdoer, its employees, servants, agents, invitees, licensees, contractors or visitors unless caused by the negligent act or omission of the innocent party, its officers, employees, agents, contractors or those for whom it is in law responsible.

7. USE OF THE LICENSED PREMISES

The Licensed Premises shall only be used for the purpose of installing, maintaining and utilizing equipment required for the facilitation of telecommunications infrastructure and application development.

8. OPERATIONAL REQUIREMENTS

- (a) O.N.Telcom shall not construct, renovate or replace any part of the Licensed Premises without first obtaining the permission, in writing, from the CBN Host and obtaining a license as required by the appropriate government authorities if required.

- (b) O.N.Telcom agrees that no work shall at any time be done on the Licensed Premises in such a manner so as to obstruct, delay, or in any way interfere with the CBN Host's operations.

9. INSURANCE

Both parties shall maintain public liability and property damage insurance with respect to the Licensed Premises and its use by O.N.Telcom; such policy to be written on a comprehensive basis with inclusive rights of not less than \$2,000,000.00 or such higher limits and including such additional terms and coverage as each party acting reasonably may require.

10. TERMINATION

- (a) Either O.N.Telcom or the CBN Host may, at any time during the term or renewal hereof, terminate this Agreement by giving the other party eight (8) months' prior written notice of termination.
- (b) At the expiration of the term or upon the earlier termination of this Agreement, O.N.Telcom shall, within thirty (30) days, remove off the said Licensed Premises of the CBN Host all other materials and things which O.N.Telcom shall have placed thereon.

11. ASSIGNMENT

In the event that a whole or part of O.N.Telcom is transferred or assigned to a third party, such transfer or assignment may proceed without O.N.Telcom requiring the consent of the CBN Host.

12. RELATIONSHIP

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein, nor any of the acts of the parties shall create any relationship between the parties other than that of Licensor and Licensee as described in this Agreement.

13. NOTICE

Any notice required by this License Agreement shall be in writing and shall be deemed to have been sufficiently given when personally delivered telefaxed or sent by prepaid registered post addressed to O.N.Telcom to:

Vice-President O.N.Telcom
555 Oak Street East
North Bay, ON P1B 8L3

and addressed to the CBN Host to:
20 Pine Street
PO Box 129
Chapleau, ON P0M 1K0

Any notice made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or if made or given by telefax, on the first business day following the transmittal thereof, or, if sent by prepaid registered post, on the third business day following the day of mailing thereof, except in the case of the interruption or anticipated interruption in the mail service in which case such notice shall be given by personal delivery or telefax.

14. SUCCESSORS

Subject to paragraph 11, this License Agreement and the covenants, provisions and obligations herein contained shall enure to the benefit of and be binding upon each party, its successors and assigns.

IN WITNESS WHEREOF the said parties hereto have signed these presents and affixed their respective seals under the hands of their respective officers duly authorized in that behalf.

SIGNED, SEALED and DELIVERED

in the presence of:

O.N.TEL INC.

per _____
Vice President

per _____
Secretary

Chapleau

per _____
Mayor

per _____
CAO

Schedule A - Floor plan of Equipment Room

As attached hereto and outlined in red.

Schedule B - Technical and Operational

Specifications for Equipment Room

Environmental

1. Sufficient ventilation and temperature control of the room to dissipate up to 500Watts of heat from O.N.Telcom's equipment, and continuously maintain a temperature between +5 Celsius and +35 Celsius, with a normal operating temperature of 20 Celsius.
2. Dust and air particle levels no greater than the levels of a normal business office environment.
3. Humidity Levels the same as those for a normal business office environment.
4. Lighting levels as agreed upon, to ensure safe and efficient operation, installation and maintenance within the Equipment Room.

Power

5. A 120VAC 15AMP circuit for O.N.Telcom's equipment (20AMP capacity preferred for future).

Security

6. Doors to the room shall be keyed for secure access, and will normally be kept locked by the CBN Host, excepting when the CBN Host requires access.
7. The CBN Host shall retain a list of all those persons holding keys to the room.
8. Signage, approved by the CBN Host, will be posted, indicating that the room is for authorized personnel only (authorized by the CBN Host or O.N.Telcom).

Personnel Access

9. Unrestricted access to the room, 24 hours a day, seven days a week, for O.N.Telcom employees, and O.N.Telcom authorized contractors, or agents.
10. Third party access as required, to the building in general, for the installation of telecommunications and transmission facilities, between the exterior of the CBN Host's property line to the Equipment Room, including without limitation, entrance cables.

Connecting Telecommunications Facilities

11. The installation of exterior telecommunications cables by O.N.Telcom or a third party, between the property line, and an entrance point to the building.
12. The installation of inside wiring or cables between the point where the external cables are terminated, and the Equipment Room, following industry standard installation practices.

Emergency Conditions

13. In emergency repair situations, and when the O.N.Telcom employee, contractor or agent is unable to utilize their cellular/mobile phone, reasonable access to a telephone line within the building, if available, so that emergency repairs can be coordinated.

