

Master Agreement

**Westfield Gas & Electric Light Department
d/b/a Whip City Fiber**



WiredWest Communications Cooperative Corp



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MASTER AGREEMENT

This Master Agreement (“**Agreement**”) is hereby entered into by and between Westfield Gas and Electric Light Department d/b/a Whip City Fiber (“**Network Operator**”), a municipal light plant in the City of Westfield, Massachusetts and WiredWest Communications Cooperative Corporation (“**WW**”), d/b/a “WiredWest”, a municipal light plant cooperative, established, organized, and existing pursuant to Chapter 164 Section 47C of the Massachusetts General Laws, Network Operator and WW may be referred to herein each, as a “Party” or as collectively, the “Parties”, and made effective this __ day of _____, 2018 (“Effective Date”).

ARTICLE 1 PURPOSE OF AGREEMENT

WHEREAS, municipal light plants that are members of WW are each building a Fiber to the Home broadband network to pass substantially all of the premises in each of their respective towns and to provide Internet and VoIP phone services to each of the premises that wants to take such service;

WHEREAS, Network Operator is a municipal light plant as provided in M.G.L. c. 164, §34 et. seq. and WW is a municipal light plant cooperative under M.G.L. c. 164 §47C;

WHEREAS, Network Operator is a provider of network operations and support services and solutions and is experienced in the administration, management, maintenance, provisioning, performance and marketing of complex network systems such as the WW Network as defined herein; and

WHEREAS, WW is in need of a provider of network operation and support services as more specifically defined herein, and Network Operator desires to provide such services to WW.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

ARTICLE 2 DEFINITIONS

In the Agreement all capitalized terms shall have the meanings set forth in this ARTICLE 2.

- 2.1 **Affiliate** shall mean an entity that directly or indirectly controls or is controlled by or is under common control with another entity.
- 2.2 **Attachment Database** shall mean at a minimum the as built strand map and pole attachment licenses for the Member owned networks.
- 2.3 **Best Effort** shall mean the delivery of service to Residential Customers by Network Operator on an “as-is” basis, with no warranties of any kind, including fitness for a particular purpose or uninterrupted use of services.
- 2.4 **Bureau** shall mean the United States Bureau of Labor Statistics.
- 2.5 **Commencement Date** shall be sixty (60) days prior to the anticipated date of the activation of the first customer on the WW Network.
- 2.6 **Commercial Customer** is a customer purchasing internet services from WW through a Service Level Agreement or “SLA” with a specified level of broadband speed.
- 2.7 **Confidential Information** shall mean any information of WW or the Network Operator that is not generally known to the public and that, at the time of disclosure, is identified as proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which a Party (or its contractors or agents) observes or learns in connection with this Agreement.
- 2.8 **Construction Contractor** shall mean the entity engaged or to be engaged by each of the Members to construct their respective segments of the WW Network pursuant to other agreements.
- 2.9 **Dark Fiber Customer** shall mean a lessee or an IRU holder of dark fiber on the WW Network from a Member pursuant to Section 4.7.4.
- 2.10 **Dispute Resolution Notice** shall mean a written request of either Party to the other Party intended to initiate resolution of a dispute pursuant to ARTICLE 11.

- 2.11 FCC** shall mean the Federal Communications Commission.
- 2.12 Fiber Management Plan** shall mean the Network Operator's fiber management plan approved by WW with the elements required in Section 4.6.2.
- 2.13 Financial Statement** shall mean any financial statements of Network Operator delivered to WW or its designee in connection with this Agreement.
- 2.14 Force Majeure Event** shall mean an event constituting or arising from any substantial and extraordinary cause beyond a Party's reasonable control, including, without limitation, acts of war, acts of God, earthquake, hurricanes, embargo, riot, sabotage, strikes, governmental act, insurrections, epidemics, quarantines, terrorist activity, extraordinarily severe or prolonged flooding, extraordinarily severe or prolonged ice and snow storms, extraordinarily severe and widespread fire or other similar casualty, or other substantial and extraordinary accidents not caused by the Party asserting such Force Majeure Event, or strikes or utility company delays not resulting from the responsible Party's or such Party's subcontractor's failure to timely take necessary actions.
- 2.15 GASB** shall mean Governmental Accounting Standards Board.
- 2.16 Indemnified Claim** shall mean a claim by an Indemnified party for indemnification under the provisions of ARTICLE 9.
- 2.17 Indemnified Claim Proceeding** shall mean any mediation, arbitration, legal and /or administrative action or other proceeding regarding an Indemnified Claim.
- 2.18 Indemnified Party** shall mean, with respect to a Party, the other Party and its Affiliates, officers, directors, employees, agents, successors and assigns.
- 2.19 Indemnifying Party** shall mean the Party from which another person seeks or is entitled to indemnification hereunder.
- 2.20 Interconnection** shall mean any connection of fiber, either active or passive, to the WW Network.
- 2.21 IPT** stands for Integrated Planning Team and shall mean the body established pursuant to ARTICLE 6 of this Agreement.
- 2.22 IRU** stands for and shall mean an Indefeasible Right of Use.
- 2.23 ISP** stands for and shall mean an Internet Service Provider.
- 2.24 KPI** stands for Key Performance Indicator and shall mean any of the rating factors used to measure the performance of the Network Operator or the WW Network in critical areas of operation and management.
- 2.25 Member** shall mean the municipal light plant of a town that has signed an MOU or a contract for Internet and VoIP services with WW. For the purposes of this document, a Town that owns its own fiber plant but does not have a municipal light plant and has signed a contract for Internet and VoIP services with WW shall be considered a Member, WW will provide to the Network Operator a list of its current Members. Such Members list will be updated when Members notify WW of their desire to terminate or join and provided to the Network Operator.
- 2.26 Network Extension** shall mean any fiber optic cable and attendant infrastructure installed and connected to the WW Network after WW has assumed operational responsibility for a Member Town's network. A fiber optic cable extension of or from the WW Network shall become part of the WW Network.
- 2.27 Network Policies** shall mean the set of policies that includes the approved Fiber Management Plan, the approved Network Management Plan, the approved Net Neutrality Policy, and the Acceptable Use Policy, any and all as may be adopted and amended by the Parties and/or as required by law from time to time.
- 2.28 Network Revenue** shall mean all revenue recognized by the Network Operator calculated on a gross basis, without deductions or allowances, employing GASB except as otherwise expressly provided in this Agreement, from (a) the sales, provisioning, support, and fees paid for bandwidth and other use of the WW Network, (b) a lease/IRU of dark fiber on the WW Network, (c) proceeds of any income loss, liability, or property loss insurance coverage or equivalent that may be procured by WW or WW Members at their sole option (d) revenues earned by the Network Operator from offering value-added services provided to Residential Customers or Dark Fiber Customers based on protocols commonly transported over the Internet and made available to customers on the WW Network. Any amounts earned by Network Operator from services related to the WW Network, other than the categories expressly

excluded in this definition, shall be Network Revenue unless WW agrees otherwise in writing. . Network Revenue shall not include revenues earned by the Network Operator for professional services such as engineering and construction services related to the WW Network, co-location at facilities not leased or owned by WW.

- 2.29 Network Segment** shall mean any portion of the WW Network as may be defined (a) by WW or WW Member Towns during the design and construction of the WW Network, and thereafter (b) by mutual agreement of WW and the Network Operator.
- 2.30 NOC** stands for Network Operations Center and shall mean a facility established by the Network Operator to be staffed and to provide, at a minimum, monitoring, troubleshooting, customer support, dispatch, and engineering services as required herein.
- 2.31 Officer's Certificate** shall mean a document signed under the penalties of perjury by an officer or authorized employee of the entity providing the document to another, the contents of which shall be binding upon the entity.
- 2.32 OLT** shall mean Optical Line Terminal that is located in the customer premise.
- 2.33 ONT** shall mean Optical Network Terminal that is located in the POI.
- 2.34 POI** stands for Point of Interconnection and shall mean a node that enables the Network Operator or Commercial Customer to connect to the WW Network without splicing WW Network fiber in order to provide services to customers, including but not limited to consumers, government entities, businesses and non-profit organization that are not directly connected to the WW Network. The WW Network is currently planned to include one POI in each of the Member's towns.
- 2.35 Price Schedule** shall mean the charges by the Network Operator to WW for providing ISP, VoIP phone, and other services to WW and WW customers as outlined in Appendix A and Appendix C.
- 2.36 Renewal Decision** shall mean a written decision by WW conforming to the requirements of Section 3.3 and responding to a Renewal Request.
- 2.37 Renewal Request** shall mean a written request by WW or the Network Operator to enter into negotiations for a Renewal Term, conforming to the requirements of Section 3.3.
- 2.38 Renewal Term** shall mean any additional period of years for which the Term of this Agreement is extended pursuant to the terms of this Agreement.
- 2.39 Residential Customer** shall mean a customer who subscribes to services from WW on a non-commercial basis, which services are rendered on a Best Effort basis for network service on a best effort basis.
- 2.40 Scheduled Maintenance** shall mean routine scheduled maintenance and repair of the WW Network as described herein.
- 2.41 Service Area** shall mean the WW Network in the towns listed in Appendix D.
- 2.42 Services** shall mean all performance obligations of the Network Operator hereunder.
- 2.43 SLA** stands for Service Level Agreement and shall mean an agreement setting forth and/or identifying the services, priorities, responsibilities, and network management policies controlling the day-to-day operations and servicing standards of the Network Operator. Each area of service is separately defined and specifies the levels of availability, serviceability, performance, operation and other attributes of service on the WW Network.
- 2.44 Splice** is a connection of two strands of fiber, at least one of which is part of the WW Network.
- 2.45 Term** shall mean the period of time from the Effective Date until the expiration or termination of this Agreement.
- 2.46 Third Party Service Provider** shall mean any organization other than Network Operator providing retail services to an end user and shall include without limitation, ISPs, fiber companies, cable TV companies, fixed and mobile wireless carriers, competitive local exchange carriers, incumbent local exchange carriers, and interexchange carriers.
- 2.47 Unscheduled Maintenance** shall mean non-routine maintenance and repair of the WW Network which is not included in Scheduled Maintenance.
- 2.48 VOIP shall mean Voice Over internet Protocol.**

- 2.49 White Label Service** shall mean that the services that Network Operator provides to the customers of WW and shall be labeled as WW services.
- 2.50 WW Network** shall mean the combined networks of each Member and the equipment and fiber to connect each of the Member's networks together into Ethernet Ring Protection Switching rings and to connect these rings to the Network Operator.

ARTICLE 3 TERM OF AGREEMENT AND RENEWAL

- 3.1 Term.** The Term of this Master Agreement will begin as of the Effective Date and will terminate upon the fifth (5th) anniversary of the Commencement Date, unless earlier terminated, extended or renewed in accordance with the provisions of this Agreement ("Initial Term").
- 3.2 Renewal.** This Agreement may be renewed by mutual agreement of the parties for two (2) successive Renewal Terms of three (3) years each, subject to the conditions set forth herein and subject to the right of the Parties hereunder to terminate this Agreement for cause. The Parties may, but are not required to, agree upon options for additional Renewal Terms by an amendment to this Agreement.
- 3.3 Renewal Time.** Should the Parties elect to renew the Agreement, they will do so in accordance with the following time requirements, with time being of the essence;
- At any time within the period from twelve (12) to fourteen (14) months prior to the expiration of the then current Term of the Agreement, WW or the Network Operator may make a Renewal Request, by written Notice to the other in conformity with Section 12.12, to extend the Term for a Renewal Term ending three (3) years beyond the then pending termination date.
- 3.4 Response to Renewal Request.** Upon receipt by either Party of such a Renewal Request, the Parties shall, within thirty (30) days thereof, enter into good faith negotiations on the terms of the renewal. Either Party may terminate such negotiation by written notice to the other Party at any time after the date that is ten (10) months prior to the expiration of the then current Term of the Agreement.
- 3.5 Renewal Term.** In the event that the Parties agree to a renewal that results in a three (3) year extension of the Agreement, the first such Renewal Term shall begin on the fifth anniversary date of the Commencement Date. Any subsequent Renewal Term agreed upon in accordance with the process set forth in Section 3.2 shall begin three (3) years after the commencement of the last agreed Renewal Term.
- 3.6 Renewal Term Pricing.** The pricing levels set forth in Appendix A and Appendix C shall be renegotiated by the Parties no later than starting twelve (12) months prior to the expiration of the Initial Term or the then-current Renewal Term.

