

# SAMPLE CONTRACT FOR SERVICES

## SHUTESBURY MUNICIPAL LIGHT PLANT SHUTESBURY, MA AGREEMENT FOR COMMUNICATIONS SERVICES

THIS AGREEMENT FOR COMMUNICATIONS SERVICES ("Agreement") is entered into on XX/XX,XXXX by and between xxx, an zzz and Shutesbury MUNICIPAL LIGHT PLANT, an entity organized under the laws of Massachusetts and located in Shutesbury, MA ("Shutesbury" or "MLP"), each a "Party" and together, the "Parties."

IN CONSIDERATION OF the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Service and NetOps Provider and MLP agree as follows:

### TERMS AND CONDITIONS

#### 1.0 SCOPE

Service and NetOps Provider, as sole ISP/NO on the Shutesbury Network, shall provide Communication Services to Subscribers on the Network, Network operations, and maintenance as defined herein, subject to the terms and conditions of this Agreement and Attachments and any Amendments that may hereafter be agreed to by the Parties, as provided below.

#### 2.0 ATTACHMENTS TO THIS AGREEMENT

Attachment A: Communications Services

Attachment B: Network operations and maintenance

#### 3.0 DEFINITIONS

"Acceptable Use Policy" means the policies of the ISP/NO applicable to Subscribers for the use of the Network.

"Affected Subscriber" means a subscriber whose ability to access or utilize any Communications Service is affected by an Outage

"Agreement" means this Agreement and any and all Attachments thereto and Addenda to which the Patties may agree from time to time and which reference this Agreement.

"Authorizations" means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may

be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

"Communications Services" means the services provided to Subscribers by the Service and NetOps Provider, including, but not limited to, data transmission service, IP transport, Internet access service, email and telephone services, regardless of technology used, as set forth in service agreements or Service Orders.

"Connection Charge" means a fee invoiced by the Service and NetOps Provider and payable by Subscriber relating to Connection Services.

"Connection Services" means work performed by the Service and NetOps Provider for the purpose of enabling the provision of Services to Subscribers, including, but not limited to, construction, installation and activation of communications facilities and equipment.

"Demarcation Point" means the point of connection between the MLP provided equipment—Optical Network Terminal ("ONT") Ethernet and telephone ports—and the subscriber's premise wiring and equipment. The demarcation point is the physical point at which the separation is made from the MLP facilities and equipment and those of the end user.

"Interconnection Point" means: 1) the MLP network connection to the "middle mile," located at the ShutesburyNet Point of Presence #1, Shutesbury, MA; and 2) the connection between the "middle-mile" network and the Service and NetOps The Interconnection points shall be established and maintained by means of a network-to network interface (NNI).

"Middle Mile Network" means the network that provides connectivity from ShutesburyNet to the Service and NetOps Provider. The "middle mile" for ShutesburyNet is owned by the Massachusetts Broadband Institute and operated by AxiaNG Networks.

"Network to Network Interface (NNI)" means a connection established between two telecommunications providers using a mutual agreement usually in exchange for fees or for services rendered. An NNI does not carry direct customer traffic. Rather it provides a means of aggregation for many customers.

"Maintenance" means work performed upon or to the Network to ensure the continuity of acceptable signal transmission to and from Shutesbury for the purpose of delivering Services to Subscribers in a manner consistent with the terms of the Communications Services Provisions set forth in Attachment A and B. Unless otherwise agreed in writing, Maintenance shall not include any work associated with equipment owned by an entity other than the Service and NetOps Provider.

"Network" "Shutesbury Network," "ShutesburyNet," or "Access Network" means the fiber optic network constructed, operated and maintained by MLP, including fiber optic cable,

conduit, routers, switches, optical equipment, wireless equipment, and associated network facilities, located within Shutesbury or within the control of the MLP.

"Outage" means "a significant degradation in the ability of an end user to establish and maintain a channel of communications" (FCC definition, in 47 C.F.R. 4.5(a)).

"Service Credit" means a dollar credit on the subscriber's next monthly bill from the Service and NetOps Provider.

"Service Order" means a written or oral agreement for the Service and NetOps Provider to provide Connection Services and Communication Services to Subscriber and for Subscriber to accept such services and pay the relevant charges, as specifically set forth in such Service Order. Service orders are agreements solely between the Subscriber and the Service and NetOps Provider. The contract between the MLP and the Service and NetOps Provider shall in no way substitute for contracts between the Service and NetOps Provider and the Subscriber.

"Subscriber or Customer" means the end-user of Communications Services.

"Uptime" means a period of time in which no Subscriber is affected by an Outage

"User to Network Interface (UNI)" means the same as "Demarcation Point."

#### 4.0 COMMUNICATIONS SERVICES/Network Operations

Service and NetOps Provider's Communications Services include all services, pricing, technical specifications, and outage provisions as specified in Attachment A and B and any subsequent amendments to that Attachments.

