

DEDICATED LOCATE SERVICES AGREEMENT

THIS AGREEMENT dated **DATE** (the “Effective Date”)

B E T W E E N :

THE REGIONAL MUNICIPALITY OF YORK

(the “Region”)

- and -

NAME OF LOCATE SERVICE PROVIDER

(the “Locate Service Provider”)

RECITALS:

- A. The Locate Service Provider has been engaged as a dedicated locator by a project owner who intends to carry out a project under subsection 7 (1) of the *Ontario Underground Infrastructure Notification System Act, 2012*, S.O.2012, c.4 and as more particularly described in Schedule 1 hereto per the Dedicated Locate Project ID;
- B. The project owner has notified Ontario One Call of the project;
- C. Ontario One Call has notified the Region as an affected member;
- D. The Region agrees with the project owner on the Locate Service Provider as the dedicated locator for the project subject to the Locate Service Provider entering into this Agreement with the Region;
- E. The Locate Service Provider wishes to provide dedicated locate services for the project and will provide locates on behalf of the Region with respect to Region owned underground infrastructure in relation to the project, as per the *Ontario Underground Infrastructure Notification System Act, 2012*, as amended from time to time;
- F. The Locate Service Provider has represented that it has qualified and skilled personnel, proper equipment, sufficient financing and an organization capable of performing the locates fully in accordance with the terms hereof including in accordance with the provisions of all applicable Law;
- G. The Region and the Locate Service Provider have agreed that the Locate Service Provider will perform Locate Services (as defined below) on behalf of the Region;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

SECTION 1 – INTERPRETATION

1.1 The Recitals form part of this Agreement.

1.2 Definitions

For the purposes of this Agreement, the following definitions apply:

“Affiliate” shall have the meaning provided in the *Business Corporations Act* R.S.O. 1990, c. B. 16, as amended from time to time;

“the Agreement”, “this Agreement”, “herein” and “hereto” are references to this Agreement between the Region and the Locate Service Provider and the Schedules attached hereto which form a part hereof and are incorporated herein by reference;

“Agreement Term” shall have the meaning provided in Section 3.1;

“Business Day” means Monday to Friday, 08:30 to 16:30 (8:30 am to 4:30 pm EST), with the exception of statutory holidays in the Province of Ontario, such statutory holidays being New Year’s Day, Family Day, Good Friday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas Day, Boxing Day and the National Day for Truth and Reconciliation;

“Change in Locate Service” means any addition, alteration or other amendment or modification to the Locate Services which arises out of instructions given by the RCA to the LSPCA;

“Commencement Date” means the date the Locate Service Provider commenced providing Locate Services on behalf of the Region;

“Coverages” means the geographical areas of the Region underground infrastructure that are registered with Ontario One Call;

“Confidential Information” shall have the meaning provided in Section 9.1(a);

“Employee” means an individual that is employed by the Locate Service Provider, or a Subcontractor and includes any individual that, under principles of Laws, is or would be in an employment relationship with the Locate Service Provider or a Subcontractor;

“Environmental Laws” means all applicable federal, provincial, municipal and local laws, regulations, permits, licences, approvals and orders issued by any governmental or regulatory agency relating to the environment, product safety, product liability and storage and transportation of goods;

“Extension Notice” shall have the meaning provided in Section 3.1;

“Facilities” means underground infrastructure owned by the Region;

“Governmental Authority” means any domestic or foreign legislative, executive, judicial or administrative body or Person having or purporting to have jurisdiction in the relevant circumstances and includes any applicable municipality;

“Guide” means the York Region Underground Services Locate Procedures Guide attached as Schedule 2 and as amended or replaced from time to time;

“Hazardous Substances” means any waste, pollutant, contaminant, material or substance which is or may be dangerous, hazardous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic or mutagenic or which could otherwise pose a risk to health, safety, the environment, the value of the properties in which the Region has any interest or which is the subject of any Environmental Law governing its Release, use, storage or identification, including without limitation any substance which

contains polychlorinated biphenyls (PCBs), asbestos, lead, urea formaldehyde or radon gas;

“Health and Safety Laws” means all applicable federal, provincial, municipal, and local laws, regulations, permits, licenses, approvals and orders issued by any governmental or regulatory agency relating to occupational health and safety, performance of the Locate Services including use of materials and equipment and including, without limitation, the *Occupational Health and Safety Act* R.S.O., 1990, c. O.1 and regulations thereunder and as amended or replaced from time to time;

“Intellectual Property” means anything that is or may be protected by any intellectual property right howsoever arising, including but not limited to, works, performances, discoveries, inventions, trade-marks (including trade names and service marks), domain names, patents, copyright, goodwill, industrial designs, trade secrets, data, tools, templates, technology (including software in executable code and source code format), documents or any other information, data or materials and the expression of the foregoing, Confidential Information as applicable, mask work and integrated circuit topographies;

“ISO Documentation” means any applicable operating and emergency procedures as amended from time to time, that need to be reviewed by the Locate Service Provider prior to initiating onsite work and for the duration of the Agreement Term. These documents are included in Schedule 3.

“Law” or **“Laws”** means (i) all statutes, treaties, codes, ordinances, orders, decrees, rules, regulations, and by-laws enacted or adopted by a Governmental Authority and (ii) all policies, practices and guidelines of any Governmental Authority or body that, although not actually having the force of law, are considered by such Governmental Authority or body as requiring compliance as if having the force of law, including, but not limited to, any guidelines, policies, codes, standards or manuals established under or issued by any Governmental Authority or any designated administrative authority which have been incorporated by reference under any legislative statute or regulation, in each case as amended from time to time, that are binding upon either of the Parties and that are applicable to this Agreement or the performance of the Locate Services, or any portion thereof, including without limitation all municipal by-laws;

“Local Municipalities” means the Town of Newmarket, Township of King, Town of East Gwillimbury, Town of Aurora, Town of Georgina, City of Markham, City of Richmond Hill, City of Vaughan and Town of Whitchurch-Stouffville in the Regional Municipality of York or the geographic area of Town of Newmarket, Township of King, Town of East Gwillimbury, Town of Aurora, Town of Georgina, City of Markham, City of Richmond Hill, City of Vaughan and Town of Whitchurch-Stouffville, as the context requires;

“Locate(s)” or **“Locating”** means the process of determining the presence of any Facilities at a Work Extent/Location and determining and Marking the locations or routes of any such Facilities performed in accordance with the Project Specific Terms and Conditions, the Guide, the ISO Documentation and this Agreement;

“Locate Service Provider” has the meaning given to it in the preamble to this Agreement;

“Locate Services” means all: (a) Locate(s)/Locating services to be performed under and pursuant to this Agreement as described in the provisions of this Agreement, including the Project Specific Terms and Conditions, the Guide and ISO Documentation, (b) all other services to be performed under and pursuant to this Agreement, as more

particularly described in any appendices, schedules or amendments to this Agreement executed by the Parties, and (c) all services which are necessary or incidental to the performance of the foregoing services;

“LSPCA” (Locate Service Provider Contract Administrator) means the representative appointed by the Locate Service Provider and authorized to receive and carry out such duties and exercise such powers imposed and conferred on such representative of the Locate Service Provider under this Agreement including under Section 5 (COVENANTS AND RELATIONSHIP OF THE PARTIES);

“Mark” or **“Marking”** means the use of labelled stakes, flags, and/or highly visible paint to indicate the centre line of the Facilities in the defined area of the Work Extent/Location in accordance with the Guide and this Agreement;

“Notice” means any notice, designation, communication, request, demand or other document delivered by either party hereto to the other in accordance with the Agreement;

“Ontario One Call” means Ontario One Call a statutory entity which provides call centre services to the Region and other members which includes receiving requests for locates and transmitting them to the Locate Service Provider;

“Party” means either the Region or the Locate Service Provider and **“Parties”** means both of them;

“Person” means any corporation, association, partnership, joint venture, organization, individual, business or trust or any other entity or organization of any kind or character, including a court or other Governmental Authority;

“Personal Information” shall have the meaning provided in Section 6.1;