ARTICLE 4 NETWORK MANAGEMENT, CUSTOMER SERVICE, MAINTENANCE AND FINANCIAL OBLIGATIONS OF NETWORK OPERATOR

- 4.1 Overview of Network Operator's Responsibilities.** The Network Operator is responsible for all aspects of the management, sales, monitoring, operations, support, and maintenance of the WW Network as specified here generally and as more specifically described in Appendix B to this Agreement. The Network Operator will perform its duties pursuant to this Agreement subject to the reasonable oversight by WW as set forth herein and WW's reasonable cooperation with Network Operator in fulfilling the overall objective. Network Operator's responsibilities include, generally;
- 4.1.1** Managing the physical plant and operations of the WW Network, including development and publication, subject to WW's approval, of policies, procedures, systems and controls to ensure the effective operation and optimal use of WW Network resources, performing all required maintenance and repair, including Dig Safe mark-out on Member owned conduit, tree trimming on WW and Member-owned poles, periodic inspection of facilities, resolving engineering issues, managing relationships with vendors and service providers, recommending and implementing equipment maintenance strategies and upgrades, tracking customer use of the network for billing and capacity planning purposes;
- 4.1.2** Maintaining records of all fiber in the WW Network in the Attachment Database, in accordance with the Fiber Management Plan, which shall include, without limitation, fiber cable route on all Network

Extensions, detailed records on splice case configuration, fiber optic strand continuity and splice map, path panel configuration, outside plant elements like slack loops, patch panels, cabinets, and splice cases, and attachments;

- 4.1.3 Maintain, for at least seven (7) years after expiration of the Term, detailed and accurate records and accounts relating to all payments, transactions and other obligations, responsibilities and rights of the Network Operator under this Agreement;
- 4.1.4 Make timely payment for all costs for which the Network Operator is responsible under this Agreement;
- 4.1.5 Monitoring, documenting and reporting on all aspects of the WW Network including, without limitation, accumulating network performance information to provide information needed to measure performance against KPIs or to detect degradation or network failures of the physical or electronic components;
- 4.1.6 Maintaining and managing the staff, consultants, agents, and contractors required to support the WW Network, including human resources functions, development and publication, subject to WW reasonable approval, of policies and procedures relating thereto, staffing for 24x7 monitoring of the WW Network and dispatch of field technicians as needed;
- 4.1.7 All aspects of marketing, sales, contracting, contract management, billing, insurance claims processing, customer support and relations with Commercial Customers, including, without limitation, leasing/IRUs of dark fiber (as specified in Section 4.7.4 below), entering into SLAs for lit service, maintenance of websites and development and deployment of customer forms, answering customer inquiries, tracking and resolving customer requests and problems, provisioning services to customers in accordance with their needs and in the timeframes specified in SLAs, performing capacity planning, detecting and resolving performance degradations, and providing necessary information to WW and customers;
- 4.1.8 Managing relations with third party facility owners that grant or have granted WW or Member's attachment rights. The Network Operator shall be administratively responsible for ensuring compliance with all of the requirements of such attachment agreements obtained for the WW Network. These responsibilities shall include, without limitation, timely responding to facility owner and third party requests for make-ready, facility moves and changes, complying with requirements to use and update third party pole life cycle management systems, subscribing to pole owners' pole lifecycle management systems and double pole notification systems and coordinating with other pole attachment licensees; and
- 4.1.9 Managing and ensuring compliance with the Network Policies, attachment agreements and other third party contracts, and applicable federal, state and local law, and taking the initiative to plan and manage, subject to WW approval, WW Network stakeholder engagement and communication. The Network Operator shall be administratively responsible for ensuring compliance with all of the requirements of such agreements, contracts and laws.
- 4.1.10 **Schedule for Initial Submissions.** Network Operator shall make the following initial submissions to WW:
 - 4.1.10.1 Within 180 days of the Commencement Date, a draft of its Initial Plan pursuant to Section 4.9.8.1;
 - 4.1.10.2 Within 180 days of the Commencement Date, a draft of proposed Network Policies, pursuant to Section 4.4;
 - 4.1.10.3 Within 180 days of the Commencement Date, drafts of all standard form contracts for Commercial and Residential Customers;
 - 4.1.10.4 Within 6 months of the Commencement Date, a draft of a proposed Fiber Management Plan, pursuant to Section 4.5.2.
- 4.1.11 Where the completion of these deliverables is delayed as a result of a delay in the provision of information from WW to Network Operator, the Parties agree that the timeframes set forth above shall be reasonably adjusted by mutual agreement of the Parties.

4.2 Role During Design and Construction of WW Network

- 4.2.1** Except as expressly stated herein, Members or their other vendors will be solely responsible for design, engineering, installation and construction decisions and for obtaining pole attachment licenses prior to the Commencement Date. Nonetheless, the Parties acknowledge and agree that it is desirable for the Network Operator to have sufficient opportunity to comment on the design, engineering, install, and construction of the WW Network to ensure a smooth transition of the operation of the WW Network to the Network Operator at the Commencement Date and for the WW Network to meet the expectations of the Parties with respect to its operating capabilities, capacity and characteristics.
- 4.2.2** Network Operator shall initiate marketing and advance sales to potential customers of each Member's network segment a minimum of 30 days prior to each Member's anticipated network segment turnover to WW for network operations and shall report the status and results of such efforts on at least a monthly basis and in such detail as WW may reasonable request. Such marketing, sales and reporting shall continue through the Term. WW agrees to cooperate and provide Network Operator with any information in WW's possession from WW's previous marketing activities on potential customers to assist the Network Operator in these endeavors.
- 4.2.3** With respect to the initial construction of the WW Network, Network Operator shall be obligated to conduct acceptance testing of each segment of the WW Network or to be present at the acceptance testing of each segment of the WW Network. Each Party shall be deemed to have accepted the results of any acceptance test unless it delivers to the other Party a written challenge thereto no later than five (5) business days after receipt of such results (which may be transmitted electronically), which challenge must be certified as made in good faith and may be based only on alleged noncompliance with the agreed acceptance testing protocol.
- 4.2.4** In the event WW requests Network Operator to perform any services with respect to the design, engineering, installation or construction of the WW Network beyond the role of the Network Operator as defined herein, the Parties shall negotiate an amendment hereto that affords commercially reasonable terms for such additional services.
- 4.2.5** Beginning on the Effective Date and continuing through the Term of the Agreement, the Network Operator shall prepare all material, documentation, and reports that may be reasonably required or requested by WW, including without limitation, documentation on network performance, documentation related to requests for reimbursement, and audit materials

4.3 Transition of Control.

- 4.3.1** Unless the Parties otherwise agree, Network Operator's responsibilities with respect to a given Network Segment will commence immediately upon acceptance by WW and Network Operator of the results of acceptance testing for that Segment as passing WW and Network Operator shall collaborate in an effort to achieve a cost effective rollout and transition of Network Segments, in order to maximize Network Revenue as early as practicable as Network Segments are completed and handed over to the Network Operator for operational and management purposes.
- 4.3.2** Network Operator shall administer on behalf of WW those provisions of Member's agreements with the Construction Contractors relating to warranty repair of the portion of the WW Network that the Construction Contractor constructs. Network Operator shall not incur legal fees and expenses in the event of disputes with the Construction Contractor regarding its warranty responsibilities without WW's prior approval and WW shall not be required to incur such legal fees and expenses except to the extent WW agrees to pay reimbursement. WW shall provide reasonable cooperation to enable Network Operator in the administration of warranty-related services.
- 4.3.3** Beginning on the Commencement Date, Network Operator shall take over from Members the maintenance, but not ownership, of the Member's Attachment Database. Network Operator shall keep the Attachment Database current and shall update the Database to reflect any Network Extension and costs associated therewith. Network Operator and WW shall confer regarding the data to be included in or added to the Attachment Database after Network Operator assumes this responsibility. Network Operator shall turn over the Attachment Database to WW upon termination or expiration of the Agreement. Network Operator acknowledges that Members either own, or shall own any intellectual property, software licenses and derivative works of or associated with use of the Attachment Database. Any assignment or sublicense of software that WW grants to the Network Operator at any time during the term

of this Agreement shall be limited in time and shall expire upon termination or expiration of the Agreement, with all rights reverting to WW upon expiration.

- 4.4 Network Policies.** Network Operator shall develop and, within 180 days after the Commencement Date, submit all Network Policies to WW for approval.
- 4.5 Net Neutrality.** Network Operator shall use reasonable efforts to follow the guidelines as outlined in FCC 15-24 adopted February 26, 2015 and released March 12, 2015
- 4.6 Network Extensions and Development.**
- 4.6.1 Consultation.** Network Operator and WW will mutually and regularly consult with each other to coordinate construction of Network Extension Interconnections and other facilities.
- 4.6.2 Establishment of Fiber Management Plan.** Within six (6) months after the Commencement Date, Network Operator shall prepare and submit to WW for approval a complete draft of a Fiber Management Plan. The draft of such plan as approved by WW shall be known as the “Fiber Management Plan.” In order to be approved it must, at a minimum, contain the following required elements:
- 4.6.2.1** Detailed procedures and criteria for permitting Interconnections to the WW network;
- 4.6.2.2** Management practices to be used in controlling and tracking the use of the WW Network fiber;
- 4.6.2.3** Technical requirements to be met by persons connecting to the WW Network.
- 4.6.3 Approval.** WW will not approve any fiber management plan unless it:
- 4.6.3.1** is based on the technical feasibility of Interconnection request, does not create the potential for excessive stranded segments of fiber, addresses the existing and anticipated capacity requirements of the WW Network; and
- 4.6.3.2** is consistent with Network Policies.
- 4.6.4 No Ownership, Title.** Except as otherwise expressly provided in this Agreement, Network Operator will not receive title to, or ownership of, any fiber or other facilities on the WW Network nor shall it be issued an IRU in such fiber by reason of its status as network Operator and signatory to this Agreement.
- 4.6.5 Commercial Customer Extensions.** Subject to the Network Policies and Section 4.7, below, Commercial Customers may interconnect to the WW Network and will be permitted to invest their own funds to create Network Extensions pursuant to the following:
- 4.6.5.1** The Network Operator will engage one or more qualified contractors to complete the interconnection in accordance with the Fiber Management Plan.
- 4.6.5.2** The Network Operator shall include in the Price Schedule all charges, requirements and procedures applicable to a Commercial Customer Extension.
- 4.6.5.3** Network Extensions funded by and constructed for any Commercial Customer pursuant to this section shall be the sole property of WW for that portion of the Network Extension that is external to any Member towns borders and those portions of the Network Extension that are internal to a Member town’s border shall be the sole property of the Member town.
- 4.6.6 WW Member Network Extensions.** Following consultation and coordination with the Network Operator, a WW Member may elect to develop WW Member Network Extensions within their town border. The construction and operation of any WW Member Network Extension may be performed by an entity selected by the WW Member independent of this Agreement. Network Operator shall have the same role and rights relative to the WW Member Network Extensions as are set forth in section 4.2 of this Agreement or as otherwise agreed between WW and Network Operator, and any such WW Member Network Extension shall be designed, constructed and operated in a manner consistent with, and that will not adversely affect achievement by Network Operator of the obligations under any SLA with respect to the WW Network. WW Member shall own all WW Member Network Extensions, regardless of the source of its funding, which shall become part of the WW Network and Network Operator shall maintain and operate it as such.