### 5.0 TERM AND TERMINATION

#### 5.1 Term

This Agreement shall be effective on the date of the last signature executing this document ("Effective Date") and shall continue for a period of xx years from the start of services to Subscribers. Services to Subscribers shall start no later than xx. The Agreement may be extended for an additional time period agreed to by both Patties at least 6 months prior to its expiration.

#### 5.2 Termination

##### 5.2.1 Material Breach

Either Party may terminate this Agreement in the event of a material breach by the other Party, consistent with the procedures and remedies for default set forth in Section 10.

Actions taken under Section 5.2.2, below, are not subject to the procedures and remedies for default set forth in Section 10.

#### 5.2.2 Termination for Insolvency

MLP may terminate this Agreement immediately, upon written notice, if Service and NetOps Provider becomes insolvent; files a voluntary petition in bankruptcy; proposes any dissolution, liquidation, reorganization or recapitalization; has filed against it an involuntary petition in bankruptcy, or a receiver is appointed or takes possession of its property, and such petition is not dismissed or stayed within thirty (30) days of such filing, appointment or taking possession; makes an assignment for the benefit of creditors, or is adjudicated as bankrupt; or takes any similar action under the laws of any jurisdiction.

#### 5.2.3 Effect of Expiration or Termination

Any termination or expiration of this Agreement shall immediately terminate any Service Agreement or Service Order between the Service and NetOps Provider and any and all Subscribers within the Town of Shutesbury. All Service and NetOps Provider IP network addresses assigned to Subscribers under this Agreement remain an integral part of Service and NetOps Provider's contiguous range of addresses and will be relinquished upon termination or expiration of this Agreement. In the event of termination or expiration of this Agreement, Service and NetOps Provider will provide full support and cooperation to the process and requirements of effecting a smooth transition to the incoming ISP/NO.

### 6.0 MLP RESPONSIBILITIES

MLP shall be responsible for the protection, storage, backup, and security of MLP software, network equipment, and related facilities. Any dealings the MLP has with third parties are between MLP and the third party, and MLP acknowledges and agrees that the Service and NetOps Provider is not liable for any loss or claim MLP may have against a third party.

6.1 MLP will provide a complete Layer 1 Fiber to the Premise access network in order for the Service and NetOps Provider to deliver services to end users. MLP will provide all fiber cables, fiber connection hardware, GPON access equipment and Optical Network Terminals ("ONTs") at each subscriber's premise.

6.2 MLP will provide, at no expense to the Service and NetOps Provider, suitable space for the Service and NetOps Provider to install equipment to support the Communications Services, and MLP will include and pay for sufficient power and environmental conditioning to support such equipment. MLP will provide backup power and an uninterruptable power supply (UPS) for the space.

6.3 MLP will allow Service and NetOps Provider employees and agents to enter upon MLP property for the purpose of connecting or disconnecting Communications Services or installing, maintaining, repairing, replacing, or removing Service and NetOps Provider equipment and apparatus connected with the provision of Communications Services.

## 7.0 SERVICE AND NETOPS PROVIDER RESPONSIBILITIES

Service and NetOps Provider shall provide Connection and Communications Services in a manner consistent with the level of care and skill ordinarily exercised by the industry and in compliance with all applicable federal, state, and local laws and regulations and all compliance filings; and shall provide all labor, materials, equipment, tools, supervision, and other resources necessary to provide such services over Shutesburynet.net as described herein. Service and NetOps Provider will make full efforts to sell services on the Network and will provide Subscriber education and support. All equipment and facilities procured or owned by Service and NetOps Provider to connect to the MLP Network and to initiate Connection Services or Communications Services shall be the property of Service and NetOps Provider and not MLP.

### 7.1 Sufficient Bandwidth

Service and NetOps Provider shall have and maintain sufficient equipment, software, access systems, and upstream bandwidth and peering arrangements to provide connectivity for the maximum load of the Shutesbury Network, including telephone service.

Provider shall be prepared to accommodate bandwidth on this link up to 10 gbps, upon two months' notification by the MLP

- a. Bandwidth upgrades shall take place when bandwidth usage as measured by sampling at 5 minute intervals exceeds 75% during the busiest hour in 3 consecutive weeks and shall only occur with prior approval of the MLP.
- b. For each additional one gbps added, the ISP/NO shall, at its option, be authorized to increase its charge to subscribers by an amount equal to its cost for the additional bandwidth, provided, however that this rate increase shall not exceed xx per month per subscriber for each one gigabit added to the network.

### 7.2 Telephone Routing and Interconnection

Service and NetOps Provider shall have and maintain sufficient equipment, software, access systems, and connectivity to provide and manage telephone services throughout the Public Switched Telephone Network (PSTN) and interconnection points of the PSTN with the Internet protocol (IP) realm, including E911, LIDB (Line Information Database), CNAM (Calling NAME), LERG (Local Exchange Routing Guide), and SS7(Signaling System 7).

### 7.3 Technical Staffing

Service and NetOps Provider shall have and maintain on staff at least two technicians certified for the specific network equipment used in Shutesbury within 6 months of the effective date of this Agreement.