“Plant Records” means all Facilities record information including Geographic Information System (GIS) mapping, documents, sketches and correspondence, in any medium, provided by the Region to the Locate Service Provider for the purpose of providing the Locate Services, and further as particularized in the Guide;

“Privacy Law” means all Laws related to privacy and the protection of Personal Information including the *Personal Information Protection and Electronic Documents Act* (S.C. 2000, c.5), and, as applicable, the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 and the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56 and, in each case, all regulations pursuant thereto and as amended or replaced from time to time;

“Project Specific Terms and Conditions” means the Project Specific Terms and Conditions attached hereto as Schedule 1, as amended from time to time in accordance with the provisions hereof;

“RCA” (Region Contract Administrator) means the representative appointed by the Region and authorized to carry out the duties and exercise the powers imposed and conferred on such representative of the Region under this Agreement including under Section 5 (COVENANTS AND RELATIONSHIP OF THE PARTIES);

“Records” shall have the meaning provided in Section 11.1;

“Region” has the meaning given to it in the preamble to this Agreement and includes its geographic area;

“Release” means any release, spill, leak, emission, discharge, leach, dumping, emission, escape or other disposal;

“Subcontractor” means a Person to which the Locate Service Provider has subcontracted a portion of the Locate Services with the approval of the Region and otherwise as provided herein;

“Work Extent/Location” means the area where any excavator or contractor intends to dig, bore, trench, grade excavate, or break ground by any means whatsoever in the vicinity of Facilities;

“Work Product” means any documentation, data, data files, or other work product created or compiled because of the provision of the Locate Services, and any embodiments of such data, including but not limited to sketches and the data included therein; and

“WSIA” means the *Workplace Safety and Insurance Act*, S.O. 1997, c. 16, as amended or replaced from time to time.

1.3 Schedules

The following is a list of the Schedules to this Agreement which are incorporated herein and form a part hereof, which Schedules and which list are subject to amendment in accordance with the provisions hereof:

Schedule 1 – Project Specific Terms and Conditions

Schedule 2 - York Region Underground Services Locate Procedures Guide

Schedule 3 – ISO Documentation

1.4 Interpretation of the Agreement

If a dispute between the Parties exists or arises in interpreting the meaning of the Agreement or in determining whether either of the Parties thereto is complying with or has complied with any of its obligations hereunder, the Region shall make the necessary interpretation or determination acting reasonably, and, subject to the provisions hereof, such interpretation or determination shall be conclusive and binding on both Parties.

1.5 Extended Power of Interpretation of the Agreement

If there is a patent omission from the Agreement, the Region shall resolve or imply such patently omitted term or terms as are necessary to fulfil the intent of the Agreement.

1.6 Priority

In cases of actual conflict between any of the provisions or requirements of the Schedules and the remainder of the Agreement, then the Region shall determine, within its sole discretion, which provision or requirement shall apply.

SECTION 2 – LOCATE SERVICES

2.1 Locate Services

- (a) The Locate Service Provider agrees to perform Locate Services only for the Dedicated Locate Project ID within the York Region Coverages both

contained in Schedule 1 in accordance with every requirement set forth in the Agreement, including:

- (i) Schedules 1 - Project Specific Terms and Conditions
- (ii) Schedule 2 - York Region Underground Services Locate Procedures Guide
- (iii) Schedule 3 – ISO Documentation, and
- (iv) the requirements of the Ontario Underground Infrastructure Notification System Act, S.O. 2012, c.4, and associated regulations

in each case as amended from time to time.

- (b) The Locate Services shall be provided in relation to all buried service infrastructure systems owned directly by the Region including sanitary and storm sewers, watermains, streetlights, traffic signals, fibre optic cable telecommunications network infrastructure and miscellaneous infrastructure. The services do not include any underground infrastructure owned by Local Municipalities. Additional details as to the location, nature and extent of infrastructure to be located under this Agreement can be found in the Guide.

2.2 Insurance and Workplace Safety and Insurance

Prior to the commencement of any Locate Services hereunder and as requested from time to time by the Region, the Locate Services Provider shall deliver to the Region: (a) a memorandum of insurance or insurance certificate in accordance with Section 12.2 hereof satisfactory to the Region; and (b) evidence from the Workplace Safety and Insurance Board that the Locate Services Provider is in compliance with and has paid all assessment and other amounts owing pursuant to the WSIA. If the Region is not in receipt of such documents within a time period satisfactory to the Region, the Locate Service Provider shall be deemed to be in default of the Agreement and the Region may, without prejudice to any other right or remedy the Region may have, terminate this Agreement forthwith without liability on its part to compensate the Locate Service Provider.

2.3 Performance of Service by The Region and Others

The Locate Service Provider shall perform the Locate Services in association with the Dedicated Locate Project ID identified in Schedule 1 during the Agreement Term. Notwithstanding the foregoing, the Locate Service Provider acknowledges and agrees that (i) the Region may from time to time use alternate service providers to perform the Locate Services, or perform the Locate Services itself, when such performance is deemed to be within the Region's best interest, as determined by the Region in its sole discretion; (iii) this Agreement does not obligate the Region to award any or all Locate Services associated with this Agreement to the Locate Service Provider, and Locate Services may be added to or deleted in the Region's absolute and sole discretion at any time.

2.4 Locate Service Provider Obligations Prior to Performing the Locate Services

The Locate Service Provider covenants that prior to carrying out any activities associated with the Locate Services it shall carefully examine this Agreement and fully acquaint itself with the general geographical area and all other conditions pertaining to the Locate Services, the Work Extent/Location of the Locate Services and its surroundings; and that it will make all investigations essential to a full understanding of the difficulties which may be encountered in performing the Locate Services. Notwithstanding anything in this Agreement or in any information furnished by the Region or its representatives, the Locate Service Provider will, regardless of any such

conditions pertaining to the Locate Services, the Work Extent/Location of the Locate Services or its surroundings, complete the Locate Services in accordance with the provisions of the Agreement and assume full and complete responsibility for any such conditions pertaining to the Locate Services, the Work Extent/Location of the Locate Services or its surroundings and all risks in connection therewith. In addition, the Locate Service Provider represents that it has authority to do business in the location in which the Locate Services is to be performed and that it is fully qualified to do the Locate Services in accordance with the Agreement.

2.5 Plant Records

The Region agrees to provide the Locate Service Provider with access to the Region's Plant Records, Guide and ISO Documentation to assist the Locate Service Provider with the performance of the Locate Services. The Locate Service Provider acknowledges that the Region may update from time to time the Guide for the performance of the Locate Services, including but not limited to the accessing of and interpreting the Plant Records. Notwithstanding any provision to the contrary in this Agreement, the Locate Service Provider acknowledges and agrees that the Plant Records and Guide are provided "AS IS" and the Region makes no representation or warranty of any kind or nature, either expressed or implied, regarding the Plant Records and Guide, including but not limited to as to their accuracy, fitness for any purpose, applicability, operation, functioning, inter-operability, completeness, availability, or non-infringement. The Region hereby disclaims, and the Locate Service Provider hereby waives any obligation, liability, right, claim or demand in either contract or tort arising either directly or indirectly from the Locate Service Provider's use of the Plant Records and Guide. The Locate Service Provider further acknowledges and agrees that the provision of the Plant Records and Guide by the Region does not in any way either limit or amend the Locate Service Provider's requirement to complete the Locate Services in accordance with the terms and conditions of this Agreement. If the Locate Service Provider becomes aware of any error, omission or discrepancy in the Plant Records or Guide, the Locate Service Provider shall promptly advise the Region of any such error, omission or discrepancy and adhere to the Region's record updating process as outlined in the Guide.

2.6 Administrative Responsibilities

Administrative responsibilities of the Locate Service Provider, include but are not limited to, receipt of requests from Ontario One Call, logging requests, retaining on file all completed requests, filing with Ontario One Call all "360 feedback" and other notices as required, and forwarding to the Region all completed locate forms on a schedule determined by the Region, if requested. All completed locate forms, including locate sketches, must be saved electronically and be available to the Region to view, retrieve and print at any time by an electronic means acceptable to the Region. Attend meetings scheduled by the Region to discuss performance, progress and general concerns.