4.6.7 WW Network Extensions. Following consultation and coordination with the Network Operator, WW may elect to develop WW Network Extensions. The construction and operation of any WW Network Extensions may be performed by an entity selected by WW independent of this Agreement. Network Operator shall have the same role and rights relative to the WW Network Extensions as are set forth in section 4.2 of this Agreement or as otherwise agreed between WW and Network Operator, and any such WW Network Extension shall be designed, constructed and operated in a manner consistent with, and that will not adversely affect achievement by Network Operator of the obligations under any SLA with respect to the WW Network. WW shall own all WW Network Extensions, regardless of the source of its funding, which shall become part of the WW Network and Network Operator shall maintain and operate it as such.

4.7 System Upgrades and Updates.

4.7.1 Network Operator is required to periodically update or upgrade the electronics and other components on the WW Network, subject to the then-current Annual Plan approved by WW, in order to maintain the carrier grade quality and reliability of services offered thereon. Upgrades to the capacity and performance of the WW Network are to be made in order to support customer needs or provide new and enhanced services over the WW Network. Updates and upgrades of the fiber and other components of the WW Network will be funded by WW and/or Members through WW. Network Operator will have no obligation to fund any Network Updates or upgrades. Network Operator may undertake such expenditures as may be available in the depreciation reserve accounts of each Member subject to the then-current Annual Plan approved by WW. Additionally, WW may reasonably direct Network Operator to undertake capital expenditures required to upgrade or update the WW Network, provided that these expenditures will not exceed the amount allocated for such purposes by WW.

4.7.2 Network Operator is required to periodically update or upgrade the electronics and other components on their portion of the network in order to maintain the carrier grade quality and reliability of services offered thereon. Upgrades to the capacity and performance of the Network Operator's Network are to be made in order to support customer needs or provide new and enhanced services over the WW Network. These upgrades will be paid for and owned by the Network Operator.

4.7.3 Network Operator is required keep all software and firmware at the latest Vendor approved release level as part of the Network Operators normal maintenance efforts for the WW network as well as their own network.

4.8 Commercial Service.

4.8.1 Network Operator is solely and fully responsible for the marketing, provisioning and support of such Commercial Service to Commercial Customers as may be required. Any and all functions, responsibilities, activities and tasks, whether or not specifically described in this Agreement or in Commercial Customer contracts, which are required for the proper performance and provision of the Services, are deemed an inherent part of, or a necessary sub-part included within, the Services.

4.8.2 Network Operator shall provide Commercial Service as required at rates to be set by WW in consultation with Network Operator.

4.8.3 Each Commercial Customer whose facilities will interconnect with the WW Network must execute a contract with Network Operator, who will be acting as agent for WW, in a form to be approved by WW prior to the start of any Commercial Service. The Network Operator may not materially amend or modify the approved form of contract without prior written approval of WW, which approval shall not be unreasonably withheld.

4.8.4 Marketing of Dark Fiber Leases/IRUs to Dark Fiber Customers. Network Operator will enter dark fiber Lease/IRU agreements on the WW Network on WW's behalf (who will be acting on behalf of the Members) with any Dark Fiber Customer so requesting, other than Network Operator itself, in accordance with the following terms and conditions.

4.8.4.1 Any such Lease/IRU shall be (a) consistent with the then approved Fiber Management Plan and subject to all Network Policies except to the extent that such Network Policies are not applicable or the IRU is otherwise exempted therefrom by WW, (b) on standard lease/IRU terms and conditions approved in advance by WW and (c) at a price to be set by WW in consultation with Network Operator.

- 4.8.4.2 Upon receipt of a request from a Dark Fiber Customer to acquire a lease or an IRU in Dark Fiber in accordance with Section 4.8.4.1, Network Operator shall present the request to WW for approval of the lease/IRU agreement.
- 4.8.4.3 Upon receipt of a request for lease or an IRU from a Dark Fiber Customer that does not comply with the terms set forth in Section 4.8.4.1, the Network Operator shall present such request to WW together with a written explanation of each deviation, the reasons therefore and anticipated benefits and detriments thereof. Any such request must be approved by Network Operator and WW.
- 4.8.4.4 All payments received by the Network Operator on account of a lease or an IRU to a Dark Fiber Customer on the WW Network during the Term of this Agreement shall be payable to WW. Network Operator will add 5% to the monthly bill as a commission as payments are received from the Dark Fiber Customer, which commission will be paid to the Network Operator.
- 4.8.5 **Commercial Pricing.** WW shall establish in consultation with Network Operator a Price Schedule setting forth charges for each and every Commercial Service offered.
 - 4.8.5.1 The Network Operator shall make the Price Schedule publicly available on the WW website to ensure that all Commercial Customers have equal and contemporaneous access to the pricing contained therein.
 - 4.8.5.2 To the extent suggested by the Network Operator, the Price Schedules shall be updated on an annual basis on each anniversary of the Effective Date of this Agreement subject to approval by WW.

4.9 Retail Service.

- 4.9.1 Network Operator shall provide ISP and VOIP services to the customers of WW as White Label services.

4.10 Financial Responsibilities and Rights.

- 4.10.1 **Network Operator Costs and Expenses.** Beginning on the Effective Date, Network Operator will pay all costs of Network Operator's compliance with the terms of this Agreement, including, but not limited to, salaries and benefits of the employees of Network Operator, contractor fees, rent, travel, purchase of equipment, tools and vehicles necessary to monitor and maintain the WW network and to service the residential and commercial customers of WW, leases or IRUs and maintenance contracts for equipment and fiber not owned by WW or Members, expenses of marketing and sales, development and maintenance of a WW website capable of taking customer orders for service, maintenance of a custom URL owned by WW for the WW website, customer service, separate 800 number for Network Operator call center, billing and collection, 24/7 network monitoring, regulatory fees applicable to operation of the WW Network, Network Operator's insurance costs, regulatory fees applicable to the operation of the WW Network, email server for WW Network Customers, network security, wholesale cost of internet bandwidth and VoIP services, administration of spares inventory, and all other operating and monitoring expenses contemplated by the Agreement whether specifically listed herein, and those expenses set forth in Appendix B, unless provided otherwise by WW in writing. Network Operator is not responsible for any up-front capital costs associated with obtaining IRUs for backhaul fiber routes between the WW Network and the Network Operator point of interconnect, or any costs associated with the design, engineering, installation, or construction of any WW Network Extensions.
- 4.10.2 **WW Costs and Expenses.** WW and Members are responsible for the funding of the design, engineering, installation or construction of the WW Network, or any costs associated with the design, engineering, installation, or construction of WW Network Extensions or for any up-front capital costs associated with obtaining IRUs for backhaul fiber routes except those that Network Operator currently owns, or for any recurring costs for lit services for backhaul from the WW Network to the Network Operators point of interconnection. Network Operator is not responsible for the following costs associated with the assets owned by WW or Members: the cost of recurring pole attachment fees, recurring conduit fees, recurring IRU or right-of-way fees, premiums for surety bonds that may be required by pole owners or conduit owners, recurring premiums for break/fix insurance on the outside plant, insurance deductibles for break/fix, or any miscellaneous costs associated with operating the POIs for each of the Members such as electricity and HVAC maintenance. WW is responsible for the purchase of spare electronics such as

OLTs and ONTs for replacement of failed WW or Member's owned equipment. WW will compensate Network Operator for the repair and maintenance of the WW and Members' assets according to the pricing schedule in Appendix C. Network Operator will obtain bids from third party contractors who will be available to respond to significant Force Majeure Events. The fee schedule for these third party contractors will be included as an addendum to this contract once bids are received and agreed to.

- 4.10.3 Third Party Costs.** WW and Network Operator shall work cooperatively in their respective capacities under this Agreement to minimize the costs that may be incurred under agreements with or otherwise imposed by third parties.
- 4.10.4 Payments to WW.** WW agrees that Network Operator will establish an electronic billing platform for the presentment of WW member customer internet and phone bills. All customer payments will be processed through this payment platform via electronic funds transfer or credit card transactions. Customer payments will be deposited into a bank account established and controlled by WW. Should a Member choose to add a fee to the bills of the customers in the Member's town for Depreciation Reserves or for debt service, these fees collected will be accounted for by town and type in a monthly statement and the funds deposited into the WW bank account. On a monthly basis Network Operator will invoice WW an amount based on the schedule in Appendix A for customer internet and phone services for Network Operator services listed in 4.9.1, Appendix C and all other services contemplated by the Agreement and any taxes and other regulatory fees, break/fix costs, and all other service costs owed by WW to Network Operator. The billing for Network Operator services listed in 4.9.1 will be based on the number of customer on the last day of the prior month plus the number of customers at the end of the current month divided by 2 times the wholesale rate per customer as specified in Appendix A.
- 4.10.5 Monthly Statement.** Network Operator will provide a monthly statement showing fees received from customer billing, wholesale costs to be paid by WW, break/fix costs and all other service fees, taxes and regulatory fees with subtotals by Member town.
- 4.10.6 Timing of Payments to WW.** Any payments required to be paid by the Network Operator to WW pursuant to this Agreement shall be paid monthly unless another payment schedule is specified herein.
- 4.10.7 Provisions regarding Agreements between WW and Others.**
- 4.10.7.1** The parties acknowledge that, after the Effective Date, WW will be required to enter into agreements with third parties in order to construct WW Network Extensions, and for other purposes aimed at maintain or enhancing the extent, structure, function and viability of the WW Network or for providing additional services to customers of WW, including but not limited to agreements to use or obtain access to the property of third parties, with respect to which, when executed, Network Operator will have the responsibilities described in this Agreement.
- 4.10.7.2** In the course of negotiating the terms of the type described in Section 4.10.7.1, or agreements with other third persons the terms of which WW wishes the Network Operator to administer or with which Network Operator is to comply, WW shall confer with Network Operator concerning the proposed terms thereof and Network Operator shall advise WW concerning such proposed terms and alternatives thereto, shall identify in writing any proposed terms it believes materially differ from (a) those previously disclosed or (b) those which are commercially reasonable or prevalent in the industry, and, shall provide in writing a good faith estimate of the incremental cost to Network Operator of administering or complying with the proposed contractual term.
- 4.10.7.3** In the event that, in the course of negotiating the terms of any agreements of the types described in Section 4.10.7.1, WW executes an agreement containing contractual terms as to which Network Operator provided, during the course of negotiations, a good faith estimate of incremental cost in accordance with Section 4.10.7.1, Network Operator shall be entitled to receive income from WW to offset the additional expense after the execution of such agreement for the amount of incremental cost Network Operator demonstrates it has actually incurred and paid as a result of WW's agreeing to the contractual term objected to. Network Operator shall take commercially reasonable efforts to avoid or mitigate such costs.

4.10.7.4 With respect to the agreements of the type described in Section 4.10.7.1, the Network Operator will interact and communicate on WW's behalf with any such third parties, as appropriate or as required in order to fulfill Network Operator's obligations under this Agreement. Network Operator shall not have, and shall take no action implying that it has, authority to terminate or materially modify any provision of such an agreement or to waive any material rights of WW thereunder. WW shall take reasonable steps to notify any such third parties of Network Operator's role with WW for that purpose if required by such third parties, including informing such third parties of the existence of this Agreement.

4.10.8 Annual Plan Reporting

4.10.8.1 Within 180 days of the Commencement Date, the Network Operator shall prepare and submit to WW an Initial Plan ("Initial Plan"). The Initial Plan shall only cover the period from the Effective Date through the first business day of the fourth quarter of the following calendar year in which the Effective Date occurs. The Initial Plan shall include a narrative outlining the principal activities and anticipated expenditures of the Network Operator for the period covered by the Initial Plan.