### 7.4 Subscriber Connection Activation

Service and NetOps Provider is responsible for configuring, provisioning, and activating MLP supplied Optical Network Terminal (ONT) equipment and GPON facilities required to provide Communications Services. Service and NetOps Provider shall test the Subscriber connection to the Network and shall notify Subscriber upon verification by Service Provider that Communications Services are active and available to Subscriber.

#### 7.5 Acceptable Use Policy & Contact Information

Service and NetOps Provider shall provide a clearly defined Acceptable Use Policy to Subscribers covering every aspect of Connection Services, Network usage, and billing, including ISP/NO mail and telephone contact information for billing and technical questions and correspondence.

#### 7.6 Subscriber Satisfaction & Trouble Reporting

- a. Service and NetOps Provider shall provide 24/7/365 one-call, toll-free telephone customer service to receive and respond to Subscriber service related inquiries, notifications of outage, and requests for maintenance. Subscriber calls shall be answered by Service and NetOps Provider employees or contracted staff under the control of the ISP/NO trained in customer telephone support and resolution of network equipment problems. Service and NetOps Provider shall provide a method for escalation of Subscriber trouble reports relating to the Access Network to dispatch their maintenance equipment and team to ensure Subscriber satisfaction, following separately agreed upon Method of Operation procedures.
- b. Service and NetOps Provider shall maintain an issue based "NETCON Trouble Ticketing" system. NETCON updates and resolutions will be provided to MLP in real time. The MLP reserves the right to contribute to the communication and assist in resolution of issues.
- c. Service and NetOps Provider shall provide MLP with monthly reports of Subscriber trouble issues and ISP/NO responses and actions. Report metrics shall include, but are not limited to: Subscriber complaint code, date reported, closing/resolution codes, and length of time to repair. Service and NetOps Provider shall also provide monthly reports of types of service requests and length of time to deliver each type of request.

#### 7.7 Additional Subscriber Services

- a. With the MLP's permission Service and NetOps Provider may provide, as agreed with Subscriber, additional equipment and facilities, including, but not limited to, interior premise installations beyond the ONT, cables and conduit physically connecting Subscriber equipment to the Network, optical and electronic equipment, and wireless transmission and reception equipment; and may sell or lease equipment to the subscriber beyond the ONT. Subscribers will pay fees in exchange for such additional services, as set forth below.
- b. Service and NetOps Provider is responsible for ensuring its services work on the Network. All services provided by Service and NetOps Provider hereunder shall be rendered in a manner consistent with that level of care and skill ordinarily exercised by the industry, and in compliance with all federal, state, and local laws and regulations, and shall be compatible with the design and capacity of the Network. The MLP retains the right to reject or prohibit the offering of services.
- c. For additional installation services, Subscriber shall pay to Service and NetOps Provider a fee according to a Schedule of Time and Materials, payable upon activation of the services, such schedule to be approved by the MLP.
- d. Service and NetOps Provider will make efforts to sell services on the Network and will provide Subscriber education. All equipment and facilities procured or owned by Service and NetOps Provider to connect to the MLP Network and to initiate Connection Services or Communications Services shall be the property of Service and NetOps Provider and not MLP.

#### 7.8 ISP/NO Right to Terminate Services

Service and NetOps Provider at its sole discretion may terminate service to a Subscriber due to nonpayment of ISP/NO invoices, including but not limited to MLP fees, as defined in Section 7.10, below.

#### 7.9 Network Information & Security

- a. Service and NetOps Provider shall provide 24/7/365 Network monitoring.
- b. Service and NetOps Provider shall maintain backups of network equipment configurations and confirm the maintenance of the backups to MLP on a monthly basis or as otherwise agreed.
- c. Service and NetOps Provider shall provide the MLP, at no charge, a subscription which will allow the MLP to monitor network utilization. In addition, Provider will provide monthly reports listing the top 10 subscriber ports' usage.
- d. Service and NetOps Provider shall institute any and all filtering of Internet content required by federal, state, or local law.

- e. Service and NetOps Provider is responsible for the protection, storage, back up, and security of any MLP data collected by the Service and NetOps Provider.
- f. Service and NetOps Provider shall maintain, according to industry best practices, security and mitigation procedures, software, and processes to protect the MLP Network against computer viruses, worms, computer sabotage, "denial of service attacks," DNS spoofing attacks, and/or other attacks of a similar nature.
- g. Service and NetOps Provider may take any reasonable and lawful action it deems necessary to protect itself and Subscribers from unlawful or unauthorized Network conduct or to maintain the quality of the Service and NetOps Provider's Communications Services under this Agreement.
- h. Service and NetOps Provider shall respond to all notices of alleged infringement that comply with the Digital Millennium Copyright Act (17 U.S.C. 512) by complying with the "notice and takedown" procedures set forth in the Act. This may include expeditiously removing or disabling access to the material that is claimed to be infringing or to be the subject of infringing activity. If time permits, the Service and NetOps Provider may, in its sole discretion, give an alleged infringer a reasonable opportunity to remove the infringing material itself. In addition, it is the Service and NetOps Provider's policy in accordance with the DMCA and other applicable laws to reserve the right to terminate the Service provided to any Subscriber or user who is found to infringe third party copyright or other intellectual property rights. In such case the Service and NetOps Provider may terminate the Service at any time with or without notice for any affected Subscriber or user.