2.7 Management System Performance Requirements

The Region's wastewater system is registered to ISO 14001 (Environmental Management Systems) and the Region's water system is registered to ISO 9001 (Quality Management Systems) and Ministry of the Environment, Conservation and Parks' (MECP) Drinking Water Quality Management Standard (DWQMS). The ISO Documentation attached in Schedule 3 outlines performance requirements for Consultants/Contractors/Suppliers through the Region's ISO 14001, ISO 9001 and DWQMS. The Locate Service Provider shall execute, as applicable, all ISO Documentation, comply with requirements within the ISO Documentation, and deliver the ISO Documentation, when applicable.

2.8 Claims For Costs

No claim shall be maintained against the Region for extra or unanticipated costs incurred by the Locate Service Provider by reason of its misapprehension of, or unexpected change in the nature, extent, or significance of, any factors such as those enumerated in Section 2.4 (Locate Service Provider Obligations Prior to Performing the Locate Services) or 2.5 (Plant Records) hereof.

SECTION 3 – AGREEMENT TERM AND EXTENSION

3.1 Agreement Term

The term of this agreement is as set out in Schedule 1.

If the Region wishes to extend the term of this Agreement, the Region shall provide the Locate Service Provider with a written notice (the “Extension Notice”) containing the Region’s intentions with respect to any such extension.

The Locate Service Provider shall respond in writing within 5 Business Days to the Extension Notice.

Where the Region has not notified the Locate Service Provider of its intention to renew this Agreement, or where the Region and the Locate Service Provider cannot agree upon the terms of extension of this Agreement, the Locate Service Provider shall fully comply with all the terms of this Agreement during the remainder of the Agreement Term.

SECTION 4 – REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LOCATE SERVICE PROVIDER

4.1 Representations, Warranties and Covenants of the Locate Service Provider

The Locate Service Provider represents, warrants and covenants to the Region as follows recognizing that the Region is relying on such representations, warranties and covenants each time Locate Services is performed by the Locate Service Provider:

General

- (a) the Locate Service Provider shall be solely responsible for the safety of all Employees or any other Person on any Work Extent/Location for any purpose relating to the Locate Service Provider’s performing the Locate Services;
- (b) the Locate Service Provider and any Subcontractor are fully qualified to perform the Locate Services in accordance with the terms and conditions of this Agreement and Laws. The Locate Services shall be performed to conform to the highest professional standards and industry standards;
- (c) all Locate Services shall be performed in strict accordance with, the Project Specific Terms and Conditions set out in Schedule 1, York Region Underground Services Located procedures Guide set out in Schedule 2 ISO Documentation set out in Schedule 3, Laws (including, without limitation, the Ontario Underground Infrastructure Notification System Act, S.O. 2012, c.4 and regulations) and all of the provisions hereof and as amended from time to time;

- (d) all Employees are qualified and trained in accordance with all Laws, the Guide, the ISO Documentation and as otherwise provided herein and have the skills and experience so that the Locate Services is performed accurately and completely;
- (e) all office staff of the Locate Service Provider engaged in receiving calls, issuing instructions or otherwise participating in the performance of the Locate Services have the skills and expertise to perform their portion of the Locate Services in accordance with the provisions hereof and are properly and adequately trained in accordance with all Laws, the Guide, ISO Documentation and as otherwise provided herein;
- (f) the Locate Service Provider will comply with all reporting and monitoring requirements under all Laws, this Agreement, the Guide and ISO Documents and will obtain all permits, certificates, approvals, registrations and licenses necessary to perform the Locate Services;
- (g) the Locate Service Provider shall exercise the highest degree of skill, care and diligence to avoid damage to Persons and property in the performance of the Locate Services;
- (h) the Locate Service Provider shall not proceed with any Locate Services when to do so would involve any risk to the health, condition or safety of Persons or property, as the case may be. In such cases, the Locate Service Provider shall initiate and implement a plan of action to ensure the safety and protection of Persons and property;
- (i) in situations where there is any damage to or risk associated with the Region's Facilities or property, the Locate Service Provider shall immediately notify the Region;
- (j) the Locate Service Provider shall give due consideration to the interests of property owners and tenants wherever involved and shall conduct the Locate Services in a manner causing a minimum of inconvenience;
- (k) the Locate Service Provider shall make all reasonable efforts to maintain good will among the general public and with the landowners, tenants and lessees when locating on private property. The Locate Service Provider shall, and shall cause its Subcontractors and Employees to, at all times, behave in a professional and businesslike fashion;
- (l) in its delivery of Locate Services, the Locate Service Provider shall: (i) comply with the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O 2005, c. 11 and associated regulations (collectively the "AODA"), (ii) satisfy the Region as to its compliance with the AODA, (iii) permit the Region to monitor its compliance and (iv) if requested to so, the Locate Service Provider shall provide the Region with copies of its policies, practices and procedures, training materials and dates of training, and confirmation the Locate Service Provider has reported its compliance to the Ministry of Community and Social Services;
- (m) the Locate Service Provider will comply with the following policies, processes and procedures of the Region (the "Region Requirements") to the extent such Region Requirements relate to the Locate Services or the obligations of the Locate Service Provider under this Agreement: (i) the Region's requirements, policies, processes and procedures with respect to

such other matters of general application as the Region may from time to time establish. Upon request by the Region, the Locate Service Provider will ensure its personnel attend training on the Region Requirements;

Employee Health and Safety

- (o) the Locate Service Provider agrees to comply with the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 and the WSIA and with all other prevailing Health and Safety Laws and all other Laws applicable to the Locate Service Provider and the Agreement and shall familiarize itself and procure all required permits and licenses and pay all charges, fees and assessments necessary or incidental to the due and lawful performance of this Agreement and the performance of the Locate Services in accordance with the provisions hereof and maintain all documentation as may be required by all Laws, and shall indemnify and save harmless the Region, its directors, officers, elected officials, Chair, agents and employees and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors against, as applicable, against any claim or liability from or based on the violation of any such Laws, whether by the Locate Service Provider, its officers, employees, representatives or agents or Subcontractors;
- (p) the Locate Service Provider shall initiate and maintain and assess and enforce all necessary safety precautions and programs to conform with all applicable Health and Safety Laws or other requirements, including the Guide, the ISO Documentation, the other provisions of this Agreement and all other requirements of the Region that have been communicated by the RCA to the LSPCA in writing, wherever the Locate Services is performed, that are designed to prevent injury to persons or damage to property on, about, or adjacent to any Locate Services location. The Locate Service Provider shall submit its safety program to the Region at the time of execution of this Agreement and shall strictly comply with such program. Identification and rectification of contraventions or infractions of all applicable Health and Safety Laws including but not limited to O. Reg. 89/20: *Traffic Management*, O. Reg. 632/05: *Confined Spaces* and safety procedures, in each case as amended from time to time, is the responsibility of the Locate Services Provider;
- (q) on a regular basis, and when requested by the Region, the Locate Service Provider shall review and consider the safety program provided in paragraph (p) above and update and amend such program so that such program complies with any change in Law, Change in Locate Services, changes required by the Region and any other change in risk or circumstance with respect to the performance of the Locate Services hereunder. A copy of such updated or annotated safety program shall be delivered to the RCA immediately upon completion.
- (r) the Locate Service Provider shall ensure that all Employees, and Subcontractors have received all training regarding health and safety or any other matters required by applicable Law, the Guide and ISO Documentation. The Locate Service Provider shall, if specified by the Region, provide further training or implementation of any additional health and safety measure appropriate for the Locate Services. The Locate Service Provider shall provide the Region written documentation of said

training and worker qualifications, upon request by the Region (as applicable).