CBN Host Contact

14. Optionally, the CBN Host will designate a contact person, employed by the CBN Host, who will have access to the Equipment room, and who, upon request, and with assistance from O.N.Telcom technicians, provide information to O.N.Telcom about the conditions of the Equipment room and the equipment there (normally to assist in determining the cause of a service problem).

11080
CONFIDENTIAL

FIBRE MAINTENANCE AGREEMENT
(SUDBURY – CHAPLEAU)

THIS FIBRE MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into as of 19th day of December, 2008 (the “Effective Date”)

BETWEEN

TELUS COMMUNICATIONS COMPANY (the “Vendor”)

- and -

O.N. Tel Inc. dba Ontera (the “Purchaser”)

RECITALS

WHEREAS the Purchaser has agreed to purchase, and the Vendor has agreed to sell, the Dark Fibres between Sudbury and Chapleau pursuant to the terms of a Fibre Purchase Agreement dated the 19th day of December, 2008 between the Parties (the “Purchase Agreement”).

AND WHEREAS the Purchaser wishes to retain the Vendor to provide maintenance services to the Purchaser on the Dark Fibres on the terms and conditions set forth below.

NOW THEREFORE in consideration of the mutual promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, including the Schedules, unless the context otherwise requires, capitalized terms shall have the meanings set forth below:

“Activated Strands” has the meaning set out in Schedule B, Article 1.

“Affiliate” has the meaning ascribed to such term in the *Canada Business Corporations Act*, as amended or replaced from time to time as well as any unincorporated association in which the Vendor or the Purchaser, or any of their respective affiliated bodies corporate, as so defined, has a controlling interest.

“Agreement” means this Fibre Maintenance Agreement including the Schedules attached

to this Agreement, together with any and all amendments made pursuant to the terms hereof, and "hereof", and "hereto" shall have corresponding meanings.

"Business Day" means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Cable" means a fibre optic cable located along a Segment or Lateral Segment and the fibres contained therein, including the Dark Fibres.

"Capacity and Services" means

- (a) telecommunications services;
- (b) bandwidth;
- (c) leases of lit fibre;
- (d) lit fibre indefeasible rights of use;
- (e) exclusive or non-exclusive use of or access to a particular wavelength on a lit fibre; and
- (f) any other services

"Commencement Date" means the date when the Dark Fibre Segment End Points, Lateral End Points and Cross Connects are interconnected, by the Vendor, to the Purchaser's telecommunications network or equipment at each Facility or Connecting Point, such date to be mutually agreed between the Purchaser and Vendor.

"CPI Adjustment" means the rate of adjustment for the respective fee, which shall be based on the Consumer Price Index–Canada–All Items as published by Statistics Canada on a monthly basis or, if the Consumer Price Index in its present form becomes unavailable, such similar index as may be approved by the Parties, acting reasonably.

"Cross Connects" means the dark fibre On-Site Cross Connects and the Off-Site Cross Connects identified in Parts 1&2 of Schedule "C", as amended from time to time.

"Dark Fibres" means the dark fibre strands identified in Part 1 of Schedule "C", as may be amended from time to time.

"Effective Date" has the meaning set out in the first line of this Agreement.

"Emergency Event" has the meaning set out in Schedule B, Article 1.

"Emergency Maintenance and Restoration Services" means the services described in Article 2.2 of Schedule "B".

"Facility" means the Vendor equipment building, shelter or other equipment space, which will be licensed for the purposes of collocating the Purchaser's telecommunications equipment.

“FPP” means a Fibre Patch Panel which is located in a Facility and used for the purposes of terminating the Dark Fibres in a Segment and to cross-connect to the Vendor’s telecommunication network or a Lateral Segment.

“Force Majeure” means, in relation to the performance of any obligation under this Agreement other than payment obligations of either Party, any cause, condition or event of any nature whatsoever that is not reasonably foreseeable at the time this Agreement is executed and that is beyond the reasonable control of the Party responsible for performance of such obligation and not caused in whole or in part by its default, and that prevents or delays, in whole or in part, the performance by that Party of its respective obligations under this Agreement, excluding lack of finances but including without limitation acts of war, revolution, riot, civil disorder, sabotage, vandalism, changes in governmental regulation, fire, flood, earthquake, storm, lightning, other acts of God, local or national emergencies, rail accidents, strikes, third party lockouts, work slowdowns and other labour disputes.

“Indemnifying Party” has the meaning set out in Article 4.3.

“Initial Term” means: (i) with respect to maintenance of the Dark Fibres, the period commencing on the Commencement Date and ending fifteen (15) years from the Transfer Date; (ii) with respect to maintenance of the Cross Connects, the period commencing on the date that the grant of the Purchase by the Vendor of such fibres becomes effective pursuant to the terms of the Purchase Agreement and ending fifteen (15) years from the Transfer Date.

“Interest Rate” means a per annum rate of 1% per month compounded monthly or an annual rate of 12.68%, both before and after any court judgment or arbitration award in respect of the same..