A Subscriber who believes a copyright infringement notice has been wrongly filed as a result of mistake or misidentification of the material may file a counter notification with Service and NetOps Provider. The counter notification shall provide the following information: a) Physical or electronic signature of the Subscriber; b) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it disabled; c) A statement under penalty of perjury that the Subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification; d) The Subscriber's name, address, telephone number and email address, and a statement that the Subscriber consents to the jurisdiction of the Federal District Court for the judicial district in which the address is located, or if the Subscriber's address is outside of the United States, for the judicial district in which the Service and NetOps Provider may be found, and that the Subscriber will accept service of process from the Service and NetOps Provider.

- j. MLP acknowledges and agrees that the reliability, availability, and performance of Internet data, applications or services accessed through the Service and NetOps



Provider and not provided by the Service and NetOps Provider are beyond the Service and NetOps Provider's control and are not in any way warranted or supported by the Service and NetOps Provider.

#### 7.10 Invoicing and Remittance of MLP Fees

- a. Service and NetOps Provider shall handle all retail billing and collections for the MLP Network, to ensure proper billing and service.
- b. Service and NetOps Provider shall collect from Subscribers ISP service costs, costs of operating and maintaining the network, including 'middle mile' transport costs. The MLP will determine its additional operating costs. This amount will be apportioned to Subscribers on a monthly basis and included by the Service and NetOps Provider as the MLP Fee in Subscriber billing statements. The monthly subscriber charge during a calendar year shall be determined by dividing the actual amount of MLP costs determined by the MLP by twelve (12) and then by the number of active ONTs on the Network as determined by the Network Operator during December of the previous year. The ISP/NO is authorized, at its option, to increase its monthly charge to each subscriber by no more than one percent (1%) of the monthly MLP subscriber charge calculated above as a bad debt allowance.
- c. Service and NetOps Provider shall remit to the MLP the MLP Fees collected and any surplus fees to the MLP within thirty (30) days after the due date of the Subscriber bill sent by the Service and NetOps Provider. All remittances shall be in U.S. dollars by electronic wire transfer to the bank account designated by the MLP from time to time or by company check delivered to MLP. Any undisputed amounts not paid when due will bear a finance charge at a rate equal to the lesser of one and one half percent (1 1/2 %) per month or the highest rate permitted by law, calculated from the first day a payment is past due. If MLP at any time has reasonable concern about security or timeliness of payments, it may, upon thirty days' notice, either (a) suspend the Communications Services and/or the rights granted under this Agreement until it receives payment or Service and NetOps Provider provides a letter of credit or other arrangement acceptable to the MLP to secure payment; or (b) terminate this Agreement and all Subscriber contracts made hereunder. If the MLP initiates a successful collection action, the MLP will be entitled to recover from Service and NetOps Provider the costs and expenses incurred in connection with collecting the same (including-attorneys' fees).
- d. If approved by MLP, Service and NetOps Provider shall indicate on Subscriber's bill items related to MLP costs separate from Service and NetOps Provider charges.
- e. Delinquent collection of MLP costs shall not in any way affect Service and NetOps Provider's obligation to pay such costs to MLP.

#### 7.11 Subscriber Information

Service and NetOps Provider shall maintain Subscriber bandwidth usage information and make that information available to MLP and Network Operator upon request. This information will be the property of the MLP, to allow identification of system capacity issues and high volume users. Service and NetOps Provider will not have any right to sell, or otherwise benefit from any such information, other than the right to use Subscriber information for service, billing, and collections purposes, and for marketing its own services.

## 8.0 UNAUTHORIZED ACCESS

Service and NetOps Provider shall not be responsible for unauthorized access to MLP transmission facilities, premises, or equipment by any individual or entity, or for unauthorized access to, or alteration, theft, or destruction of MLP data files, programs, or other information unless such facilities, premises, equipment, data files, programs, or other information are under Service and NetOps Provider's control. For the purposes of this paragraph, the term "unauthorized" means that an act has not been approved in advance in writing by MLP.

## 9.0 NOTICES

With the exception of Subscriber requests for Service, changes to Service, notices of outages, and other Subscriber related inquiries, all legal notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, and (b) delivered to MLP by facsimile transmission with confirmation of delivery, or electronic mail with confirmation of delivery by MLP recipient, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of the transmission and receipt of facsimile or electronic mail transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt.

## 10.0 DEFAULT

### 10.1 Default and Cure

A Default under this Agreement shall occur if (a) a Party fails to perform, in any material respect, any of its obligations set forth in this Agreement, and (b) such failure is not excused by any provision of this Agreement, and (c) such failure continues un-remedied for a period of twenty-eight (28) days following receipt of written notice from the nonbreaching Party. If the breach by its nature cannot be cured within twenty-eight (28) days and the breaching Party within that time has diligently commenced its cure, there shall be no Default as long as the Party diligently continues such cure to completion.