- (s) upon request, the Locate Service Provider will allow the Region, or a representative designated by the Region, immediate access to any facility related to the Locate Services in order to monitor and audit the Locate Service Provider's compliance with the health and safety requirements of this Agreement;
- (t) the Locate Service Provider will immediately report to the Region any personal injury, motor vehicle accident, or other damage or injury that occurs while the Locate Service Provider is performing the Locate Services or at any Work Extent/Location. The Locate Service Provider shall follow the procedures established by the Region relating to injuries and accidents and provide such reports regarding injuries and accidents as the Region may require;
- (u) whenever the Locate Service Provider has not complied with its obligations set forth in this Agreement which non-compliance creates a circumstance requiring immediate action to ensure the health and safety of all Persons at any Work Extent/Location, the Region may take or require the Locate Service Provider to take such reasonable precautions as determined by the Region in its sole discretion, including the stoppage of Locate Services and/or taking over the Locate Services. The taking of such action or actions by the Region (or its failure to do so) shall not limit the Locate Service Provider's liability or its obligations under this Agreement. The Locate Service Provider shall reimburse the Region for all costs incurred by the Region in taking such precautions and any costs incurred by the Locate Service Provider for such precautionary action and any subsequent remedial action shall be paid by Locate Service Provider;
- (v) when requested by the Region, the Locate Service Provider shall provide a dedicated, qualified health and safety professional to monitor the Locate Services being performed under this Agreement;

Inaccurate Locates

- (w) the Locate Service Provider will immediately report to the Region any "incident" or "near miss" involving Employees, any Subcontractor, the public, or property, arising from the Locate Service Provider's performance of the Locate Services regardless of how the inaccurate Locate is discovered and whether or not it results in any "incident" or "near miss";

Environmental

- (x) the Locate Service Provider shall complete the Locate Services in accordance with all Environmental Laws and shall not cause or permit the Release of any Hazardous Substances in relation to the Locate Services, except in accordance with Environmental Laws. The Locate Service Provider will comply with all reporting and monitoring requirements under all Environmental Laws and will obtain all permits, certificates, approvals, registrations and licences necessary to perform the Locate Services. The Locate Service Provider will not use any of the areas affected by the Locate Services for the disposal of waste;

- (y) the Locate Service Provider shall be responsible for initiating, maintaining and supervising all environmental and safety precautions and programs in connection with the performance of the Locate Services;
- (z) the Locate Service Provider shall erect and maintain, as required by existing conditions and performance of the Locate Services, reasonable safeguards for safety and protection of people and property, including posting signs warning against Hazardous Substances and hazards, describing and notifying owners and users of adjacent sites and utilities;

SECTION 5 – COVENANTS AND RELATIONSHIP OF THE PARTIES

5.1 Locate Service Provider's Responsibility for Locate Services Methods

The Locate Service Provider shall perform the Locate Services strictly in accordance with the Agreement, the Guide, the ISO Documentation, the Project Specific Terms and Conditions and all Laws.

5.2 The Locate Service Provider's Employees

The Locate Service Provider's servants, Employees and agents (including Subcontractors) are not, and shall not, under any circumstances whatsoever, be deemed to be the servants, employees or agents of the Region. The Locate Service Provider shall have sole responsibility for the instruction, management and control of and all other matters relating to such persons and shall indemnify and save the Region, its directors, officers, elected officials, Chair, agents and employees and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors against, harmless in respect of any and all claims of such persons.

5.3 RCA

The Region will designate a senior level individual to be the RCA (i) who will be the primary contact person with the Locate Service Provider in dealing with the Region under this Agreement, (ii) who will have the authority to make decisions and take actions on behalf of the Region in the ordinary course of day-to-day management of this Agreement, and (iii) who will serve as an escalated point of contact for any unresolved Locate Services issues. The Region may from time to time replace the individual serving as the RCA (including short term replacements to provide for vacation and other temporary absences) by providing written notice to the Locate Service Provider. The RCA shall be the point of contact in all matters related to the interpretation of this Agreement.

In addition to any powers under the Agreement, the RCA and his or her designee has the authority to determine whether the Locate Services has been performed in a manner acceptable to the Region. The RCA and his or her designee has the authority to require the LSPCA or other Employees to attend and to correct or re-perform Locate Services at the Locate Service Provider's expense.

The RCA may designate some or all of his or her duties to another employee of the Region as determined by the RCA from time to time.

5.4 LSPCA

At the time of the execution of the Agreement, the Locate Service Provider shall give the Region written notice of the name and address of a senior-level individual who will be the LSPCA dedicated to the performance by the Locate Service Provider of all its obligations under this Agreement and will be the principal contact person with the

Region. The LSPCA (i) will be the primary contact person with the Region in dealing with the Locate Service Provider under this Agreement and the performance of the Locate Services under and in accordance with this Agreement, (ii) will have overall responsibility for managing and coordinating the performance of the Locate Services in accordance with the terms hereof, (iii) will meet regularly with the RCA, (iv) will have the authority to make decisions and take actions on behalf of the Locate Service Provider in the ordinary course of day-to-day performance and management of the Locate Services and (v) will serve as an escalated point of contact for any unresolved Locate Services issues. The Region may request the removal and replacement of the LSPCA in which case the LSPCA shall immediately be removed and replaced with a representative of the Locate Service Provider acceptable to the Region. The Locate Service Provider shall designate and provide the Region written notice with the name and address of the LSPCA and any permanent or temporary replacement of the LSPCA.

5.5 Instructions and Cessation of Locate Services

The Locate Service Provider shall not take any instructions, including instructions as to any Change in Locate Services, or accept any decisions or interpretations purportedly made on behalf of the Region, except those given or made by the RCA or by, and within the express authority of, his or her designee.

All instructions, decisions or contractual interpretations given or made by the Region in respect of this Agreement or the performance of the Locate Services hereunder shall be communicated in written form by the RCA to the LSPCA.

The RCA and his or her designee has the right to require that the Locate Service Provider cease the performance of Locate Services if the Region has any grounds to believe that the Locate Services is being performed or is about to be performed in a hazardous manner, an unsafe manner, or not in compliance with this Agreement. All cost resulting from the cessation of the Locate Services (and commencing the Locate Services after cessation) is that of the Locate Service Provider.

Upon written notice from the LSPCA to the RCA, the RCA or his or her designee shall provide the answer to any questions the Locate Service Provider may have regarding Plant Records, the Guide, the ISO Documentation and the Project Specific Terms and Conditions to assist the Locate Service Provider in the training of its employees who will be performing the Locate Services under this Agreement.

Any such assistance provided by the Region shall in no way be deemed to be a waiver or qualification of any of the Locate Service Provider's obligations to perform the Locate Services nor qualify any of the Region's rights under this Agreement.

5.6 Change in Locate Services

The Region may, at any time by a Notice in writing from the RCA or his or her designee delivered to the LSPCA change or issue additional instructions, and change, omit or require Change in Locate Services to be performed by the Locate Service Provider which shall include any change, addition or amendment to or deletion from or restatement of the Guide, or other specific procedural requirements of the Region. In such event the Region shall have full authority to specify the amount and kind of Locate Services to be performed or omitted, the materials to be used and the equipment to be furnished as fully as though such changes had been incorporated in this Agreement. The Locate Service Provider shall make no additions, changes, alterations or omissions, nor supply or use extra materials or equipment, of any kind, to the Locate Services without the prior written consent of the RCA. Where a Change in Locate Services is authorized or requested by the RCA or his or her designee, the Locate

Service Provider shall provide such additional personnel and equipment as are necessary to complete the Change in Locate Services within the time specified by the Region. The time for the completion of the Locate Services shall not be exceeded unless approved in writing by the Region.

Where a Change in Locate Services results in a change to Schedule 1 - Project Specific Terms and Conditions or Schedule 2 - York Region Underground Services Locate Procedures Guide, the amendment reflecting such change shall be attached hereto and form a part hereof and any restated Schedule shall replace the original Schedule and such restated Schedule shall be attached hereto and form a part hereof.