4.10.8.2 Beginning with the first business day of the fourth quarter of the period covered by the initial plan required hereunder, and by the beginning of each fourth calendar quarter thereafter during the Term of this Agreement, the Network Operator shall prepare and submit to WW an Annual Plan. The Annual Plan shall include a plan for the succeeding calendar year and a three (3) year plan. Each plan shall specify, among other things, expected Network Revenue, all expected operating costs associated with the WW Network, and all CAPEX Upgrades and Updates that Network Operator recommends should be undertaken by WW and Members within the respective one and three year periods, as well as such other information and detail as may be requested by the IPT. The Network Operator will develop the priorities and schedule for CAPEX Upgrades and Updates in coordination and consultation with the IPT. The Annual Plan shall be subject to approval by WW, which approval shall not be unreasonably withheld.

4.10.9 Network Operator Financial Reporting. Network Operator shall furnish WW with the following Financial Statements reflecting all Network Operator's assets, liabilities, income and expenses limited to those related to the WW Network.

4.10.9.1 Quarterly, within sixty (60) days after the end of each calendar quarter, an unaudited Financial Statement for the quarter just ended;

4.10.9.2 Annually, within one hundred twenty (120) days after the end of the Network Operator's fiscal year, an audited Financial Statement for the fiscal year just ended; and

4.10.9.3 Quarterly, sufficient information and analysis to establish, to WW's reasonable satisfaction, the accuracy and completeness of payments made or owed to WW.

4.10.9.4 Each Financial Statement shall be accompanied by an Officer's Certificate certifying that (a) the Financial Statement has been prepared from Network Operator's books and records in accordance with IFRS, is true, correct and complete and fairly presents in all material respects the financial condition of Network Operator's WW operations as of the dates, and for the periods, indicated thereon and (b) there has been no fraud or intentional or willful misconduct by any Person in connection with the recordation, maintenance, or preparation of the Financial Statement, or any other financial documents, record or information.

4.11 Non-Solicitation/Competition. The Network Operator shall not enter into any contract with a Commercial or Residential Customer located within a Member's service area or with a Member itself, or attempt to solicit business with and/or provide Services to Members similar to those provided to WW hereunder within the geographical area serviced by the WW Network up to six (6) months prior to the expiration of the or Renewal Term of this Agreement, without the prior written consent of WW.

4.12 Maintenance Requirements, Procedures and Reporting.

4.12.1 Maintenance Level. Network Operator shall maintain the WW Network and its components in the same or better operational condition that existed when the WW Network was turned over to Network Operator.

for maintenance and operation. Equipment nearing end-of-useful-life condition will be replaced with same or better performing equipment as specified in the Annual plan in section 4.6. All software and firmware shall be upgraded to the latest release as appropriate. In performing its services hereunder, Network Operator shall take workmanlike care to prevent impairment to the signal continuity and performance of the WW Network. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a truck roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other WW Network facilities, then Network Operator shall make such personnel available as may be necessary in order to accomplish such maintenance.

- 4.12.2 Change Documentation.** Network Operator shall maintain detailed change logs for all software and firmware upgrades and patches and all changes to or replacement of any equipment in the WW Network. Change logs shall be maintained in a searchable database.
- 4.12.3 Scheduled Maintenance.** Network Operator shall perform appropriate Scheduled Maintenance on the WW Network in accordance with all applicable laws, codes and regulations, and with Network Operator's then current preventative maintenance procedures, which shall meet or exceed standard industry practice.
- 4.12.4 Notice of Scheduled Maintenance.** Network Operator shall notify WW at least ten (10) days prior to any Scheduled Maintenance which will or is reasonably likely to have a material impact on Services. Network Operator will normally perform Scheduled Maintenance which is reasonably expected to produce any signal discontinuity during standard maintenance windows to be established by Network Operator. If Scheduled Maintenance must occur outside such standard maintenance windows, Network Operator shall use its best efforts to coordinate between the Parties and any affected Commercial Customer. WW may not prevent Network Operator from performing maintenance that Network Operator deems necessary. WW shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Network Operator's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Network Operator shall notify WW and any affected Commercial Customer at Network Operator's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.
- 4.12.5 Unscheduled Maintenance.** Network Operator shall notify WW and any affected Commercial Customer connected to the WW Network as soon as practicable after becoming aware of the need for any Unscheduled Maintenance. Network Operator shall perform Unscheduled Maintenance, which shall consist of:
- 4.12.5.1** Emergency Unscheduled Maintenance in response to an alarm identification originated by either Network Operator or WW, end-user or by any other third party of any verifiable failure, interruption or impairment in the operation of the WW Network, or upon learning of any event imminently likely to cause the failure, interruption or impairment in the operation of the WW Network; and
 - 4.12.5.2** Non-Emergency Unscheduled Maintenance in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the WW Network not covered by Scheduled Maintenance. Network Operator shall use its best efforts to promptly report the need for Unscheduled Maintenance to WW in accordance with Network Operator's reasonable procedures, recognizing that in some instances such notification may not be possible until after the Unscheduled Maintenance has occurred, in which case such notification shall be given as soon as possible but no later than the start of the next business day. Network Operator will log the time of any such report, verify the problem and dispatch personnel in accordance with Commercial Customers' SLAs to take corrective action.
- 4.12.6 NOC.** Network Operator shall operate and maintain a NOC staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel. Network Operator's maintenance personnel shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Network Operator shall maintain a toll-free telephone number for the contacting of personnel at the NOC. Network Operator's NOC personnel shall dispatch maintenance and repair personnel along the system to handle and, repair, problems detected in the WW Network: (i) through Network Operator's remote network monitoring equipment and/or upon notification by WW or (ii) upon credible notification by any third party or

verification thereof. Network Operator shall make and maintain arrangements for a backup location for the NOC or remote management capability in the event its usual location unexpectedly becomes unavailable or unusable, and shall inform WW of such arrangements

4.12.7 Procedure Manual. Network Operator shall maintain and comply with a written procedure manual, subject to WW approval which shall not be unreasonably withheld, documenting the preventative and restorative procedures it will use to manage and monitor the WW Network and ensure that SLAs are met.

4.12.8 Insurance Claim Documentation. Network Operator shall obtain and maintain such information and documentation regarding property damage to Network Segments that may be required in order to present claims for insurance covering property losses and/or to recover reimbursement from persons that may be liable for such losses.

4.12.8.1 Network Operator shall diligently prosecute and resolve, at its own expense, any claims under the applicable policies under ARTICLE 10 and shall apply any proceeds of such claims to the repair or replacement of the damaged property, except that, in the case of a claim or series of claims arising out of a single event totaling more than \$500,000, the Network Operator must obtain the prior written approval of WW for any compromise of the amount of the claim and for any disposition of proceeds, which approval shall not be unreasonably withheld.

4.12.9 Legal Reporting. Network Operator shall prepare and file with applicable law enforcement agencies any reports required by law relating to incidents involving the WW Network.

4.12.10 Outage Response. Network Operator shall respond to any outage or other interruption, of service or a failure of the WW Network to operate in accordance with the specifications set forth in any SLA as quickly as possible (allowing for delays caused by circumstances beyond the reasonable control of Network Operator) in accordance with the procedures set forth herein. When restoring a cut cable in the WW Network, Network Operator will work to restore all traffic as quickly as possible in accordance with the SLA.

4.12.11 Subcontractors. Network Operator may subcontract any of the maintenance services hereunder; provided that Network Operator shall require the subcontractor(s) to perform in accordance with the requirements and procedures set forth herein including applicable insurance requirements. The use of any such subcontractor shall not relieve Network Operator of any of its obligations hereunder. Without limiting its obligations under this Agreement, Network Operator shall comply with all applicable tax and employment laws and regulations in engaging any subcontractor to perform such services or any portion thereof.

4.12.12 Network Testing. WW may, upon reasonable notice but no more frequently than every three (3) years, direct Network Operator to test Network Segments of the WW Network. WW shall have the right, but not the obligation to be present to observe the testing. Network Operator shall provide WW with a copy of any such test results.

4.13 Compliance with Network Policies. Network Operator shall operate the WW Network in full compliance with all Network Policies.

4.14 Performance.

4.14.1 Network Operator agrees that the performance of the Services covered by this Agreement and each Commercial Customer contract will meet or exceed the standards set forth in the SLA the Parties are in the process of completing (which, when complete, will be attached as Appendix E), subject to the limitations and in accordance with the provisions set forth in this Agreement.

4.14.2 Upon request by either Party, WW and Network Operator will review and agree to commercially reasonable changes, modifications, deletions and replacements of and additions to the performance standards and the service levels under this Agreement, the SLA and each Commercial Customer contract for the purposes of supporting the continuing development, and evolving priorities of WW, Commercial Customers and end users. The Parties agree to cooperate and deal with each other in good faith to promptly resolve, on a reasonable basis in consonance with the purposes of the review process, any differences between the Parties regarding appropriate changes to, modifications of, additions to, deletions of and replacements of the performance standards and the service levels.

- 4.14.3** Network Operator shall implement the necessary measurement and monitoring tools and procedures required to set baseline measurements and to measure, record and report Network Operator's performance of the Services as against KPI's, as the same may evolve and be supplemented and enhanced during the Term, and in a reasonable level of detail. Network Operator shall provide WW and its designees' electronic access to such records and reports as they may reasonably request.

4.15 Inspections and Audits.

- 4.15.1** Network Operator shall maintain a complete audit trail of all financial and non-financial transactions resulting from or arising in connection with the Agreement. Network Operator shall provide to WW, its auditors (including internal audit staff and external auditors), inspectors, regulators and other representatives as WW may from time to time designate in writing, access at all reasonable times to any facility or part of a facility at which either Network Operator or any of its subcontractors is providing the Services, to Network Operator personnel, and to data and records relating to the Services for the purpose of performing audits and inspections of either Network Operator or any of its subcontractors to:

4.15.1.1 Verify the accuracy of charges and invoices;

4.15.1.2 Verify the integrity of the operational status of the WW Network and examine the systems supporting that network; and

4.15.1.3 Examine Network Operator's performance of the Services.

- 4.15.2** Network Operator shall prepare and maintain detailed records regarding its compliance with the performance standards and minimum service levels and shall permit WW and its designees' electronic access to all such records. Upon request, Network Operator shall provide WW with information and reasonable electronic access to such records and the service performance measurement tools and procedures relating thereto.

- 4.15.3** Network Operator shall provide to WW's auditors, inspectors, regulators, and representatives such assistance as they require, including installing and operating audit software. Network Operator shall cooperate fully with WW or its designees in connection with audit functions and with regard to examinations by regulatory authorities. WW's auditors and other representatives shall comply with Network Operator's reasonable security requirements in connection with audit or examination. Network Operator shall maintain financial and other records for at least seven (7) years after the end of the Term.

- 4.15.4** Such access will require twenty-four (24) hour notice to Network Operator and will be provided at reasonable hours. If any audit or examination reveals that Network Operator's accounting for the audited period is not correct (other than amounts in dispute and the subject of active dispute resolution procedures pursuant to ARTICLE 11), Network Operator shall promptly make all remunerative payments to WW.

- 4.15.5** Network Operator agrees to make any changes and take other actions which are necessary in order to maintain compliance with laws and regulations applicable to its performance and provision of the Services and Network Policies. WW may submit to Network Operator findings and recommendations regarding compliance by Network Operator with applicable laws and regulations which Network Operator will analyze and consider in good faith. Network Operator shall promptly respond to WW regarding Network Operator's evaluation and activity plan for such findings and recommendations.

4.16 Resources and Facilities.

- 4.16.1** The use by Network Operator of any WW Network facilities as described in this Agreement (including as described in any Commercial Customer contracts) will not constitute or create any lease, leasehold interest, estate for any period or other similar interest in the WW Network, but instead, unless expressly constructed otherwise, will constitute a limited license to use the WW Network to provide services to WW Customers for the periods and subject to the terms of any Commercial Customer contract or this Agreement.

- 4.16.2** Except as otherwise provided in the Agreement, Network Operator will have the responsibility and obligation to provide and administer, manage, support, maintain and pay for all resources (including, without limitation, personnel, hardware, software, facilities, services and other items, however described) necessary or appropriate for Network Operator to provide, perform and deliver the Services as described in the Agreement.