“Lateral Segment” means a section of Cable established by the Vendor for the Purchaser that contains and extends the Dark Fibres from a Segment End Point or an intermediate Segment splice point to an interconnection point on the Purchaser’s telecommunications network.

“Maintenance Fees” has the meaning set forth in Article 3.1.

“Maintenance Services” means the Scheduled Maintenance Services and the Emergency Maintenance and Restoration Services respecting the Dark Fibres.

“Municipal Access Rights” means all licenses, permits and authorizations granted or required by any municipal governmental authority in Ontario in respect of Dark Fibres located on or crossing or passing through public right of way or other lands owned or administered by such governmental authority.

“Party” means each of the Vendor and the Purchaser, and “Parties” shall mean both the Vendor and the Purchaser.

“Proportionate Share” means, with respect to costs payable by Purchaser on a particular Segment, the proportion that A bears to B, where A equals the number of Dark Fibres in the Segment and B equals the total number of fibres in the Segment;

“Purchase Agreement” has the meaning set forth in the recitals.

“Renewal Term” means (i) with respect to maintenance of the Dark Fibres, the period of time commencing on the expiry of the Initial Term and ending upon the expiry of the initial and any subsequent renewal of the Underlying Rights for the Dark Fibres; and (ii) with respect to maintenance of the Cross Connects, (A) the period commencing on the expiry of the Initial term and ending upon the expiry of the initial and any subsequent renewal of the Underlying Rights for the Dark Fibres or, (B) if commencing later than the expiry of the Initial Term, commencing on the date that the grant of the Purchase by the Vendor of such fibres becomes effective pursuant to the Purchase Agreement and ending upon the expiry of the initial and any subsequent renewal of the Underlying Rights for the Dark Fibres.

“Scheduled Maintenance Services” means the services described in Article 2.1 of Schedule “B”.

“Segment” means a geographical route segment described in Schedule “C” containing a Cable that holds Dark Fibres.

“Service Affecting Condition” means any condition that causes the loss of, or disruption to, Capacity and Services being delivered by Purchaser or its Affiliates utilizing the Dark Fibres due to a break in continuity or optical degradation of the Dark Fibres, but excluding when such a condition is caused by a deficiency in the electronics or other equipment of Purchaser or its Affiliates.

“Specifications” has the meaning set out in Schedule B, Article 1.

“Support Structures” means, collectively, all infrastructure (other than shelters) necessary to support a Cable or Cables, including, without limitation, cable sheathing, conduit (where the cable is not direct buried), messenger wire, subducts, troughing, splice closures, pedestals, slack containers, poles, warning signs, marking posts, handholes, manholes and any equipment related thereto but excluding any fibres and any electronic, optronic, optical or similar equipment.

“Term” means the Initial Term and any and all Renewal Terms, all subject to early Termination or Suspension as set forth in Article 8.4.

“Transfer” means any assignment, sale, transfer, swap, lease or other disposition of any type.

“Transfer Date” has the meaning ascribed to such term in the Purchase Agreement.

“Unactivated Strands” has the meaning set out in Schedule B, Article 1.

“Underlying Rights” means collectively all easements, rights-of-way, leases, licenses, authorizations, permits, crossing agreements and other agreements, whether written or otherwise, relating to the grant of rights and interests in and/or access to the real property underlying the Vendor System or access to Support Structures in connection therewith relating to the Dark Fibres, excluding Municipal Access Rights.

“Vendor Control Centre” has the meaning set out in Schedule B, Article 1.

“Vendor System” means the fibre optic communications network owned and operated by the Vendor located in the Province of Ontario, which includes fiber optic cable and related Support Structures and facilities in which the Dark Fibres are contained.

1.2 Schedules

The following Schedules are attached to and form part of this Agreement:

Schedule “A” -	Maintenance Terms
Schedule “B” -	Maintenance Specifications and Procedures
Schedule “C” -	Description of Dark Fibres

1.3 Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Priority of Agreements

In the event any conflict or inconsistency between the terms of this Agreement and the terms of the Purchase Agreement with respect to the Maintenance Services, the terms of this Agreement shall prevail. In the event of any conflict or inconsistency between the body of this Agreement and the terms of any Schedule, the terms of the Schedule shall prevail.

1.6 Currency

All amounts in this Agreement are stated and shall be paid in Canadian currency.

ARTICLE 2 MAINTENANCE SERVICES

2.1 The Vendor to Provide Maintenance Services

Subject to the terms and conditions of this Agreement, the Vendor shall provide to the Purchaser the Maintenance Services respecting the Dark Fibres for the Term in accordance with the maintenance procedures described in Schedule "B". For the Dark Fibres, the Vendor shall commence providing Maintenance Services as of the Commencement Date.

2.2 Right to Subcontract

The Vendor may subcontract any or all of the Vendor' duties or obligations to the Purchaser under this Agreement to a qualified third party contractor, provided that the Vendor shall remain obligated to the Purchaser during the Term for complying with any such duties or obligations.