SECTION 6 – PRIVACY LAW

6.1 Privacy Law

In performing the Locate Services, the Locate Service Provider may obtain personal information about citizens and employees of the Region, including without limitation, name, address, telephone number. All such information is referred to hereafter as “Personal Information.” While performing Locate Services hereunder, the Locate Service Provider agrees to comply with Privacy Law and shall only use such Personal Information for the purposes of performing the Locate Services hereunder. Furthermore, the Locate Service Provider acknowledges and agrees that it will: (i) not otherwise use or disclose any Personal Information to any affiliated or unaffiliated third parties, except as expressly permitted in writing by the Region; (ii) not transmit or provide access to Personal Information to or from any facility outside of Ontario; (iii) establish policies, procedures and security measures in accordance with Privacy Law and industry standards appropriate to the sensitivity of the Personal Information to protect Personal Information from unauthorized use or disclosure; (iv) implement such policies, procedures and security measures thoroughly and effectively and in accordance with the terms thereof; (v) ensure that only such of its Employees as have a need to know the Personal Information for the performance of the Locate Services have access to the Personal Information; (vi) not develop or derive for any purpose whatsoever any other product in machine-readable form or otherwise, that incorporates, modifies, or uses in any manner whatsoever, Personal Information; (vii) not use the Personal Information for any marketing efforts and not sell or convey Personal Information to third parties; and (viii) upon completion of its Locate Services for or on behalf of the Region hereunder, or upon the earlier request of the Region, destroy all Personal Information and all copies and records thereof unless otherwise agreed to in writing by the Region. The Region shall be entitled to conduct a review under Section 11 (EXAMINATION, REVIEW, AUDIT AND OTHER RIGHTS) of the Locate Service Provider’s Personal Information handling practices and procedures to ensure the Locate Service Provider’s compliance with the foregoing provisions and Privacy Law. The Locate Service Provider shall at its own cost co-operate with and assist the Region in complying with any audits performed by government officials under the Privacy Law, adopt any recommendations of such government officials and/or the courts, and immediately notify the RCA of any breaches of Privacy Law.

SECTION 7 – STOPPAGE OF LOCATE SERVICES AND TERMINATION

7.1 Right of Region to Stop Locate Services

(a) Inadequate Performance

Without limiting any other provisions of this Agreement including paragraph (b) of this Section below, if the Locate Service Provider fails to carry on any part of the Locate Services covered by this Agreement in a

manner which is completely satisfactory to the Region, or in the event the Locate Services is not proceeding with such speed as to comply with this Agreement or in the event of failure of the Locate Service Provider to comply with any other requirement of the Agreement, then the Region may, subject to its other rights hereunder, notify the Locate Service Provider in writing that it is in default and instruct it to correct the default or failure within five Business Days following the receipt of the Notice. If the correction of the default or failure cannot be completed in the five Business Days specified, the Locate Service Provider shall follow the Region's instructions if it:

- (i) commences the correction of the default or failure within the five Business Day period;
- (ii) provides the Region with a schedule acceptable to the Region in its sole discretion for such correction; and
- (iii) completes the correction in accordance with such schedule.

If the Locate Service Provider fails to correct the default or failure in the five Business Day period or the period subsequently agreed upon, the Region, without prejudice to any other right or remedy it may have, may:

- (iv) correct such default or failure with full cost reimbursement from the Locate Service Provider, or
 - (v) forthwith terminate the Locate Service Provider's right to continue with the Locate Services or the Agreement, or both, in whole or in part.
- (b) Where the Locate Services Provider has failed to comply with this Agreement or defaulted in any of the ways described in paragraph (a) above of this Section and the Region, in its absolute discretion, determines that such default or failure cannot be corrected to the Region's satisfaction, then the Region shall have immediately available to it the remedies specified in subparagraph (iv) and (v) of paragraph (a) above of this Section and the Locate Services Provider shall not have available to it the provisions of rectification provided for in such paragraph.

7.2 Termination

- (a) **Immediate Termination Upon Notice:** This Agreement may be terminated by the Region with immediate effect or with effect at a later date to be determined by the Region, upon written notice to the Locate Service Provider, such notice specifying the basis for termination if:
- (i) the Locate Service Provider is in material breach of this Agreement, which shall include: (A) any action or omission that endangers the safety of any individual or material property; or (B) failure to obtain insurance or bonds of the type and in the amount and as specified in Section 12.2 (Locate Service Provider's Insurance); or
 - (ii) a breach of the confidentiality or Intellectual Property provisions of this Agreement; or
 - (iii) the Locate Service Provider suspends or threatens to suspend carrying on its business in the ordinary course or makes a decision

or takes any action toward or passes a resolution for its winding up or dissolution; or

- (iv) the Locate Service Provider becomes insolvent, takes the benefit of any bankruptcy or insolvency law or a petition in bankruptcy is filed by or against it; or
- (v) the Locate Service Provider assigns or purports or threatens to assign this Agreement or if the Locate Service Provider assigns or purports or threatens to assign any portion of this Agreement or if without the prior written consent of the Region in accordance with the provisions hereof the Locate Service Provider subcontracts or purports or threatens to subcontract any portion of this Agreement or the Locate Services; or
- (vi) at any time there occurs an event or circumstance which, in the opinion of the Region, represents a material adverse change in the business, operations, property or financial or other condition of the Locate Service Provider which would negatively affect the ability of the Locate Service Provider to perform the Locate Services in accordance with this Agreement or otherwise discharge its obligations hereunder; or
- (vii) the Locate Service Provider is in breach of or default under any other agreement with the Region.

In addition, the Region may elect, in its sole discretion, to allow the Locate Service Provider the opportunity to cure any breach which gives rise to a termination notice under this Section 7.2, within the time period it determines. In such case, this Agreement shall be automatically terminated at the expiration of the cure period if the Locate Service Provider has failed to cure the breach to the entire satisfaction of the Region.

7.3 Region's Right to Damages

The Locate Service Provider acknowledges the Region's right to damages for any breach by the Locate Service Provider of the terms of this Agreement either in whole or in part, including but not limited to the right to damages where the Region has terminated this Agreement in accordance with the provisions hereof.

7.4 Taking Over Service on Termination

In the event of any termination as provided in this Section 7 (STOPPAGE OF LOCATE SERVICES AND TERMINATION), the Region shall have the right to terminate the right of the Locate Service Provider to proceed with the Locate Services and to finish the Locate Services terminated by any method that the Region may deem expedient, including the employment of another locate service provider or contractors on such terms as the Region may deem advisable.

7.5 Obligations After Termination

The following obligations of the Locate Service Provider (and rights of the Region under Section 11 (EXAMINATION, REVIEW, AUDIT AND OTHER RIGHTS)) shall continue in force after any such termination:

- (a) obligation as to quality, correction and warranty of the Locate Services;

- (b) confidentiality and intellectual property obligations;
- (c) privacy obligations;
- (d) audit obligations under Section 11; and
- (e) such other obligations, if any, that are specified to continue in force after termination in the Project Specific Terms and Conditions, the Guide or ISO Documentation.

7.6 Termination for Convenience

The Region may, in its sole discretion, terminate this Agreement without cause provided that it first gives a minimum of 30 days written notice to the Locate Service Provider.

SECTION 8 – INSPECTION OF THE LOCATE SERVICES

8.1 Region's Right of Inspection

The Locate Service Provider shall co-operate with and provide the Region with every reasonable facility to ascertain the quality of the Locate Services performed and measure the performance of the Locate Services in accordance with this Agreement, the Guide and Project Specific Terms and Conditions and ISO Documents from time to time and in this regard shall meet with the Region and provide such written reports in each case as from time to time required by the Region.