- 4.16.3 Network Operator will provide and have available an adequate number of trained and qualified personnel as necessary or appropriate to facilitate and ensure the timely and proper definition, provision, performance and delivery of the Services in accordance with the Agreement and all applicable laws and regulations.
- 4.16.4 WW will provide reasonable access to any portion of the WW Network and appurtenant infrastructure used by Network Operator necessary to provide and perform its Services hereunder (including, without limitation, the attendant WW Network infrastructure, rights-of-way, access points, etc.) to Network Operator's authorized employees, agents and representatives as necessary or appropriate for the performance, delivery and use of the Services in support of network operations over the WW Network and for the operation, maintenance, upgrade, support and use of the WW Network.

4.17 Security of WW Network Infrastructure.

- 4.17.1 WW authorizes Network Operator all access to the facilities and premises related to the WW Network needed to support the Services covered by this Agreement. Network Operator shall establish, subject to WW's reasonable approval, and comply with written policies and procedures for ensuring the security of the WW Network in tune with industry best practices, including without limitation physical security, personnel security, access control, meeting the needs of law enforcement, and monitoring to ensure compliance with the policies and procedures. Network Operator shall submit to WW for approval policies and procedures Network Operator will follow with respect to Criminal Offender Record Information a/k/a "CORI" checks to be conducted on all personnel of the Network Operator and its subcontractors that will enter Residential or Commercial Customer premises and will deny such access to all persons who do not pass a CORI check.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Network Operator. Network Operator represents warrants and covenants that, as of the Effective Date and continuing throughout the Term of this Agreement.

- 5.1.1 It is a municipal light plant, validly existing and is in good standing under the Laws of the Commonwealth of Massachusetts.
- 5.1.2 It has all requisite statutory power and authority to enter into, and fully perform in accordance with the terms of the Agreement; and the execution, delivery and performance of the Agreement contemplated hereby have been duly and properly authorized by all requisite actions of the Network Operator.
- 5.1.3 This Agreement constitutes a legal, valid and binding obligation of Network Operator, enforceable against it in accordance with its terms.
- 5.1.4 The execution, delivery and performance of this Agreement will not constitute (i) a violation of enabling legislation, its bylaws or any judgment, order or decree; (ii) a material default under any material contract by which it or any of its material assets are bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a default as described in (ii).
- 5.1.5 Neither Network Operator nor any of its respective officers, directors or Affiliates has been subject to any criminal proceeding or investigation, nor has any such proceeding or investigation been threatened against Network Operator, or any of its employees, agents; municipal light board members or Affiliates.
- 5.1.6 It has, and during the Term will have, and each of the employees and subcontractors that it will use to provide and perform the Services during the Term will have, the necessary knowledge, skills, experience, qualifications, rights and resources to provide and perform the Services in accordance with the Agreement;
- 5.1.7 It has successfully provided and performed the Services or services that are substantially equivalent to the Services in other settings and circumstances;
- 5.1.8 Consistent with the obligations of the Network Operator under this Agreement, the Services will be performed in a diligent manner in accordance with or exceeding generally accepted industry standards applicable to the performance of such Services.

- 5.1.9** It will perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, trade secret, copyright or other proprietary right of any third party.
 - 5.1.10** There is no claim, litigation or proceeding pending or (to the best of its knowledge) threatened against Network Operator that Network Operator has not disclosed to WW or its designee prior to the Effective Date, including but not limited to any claim, litigation or proceeding with respect to the Services to be provided under this Agreement alleging infringement, misappropriation or violation of any patent, trade secret, copyright or other proprietary right of any third party.
 - 5.1.11** At its cost and expense, it has obtained (or will obtain when necessary to perform the services hereunder) and will maintain all necessary licenses, permits, franchises and regulatory approvals applicable to its business and the performance of the Services hereunder and the operation of the WW Network.
 - 5.1.12** It is and will be in compliance with all laws, orders including court orders, and, regulatory requirements applicable to the performance of its obligations under this Agreement.
 - 5.1.13** It shall timely and diligently cooperate to affect the goals, objectives and, purposes of this Agreement and to facilitate the performance of the respective duties and obligations of the Parties under this Agreement in a commercially reasonable manner.
 - 5.1.14** It acknowledges and accepts that as the Network Operator, it has a responsibility to the interests of the WW Network are protected in all transactions involving third parties that relate to the WW Network and agrees that it shall engage in no transaction relating to the WW Network that would constitute self-dealing.
 - 5.1.15** The Network Operator has taken out all insurance required under this Agreement, except for any insurance that is not required at the Effective Date, which shall be timely procured, and has not done or omitted to do or suffered anything to be done or not to be done which has rendered or would in the ordinary course of business render any such insurance void or voidable.
 - 5.1.16** The Network Operator will operate the WW Network, so that the WW Network is and remains, in compliance with all Network Policies, applicable laws, regulations, and orders, including court orders, and all regulatory requirements applicable to the performance of its obligations under this Agreement and the operation of the WW Network. Network Operator agrees that it will notify WW immediately in writing of the occurrence of any event which renders the foregoing warranties and representations incorrect.
- 5.2** WW represents warrants and covenants that, as of the Effective Date and continuing throughout the Term of this Agreement:
- 5.2.1** It is a municipal light plant cooperative, established, organized and existing pursuant to Chapter 164, Section 47C of the Massachusetts General Laws.
 - 5.2.2** It has all requisite statutory power and authority to enter into, and fully perform in accordance with the terms of the Agreement; and the execution, delivery and performance of the Agreement contemplated hereby have been duly and properly authorized by all requisite actions of WW.
 - 5.2.3** This Agreement constitutes a legal, valid and binding obligation of WW, enforceable against it in accordance with its terms.
 - 5.2.4** The execution, delivery and performance of this Agreement by WW will not constitute (i) a violation of any judgment, order or decree; (ii) a material default under any material contract by which it or any of its material assets are bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a default as described in (ii).
 - 5.2.5** Neither WW nor any of its respective officers, directors or Affiliates has been subject to any criminal proceeding or investigation, nor has any such proceeding or investigation been threatened against WW, or any of its employees, or agents.
 - 5.2.6** There is no claim, litigation or proceeding pending or (to the best of its knowledge) threatened against WW that WW has not disclosed to the Network Operator or its designee prior to the Effective Date, including but not limited to any claim, litigation or proceeding with respect to the Services to be provided under this Agreement alleging infringement, misappropriation or violation of any patent, trade secret,

copyright or other proprietary right of any third party. It will perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, trade secret, copyright or other proprietary right of any third party.

5.2.7 It is and will be in compliance with all laws, orders including court orders, and regulatory requirements applicable to the performance of its obligations under this Agreement.

5.2.8 It shall timely and diligently cooperate to affect the goals, objectives and purposes of this Agreement and to facilitate the performance of the respective duties and obligations of the Parties under this Agreement in a commercially reasonable manner. WW agrees that it will notify Network Operator immediately in writing of the occurrence of any event which renders the foregoing warranties and representations incorrect.

ARTICLE 6 INTEGRATED PLANNING TEAM & REVIEW PROCESS

6.1 Integrated Planning Team.

6.1.1 The Parties shall form and participate in an IPT in accordance with the provisions of this ARTICLE 6 for the following purposes: (i) to evaluate the objectives, substance and performance of the Services, any necessary revisions to applicable pricing, charges and fees, and the pricing of new and replacement services; (ii) to evaluate at least annually and recommend modifications to, and evolution of, the Services (including KPI's and Network Policies) and determine whether existing pricing should be amended to reflect modifications of the Services; (iii) to report to WW and the Network Operator regarding each of the foregoing areas; and (iv) to resolve disputes submitted by the Parties pursuant to ARTICLE 11.

6.1.2 The IPT will be comprised of two representatives of each Party, representing technology and business management. The IPT will be chaired by one of the representatives of WW.

6.1.3 The IPT shall establish procedures to carry out its functions and shall meet at least once a year.

6.2 Changes to Agreement Resulting from Periodic Service Requirement Reviews. Within thirty (30) days after submission of annual recommendations by the IPT, (i) the Parties shall make a threshold determination as to whether the changes proposed by the IPT may be implemented without an amendment to the Agreement; and, (ii) if the changes are determined to result in a material change in scope, price, terms and conditions of this Agreement, then the Parties may either negotiate to amend the Agreement (including the Schedules thereto) or consider the change during any subsequent renewal. If a mutual determination is made that such changes can be implemented without the requirement of an amendment to this Agreement, their implementation nonetheless shall require the express written approval of both parties.

ARTICLE 7 CONFIDENTIALITY

7.1 Confidential Information. shall mean all information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by the Party disclosing the information ("Disclosing Party") or otherwise, which is disclosed to Party receiving the information ("Receiving Party") regardless of whether such information is disclosed intentionally or inadvertently, before or after the execution of this Agreement, in connection with the Services and including all reports, analyses, notes, data or other information that are based on, contain or reflect any such Confidential Information. However, Confidential Information shall not include the following:

(a) Information which is at the time of the disclosure or becomes publicly available other than as a result of a violation of this Agreement;

(b) Information which is or becomes available on a non-confidential basis from a source which is not known to the Receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation;

(c) Information which the Receiving Party can demonstrate was legally in its possession prior to disclosure by the Disclosing Party; or

(d) Information subject to disclosure pursuant to Section 7.3, below.

- 7.2 Nondisclosure and Use of Confidential Information.** Confidential Information shall not be used for any purpose other than to perform a Party's respective obligations under the Agreement. Confidential Information shall be held in strict confidence by Receiving Party and shall not be disclosed without prior written consent of Disclosing Party, except to the officers, employees, attorneys, agents, consultants and advisors of the Receiving Party, to whom disclosure is reasonably necessary in connection with the Agreement (with respect to the Receiving Party, "Representatives"). Receiving Party will require all Representatives to whom it discloses Confidential Information to observe the non-disclosure obligations of this Agreement.
- 7.3 Required Disclosure.** Notwithstanding anything in Section 7.2 to the contrary, and subject to all terms and provisions of this Section 7.3, a Receiving Party may disclose Confidential Information if necessary to comply with any applicable law, order, regulation, ruling, subpoena or order of a governmental authority or court. In the event that Receiving Party is so requested or required to disclose any Confidential Information, the Receiving Party to the extent permitted by Law, shall promptly notify the Disclosing Party of such request or requirement prior to disclosure so that Disclosing Party may, if it so elects, seek an appropriate protective order or otherwise seek to contest, limit or protect the confidentiality of any such requested or required disclosure. With respect to any disclosure made by Receiving Party pursuant to this Section 7.3, Receiving Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand or request. Receiving Party will provide reasonable cooperation to Disclosing Party and its legal counsel with respect to performance of the covenants undertaken pursuant to this Section 7.3. The Parties acknowledge they are subject to Massachusetts Public Records Laws and anything undertaken with regard to disclosure of Confidential Information must be consistent with applicable laws.
- 7.4 Publicity.** The Parties shall cooperate with one another to prepare any public statement or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release, news conference or response to press inquiry in which the WW Network is concerned or discussed and to coordinate as to the content and timing of their release or response. Approval of either Party as to content or timing of such statements, announcements or press release shall not be unreasonably withheld. This Section 7.4 shall not be deemed to apply to disclosures in the ordinary course under any regulatory reporting requirements imposed upon other party.