## 10.2 Remedies

Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this Agreement, to terminate this Agreement and to pursue any and all available legal or equitable remedies against the defaulting Party. The non-breaching Party may pursue such remedies simultaneously or consecutively, at its discretion.

## 11.0 ASSIGNMENT

Service and NetOps Provider shall not assign its rights and obligations under this Agreement without the prior consent of MLP.

## 12.0 CONFIDENTIALITY

### 12.1 In General

The following shall apply to Parties' Proprietary Information, as defined below:

- a. Subject to the exceptions set forth below, each of the Parties shall hold in confidence any non-public information obtained by it pursuant to the performance of the obligations required or the transactions contemplated by this Agreement. Proprietary Information includes, but is not limited to, proprietary or confidential information disclosed by either Party to the other for the purposes hereunder, including but not limited to any material clearly identified in writing as being such ("Proprietary Information"). Proprietary Information shall be safeguarded and protected in the same manner as the recipient's procedures require, to ensure protection and nondisclosure of recipient's proprietary and confidential information. The recipient's obligation to safeguard and not disclose such Proprietary Information shall not apply to information in the public domain, lawfully in the recipient's possession prior to receipt hereunder, or lawfully obtained from third parties. The parties acknowledge that Proprietary Information may be disclosed as part of any normal reporting and review procedure with auditors and attorneys, or with any outside lender, or any proposed or actual successor in interest; provided, however, that prior to such disclosure, the third party to receive such disclosure shall agree to maintain the confidentiality of the Proprietary Information.
- b. If required by order of a governmental or judicial body, recipient may release to such body the Proprietary Information required by such order; provided, however, recipient agrees that prior to such release it shall promptly notify the other party of the order and allow the other party to contest any release of the Proprietary Information; and provided, further, recipient shall use all reasonable efforts to prevent such Proprietary Information from becoming disclosed to the public.

### 12.2 Survival

The confidentiality provisions in this section shall survive expiration or termination of this Agreement.

### 13.0 INTELLECTUAL PROPERTY

Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions or patents now or later owned or controlled by either Party, and nothing in this Agreement shall be construed as granting any right, title, or interest in the other Party's trademarks, trade names, service marks, or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other party without prior written permission.

### 14.0 INDEMNIFICATION

a. To the fullest extent permitted by law, the Parties shall defend, indemnify, and save harmless the other Party, including its duly elected or appointed officials, agents, subcontractors, officers, and employees, (referred to as the Indemnified Party) from and against all demands, claims, damages, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorney and experts fees) (referred to collectively as "demands") arising out of or resulting from the negligence or willful misconduct of the Indemnifying Party (including, but not limited to the Network Operator, the Massachusetts Broadband Institute, and any subcontractor of Service and NetOps Provider) in performance of, or related to the Indemnifying Party's duties or obligations under this Agreement. . Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights either Party may have under statute or in law or equity. Notwithstanding, the above, the MLP's liability for indemnification to the Service and NetOps Provider shall be limited to the amounts allowed pursuant to the Massachusetts Tort Claims Act, Mass. Gen. Laws Ann. ch. 258.

b. Subject to the limitations set forth above, each Party assumes full responsibility for relations with any subcontractors employed directly or indirectly by that Party and shall defend, indemnify, and save harmless the other Party from all demands made against the Indemnified Party by such subcontractor, such subcontractor's agent or employee, or any person, as the result of such subcontractor's work performed pursuant to this Agreement including but not limited to negligent acts, errors, or omissions that arise out of, result from, or are connected with the performance of this Agreement or any subsequent Agreement and is not otherwise subject to indemnifications under subparagraph "a" above.

c. The Service and NetOps Provider shall defend, indemnify, and hold harmless the MLP from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by the Service and NetOps Provider for work performed in connection 'With the work hereunder or required by state or federal law. .

e. In the event of a breach of this Agreement by either Party, the other Party shall pay all reasonable attorney and experts fees, costs and other litigation expenses incurred by the nonbreaching Party in enforcing its rights as a result of said breach in addition to any damages for said breach.

## 15.0 REPRESENTATIONS AND WARRANTIES

By execution of this Agreement, each Party represents and warrants to the other that: (a) the Party is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and thereof; (c) the Party's execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a party, or (iv) any instrument to which such Party is or may be bound onto which any of its material properties or assets is subject; (d) the Party's execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action; (e) that the signatories for such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a Material adverse effect on the Party's ability to perform its obligations under this Agreement; (g) the Party has not received any currently effective notice of any material default; and (h) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.

## 16.0 TAXES

Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement. Service and NetOps Provider reserves the right to pass through to Subscribers any and all fees payable by Service and NetOps Provider relating to the Federal Universal Service Fund and other appropriate federal, state, and local subscriber taxes, surcharges, and fees, which shall be designated as such in a separate line item on billing statements and which shall be payable by Subscriber.