2.3 Acknowledgement

The Purchaser acknowledges that the Vendor is not supplying, nor is the Vendor obligated to supply, any maintenance services relating to the optronics or electronics or optical or electrical equipment which may be required to use any of the Dark Fibres

ARTICLE 3 MAINTENANCE FEES

3.1 Maintenance Fees

In consideration for the Vendor providing the Maintenance Services, the Purchaser shall pay to the Vendor the fees described in Article 1.1 of Schedule "A" (the "Maintenance Fees") commencing on the Commencement Date.

3.2 Invoicing and Payment

Maintenance Fees for Maintenance Services shall be calculated annually and payable monthly. On the last day of the calendar month in which the Commencement Date falls, the Vendor shall provide the Purchaser with an invoice for Maintenance Fees in respect of Maintenance Services performed in that month or portion thereof. Such invoice shall be due and payable in full within sixty (60) days from the invoice date. Thereafter, the Vendor shall invoice the Purchaser for Maintenance Fees on the last day of each subsequent month of the Term, which invoices shall be due and payable in full within sixty (60) days from the invoice date. Upon expiry of the Term, the Vendor will invoice the Purchaser for the final payment amount owing for the remaining Maintenance Services covering the period from the end of the previous invoice billing period to the end of the Term.

3.3 Other Charges

In addition to the amounts payable under Articles 3.1 and 3.2, the Purchaser shall (i) reimburse the Vendor for all sums, costs, fees and expenses as a result of any work performed by the Vendor or its subcontractors at the request of the Purchaser under this Agreement which is in addition to the Maintenance Services; and/or (ii) reimburse the Vendor's subcontractors or other third parties directly if so agreed by the Parties (as an example CPR flagging, hi-rail and escort charges). If requested by the Purchaser, the Vendor will provide a cost estimate for the work so requested. If the Purchaser grants approval to the Vendor to proceed with such work, the Vendor will complete such work; and may, at its sole discretion, subcontract this work to one or more third parties. After such work has been performed by the Vendor and/or its subcontractor(s), the Vendor or the applicable subcontractor shall invoice the Purchaser for all such reasonable sums, costs, fees and expenses, plus an overhead fee not to exceed 15%. Such invoices shall be due and payable to the Vendor or the applicable subcontractor within sixty (60) days of the invoice date. If requested by the Purchaser, the Vendor shall provide supporting documentation confirming costs incurred by the Vendor in connection with the performance of such work by the Vendor.

3.4 Method of Payment

All payments made by the Purchaser hereunder shall be by cheque payable to the Vendor or by such other method of payment as may be agreed to by the Parties.

3.5 Interest

If the Purchaser fails to pay the Vendor any amount due and payable under this Agreement when due then, in addition to any other rights and remedies that the Vendor may have, the Purchaser shall pay interest on such unpaid amount at the Interest Rate. Notwithstanding the foregoing, no interest shall accrue on any payment that is disputed in good faith by the Purchaser while such dispute is pending. If such dispute is later resolved in favour of the Vendor, such amount shall bear interest from the date when due until paid at the Interest Rate, both before and after any court judgment or arbitration award in respect of the same.

3.6 No Deductions

All payments to be made by the Purchaser under this Article shall be made without any deduction or set off of amounts which the Vendor may owe the Purchaser, or which the Purchaser may claim the Vendor owes the Purchaser, under any other agreement.

3.7 Sales Taxes

The Maintenance Fees specified in this Agreement do not include any sales taxes levied in respect of the provision of Maintenance Services. The Purchaser shall be responsible for and shall pay as and when due in accordance with applicable laws any and all sales taxes levied in respect of such services. To the extent any sales taxes are paid by the Purchaser to the Vendor, the Vendor shall remit or cause to be remitted to the applicable taxing authority such sales taxes on a timely basis in accordance with applicable laws.

ARTICLE 4
WARRANTIES, INDEMNIFICATION AND LIABILITY

4.1 Exclusion of Warranties

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE VENDOR MAKES NO WARRANTY, REPRESENTATION OR INDEMNITY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MAINTENANCE SERVICES PERFORMED UNDER THIS AGREEMENT OR ANY RELATED WORK OR MATERIALS SUPPLIED, INCLUDING ANY AND ALL WARRANTIES OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE.

4.2 Services Warranty

The Vendor shall perform the Maintenance Services in a good and workmanlike manner in accordance with general industry standards for the provision of similar dark fibre maintenance services. In the event of a breach of this warranty, the sole right of the Purchaser shall be to require the Vendor to re-perform the Maintenance Services in accordance with such standards, free of additional charge.

4.3 Indemnity

Subject to Articles 4.4 and 4.5, each Party (the "Indemnifying Party") shall indemnify and save harmless the other Party and its Affiliates and their respective employees, officers, directors and contractors from and against any and all losses, claims, damages, liabilities, and costs, incurred or suffered by the other Party and its Affiliates and their respective employees, officers, directors and contractors by reason of, resulting from or in connection with, or arising out of, under or pursuant to:

- (a) the breach or inaccuracy of any representation, warranty, covenant, term or duty or obligation of the Indemnifying Party set out in or arising under this Agreement; or
- (b) the gross negligence or wilful misconduct of the Indemnifying Party or its Affiliates in connection with the subject matter of this Agreement.