SECTION 9 – CONFIDENTIALITY

9.1 Confidentiality

- (a) In connection with this Agreement, each of the Parties has disclosed and may continue to disclose to the other party information that relates to the disclosing party's business operations, financial condition, customers, products, services or technical knowledge. Except as otherwise specifically agreed in writing by the Parties, the Locate Service Provider and the Region each agrees that the following will be deemed to have been received in confidence and will be used only for the purposes of this agreement:
 - (i) all information communicated to it by the other and identified as confidential or proprietary, whether before or after the date hereof, including the Guide and the contents thereof
 - (ii) all information identified as confidential or proprietary to which it has access in connection with the performance of its obligations under this Agreement, whether before or after the date hereof,
 - (iii) all information communicated to it that reasonably should have been understood by the receiving Party, because of confidentiality or similar legends, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing Party,
 - (iv) all business methods, technologies, designs, and specifications, and
 - (v) the terms and conditions of this Agreement (collectively and including any modifications, improvements, enhancements or derivatives of (i) to (v) above, the "Confidential Information"),
- (b) Safeguarding and Permitted Disclosure. Each Party's Confidential Information will remain the property of that Party and shall not be

disclosed, made available, sold or transferred to any other Person in any manner or for any purpose whatsoever. Each of the Parties shall use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure or publication of its own information (or information of its customers) of a similar nature, and in any event, no less than reasonable care.

- (c) Use of Confidential Information. Except as provided elsewhere in this Agreement, neither Party shall (i) make any use or copies of the Confidential Information of the other Party except as contemplated by this Agreement and for the purposes of this Agreement, (ii) acquire any right or interest in or assert any lien against the Confidential Information of the other Party, or (iii) sell, assign, lease or otherwise commercially exploit the Confidential Information of the other Party.
- (d) Permitted Disclosures. This Section will not apply to any particular information that either Party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party or a Subcontractor, or Employee in the case of the Locate Service Provider; (iii) was in the possession of the receiving Party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a third party who did not obtain such information as a result of a wrongful or illegal act and further had a lawful right to disclose such information to it; or (v) was independently developed by the receiving Party without use of the Confidential Information of the disclosing Party. A Party will not be considered to have breached its obligations under this Section for disclosing Confidential Information of the other Party to the extent required to satisfy any legal requirement of a court, tribunal or other competent governmental, administrative, or regulatory authority, including such authority acting under Privacy Legislation.
- (e) No Licenses. Nothing contained in this Section will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information or Intellectual Property of the other Party. Without limiting any other provision, all information exchanged under this Agreement is provided "AS IS".
- (f) The Locate Services Provider acknowledges that all information that is in the custody or control of the Region may be subject to the access provisions of the *Personal Information Protection and Electronic Documents Act* (S.C. 2000, c.5), the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 and *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56 , in each case, as amended or replaced from time to time. To the extent permitted under the applicable statute(s), the Region will inform the Locate Services Provider of any request made of the Region under such statute for any records related to this Agreement that may reveal a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence by the Locate Service Provider to the Region so that the Locate Services Provider will have an opportunity to make representations with respect to the proposed disclosure.

9.2 Safeguarding of Intellectual Property

The Locate Service Provider shall develop, implement and maintain data integrity, backup, security and privacy technologies, procedures, policies and controls that meet or exceed applicable industry standards or as the Region may require from time to time, including as provided in the Guide and also including the creation of backup data and the creation of a business continuity plan.

9.3 Unauthorized Acts

The Locate Service Provider shall:

- (a) notify the Region promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the Region's Confidential Information or Intellectual Property by any Person that may become known to such Party;
- (b) promptly furnish to the Region details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the Region in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of the Region's Confidential Information or Intellectual Property;
- (c) use reasonable efforts to cooperate with the Region in any litigation and investigation against third parties deemed necessary by the Region to protect its proprietary rights and Confidential Information or Intellectual Property; and
- (d) promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge, or attempt thereof, of the Region's Confidential Information or Intellectual Property.

SECTION 10 – PROPRIETARY RIGHTS

10.1 Plant Records

Without limiting any other provision of this Agreement or this Section, the Locate Service Provider acknowledges and agrees that the Region owns Plant Records and that, (i) all such intellectual property is Region Confidential Information, (ii) the Locate Service Provider shall comply with the terms of such intellectual property of which it is made aware and will indemnify and hold harmless the Region in accordance with the provisions of Section 12.1 (Indemnity and Defence) for any breach of such end user agreements; and (iii) while the Locate Service Provider has limited rights to use such intellectual property during the Agreement Term in connection with the performance of the Locate Services all rights thereto shall immediately terminate on the termination or expiration of this Agreement for any reason whatsoever. The Locate Service Provider acknowledges and agrees that any use of Plant Records other than in accordance with this Agreement in connection with the performance of the Locate Services or any assignment or attempted or purported assignment of any of its rights with respect to the Plant Records may result in the immediate and automatic termination of this Agreement, in the Region's sole discretion.

10.2 Trade-Marks

The Locate Service Provider may not use in its communications, including press releases, publicity, referred customers listing or marketing literature or promotional material either the Region's name or any of the trade-marks and related official seals,

the fact that it has signed this Agreement with the Region, or any information which may reasonably be seen to imply that the Locate Service Provider has entered into an agreement with or has a relationship with the Region without first obtaining the Region's written approval and, if applicable, signing a license agreement in a form to be provided by the Region. The Locate Service Provider shall use the trade-marks solely within the scope of any such written authorization provided by the Region.

10.3 Further Assurances

The Locate Service Provider and the Region agree to execute and deliver such instruments and documents as the other Party reasonably requests to evidence or effect the acknowledgements, covenants and agreements contemplated by this Section.

SECTION 11 – EXAMINATION, REVIEW, AUDIT AND OTHER RIGHTS

11.1 Operational Review

The Locate Service Provider shall provide to such employees, representatives and agents (including independent third party auditors) of the Region as the Region may designate in writing, access to information applicable to the Locate Services and to all data, records (including invoices), operational records, log books, charts, maps, plans, lists of materials, supplies and equipment and supporting documentation maintained by the Locate Service Provider with respect to the Locate Services (collectively the "Records") (in any form whatsoever) for the purpose of (i) performing operational reviews, audits and inspections of the Locate Service Provider and its businesses (including any operational audits necessary to enable the Region to meet and satisfy all Laws and regulatory requirements), (ii) to perform quality checks and to ensure compliance with the terms and conditions of this Agreement.

11.2 General Principles Regarding Maintenance of Records and Reviews and Audits

- (a) The Region shall use commercially reasonable efforts to conduct such reviews and audits in a manner that will result in a minimum of inconvenience and disruption to the Locate Service Provider's business operations. Reviews and audits may be conducted only during normal business hours of the Locate Service Provider and only as frequently as reasonably necessary. The Region will provide the Locate Service Provider with reasonable prior written notice of each review or audit. The Locate Service Provider will make available on a timely basis its appropriate personnel and the information reasonably required to conduct the review or audit and will assist the designated employees and agents of the Region or its auditors as reasonably necessary. All information learned or exchanged in connection with the conduct of a review or audit, as well as the result of any review or audit, constitutes Confidential Information and will be subject to the provisions of Section 9 (CONFIDENTIALITY). Any reports received as a result of these reviews or audits will be addressed to the Region.
- (b) The performance by or on behalf of the Region of any reviews or audits hereunder is no assurance that the Locate Services performed complies with the provisions hereof which performance shall remain the sole responsibility of the Locate Service Provider.

Each Party will pay its own costs as provided herein in connection with any review or audit performed under the provisions of this Section.

11.3 Statutory Audits

- (a) The Region may be subject to statutory audits and other requests for information from taxation and other Governmental Authorities (each, a “Statutory Audit”). The Region shall notify the LSPCA forthwith if it is contacted by taxation or other authorities regarding a Statutory Audit relating to the Region. The Locate Service Provider shall respond to any Statutory Audit regarding the Region according to the Region’s direction.
- (b) The Locate Service Provider may provide information to Governmental Authorities only under the direction of the RCA. The Locate Service Provider shall provide such information in a timely manner either to the Region or, upon written request of the RCA, directly to the applicable statutory authority.
- (c) If, as part of any Statutory Audit process, the Locate Service Provider is required to answer questions from Governmental Authorities with respect to its performance of the Locate Services, the Locate Service Provider shall provide the RCA prompt written notice of such request and the Region shall be entitled to send a representative to be present at all such discussions with such statutory authorities and to preview responses to such questions.