## 17.0 INSURANCE

The Service and NetOps Provider shall, at all times during the Contract, maintain in full force and effect: Employer's Liability, Workers' Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage for the provisions of the Section herein entitled Indemnification. All insurance shall be by insurers and for policy limits acceptable to the MLP and, before commencement of work hereunder, the Service and NetOps Provider agrees to furnish the MLP with certificates of insurance or other evidence satisfactory to the MLP to the effect that

such insurance has been procured and is in force. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given to the Municipal Light Plant for the Town of Shutesbury."

For the purpose of the Contract, the Service and NetOps Provider shall carry the following types of insurance in at least the limits specified below:

**COVERAGE LIMITS OF LIABILITY**

Workers' Compensation	Statutory Limit
Employers' Liability	\$500,000
Bodily Injury Liability	\$1,000,000 each occurrence
(except automobile)	\$2,000,000 aggregate
Property Damage Liability	\$1,000,000 each occurrence
(except automobile)	\$2,000,000 aggregate
Automobile Bodily Injury Liability	\$1,000,000 each person
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

The MLP shall be named as an Additional Insured under all liability and automobile insurance. The general liability insurance policy must contain a broad form general liability endorsement.

**18.0 RELATIONSHIP OF THE PARTIES**

This Agreement is not intended to create, nor shall it be construed to create, any partnership, joint venture, or employment relationship between Service and NetOps Provider and MLP, and neither Party shall be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing. Each Party covenants that it shall not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing by the other Party. Service and NetOps Provider and MLP, in performing any of their obligations hereunder, shall be independent Parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

**19.0 FORCE MAJEURE**

### 19.1 Force Majeure Events

Notwithstanding any other provision of this Agreement, neither Party shall be liable for any failure or delay in performing its obligations, or for any loss or damage, resulting from any event or circumstance beyond the reasonable control of the Party, including but not limited to an earthquake, hurricane, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes ("Force Majeure Event").

### 19.2 Response to Force Majeure

A Party whose performance is affected by a Force Majeure Event shall provide reasonable notice to the other Party and shall make commercially reasonable efforts to minimize the impact of the Force Majeure Event on its performance.

### 19.3 Suspension Pending Force Majeure

The deadline by when a party must perform an obligation under this agreement, other than payment of money, shall be postponed by the period of time by which the party's ability to perform that obligation is materially prevented or interfered with by a force majeure event.

## 20.0 APPLICABLE LAW

This Agreement will be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to any conflicts of law provisions that would affix jurisdiction in another State, and any dispute arising out of this Agreement shall be filed in a state court of competent jurisdiction in Franklin County, Massachusetts.

## 21.0 HEADINGS

Headings and captions of this Agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement's terms or be used to interpret or assist in the construction of this Agreement.

## 22.0 SEVERABILITY

If any provision of this Agreement is illegal or unenforceable, the Agreement's unaffected provisions will remain in effect.

## 23.0 SURVIVABILITY

The terms and conditions of this Agreement regarding confidential information, indemnification, warranties, payment and all others that by their context are intended to survive the expiration or termination of this Agreement will survive and continue in effect.

## 24.0 GRAMMAR



As used throughout this Agreement, language in the singular shall be understood to include the plural, and vice versa. Similarly, language in the masculine shall be understood to include the feminine, and vice versa.

## 25.0 MODIFICATION, WAIVER OR CHANGE

Any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed-a waiver of any other rights or remedies at the time.

No modifications, waiver or change shall be made in the terms and conditions of this Agreement, except as may be mutually agreed upon in writing by all parties hereto.

## 26.0 VIOLATION OF LAW

The Service and NetOps Provider shall strictly observe and comply with all federal, state and local laws and regulations which may govern the work to be performed as herein specified.

## 27.0 NONDISCRIMINATION

The Service and NetOps Provider shall not discriminate against any person because of race, gender, age, color, religion, ancestry, handicap, sexual orientation, sexual identity, gender identity, veteran status, national origin or any other protected class under the law.

## 28.0 LICENSES AND FEES

The Service and NetOps Provider shall obtain all licenses and permits (other than the license and permit granted by the Agreement) required to conduct the activities pursuant to this Agreement and shall promptly pay all fees, taxes or other state or municipal costs necessary for said licenses, permits or activities.

## 29.0 COMPLIANCE WITH THE LAW

The Service and NetOps Provider shall conduct operations under this Agreement in compliance with all applicable laws, regulations, rules, by-laws and codes of the local, state and federal government, including, without limitation, all compliance filings such provisions being incorporated herein by reference, as well as, this Agreement and the Request for Proposals.

## 30.0 ACCESS TO RECORDS

Service and NetOps Provider shall make all books, accounts, data, records, reports, files and other papers required to be kept or kept in the course of the work to be performed under this Agreement available at all reasonable times for inspection, review and audit by the MLP or its authorized representative.