For the purposes of this Article 4.3, "costs" includes reasonable lawyers' fees and expenses, reasonable accountants' fees and expenses, court costs and all other reasonable out-of-pocket expenses.

4.4 Limitation of Liability

In no event shall the Vendor' aggregate liability arising out of, or in connection with:

- (a) breach or breaches of this Agreement; or

- (b) breach or breaches of contract, breach of warranty, tort, negligence, strict liability or any other theory of liability relating to the subject matter of this Agreement, or to the Party's performance or non-performance of its obligations under this Agreement

exceed the aggregate Maintenance Fees actually received by the Vendor from the Purchaser under this Agreement for the 12 month period preceding the date of the event or events giving rise to the liability. Nothing contained in this section shall limit or otherwise modify any liability which the Vendor may have at law to the Purchaser in connection with the Vendor ceasing to provide Maintenance Services or otherwise terminating this Agreement except as expressly permitted in this Agreement.

4.5 Exclusion of Liability

4.5.1 Purchaser and its Affiliates shall not be liable to the Vendor or its Affiliates, and the Vendor and its Affiliates shall not be liable to Purchaser or its Affiliates, for any special, indirect, punitive or consequential damages including, but not limited to, loss of profits or revenue, cost of capital, or claims of contractors, suppliers, clients or customers (whether arising out of transmission interruptions or problems, any interruption or degradation of service, or otherwise), whether foreseeable or not, arising out of, or in connection with any:

- (a) breach of this Agreement; or
- (b) breach of contract, breach of warranty, tort, negligence, strict liability or any other theory of liability relating to the subject matter of this Agreement, or to the Party's performance or non-performance of its obligations under this Agreement.

4.5.2 Nothing contained in this Agreement shall operate as a limitation on the right of either Party to bring an action for damages against any third party, including indirect, special or consequential damages, based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation or use of the Purchaser Assets or the Vendor System; provided, however, that each Party shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the other Party to pursue any such action against such third party.

ARTICLE 5 INSURANCE

5.1 The Vendor Insurance

5.1.1 The Vendor shall obtain insurance on the following terms:

- (a) During the Term, the Vendor shall at its sole cost obtain and maintain commercial general liability insurance on an occurrence basis indemnifying and protecting the Vendor and Purchaser as an additional insured against claims for personal injury, death or property damage or loss arising out of operations and activities of the Vendor on or with respect to the Vendor System or part thereof in such amount as

would from time to time be carried by a prudent owner considering the operations and activities being insured, but in no event less than \$10,000,000 per occurrence and aggregate. All such insurance shall be effected with insurers which are licensed to carry on business in the applicable jurisdiction(s), have an A.M. Best rating of A- or better and shall contain broad form blanket contractual liability, cross-liability and severability of interest provisions.

(b) The Vendor shall not do or permit to be done any act or thing which might render void or voidable or conflict with the requirements of any policy of insurance obtained by the Vendor under this Article 5.1.

5.1.2 The Vendor shall insure that all insurance policies obtained under this Article 5 require that the insurers provide Purchaser with 30 days prior written notice of any cancellation to the detriment of Purchaser or lapse of any policies of insurance required to be provided hereunder. Should the Vendor fail to effect and to keep such insurance in force, and should the Vendor not rectify such situation within 15 days after written notice by Purchaser in that regard, Purchaser shall have the right, without assuming any obligation in connection therewith, to effect such insurance at the cost of the Vendor, and all outlays by Purchaser be immediately payable by the Vendor to Purchaser.

5.1.3 Upon request by Purchaser the Vendor shall promptly provide Purchaser with a certificate of insurance evidencing the insurance required to be obtained by the Vendor pursuant to this Article.

ARTICLE 6 CONFIDENTIALITY

6.1 Confidentiality

The terms of this Agreement and all documentation and information provided by a Party to the other Party pursuant to this Agreement and marked or identified as confidential shall be deemed to be Confidential Information for the purposes of the confidentiality provisions of the Purchase Agreement and this Agreement is subject to the confidentiality provisions set out in the Purchase Agreement.

ARTICLE 7 FORCE MAJEURE

7.1 Delay Caused by Force Majeure

Neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any event of Force Majeure, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay. The Party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay.

ARTICLE 8 TERMINATION

8.1 Termination For Default

If the Vendor fails to provide maintenance services to Purchaser in accordance with this Agreement, Purchaser may provide Vendor with written notice specifying the particulars of the failure. If the Vendor does not remedy the failure to the satisfaction of Purchaser, acting reasonably, within 5 days (or 24 hours in the event of a Service Affecting Condition) from the date Purchaser delivers such notice then the Purchaser may make alternative arrangements through an approved contractor to correct the Service Affecting Condition. If the Vendor and Purchaser are unable to resolve whatever process deficiency or other cause led to the Vendor's inability to fulfill its maintenance obligations under this Agreement, the matter will then be dealt with through the Dispute Resolution Process referenced in Article 9.5 of this Agreement. In any event, it is intended that the Vendor will remain the maintenance provider of the Dark Fibres for the Term.