11.4 Records Retention

- (a) The Records shall be maintained and retained in accordance with the highest standard required under, (i) all Laws, and (ii) Canadian generally accepted accounting principles.
- (b) The Records shall be maintained and retained by the Locate Service Provider for two years following the expiration or termination of this Agreement unless the retention period for a particular Record has previously expired except that:
 - (i) Records related to any matter disputed between the Parties shall be preserved until such dispute is settled, and
 - (ii) Records related to any matter or the requirements of any authorities shall be preserved for a period of seven years from the end of the calendar year to which such Records relate.

The Locate Service Provider may fulfill its obligations to preserve any Records by delivering them to the RCA with a notice stating that such delivery is being made in satisfaction of its obligations under this Section.

11.5 Performance Report

A performance report containing pertinent performance metrics will be completed by the Locate Service Provider and delivered to the Region on a monthly basis, or as determined by the Region. The contents of the Performance Report may be further developed in conjunction with the Locate Service Provider.

11.6 Subcontractors and Affiliates

The Locate Service Provider agrees that all of the foregoing review and audit rights of the Region shall be available to the Region in respect of any Affiliate of the Locate Service Provider and to the Locate Service Provider in respect of any Subcontractor

and that is providing materials or services to the Locate Service Provider in connection with or related to the performance of Locate Services. The Locate Service Provider acknowledges and agrees that it shall ensure by written agreement that it (and the Region to the extent applicable) have access to all Records of Subcontractors and Affiliates of the Locate Service Provider for the purposes of examinations, audits and reviews as provided in this Agreement. The Locate Service Provider shall provide to the Region on the request of the Region the results of any such audit performed by or for the Locate Service Provider which shall include any summary or analysis prepared by or for the Locate Service Provider and the information and documents and materials upon which such were based.

11.7 Use of Review and Audit Results

The Locate Service Provider acknowledges and agrees that the results of any review or audit can and will be used by the Region, subject to the provisions of Section 9 relating to Confidential Information, for any purpose hereunder including a decision by the Region to terminate this Agreement in accordance with the provisions hereof.

SECTION 12 – INDEMNITY, INSURANCE AND WARRANTY

12.1 Indemnity and Defence

The Locate Service Provider shall, and hereby agrees to indemnify the Region, its directors, officers, elected officials, Chair, agents and employees and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors against and save and hold them harmless from any and all liability, claims, demands, loss, damages, costs and expenses (including without limitation all applicable solicitors' fees and disbursements, investigation expenses, adjusters' fees and disbursements) of every nature and kind for or in respect of:

- (a) injury to or the death of any and all persons;
- (b) damage, destruction or loss, consequential or otherwise, to or of any and all property, whether real or personal;
- (c) any act or omission by the Locate Service Provider or any officer, director, employee, agent, representative or Subcontractor of the Locate Service Provider;
- (d) any penalties, charges, administrative monetary amounts, or fines levied against the Region, its directors, officers, elected officials Chair, agents and employees, and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors against, as applicable, arising out of any act or omission of the Locate Service Provider or any officer, director, employee, agent, representative or Subcontractor of the Locate Service Provider or failure to perform the Locate Services as required by the Agreement, or in accordance with the requirements of Law;
- (e) contravention of Environmental Laws, or adverse property or environmental condition or impact caused or contributed to by work practices, or by the Release, spilling, leaking, abandoning or flowing of any contaminant which are either directly or indirectly, in any manner based upon, occasioned by, attributable to or arising out of anything done by the Locate Service Provider or any officer, director, employee, agent, representative or Subcontractor of the Locate Service Provider;

- (f) any claim that the Locate Services, the Locate Service Provider's technology and tools utilized in providing the Locate Services, Work Products, or the use thereof by the Region constitute an infringement, violation or misappropriation of any third party's right, including any Intellectual Property right; and
- (g) any and all breaches by the Locate Service Provider of any representations, warranties, covenants, terms or conditions of this Agreement,

where such injury, death, damages, destruction, loss, act, omission, penalty, charge, fine, contravention, adverse condition or impact, claim or breach, as the case may be, results from or in any manner arises out of or in connection with or is referable to any Locate Services or to the performance of any activity incidental to any Locate Services or the Agreement. The Locate Service Provider shall also, upon the request of the Region, and at no expense to the Region, defend the Region, its directors, officers, elected officials, Chair, agents and employees, and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors, as applicable, in any and all suits, actions and proceedings concerning any such injury, death, damage, destruction, loss, act or omission. The Locate Service Provider shall promptly settle or cause the settlement of all claims for injuries or damages for which it is responsible. Upon receipt of any such claim, the Locate Service Provider shall immediately notify the Region of the full particulars thereof and the Region may elect by notice to the Locate Service Provider to have its representative accompany the Locate Service Provider's representative in making settlement of the claim.

For certainty, any penalties, charges, administrative monetary amounts, or fines levied against the Region, its directors, officers, elected officials, Chair, agents and employees, and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors against, as applicable, arising out of any act or omission of the Locate Service Provider or failure to perform the Locate Services as required by the Agreement or in accordance with the requirements of Law, may be retained by Region from the monies due the Locate Service Provider or charged or invoiced to Locate Service Provider to indemnify Region as set out in this Section.

The Locate Service Provider shall not be liable to indemnify the Region or hold the Region harmless or defend the Region in respect of any injury, death, damage, destruction or loss arising from either the sole negligence of or the wilful misconduct of the Region, or its employees or representatives.

In the event of damage, destruction or loss to the Region's property or to any public or private property including property owned or maintained by other utility companies, upon or in the vicinity of any Work Extent/Location, due or allegedly due, to a locate error by the Locate Service Provider, the Parties hereby agree to follow the claims settlement process specified by the Region.

12.2 Locate Service Provider's Insurance

Unless the Region specifies otherwise in writing, the Locate Service Provider and its subcontractors, of every tier, shall at its own expense maintain and keep in full force and effect at all times during the Agreement Term and for so long thereafter as a claim related to this Agreement is possible under applicable statutes of limitations:

- (a) Commercial General Liability insurance having a minimum inclusive coverage limit of at least ten million dollars (\$10,000,000) per occurrence for personal injury (including bodily injury and death) and property damage

arising out of or relating to Locate Service Provider's activities under this Agreement, which policy should be extended to cover contractual liability addressing indemnification under this Agreement, cross liability, severability of interests, liability arising out of unlicensed equipment, products and completed operations, limited time element pollution, contingent employer's liability and, shall provide coverage for explosion, collapse, and underground hazards ("XCU"), either in a single policy or a primary policy with an excess or umbrella policy. Such policy shall be endorsed to add the Region and its Affiliates as additional insureds.

- (b) Commercial Automobile Liability insurance on all vehicles used in connection with the Agreement or the performance of the Locate Services and such insurance shall have a limit of at least five million dollars (\$5,000,000) per occurrence in respect of bodily injury (including passenger hazard) and property damage inclusive in any one accident, either in a single policy or a primary policy with an excess or umbrella policy.
- (c) Professional Liability or Errors and Omissions Liability for claims arising out of the Service, with a policy limit of at least two million dollars (\$2,000,000) per claim and in the aggregate; and
- (d) All Risk Property Damage insurance on a replacement cost basis covering loss of or damage to property owned or leased, or in the care custody and control by the Locate Service Provider or for which the Locate Service Provider has otherwise assumed responsibility for loss or damage under the terms of this Agreement.

The Locate Service Provider shall ensure that each insurance carrier providing coverage hereunder provides (in each case arranged to provide the maximum benefit to the Region and its Affiliates), the following:

- (i) waiver of insurers' rights of recovery, contribution, subrogation, set-off or counterclaim, in favour of the Region, in all policies of insurance under this Section and including all applicable third-party liability policies and property insurance policies, arising out of or related in any way to this Agreement; and
- (ii) that coverage, in all Locate Service Provider's insurance policies (whether such policies are primary, umbrella or excess) arising out of or related to this Agreement in any way, shall be written to respond on a primary and non-contributory basis irrespective of any other applicable insurance otherwise available to the Region under this Agreement.