### 31.0 OWNERSHIP OF DOCUMENTS

The parties agree that all documents created for the MLP pursuant to this Agreement by the Service and NetOps Provider shall belong to the MLP with all rights

### 32.0 ENTIRE AGREEMENT; AMENDMENTS

This Agreement and Attachment(s) constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments or representations, whether oral or written, concerning the subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the Parties.

### 33.0 NET NEUTRALITY

Service and NetOps Provider shall comply with the FCC Net Neutrality regulations as mandated in 2016 even if they are suspended by the FCC.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year of the second and final signatory:

Service and NetOps Provider:

Name:

Title:

Date:

MLP•.

By:

Name:

Title:

Date:

ATTACHMENT A  
COMMUNICATIONS SERVICES

1.0 Generally

This Attachment A specifies the Communications Services, pricing, technical specifications, and outage provisions to be provided by Service and NetOps Provider to Subscriber, for which Subscriber shall pay a recurring Fee to Service and NetOps Provider on an advance monthly basis, as described below.

2.0 Price and Description of Services

The term of Subscriber pricing and services description shall be co-extensive with the Term of the Agreement as set forth in Section 5.1 of the Agreement, except that decreases in price may be implemented during the Term and the increases defined in Sections 7.1 and 7.10b shall be allowed. Subscriber pricing alternatives beyond those established in this Attachment are the sole authority

of the MLP. Variations, extensions, or alternatives demonstrated to benefit Subscribers and Network operation will be encouraged and considered by the MLP.

Stand alone telephone service, full featured\* : \$

\*Includes: unlimited calling to 48 states plus Extended Domestic (Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and N. Mariana Islands); calls outside the 48 states and Extended Domestic billed at published International rates; call waiting; caller ID; caller name ID; voicemail; call forwarding; call forwarding busy, do not answer, and fixed; enhanced call forwarding do not answer; caller ID blocking and unblocking; message waiting indication (stutter tone); 411 directory service

Stand alone Internet access service, 1 Gbps\*\* : \$

\*\*Each subscriber will have a full 1Gbps symmetrical connection with shared access to the bandwidth established by Network Operator to the Service and NetOps Provider.

Combined voice and Internet, as above: \$

New installations charge: \$

3.0 Technical specifications of services (in addition to those stated in Section 7.0 of the Agreement) ((Some of the following may not apply in a PON-based network. Provide those items that do apply, or some PON equivalent where appropriate.))

- a. Dynamic IP addressing by default, using carrier grade DHCP server
- b. Static IP address option, upon Subscriber request
- c. Both addressing types shall have automatic redundancy provided by at least two properly sized high availability servers in different physical locations. IP address servers shall be sized so that any one of the servers can handle the entire worst-case demand alone. IP address servers shall be configured to ensure automatic fail-over without manual intervention. Service and NetOps Provider shall maintain automatic monitoring and notification of problematic IP address server to Service and NetOps Provider staff so that issues may be resolved promptly. During essential maintenance windows, at least one IP address server shall be on-line and available at all times.
- d. DHCP option 82 implemented to aid in the identification of individual subscriber ports
- e. DHCP helper, if required
- f. VLAN, per service
- g. VLAN broadcast domains, limited to 300 or fewer hosts

- h. VLANs terminate on individual IP router sub-interfaces
- i. VoIP Telephone service prioritization. VOIP telephone service shall include capacity to provide 'plain old telephone' connectivity utilizing Subscriber's ONT built-in connections for premise copper wire connections. No additional VOIP analog to digital converter box shall be required.
- j. Retention of existing Subscriber telephone numbers
- k. Public Safety communications prioritization
- l. Security practices at network ingress and egress points, including:
  - 1. MAC forced forwarding turned on
  - 2. IP source verify turned on
  - 3. Multicast filtering turned on
- m. Email accounts (POP and IMAP), up to 5 per Subscriber, at 5GB minimum storage per account, with domain name Shutesburynet.net. During the email set-up process, subscribers will be instructed to utilize best practices regarding email security.
- n. Domain Name Service — authoritative, recursive, and resolver; all domain name tables shall be maintained so as to provide fully consistent forward and reverse lookups
- o. Multicast feature support
- p. IPv4 and IPv6 support
- q. Domain name of the network shall be Shutesburynet.net
- r. Subscriber billing and payment methods shall include (for Subscriber choice): 1) Monthly paper statements sent by US Postal Mail, with payments accepted by US Postal Mail; 2) Monthly email notification of statement availability with option to pay via subscribers credit or debit card, check or savings draft. Telephone based payment of bill using any of the above methods during normal business office hours. Subscribers shall not be charged additional fees dependent on the type of billing they choose. Provider will use SSL (secure sockets layer) which will ensure that customer connections and information are secure from outside inspection. Provider's electronic bill pay services will use 128-bit encryption to make customer information unreadable as it passes over the Internet and are PCI compliant.