8.2 Suspension or Termination for Non Payment

Notwithstanding Article 8.1, if the Purchaser fails to pay the Vendor any amount payable by the Purchaser under this Agreement within ten (10) days written notice from the Vendor, other than an amount which is being disputed in good faith by the Purchaser, then the Vendor:

- (a) shall be entitled to immediately suspend all or a portion of the Maintenance Services and any other work being undertaken by the Vendor under this Agreement upon delivery of written notice to the Purchaser;
- (b) shall be entitled to terminate this Agreement in its entirety if the amount of the arrears regarding any particular Segment exceeds the amount payable by the Purchaser under this Agreement in relation to such Segment for a three (3) month period; and
- (c) may pursue any other remedies which it may have at law or under this Agreement.

8.3 Termination on Bankruptcy or Winding-Up

If:

- (a) a Party makes, or is required to make, a proposal or an assignment into bankruptcy or is declared bankrupt under the *Bankruptcy and Insolvency Act (Canada)*;
- (b) a Party makes a proposal or otherwise obtains protection from its creditors under the *Companies Creditors Arrangement Act (Canada)*; or
- (c) an order is made or an effective resolution is passed for the winding-up of a Party,

then the other Party may terminate this Agreement upon providing written notice to the Party.

8.4 Termination or Suspension for Convenience

If, at any time during the Term, the Purchaser determines that it no longer requires use of the Dark Fibres, the Purchaser may terminate or suspend this Agreement by providing written notice to the Vendor that it wishes to either terminate this Agreement or to suspend its receipt of Maintenance Services under this Agreement. Such notice will be effective on the last day of the month following the month in which the notice is received by the Vendor. Upon receipt of such notice of either termination or suspension, the Vendor will determine the amount owing to the Vendor for services provided up to and including the end of the month following the month in which the Vendor received the termination or suspension notice and the Vendor will then issue an invoice for the final payment owing to the Vendor by the Purchaser. Where the Purchaser has provided notice that it intends to suspend its receipt of Maintenance Services under this Agreement rather than terminate the Agreement, the Agreement will be suspended until the later of the expiry or other termination of the Term and the date upon which the Purchaser provides notice to the Vendor that it wishes to re-commence obtaining Maintenance Services under this Agreement. Upon receipt of such a request, the Vendor may, in its sole discretion, re-commence the provision of Maintenance Services under this Agreement or refuse to do so and declare the Agreement terminated immediately. In the event the Vendor agrees to re-commence the provision of suspended Maintenance Services, the Purchaser will reimburse the Vendor for any and all costs associated with the Vendor repairing or restoring the condition of the Dark Fibres due to lack of their repair during the period in which the Maintenance Services were suspended. Unless this Agreement is terminated by the Purchaser pursuant to Article 8.1 or Article 8.3, should this Agreement be terminated by the Purchaser, the Purchaser will not then or later perform services similar or identical to the Maintenance Services on the Dark Fibres itself or engage a third party to perform services similar or identical to the Maintenance Services on the Dark Fibres.

ARTICLE 9 GENERAL MATTERS

9.1 Underlying Rights

The obligation of the Vendor to provide Maintenance Services under this Agreement is subject in all respects to the Underlying Rights and any access restrictions respecting the Vendor System contained therein.

9.2 Public Disclosure

All public notices to third parties and all other publicity concerning the Maintenance Services shall be subject to the public disclosure provisions of the Purchase Agreement.

9.3 Assignment

Any Transfer of this Agreement or any portion of this Agreement by the Purchaser shall be in accordance with the transfer provisions of the Purchase Agreement.

9.4 Notices

With the exception of notification for Emergency Maintenance and Restoration Services, all notices and other communications required or permitted under this Agreement shall be in writing and shall be given by courier or facsimile addressed as follows:

If to the Vendor:

TELUS Communications Company

FLR 23

TELUS Tower

411 1 St SE

Calgary, Alberta T2G 4Y5

Attention: VP, Partner Solutions Carrier Services

With a copy to:

TELUS Legal Department

21st Floor 3777 Kingsway

Burnaby, British Columbia V5H 3Z7

Fax: (604) 439 1261

Attention: Legal Department

If to the Purchaser:

Ontera

555 Oak Street

NORTH BAY ON

Attention: Vice-President

With a copy to:

Purchasing

9.5 Dispute Resolution

The dispute resolution provisions set out in Article 21 of the Purchase Agreement shall apply to this Agreement.

9.6 Time of Essence

Time is of the essence of this Agreement.

9.7 Further Assurances

Each Party shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Party may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

9.8 Enurement

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

9.9 Execution

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. This Agreement may be executed by facsimile and the facsimile execution pages will be binding upon the executing Party to the same extent as the original executed pages.

9.10 Relationship of the Parties

The relationship between the Parties shall not be that of partners, agents or joint venturers for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, agency or joint venture agreement between the Parties for any purposes. In performing the Maintenance Services the Vendor shall be an independent contractor.