ARTICLE 8 TERMINATION AND OTHER REMEDIES

- 8.1 Termination by WW.** WW may terminate this Agreement for the following reasons:
- 8.1.1** A material breach of this Agreement by Network Operator that remains uncured for a period of thirty (30) days after receipt of written notice thereof or in the case of a breach under ARTICLE 10, remains uncured for a period of ten (10) days; or
 - 8.1.2** There exists a series of non-material or persistent breaches by Network Operator that, in the aggregate, have a material and significant adverse impact on the Services to or the support and operational management of the WW Network; or
 - 8.1.3** Network Operator becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it), a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States, or transfers all or substantially all of its assets to another person or entity; or
 - 8.1.4** Network Operator assigns this Agreement without the consent of WW in violation of Section 12.9; or
 - 8.1.5** Network Operator fails to maintain service levels as specified in Appendix E [expand].
- 8.2 Force Majeure.**
- 8.2.1** If a Force Majeure Event occurs after the Commencement Date and results in a disruption to the basic functioning of more than ten percent (10%) of the WW Network as set forth in Appendix E for a period of more than ninety (90) days despite compliance by both Parties with their obligations under this

Agreement and commercially reasonable efforts by the Network Operator to restore such functioning, either Party may terminate this Agreement upon one hundred eighty (180) days' notice to the other. In the event of termination under this Section, the Network-Operator shall pay WW all amounts owing through the date of termination.

- 8.2.2** If a Force Majeure Event occurs after the Commencement Date that is not within the scope of Section 8.2.1 and results in a disruption to the basic functioning of one or more elements of the WW Network, the Network Operator shall take all commercially reasonable action to restore such functioning to levels and with the urgency established by this Agreement, but, provided the Network Operator has taken all commercially reasonable action, the lack of functioning so caused shall not create an instance of default under this Agreement, and Network Operator's time to achieve levels of functioning established by this Agreement shall be extended by the period of time reasonably required to restore such functioning as soon as is reasonably practicable by one acting with urgency.

8.3 Services Transfer Assistance.

- 8.3.1** The Parties agree that Network Operator will cooperate with WW to assist in the orderly transfer of all WW assets, WW Network, and WW customer data and records accumulated by Network Operator during the term of this contract, the services, functions, responsibilities, tasks, and operations comprising the Services hereunder and the services provided by Network Operator under each Commercial Customer SLA contract to a successor Network Operator in the event of the expiration or termination of the Agreement for any reason. Neither the Term of this Agreement nor Network Operator's obligations arising under any SLA or Commercial Customer contract shall be deemed to have expired or terminated until either the services transfer assistance described herein is completed or WW waives the requirement for their completion.
- 8.3.2** Upon WW's request, Network Operator shall provide services transfer assistance, as described herein, in connection with migrating the work of Network Operator to another Network Operator commencing up to twelve (12) months prior to expiration, or upon any notice of termination or of non-renewal of the Agreement pursuant to ARTICLE 3.
- 8.3.3** Services transfer assistance, as described herein, shall be provided through the effective date of the expiration or termination of the Services being terminated. Upon request by WW, the effective date of such expiration or termination shall be extended for up to one year thereafter pursuant to the terms and conditions of the Agreement.
- 8.3.4** WW agrees to negotiate with and to compensate Network Operator for any reasonably-incurred, direct expenses associated with the orderly transfer of WW assets, WW Network, and WW Residential Customers, Commercial Customers and Dark Fiber lease customers' data to a successor network operator.

8.4 Other Rights Upon Termination. At the expiration or earlier termination of the Agreement for any reason, however described, Network Operator agrees in each such instance, as applicable;

- 8.4.1** Upon WW's request, Network Operator will transfer or assign to WW or its designee, on mutually acceptable terms and conditions, any third party agreements that permits assignment including, without limitation, third party agreements for maintenance, disaster recovery services and other necessary third party services then being used by Network Operator to perform the Services subject to the payment by WW of any transfer fee or charge imposed by the applicable vendors.

8.5 Termination By Network Operator. Network Operator may terminate this Agreement for the following reasons:

- 8.5.1** A material breach of this Agreement by WW that remains uncured for a period of thirty (30) days after receipt of written notice thereof; or
- 8.5.2** WW becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States, or transfers all or substantially all of its assets to another person or entity.

ARTICLE 9 INDEMNIFICATION

- 9.1 Indemnification by Network Operator.** For purposes of this ARTICLE, the term “Network Operator” shall include each and all of its subcontractors, assignees, and any other third party acting at the direction of them. To the maximum extent permitted by law, the Network Operator shall indemnify, defend and hold harmless WW, its Affiliates, members, officers, directors, employees, agents, successors and assigns, as Indemnified Parties, from and against all claims, liabilities, costs, or expenses arising out of: (a) bodily injury, death, personal injury or property damage resulting from the negligence or willful misconduct of Network Operator, (b) claims by third parties for breach by the Network Operator of, or default by the Network Operator under, any contract between Network Operator and such third party, (c) any loss, cost, damage or expense resulting from Network Operator's non-compliance with applicable laws, orders, or rules of any governmental authority, (d) any loss, cost, damage or expense resulting from Network Operator's act or omission that causes, in whole or in part, WW to breach any agreement between WW and a pole owner, conduit owner, Commercial Customer, or any other person relating to the WW Network, or (e) any loss, cost, damage or expense resulting from Network Operator's infringement or misappropriation of, any patent, trade secret, copyright or other proprietary right of any third party. The foregoing indemnity shall not be deemed to apply to any of the foregoing claims, liabilities, costs or expenses to the extent attributable to the Indemnified Party's own negligent acts or omissions or willful misconduct, or those of anyone acting by, through or under the Indemnified Party.
- 9.2 Indemnification by WW.** To the maximum extent permitted by law, WW shall indemnify, defend and hold harmless Network Operator, its Affiliates, officers, directors, employees, agents, successor and assigns, as Indemnified Parties, from and against all claims, liabilities, costs or expenses arising out of (a) claims by third parties for breach by WW of, or default by WW under, any contract between WW and such third party and (b) any loss, cost, damage or expense resulting from WW's non-compliance with laws, orders, or rules of any governmental authority. The foregoing indemnity shall not be deemed to apply to any of the foregoing claims, liabilities, costs or expenses to the extent attributable to the Indemnified Party's own negligent acts or omissions or willful misconduct, or those of anyone acting by, through or under the Indemnified Party.
- 9.3 Notice of Claims; Indemnification Procedures.** The Indemnified Party shall provide written notice immediately to the Indemnifying Party of any loss, event, happening or occurrence which could be the basis of an Indemnified Claim. So long as the Indemnifying Party is not in default in the performance of its obligations under the Agreement, as between the Indemnified Party and the Indemnifying Party, the Indemnifying Party shall retain primary responsibility for the conduct of an Indemnified Claim Proceeding and the defense (and any appropriate appeal) thereof. As between the Indemnified Party and the Indemnifying Party, all costs incurred with respect to any Indemnified Claim Proceeding (including, but not limited to, reasonable costs and attorneys' fees) shall be borne by the Indemnifying Party, and the Indemnifying Party's indemnification obligations set forth in this ARTICLE 9 shall extend to all such costs (but net of the amount of any insurance proceeds realized by such Indemnified Party from insurance policies with respect to such matters or any recoveries by any Indemnified Party from any third party, without duplication).
- 9.4** In the event that an Indemnifying Party defends an Indemnified Party pursuant to the terms hereof, and the final adjudication determines that the Indemnified Party bears some portion of liability under the Indemnified Claim which is not subject to the Indemnifying Party's indemnification obligations hereunder, the costs of such defense will be apportioned between the Indemnifying Party and the Indemnified Party based upon such parties' ultimate liability after giving effect to the indemnification provisions hereof. Each Indemnified Party agrees to cooperate and to cause its employees and agents to cooperate with the Indemnifying Party in the defense of any such Indemnified Claim and the relevant records of the Indemnified Party shall be available to the Indemnifying Party with respect to any such defense, subject to the confidentiality restrictions and limitations set forth in ARTICLE 7.
- 9.5** Any settlement of an Indemnified Claim shall be subject to the written approval of both the Parties.

ARTICLE 10 INSURANCE AND RISK OF LOSS

- 10.1 Network Operator Liability Insurance.** During the Term of the Agreement, Network Operator shall maintain and keep in force, at its own expense; the following minimum insurance coverages. The insurance required is in addition to and separate from any other obligations contained in this Agreement.
- 10.1.1** Workers' Compensation Insurance in compliance with state law, Such Worker's Compensation Insurance policy(ies) shall include coverage for statutory worker's compensation benefits, voluntary compensation

coverage and all appropriate state specific endorsements. Such policy(ies) shall also provide Employers Liability Insurance per state law, with not less than the following limits:

10.1.1.1 Bodily Injury with Accident - \$1,000,000 (one million) per accident;

10.1.1.2 Bodily Injury with Disease - \$1,000,000 (one million) policy limit; and

10.1.1.3 Bodily Injury with Disease - \$1,000,000 (one million) per employee.

10.1.2 Comprehensive Automobile Liability Insurance and Excess Liability, including coverage for bodily injury, property damage and other liability arising out of the use of owned, non-owned, leased or hired automobiles to be used in the performance of Network Operator's obligations hereunder. As used herein, the term "automobile" means any vehicle (including land motor vehicles, trailers and semi-trailers design for travel on public roads, whether licensed or not and including any machinery or apparatus attached thereto). Such Comprehensive Automobile Liability Insurance shall have a combined single limit of \$1,000,000 (one million) per occurrence (Bodily Injury and Property Damage Liability) or the amount required by applicable law, whichever is greater.

10.1.3 Commercial General Liability and Excess Liability Insurance shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, XCU and liability assumed under this Agreement, with not less than the following limits

10.1.3.1 \$1,000,000 (one million) per occurrence;

10.1.3.2 \$1,000,000 (one million) personal injury and advertising injury; and

10.1.3.3 \$2,000,000 (two million) annual aggregate.

10.1.3.4 Network Operator's Excess Liability insurance carrier(s) may not seek contribution from primary liability policies other than Network Operator's own. The Excess Liability is provided on a Claims Made Form, with a retroactive date of 10/01/1986, which precedes the effective date of the Master Agreement. Network Operator shall continue the coverage for five years following the termination of the agreement. Network Operator agrees to purchase an extended reporting period if during the term of this Agreement, the policy is canceled or not renewed and not replaced by another claims-made policy with a retroactive date preceding the commencement of the contract.

10.2 Endorsements. The policies listed in Section 10.1 above, other than Worker's Compensation Insurance and other statutory insurances where it would be inappropriate, must be endorsed to name WW and WW Members as additional insureds on a primary and noncontributory basis.

10.2.1 Network Operator waives all rights to recover against WW and Members for any loss or damage to its tangible personal property (whether owned or leased) from any cause covered by insurance maintained by Network Operator, for which Network Operator receives payment for all such damages. Network Operator will cause its insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies maintained by Network Operator. All required policies must be endorsed to waive the insurer's rights of subrogation against WW and WW Members and provide a severability of interests and cross-liability clause.

10.2.2 All insurance policies shall be written by insurance companies authorized to do business in the Commonwealth of Massachusetts. WW reserves the right to reject insurance written by an insurer it deems unacceptable because of a poor financial condition or because it is not operating legally.

10.2.3 Except as set forth in Section 10.2.1, certificates of insurance evidencing the above referenced insurance policies shall be provided to WW within thirty (30) days following the Effective Date and within ten (10) days following policy renewal, with copies of the complete policies with all endorsements. To the extent that certain types of insurance are not required within thirty (30) days of the Effective Date, Network Operator shall seek consent from WW to procure such insurance when required and shall furnish the applicable certificates within five (5) days of requiring such insurance.

10.2.4 Network Operator shall provide WW with a copy of any notice it receives of cancellation, material change or non-renewal of the coverage within 10 calendar days after receipt of such a notice. No such cancellation or material modification shall affect Network Operator's obligation to maintain the insurance

coverages required by the Agreement. WW shall be named as loss payee as its interest may appear on the property insurance policies of Network Operator. Network Operator shall be responsible for payment of any and all deductibles and self-insurance retentions from insured claims under its policies of insurance. Network Operator shall not perform under the Agreement without the insurance required herein and shall not permit its subcontractors to perform any services under this Agreement without documenting commercially reasonable types and amounts of liability insurance coverage. If Network Operator or its subcontractors fail to comply with any of the insurance requirements herein, upon written notice to Network Operator by WW and a ten (10) day cure period, WW may, without any obligation to do so, and in addition to any other remedies WW may have, procure such insurance and Network Operator shall pay WW the cost thereof plus a reasonable administrative fee as designated by WW. The maintenance of the insurance coverages required under the Agreement shall in no way operate to limit the liability of Network Operator to WW under the provisions of the Agreement.