#### 4.0 Services Outage Credit Provisions

##### 4.1 Interruption of Service: Credit a For any interruption of service (Outage)

that is:

i. not due to negligence or noncompliance with the Acceptable Use Policy on the part of Subscriber or the operation or malfunction of facilities, power, services, e.g. email, or equipment not owned or provided to subscribers by ISP/NO, including any portion of the Network provided by, or operated by, the MLP, the Network Operator, or the Massachusetts Broadband Initiative.

ii.. otherwise reasonably within ISP/NO's control: and iii. not due to a

Force Majeure condition as defined in this agreement

Subscriber shall receive a Service Credit for the period during which a service interruption or Outage exists.

- b. A service interruption or Outage begins when the Affected Subscriber or the Network Operator reports a service, facility or circuit to be interrupted and releases it for testing and repair, (providing access and cooperation with respect to equipment, facilities and premises controlled by the Affected Subscriber) or when the ISP/NO notices an Outage affecting 10 or more Subscribers.
- c. A service interruption or Outage ends when the affected service, facility or circuit resumes full operation.
- d. Service Credits are calculated on the basis of a 30-day month and shall be a pro-rated allowance against the charge for the interrupted service based on the duration of the interruption as follows:
  - i. for the first 30 minutes: no credit
  - ii. for an Outage greater than 30 minutes and up to 3 hours: half of one day (12 hours).
  - iii. for additional 3-hour period or fraction thereof: one day (24 hours) provided, however, that no more than one and one half full' months credit shall be allowed for any 30-day period and further that two or more Outages of 15 minutes or more during any one 24-hour period shall be considered a single Outage.

## 2.0 Planned Maintenance or Service Interruptions

Planned maintenance events do not constitute a service interruption or Outage under section 4.1 above

Service and NetOps Provider shall notify Subscribers of planned maintenance activities, with a minimum of ten (10) days notice via email transmission or telephone call. Service and NetOps Provider shall provide a follow-up reminder notice two (2) days in advance. All planned maintenance or service interruption shall be scheduled between the hours of

12am and 6am, Monday through Friday (Eastern Time). Notice times may be shortened with MLP consent. In the event of an emergency, the notification periods may be shortened as circumstances warranted.

### 3.0 Service Restoration.

Service and NetOps Provider shall work with Network Operator to restore service as soon as feasible after any interruption or Outage. Network Operator shall inform Service and NetOps Provider of service restoration on the Access Network, whether for a single Subscriber or multiple Subscribers.

## ATTACHMENT B

### Network Operations and Maintenance

The following services are included in the scope of responsibilities for network operations and maintenance:

- a. Point of Presence (POP) monitoring and maintenance.
  - i. The network operator will continuously remotely monitor (24x7x365) the performance of the network equipment located in the POP building located at the Shutesbury Town Hall and will escalate any anomalies as outlined below.
  - ii. The POP equipment included within the scope of this Agreement will be identified on the as-built drawings for the POP and will be attached to this Agreement as Exhibit 1.

The network operator will continuously remotely monitor (24x7x365) environmental conditions of the network equipment areas within the POP buildings (power, HVAC, gen sets, temperature, smoke, humidity, door entry) and will escalate any anomalies to the responsible parties.
  - iii. Maintain a ShutesburyNet Dashboard accessible online, to allow the above status information to be viewed by Shutesbury MLP and their designees. Include on that dashboard the number of ONT's that are currently connected in the access network. Also include and maintain at that dashboard the log data that tracks at least on a daily basis, services "up" and disrupted services and repair response status.
  - iv. Replacement of any POP equipment will be at the expense of the Town. The Network Operator will work with the Town to ensure that any valid equipment warranties are utilized for required equipment replacements.
- b. Customer Premise Equipment (CPE) Optical Network Terminal ONT monitoring and maintenance. The network operator will remotely monitor the performance of CPE ONT devices located on the exterior of subscribers' premise dwellings. Any malfunctioning ONT 's that require replacement will be replaced by the Network Operator with ONT's provided by the Town.



- c. Middle-mile network connectivity to ISP. The Network Operator shall order, install, provision, monitor, maintain and bill the Shutesbury MLP for a xx gigabit lit ethernet service from MBI/Axia originating from POP located at xx
- d. Monitor the access network from the middle-mile interface to the MBI/Axia network up to each activated ONT on the exterior of the subscriber premise dwelling.
  - i. Produce statistical information on network health to the Town every month inclusive of throughput, latency, packet loss, jitter and top-talkers;
    - 1. Overall network;
    - 2. Subscribers.
  - ii. Performance Monitoring
- e. Field dispatch for access nodes, fiber network, and premise ONTs. Perform troubleshooting, repair or replacement, using ISP/NO equipment with hardware provided by the Town, for access node equipment, fiber network, and ONTs .
- f. Monitor network performance and traffic optimization within pre-defined metrics.
  - i. Provide priority service to public safety organizations.
- g. 24 x 7 x 365 telephone support to the Shutesbury MLP and dispatch services to appropriate responders.
- .h. Ensure timely resolution and accurate communication to customers.
  - At the reasonable request of the Town of Shutesbury Municipal Light Plant, provide services listed above that may be the responsibility of the Contractor, through a separate agreement between the Town and Contractor, during the first year of this Agreement.
  - Provide storage for MLP supplied replacement hardware.