9.11 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision.

9.12 Entire Agreement

This Agreement, together with the Purchase Agreement and the documents referenced in the Purchase Agreement constitute the entire agreement between the Parties pertaining to the subject matter hereof.

9.13 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by both Parties. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

9.14 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws applicable therein.

9.15 Survival

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and will continue in full force and effect. Additionally, all provisions of this Agreement will survive the termination or expiration of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

[The next page is the execution page.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day specified on the first page of this Agreement.

TELUS COMMUNICATIONS COMPANY

By: _____

Name: _____

Title: VP Network Transformation

O.N. TEL INC.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day specified on the first page of this Agreement.

TELUS COMMUNICATIONS COMPANY

By: _____

Name: _____

Title: _____

O.N. TEL INC

By: _____

Name: _____

Title: Vice President & General Manager

By: _____

Name: _____

Title: Secretary

SCHEDULE "A"
MAINTENANCE TERMS

1.1 Maintenance Fees

In consideration for the Vendor providing the Maintenance Services under this Agreement, the Purchaser shall pay to the Vendor the following Maintenance Fees in accordance with the payment schedule set out in Article 3.2 of this Agreement:

- (a) for scheduled maintenance, at the rate of two hundred and thirty five dollars (\$235) per route kilometre per year based on a total route length of two hundred ninety (290) route kilometres; and
- (b) where the total cost for Emergency Maintenance and Restoration Services in respect of a single Emergency Event exceeds \$100,000, its Proportionate Share of the amount by which the total cost exceeds \$100,000.

Rates for 1.1 (a) and 1.1 (b) above may be renegotiated by the Parties at five year intervals starting on the Commencement Date. Any such adjustments to the Maintenance Fees will be negotiated by the Parties, acting reasonably and taking into account industry benchmarks, but shall not exceed the "CPI Adjustment" for the preceding five year period unless mutually agreed by both Parties.

The Maintenance Fees will be divided into and paid in equal monthly payments as described in Article 3 of this Agreement.

1.2 Term

This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with this Agreement, shall continue for the Term.

SCHEDULE "B"**MAINTENANCE SPECIFICATIONS AND PROCEDURES****ARTICLE 1
INTERPRETATION****1.1 Definitions**

In this Schedule, the capitalized terms listed in this Section and derivatives thereof shall have the meanings respectively ascribed to them in this Section, unless the context otherwise requires:

"Activated Strands" means at any time the Dark Fibres held by the Purchaser which are at that time being used for the transmission of signals for any purpose other than an experimental or test purpose.

"Emergency Event" means an unplanned failure or impairment of or damage to the Dark Fibres or related Support Structures that adversely affects the operation or risks the operation of the Dark Fibres in accordance with the Specifications.

"Specifications" means the Vendor's fibre standards that it uses for its own commercial traffic.

"Unactivated Strands" means all Dark Fibres that are not Activated Strands.

"Vendor Control Centre" means the control centre or other facility designated by the Vendor for the purpose of monitoring and effecting Emergency Maintenance and Restoration.

**ARTICLE 2
MAINTENANCE SERVICES****2.1 Scheduled Maintenance Services**

The Vendor shall provide the following scheduled preventative maintenance services respecting the Dark Fibres:

- (a) Annual visual inspection of the Vendor System.
- (b) Repair of any damage identified during annual inspections or otherwise, including but not limited to repair of support structure components such as marker posts and signage, bridge troughing, conduits (where applicable), handholes, splice cases and manholes;
- (c) All cable locates referred to Vendor by the Ontario One-Call program. Vendor shall then initiate the dispatching of TELUS employees or contractors to perform the cable locate;
- (d) Ongoing brushing activities required to ensure sufficient clearance from the Vendor System;

2.2 Emergency Maintenance and Restoration Services

- (a) The Vendor, through the Vendor Control Centre, shall provide or cause to be provided to the Purchaser such emergency maintenance and restoration services as may be necessary in the event of a Emergency Event to inspect, assess and repair the Dark Fibres and related Support Structures such that, to the extent possible, the Dark Fibres meet the Specifications, on a 7 days per week, 24 hours per day basis. Such work shall include all trenching, fibre interconnection and splicing work and all conduit, vault and pole replacement work.
- (b) Emergency Maintenance and Restoration Services shall include where possible the provision of a temporary by-pass cable. For this purpose the Vendor agrees, where possible, to maintain on hand and to have available at all times a by-pass cable.
- (c) If, at any time the Purchaser, acting reasonably, finds the arrangements for emergency response by the Vendor Control Centre inadequate, the Vendor and the Purchaser shall co-operate to remedy the existing arrangements or to effect suitable alternate arrangements acceptable to the Parties; provided, however, that if the Vendor does not agree that the arrangements for emergency response by the Vendor Control Center are inadequate, then the dispute shall be resolved pursuant to the Dispute Resolution procedures provided in the Purchase Agreement.