10.2.5 Irrespective of the requirements for insurance to be secured and maintained hereunder, the insolvency, bankruptcy or failure of any insurance company carrying insurance required hereunder or the failure of any insurance company to pay Claims accruing, shall not affect, negate or waive any of the provisions of this Agreement including, without exception, the indemnity obligations of the Network Operator.

10.3 Property Insurance. Each Member shall be required by WW to acquire and maintain commercially available All Risk Property insurance for the Network Segment owned by the Member. Certificate of insurance providing evidence of such coverage to be provided to Network Operator.

10.4 Income Loss Insurance. WW may acquire and maintain income loss insurance at its own expense to cover income losses to WW only.

ARTICLE 11 DISPUTE RESOLUTION

11.1 Dispute Resolution Procedures.

11.1.1 Any dispute between the Parties either with respect to the interpretation of any provision of the Agreement or with respect to the performance by Network Operator or by WW hereunder shall be resolved as specified in this ARTICLE 11, regardless of whether or not mention of this ARTICLE is made in any other Section.

11.1.1.1 Any Party may submit a dispute to the IPT for resolution by delivering to the other Party and to the members of the IPT a Dispute Resolution Notice.

11.1.1.2 The IPT shall meet as often as necessary to gather and furnish to each Party all information with respect to the matter in issue which is appropriate and germane in connection with its resolution.

11.1.1.3 The IPT shall discuss the problem and negotiate with the Parties in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto.

11.1.1.4 During the course of such negotiation, all reasonable requests made by one Party to the other for non-privileged information reasonably related to the Agreement, will be honored in order that each Party may be fully advised of the other Party's position.

11.1.1.5 The specific format for such discussions will be left to the discretion of the IPT, but may include the preparation of agreed upon statements of fact or written statements of position furnished by each Party to the other Party.

11.1.2 If the IPT is unable to resolve the dispute by agreement of the Parties within fifteen (15) days after the date of receipt by the other Party of the Dispute Resolution Notice, then the dispute shall be escalated to an officer of WW and an officer of Network Operator, neither of whom is then serving on the IPT, for their review and resolution within thirty (30) days after the receipt of the Dispute Resolution Notice.

11.1.3 Except in the case of an emergency, exhaustion of the foregoing procedures shall be a condition precedent to further Dispute Resolution proceedings. If the dispute is not resolved by the Parties' officers within

forty-five (45) days after the receipt of the Dispute Resolution Notice, a Party may pursue all legal and/or equitable remedies available to it under the law.

- 11.2 Continued Performance.** The Parties agree to continue performing their respective obligations under the Agreement (including the Commercial Customer contracts and SLAs) while the dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement, or unless otherwise directed by WW.

ARTICLE 12 GENERAL

- 12.1 Entire Agreement, Updates Amendments and Modifications.** The Agreement constitutes the entire agreement of the Parties with regard to the Services and matters addressed therein, and all prior agreements, letters, proposals, discussions and other documents regarding the Services and the matters addressed in the Agreement are superseded and merged into the Agreement. Updates, amendments and modifications to the Agreement may not be made orally, but shall only be made by a written document signed by both Parties. Any terms and conditions varying from the Agreement on any order or written notification from either Party shall not be effective or binding on the other Party.
- 12.2 Nonperformance, Time.** Time is of the essence to this Agreement. Except as otherwise provided in the Agreement, to the extent any nonperformance by either Party of its nonmonetary obligations under the Agreement results from or is caused by the other Party's failure to perform its obligations under the Agreement, such nonperformance shall be excused.
- 12.3 Survival.** The provisions of ARTICLES 7, 8, 9, 10 and 11, and any other provisions that by their terms cannot be performed prior to the expiration or earlier termination of this Agreement, shall survive such expiration or termination for any reason.
- 12.4 Interest on Late Payments.** Any payment due under this Agreement from one Party to the other, if not made within fourteen (14) days of the date due, shall accrue interest at the rate of one and one half (1.5) percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston.
- 12.5 Waiver.** No waiver of any breach of any provision of the Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.
- 12.6 Severability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and such provision shall be deemed to be restated to reflect the Parties' original intentions as nearly as possible in accordance with applicable law(s).
- 12.7 Counterparts.** This Agreement shall be executed in counterparts. Each such counterpart shall be an original and together shall constitute but one and the same document.
- 12.8 Governing Law, Venue.** This Agreement and any and all claims and disputes arising out of or in connection with or related to the relationships and arrangements between WW and Network Operator described in the Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of laws principles. Venue for any disputes arising under this Agreement shall be in the court of appropriate jurisdiction located in the Commonwealth of Massachusetts.
- 12.9 Binding Nature and Assignment.** This Agreement will be binding on the Parties and their respective successors and permitted assigns. Except as provided in this Section, neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other, which consent shall not be unreasonably withheld, except that WW may assign its rights and obligations under the Agreement to an Affiliate, a subsidiary of WW or a special purpose entity established and owned in whole or in the majority by WW which expressly assumes its obligations and responsibilities hereunder, without the approval of Network Operator. Unless otherwise agreed, the assigning Party shall remain fully liable for and shall not be relieved from the full performance of all obligations under this Agreement. Any attempted assignment that does not comply with the terms of this Section shall be null and void and constitute a default under Section 8.1.4. If WW assigns its rights or obligations to an Affiliate or other entity in accordance with this Agreement, WW shall provide written notice thereof to Network Operator together with a copy of the assignment document, within three (3) business days after such assignment.

- 12.10 No Third Party Beneficiaries.** Nothing in this Agreement shall be deemed to confer rights on any person not a Party hereto, as third party beneficiary or otherwise.
- 12.11 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE, REGARDLESS OF THE LEGAL THEORY UNDER WHICH LIABILITY IS IMPOSED. IN THE CASE OF INDEMNIFICATION CLAIMS ASSERTED IN CONNECTION WITH ARTICLE 9, THE TOTAL LIABILITY OF A PARTY SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED THE LIMITS OF INSURANCE PROVIDED IN ARTICLE 10.
- 12.12 Consents and Approvals.** The Parties agree that in any instance where a consent, approval or agreement is required of a Party in order for the other Party to perform under or comply with the terms and conditions of the Agreement, then such Party will not unreasonably withhold or delay such consent, approval or agreement and where consent, approval or agreement cannot be provided, the Party shall notify the other Party in a timely manner.
- 12.13 Notices.**

12.13.1 Whenever one Party is required or permitted to give notice to the other Party under the Agreement, such notice will be in writing unless otherwise specifically provided herein and will be deemed given (a) when delivered by hand, (b) one (1) day after being given to an express courier with a reliable system for tracking delivery, (c) five (5) days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, (d) when sent if delivered by facsimile, with confirmation of delivery by the sending machine or (e) when received electronically if sent by email and one of the delivery methods in (a) through (d) above.

12.13.2 Notifications will be addressed as follows:

For termination, breach or default under this Agreement or a Commercial Customer contract, notify:

In the case of Network Operator:

Westfield Gas & Electric Light Department
100 Elm Street, P. O. Box 990
Westfield, Massachusetts 01086-0990
Attention: General Manager
Fax: 413-572-0104

In the case of WiredWest:

WiredWest
99 Main Street
Old Courthouse
Northampton, MA 01060
Attn: Chairman
Fax: (413) 584-1465

with a copy to:

Diedre Lawrence
Duncan & Allen N.E., LLC
35 Braintree Hill Office Park
Suite 201
Braintree, MA 02184

Either Party hereto may from time to time change its address for notification purposes by giving the other prior written notice of the new address and the date upon which it will become effective.

IN WITNESS WHEREOF, WiredWest Communications Cooperative Corp. and Westfield Gas & Electric Light Department have caused this Agreement to be signed by their respective duly authorized representatives effective as of the day and year first above written.

WESTFIELD GAS & ELECTRIC LIGHT DEPARTMENT

Daniel J. Howard, General Manager

WIREDWEST COMMUNICATIONS COOPERATIVE CORP.

Douglas McNally, Chairman

Appendix A
Wholesale Price Schedule

The below table is the maximum wholesale price that the Network Operator shall charge WW for each WW Customer taking service on the WW Network. These wholesale price maximums shall remain in effect for the duration of this Agreement. Should this Agreement be extended beyond the original term, these wholesale prices shall be renegotiated as a condition of extending the term of this agreement. These prices are based on the total number of customers being served by Network Operator that are non Whip City customers, so if the total number of customers being served is 10,250 then the wholesale price for *all* customers is \$26.88 for internet only and \$37.48 for internet and phone service.

Subscribers	Internet Only	Phone
2500 to 5,000	\$34.69	\$12.03
Up to 9,999	\$29.47	\$11.10
Up to 14,999	\$26.88	\$10.60
Up to 19,999	\$25.24	\$10.10
More than 20,000	\$22.65	\$9.60

Appendix B

Network Operator Services Provided

Network Operations

The cost of Circuits from the WW Network to Network Operator Edge Router(s) will be negotiated once the circuit paths are determined. Network Operator will develop cost effective circuit paths from the WW Network to Network Operator edge routers. The cost to WW will be dependent upon the total number of subscriptions and the requested topology. Network Operator will negotiate the cost of the circuit paths and WW will approve.

Program Management will include

- oversight of program implementation and
- direct access to senior executive 24X7X365

Customer Service will include

- Separate 800 number to Network Operator Call Center,
- Customer Service personnel shall recognize customers based on phone number caller id where possible and then verify customer to the best of the Network Operator's ability
- Customer Service personnel shall be trained to handle most issues using a knowledge base approach before escalation to Technical Support.
- Physical Payment Center located at Network Operator's usual place of business 8:30am to 5 pm, Monday – Friday, and
- Call Center Account Agents available 8:30am to 5pm, Monday - Friday, answering as WW brand
- Off hours answering service capable of escalating technical service problems to Network Support
- Automated Customer satisfaction callback survey
- Customer Service personnel will be capable of provision service to customer.

Sales and Marketing will include

- custom branded correspondence,
- Print materials will be developed and available for distribution by the towns
- Direct Marketing
 - Constant Contact or equivalent
 - Direct mail
 - Door to door
 - Events
 - Multilevel
 - Other
- Local newspaper ads and articles
- email literature Item, and
- sales literature
- Customer relationship management tools
- Inbound sales calls through the customer service call center
- Ongoing periodic educational events

Web Site will include

- Custom branded web site to capture customer applications and interest
- Built on Network Operator framework
- Capable of provisioning customer network services
- Capable of allowing the customer to turn their service on or off
- Custom URL owned by WW
- Reporting, Customer Relationship Management Item

Billing will include

- Billing Template setup

- Customer surcharges by WW Member Town
- Custom branding as WW
- Rates management
- Electronic bill presentment
- Online bill presentment (optional at a cost)
- Collections
- Reporting
- Tax payments, as required

Tech Support will include

- Tier 1 Help Desk 24 X 7 -Phone Support
- Tier 2 Help Desk 7 am -6 PM, Monday -Saturday
- Tier 3 Network Support 24 X 7
- Tier 1 Field Support -7am -6pm, Monday -Saturday
- CPE Trouble Call Support 7am -10 pm, Monday -Saturday.
- Field Trouble Call Support 7am -10 pm, Monday -Saturday.