The Locate Service Provider shall forthwith after entering into the Agreement, and before the commencement of any Locate Services, be required to provide evidence of insurance at time of execution on the Region's standard Certificate of Insurance form and from time to time at the request of the Region, furnish to the Region an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter called "Insurance Policies") maintained by the Locate Service Provider to satisfy the requirements of this Section.

The Locate Service Provider shall not cancel, terminate or alter the terms of any of the Insurance Policies without providing at least 30 days prior written notice to the Region.

All insurance policies provided and maintained by the Locate Service Provider and each subcontractor of every tier, shall be deemed to be primary for all purposes, without right of contribution from any other insurance available to the Region. The Locate Service Provider agrees that the insurance described herein does in no way limit the Locate Service Provider's liability pursuant to the indemnity provisions of this Agreement.

12.3 Locate Service Provider's Default in Procuring Insurance

Without prejudice to the Region's right to terminate this Agreement by reason of the Locate Service Provider's failure to take out and continuously maintain in force the insurance required hereunder or to provide the certificate(s) of insurance required hereby, the Region, in the event of any such default, may but it is not obligated to take out a policy of insurance protecting the Locate Service Provider and the Region against any risk with respect to which the default shall have occurred and may deduct a sum equivalent to the amount paid in respect of premiums paid on such policy of insurance from any monies due or to become due to the Locate Service Provider or, alternatively, may recover from the Locate Service Provider an amount equal to such premiums. For the purpose of determining whether the Locate Service Provider has made default in insuring or providing a certificate of insurance as herein before specified, the Region shall be the sole and exclusive judge, in its unfettered discretion, as to whether any policy of insurance or certificate of insurance satisfies the obligations of the Locate Service Provider in respect thereof under the Agreement.

12.4 Warranty of Locate Service Provider

In addition to any and all guarantees provided for in the Agreement and all other documentation related to the Locate Services, the Locate Service Provider guarantees that the Locate Services will be accurate and complete and free from any and all defects.

SECTION 13 – RIGHTS AND REMEDIES

13.1 Rights and Remedies

- (a) The duties and obligations imposed upon the Locate Service Provider by this Agreement and the rights and remedies available to the Region hereunder shall be in addition to and not a limitation upon any duties, obligations, rights and remedies otherwise imposed or available by Law.
- (b) No action or failure by the Region at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the Agreement shall constitute a waiver of any right or remedy afforded to it under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence to any breach thereunder or preclude the Region from availing itself of such rights, duties or remedies.

SECTION 14 – GENERAL

14.1 Notice

Any Notice required or permitted to be given or sent or delivered hereunder to either Party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is:

- (a) delivered personally to an officer or director or Contact of such Party; or
- (c) sent by electronic mail.

A Notice shall, if delivered personally or by electronic mail, be deemed to have been received on the date of delivery;

14.2 Law of the Agreement and Locate Services

This Agreement and the Locate Services shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties hereto hereby irrevocably attorn to the jurisdiction of the Courts of Ontario.

14.3 Entire Agreement

This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. Neither of the Parties hereto shall be bound by any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement. The Parties hereto further acknowledge and agree that, by entering into this Agreement, they have not in any way relied, and will not in any way rely upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, express or implied, not expressly set forth in the Agreement.

14.4 Modifications and Amendments

Except for changes to the Schedules which is provided for in Section 5.6 (Change in Locate Services), any changes to the Agreement made subsequent to the execution hereof shall not be binding on either of the Parties unless made in writing and signed by both of the Parties hereto.

14.5 Succession, Assignment and Privacy

The Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns; however, this Agreement and the Locate Services performed hereunder shall not be assigned nor transferred in whole or in part by the Locate Service Provider without obtaining the prior express written consent of the Region, which consent may be withheld in its sole discretion. Nothing herein express or implied, is intended to confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14.6 Time of the Essence

Time shall be of the essence in the performance of Locate Services.

14.7 Force Majeure

No party shall be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control; an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in this Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies

or services, or labour unrest with respect to the labour force of the Party seeking to excuse itself from its obligations under this Agreement. If a Party seeks to excuse itself from its obligations under this Agreement due to a force majeure event, that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance by the Locate Service Provider exceeds fifteen (15) days, the Region may immediately terminate this Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies of the Region under this Agreement, at law or in equity. Such cause or circumstance affecting the performance of this Agreement by either Party, however, shall not relieve it of liability in the event of its concurrent negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause or circumstance in an adequate manner and with all reasonable dispatch.

14.8 Further Assurances

Each of the Region and the Locate Service Provider hereby covenant and agree that, at any time and from time to time after the date hereof they will, upon the request of the other, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds and assurances as may be required for the carrying out and performance of all of the terms of the Agreement.

14.9 Publicity

The Locate Service Provider may not use the Region's name, or reference in any way whatsoever to the Locate Services in advertising or promotional material, or publicity release, or any like purpose relating to the Locate Services to be performed by Locate Service Provider, without the prior written approval of the Region (which written approval may be refused or withheld in the sole and absolute discretion of the Region).

14.10 Independent Locate Service Provider

The Locate Service Provider is and always shall be an independent contractor and shall, under no circumstances, conduct its affairs or represent itself as a partner of the Region. The Parties agree that no provision to this Agreement shall be construed to constitute the Locate Service Provider as being the agent or servant of the Region. The Locate Service Provider shall have no authority to make statements, representations, or commitments of any kind, or to take any actions that shall be binding upon the Region, except as specifically provided for herein or authorized in writing by the Region.

14.11 Conflict of Interest

The Locate Service Provider covenants and agrees that it is not aware of the existence of any relationship, family, business, contractual or otherwise, between itself, its principals, shareholders, officers or employees and the Region, its directors, officers, elected officials, Chair, agents and employees, and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors ; and it will not perform any Locate Services for or enter into any contract with others that may conflict with its contractual, professional, equitable or other obligations to the Region without first obtaining the prior written approval of the Region.

14.12 Locate Service Provider Contributions

The Locate Service Provider shall pay all royalties and license fees on any equipment, materials or Software to be furnished by it as particularized in the Guide and shall pay all workers' compensation contributions, employment insurance contributions, Canada

Pension Plan (or other statutory plan) contributions, and employees' income tax deductions together with all other taxes and payroll contributions now or hereafter imposed by any lawful authority and indemnify and save harmless the Region, its directors, officers, elected officials, Chair, agents and employees and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors against, as applicable, from any and all claims, penalties, interest and cost and any of the same which may be made or assessed against the Region, its directors, officers, elected officials, Chair, agents and employees and the Region's Affiliates, its and their respective shareholders, directors, officers, employees, agents and councillors in respect thereof.

14.13 Severability

Any provision of this Agreement held to be invalid, void, illegal or unenforceable is ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality or enforceability of the remaining provisions of this Agreement.

14.14 Counterparts

This Contract may be executed by the parties in separate counterparts, each of which when so executed and delivered will be deemed to be an original, and all such counterparts will together constitute one and the same instrument.

This Contract is effective on the date stated in the introductory clause.

Authorized by:

THE REGIONAL MUNICIPALITY OF YORK

Name: David Szeptycki
Title: Acting Commissioner of Public Works

Approved as to form and content
Legal Services

NAME OF SERVICE PROVIDER

Name: Name
Title: Title

Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 1 – PROJECT SPECIFIC TERMS AND CONDITIONS

The content on this Schedule is specific to the Dedicated Locator project.

1.0 Dedicated Locate Project ID: PROJECT ID

2.0 York Region Coverages: COVERAGE AREAS

3.0 Agreement Term

The term of this Agreement will commence on [INSERT START DATE] and will continue until project completion or [INSERT END DATE], whichever occurs first, unless earlier terminated or shortened in accordance with the terms of this Agreement, or the contract is extended subject to mutual agreement confirmed in writing by both parties.

4.0 Contacts

For the Region (RCA):

The Regional Municipality of York
17250 Yonge Street
Newmarket, ON L3Y 6Z1

Attention:	XXXX
	XXXX
Phone:	XXXX
Email:	XXXX

For the LSP (LSPCA):

[LSP NAME & ADDRESS]

Attention: _____

Phone: _____

Email: _____