ARTICLE 3 REPAIR PROCEDURE

3.1 Response by the Vendor

The Vendor shall attempt to establish telephone contact with the Purchaser's designated contact person in authority within 15 minutes after receipt of an oral request made by the Purchaser to undertake Emergency Maintenance and Restoration Services, or in the event that the Vendor becomes aware of the Emergency Event prior to the Purchaser, the Vendor shall establish telephone contact with the Purchaser's designated contact immediately upon becoming aware of the Emergency Event. The Vendor Control Centre personnel will provide timely updates of the status of the efforts of the Vendor to identify the cause and scope of damage to the Dark Fibres and, when able to be determined, an estimate of the time required to effect the repair.

3.2 Update Reports

During an Emergency Event, the Vendor Control Centre personnel shall provide timely status updates of the repair work by the Vendor to the Purchaser after the initial telephone contact relating thereto until such time as the Emergency Event has been corrected.

3.3 Repair Time

- (a) Upon the occurrence of an Emergency Event, the Vendor will make all commercially reasonable efforts to restore Activated Strands as quickly as possible and to full operation within:

- (i) Ten (10) hours for any Dark Fibres located in metropolitan areas where repair technicians are located; and
- (ii) Fourteen (14) hours for all other Dark Fibres

from the time that the Purchaser informs the Vendor that there is a requirement for Emergency Restoration and Maintenance Services or the Vendor otherwise becomes aware of the Emergency Event; and

- (b) Notwithstanding the foregoing, it is understood by the Purchaser that the actual repair time will depend upon a variety of factors including, without limitation, access to the site of the event giving rise to the Emergency Event, the access terms of Underlying Rights, the extent of the damage causing the Emergency Event, damage to other utilities and property from the same event, and weather and Force Majeure conditions.

3.4 Priority of Repairs

The Purchaser shall, by notice in writing given to the Vendor, immediately identify each of its Activated Strands. In the event of a failure of or damage to the Dark Fibres or the associated Support Structures that adversely affects the operation of the Dark Fibres in accordance with the Specifications, the Vendor shall observe the following priority in providing Emergency Maintenance and Restoration Services: the Vendor first shall repair all Activated Strands identified by the Purchaser as providing 911 or other emergency response services, and shall then repair the other Activated Strands contained in the bottom splice tray and continue to repair the Activated Strands in each splice tray working from the bottom tray to the top. In all emergency restorations, after the Activated Strands have been repaired, the Unactivated Strands will be repaired.

3.5 Notice Before Disturbance

The Vendor shall, to the extent it is reasonably able to do so, give to the Purchaser the following notice before commencing any work involving the Vendor System that might reasonably be expected to disturb the Dark Fibres or in any other way might reasonably be expected to expose the Dark Fibres to the risk of an Emergency Event:

- (a) For a non-service affecting disturbance, the Vendor shall provide the Purchaser with five (5) Business Days notice.
- (b) For a service affecting disturbance, the Vendor shall provide the Purchaser with thirty (30) Business Days notice and shall make all commercially reasonable efforts to accommodate the Purchaser's preferred timing for the disturbance bearing in mind the possible need for the Purchaser to obtain customer releases prior to undertaking the service affecting activity.
- (c) The Vendor recognizes that the Purchaser has specific network activity guidelines that it uses to operate its network, and agrees to take all reasonable and necessary steps to adhere to these rules as it pertains to both planned and unplanned activities.

3.6 Joint Practice Procedure

The Parties shall cooperate to develop and modify from time to time during the Term as may be required a Joint Practice Procedure which will govern operational maintenance issues under this Agreement, including points of contact and service disruption coordination. This may require the involvement of other departments of either Party, including Threats & Releases, and the sharing of standards and practices.

ARTICLE 4 ACCESS TO THE DARK FIBERS

4.1 Access by the Purchaser

All Maintenance Services respecting the Dark Fibres and related Support Structures shall be performed by the Vendor or its authorized contractor(s) and the Purchaser shall have no access to the Vendor System except as expressly provided in the Purchase Agreement.

The Purchaser shall have the right, at its own expense, to have a representative accompany the Vendor or its authorized contractor in the performance of any Maintenance Services respecting the Dark Fibres upon providing the Vendor with one week's prior notice or such shorter notice as may be reasonable and feasible in the case of emergencies.

ARTICLE 5 MAINTENANCE STANDARDS

5.1 Maintenance Standards

The Vendor shall maintain the Dark Fibres and the related Support Structures in accordance with the Vendor standard specifications, practices and procedures in place from time to time during the Term (which shall be the same specifications, practices and procedures that the Vendor uses for the remainder of the Vendor System), including, without limitation: fibre splicing and testing specifications, fibre and conduit installation specifications and cable placement practices and procedures. Notwithstanding the foregoing, the Vendor's obligations under this Section shall exclude the following:

- (a) reasonable wear and tear; and
- (b) deterioration of characteristics of the Dark Fibres, and the Cable and Support Structures that occur principally by reason of the passage of time.

SCHEDULE "C"

PART 1 – Dark Fibres (Segments)

PART 2 – Dark Fibres (Lateral Segments)

PART 3 – Cross-Connects