Email will include

- 5 email address per subscriber
- Custom domain owned by WW
- IMAP

Data Security

- Compliance with M.G.L Chapter 93H and CMR 201 Standards of Personal Information of Residents of the Commonwealth
- Backup of all customer data
 - Dailies for two weeks
 - Weeklies for two months
 - Monthlies for two years
 - Yearlies for duration of this agreement

Network Security will include

- 1 license of TrendMicro
- Backup of all network data
 - Dailies for two weeks
 - Weeklies for two months
 - Monthlies for two years
 - Yearlies for duration of this agreement
- Protection from Denial of Service attacks

Network Monitoring

- Load monitoring and reporting
- Load balancing
- High use customer monitoring for compliance of acceptable use policies

Legal and Regulatory will include

- FCC Form 477 filing
- FCC Form 499A filing
- Digital Content Millennium Act (DCMA) administration
- Communications Assistance for Law Enforcement Act (CALEA) management

VoIP services will include

- Customer Service as described in above
- Legal and regulatory: Universal Service Fund fees, taxes, and fee calculation.

VoIP Features will include:

- Free U.S. calling
- Caller-ID and call-waiting

- One-touch voicemail access
- Online call log
- Fax Mode
- Optional Bluetooth Adapter
- The utmost voice clarity
- Caller-ID blocking
- Remote Voicemail Retrieval
- Online Preferences
- Live Customer Support
- 911 Service Call Hold
- Enhanced 911
- Online Voicemail Playback
- Area Code Selection
- Encrypted calls
- 911 Email and Text Alerts
- Call Return
- Online phonebook
- 7/10-Digit Dialing
- Optional Wi-Fi Adapter
- Free calling to Canada
- Caller Name
- Anonymous call blocking
- Voicemail alerts
- Private Device
- Instant Second Line™
- Voicemail monitoring
- Call forwarding
- Voicemail-to-email forwarding (audio)
- Private Voicemail
- Three-way conferencing
- Do not disturb
- Online Voicemail Playback
- Multi-Ring
- Send to voicemail
- Personal Number
- Backup Number
- Community blacklist
- Free Mobile Minutes
- Voicemail-to text (\$4.99/month)
- Google Voice Extensions

Construction and repair personnel as required

- Construction equipment, materials
- Traffic control
- Testing
- Splicing
- Repair stock
- Supervision

Appendix C

Repair Price Schedule

Network Operator currently has resources positioned in Westfield, MA, which is roughly under a 60 minute travel time to the majority of the Members' service areas. Network Operator will position additional resources deeper geographically into the subscriber base as it is better determined where the subscribers will be located, in order to maintain our service level agreement. These prepositioned resources will include vehicles, tools and personnel. Members will be responsible for paying for spare electronics and associated material at direct cost. The following rates will be in effect during the Initial Term of this Agreement and will be renegotiated for each subsequent Renewal Term.

Downed Fiber Cable

- Regular Business Hours 8:00 am to 5:00 pm Monday thru Friday \$99.95 per hour per crew
- Outside regular business hours, including weekends and holidays: \$149.95 per hour per crew
- Billable labor includes portal to portal travel time

Broken Fiber Cable

- Regular Business Hours 8:00 am to 5:00 pm Monday thru Friday \$99.95 per hour per crew
- Outside regular business hours, including weekends and holidays: \$149.95 per hour per crew
- Billable labor includes portal to portal travel time

OLT Problem

- Regular Business Hours 8:00 am to 5:00 pm Monday thru Friday \$99.95 per hour per crew
- Outside regular business hours, including weekends and holidays: \$149.95 per hour per crew
- Billable labor includes portal to portal travel time

ONT problem

- Truck rolls for ONT Problems are covered within the price quoted for monthly services in Appendix A.

Force Majeure event recovery

- 3rd Party Contractor rate
 - Normal Business Hours
 - Fiber Technician \$150.00
 - Locate Technician \$150.00
 - Construction Crew \$200.00
 - Weekends & Holidays
 - Fiber Technician \$225.00
 - Locate Technician \$225.00
 - Construction Crew \$300.00

Appendix D
List of WW Member Towns

Town	Premises
Ashfield	741
Becket	1802
Blandford	605
Charlemont	681
Chesterfield	597
Cummington	451
Goshen	584
Heath	402
Leyden	361
New Ashford	126
New Salem	465
Peru	419
Plainfield	334
Rowe	212
Shutesbury	713
Washington	286
Wendell	412
Windsor	491
Worthington	642

Appendix E

Service Level Agreement including KPIs

1. Overview of Scope of SLAs and KPIs

The SLAs and KPIs to be established within this document provide a measurement of the performance objectives against actual performance of operations and services.

The measurements are driven by:

- The desired performance levels
- Network Operator's operational and service standards

Terminology

- **Service Level Agreement (SLA):** This term details the service level minimum performance objective for the WW Network and the Network Operator. Where agreed to by the Network Operator, failure to meet an SLA may be associated with a contractual performance penalty as is customary in the industry. Between the Network Operator and WW in its oversight of the network, no performance penalties apply, however chronic failure to meet service levels may lead to a breach of contract.
- **Key Performance Indicator (KPI):** This term detail a key measurement of performance, and when associated with a specific SLA commitment can be used to determine if that SLA is being achieved.

The measurements described within this document represent the desired Service Levels agreed to by WW and Network Operator for the WW Network. These SLAs and KPIs do not include service performance of networks not managed or controlled by the Network Operator, such as the Internet or any other interconnected networks such as the MBI middle mile network that may be used for backhaul to the Network Operators Point of Interconnect. The SLA is based on the services provided by the Network Operator and does not include the performance of customer equipment which uses the WW Network.

Achievement of these SLAs and KPIs is dependent on the final network design providing an adequate infrastructure to support the Network Operator's commercially reasonable technical requirements. Network Operator shall advise WW on equipment and design specifications and WW shall include performance targets for the Design Engineers and third parties providing facilities by IRU suitable to enable the Network Operator to meet or exceed the SLAs and KPIs outlined in this Agreement. Modifications to the Design criteria may result in updates to these SLAs and KPIs.

Service performance levels are measured from various points on the WW Network to one or more Test Reference Points (TRP) unless otherwise noted. The initial TRP shall be a Network Operator managed network device on the WW Network located in 1 Federal Street in Springfield, Massachusetts or other location as may be later mutually agreed upon by the Parties.

The WW Network is logically broken into three components: Core Network, Distribution Network, and End User sites. The Core Network consists of network segments which are arranged in geographically diverse optical rings and provide service to Distribution Network hubs. Distribution Network is the used to bring services to one or more sites. Distribution Network runs from the point of intersection with the Core Network to a Site. Sites are the endpoints for service and represent the WW Network and other telecommunications or customer facilities.

The SLAs and KPIs in this appendix focus on the performance of the network as a whole, not on the performance levels offered to the customers of the WW Network. WW and Network Operator will define additional SLAs and KPIs for monthly reporting that are in addition to the metrics defined in this document (such as new customer counts, unused circuits, etc.)

2. Network and Service Performance

2.1. Service Levels

WW in consultation with Network Operator may offer different service levels to Commercial Customers for different service offerings and different Quality of Service levels within a service offering. However,

WW will offer non-discriminatory treatment to all residential and commercial customers for a given service/service level.

All Service Levels in this section are measured between a Test Reference Point (TRP) or the core of the network and the service demarcation point unless otherwise specifically noted. At least on TRP for WW shall be located at a Network Operator managed network device at 1 Federal Street in Springfield, Massachusetts.

Network Operator Service performance SLAs, based on the measurements of the Network Operator’s network management and monitoring tools:

Specification	Units	Value
Peak Latency	ms	30
Average Latency	ms	10
Packet Loss	%	0.01
Maximum Packet Delay Variation	ms	8
Average Packet Delay Variation	ms	.5

2.1.1. Latency

Peak Latency is measured as the round trip time, in milliseconds, for a packet between a Test Reference Point (TRP) and the service demarcation device for transport solely within the network. Average latency is measured over the period of a month between the service demarcation device and the TRP while peak latency represents the highest latency observed during the course of the month.

2.1.2. Packet Loss

Packet loss is the percentage of packets dropped by the network (Not including policed packets to maintain compliance to Committed Information Rates (CIR) between a Test Reference Point (TRP) and the service demarcation device on the WW Network. Packet loss associated with interface errors (CRC) etc. due to customer caused issues of configuration or mismatches between the demarcation switches and the customer are not included in the packet loss calculations. Packet loss is calculated on an average basis each month.

2.1.3. Packet Delay Variation

Packet Delay Variation is the measure of variance in the latency of packets between a Test Reference Point (TRP) and the service demarcation device. Packet Delay Variation is measured as an average for the month. Maximum Packet Delay variation shall not occur for more that .1% (roughly 40-45 minutes) per month.

2.2. Service Availability

Service Availability is defined separately for core network, across all sites, and for individual sites within the network. Non-Emergency scheduled outages (scheduled at least 3 business days in advance) are not considered “downtime” with respect to calculating Service Availability. The source of an outage must be determined to be within the demarcation points of the WW Network to be considered an outage. For example customer premise power outages are excluded from this calculation. However an outage within the Network Operator’s operations that causes an outage within the WW Network is considered an outage and included in this calculation. All scheduled outages shall occur between the hours of 12:01 am and 6 am.

2.2.1. Network Failure Definition

- 2.2.1.1. Any failure of non redundant equipment
- 2.2.1.2. Point of Presence generator running
- 2.2.1.3. Point of Presence environmental alarms triggered
- 2.2.1.4. 5 or more premises on a single OLT on battery backup

2.2.2. Service Availability for Core Network

Service Availability for the Core Network shall be 100% on a monthly basis for at least the majority of the network. General availability of the Core Network shall be 99.999% on a monthly basis. Non-degraded Service Availability for the Core Network shall be at least 99.995% on a monthly basis

The Core Network also included WW Network Optical and Ethernet equipment located at Points of Interconnections and 1 Federal Street in Springfield, Massachusetts.

This calculation is performed utilizing trouble tickets and a calculation of “measurable” outage time that is attributed to a core component. Only failures attributed to core components which cause End-User service disruptions are considered “measurable” time in the Core Availability calculation.

Non-degraded Service Availability for the Core Network is calculated based on the amount of time that problems in the Core Network result in multiple sites failing to achieve their Service Level Agreements

2.2.3. Service Availability for All Sites (Network Distribution Availability)

Service Availability for all sites served by the network shall be 99.995% in the aggregate measured on a monthly basis. Availability is measured to the demarcation point of the WW Network.

This calculation is performed utilizing trouble tickets and a calculation of “measurable” outage time that is attributed to a distribution network component. All network elements downstream from the core network, including the distribution line cards in the core network, are to be considered distribution network components. Outages attributed to a component of the Network Operator’s Network are considered against availability only to the extent that they affect the WW Network.

2.3. Network Operator Time to Respond (TTR)

Network Operator will achieve the following response times for outages. These times are cumulative so that total time from detection or phone notification of a problem to Time to Dispatch should not exceed 35 minutes. Notification of Commercial Customer is concurrent with Escalation to Engineering. These response times apply to all Commercial Customers, and to any event that affects 5 or more Retail Customers. If 4 or fewer retail customers are experiencing an outage that is detected or reported after 2pm the response will be next day otherwise these response times will apply

Specification	Units	Time to Respond
Detection of Network Failure	Minutes	5
Answer Customer Phone Call	Minutes	1
Answer Customer Email	Hour	1
Notification of Commercial Customer	Minutes	+5
Escalation to Engineering	Minutes	+15
Time to Dispatch	Minutes	+15

Response times to detect a network failure will be based on systems records from the Network Operator’s network monitoring and management system. Time to answer a Customer phone call shall be based on call center records. Time to notify a commercial customer, time to escalate to engineering, and time to dispatch shall be measured based on the timestamps from the trouble ticket system.

2.4. Network Operator Time To Arrive Onsite (TTAO)

TTAO is calculated based on the time from dispatch to the arrival of a prepared technician at the Site. TTAO time excludes time where the technician is unable to gain access to the facility due to Customer issues. The TTAO target shall be two (2) hours maximum with severe weather conditions or other travel time impediments noted.

2.5. Mean Time To Repair (MTTR)

Network Operator will repair service affecting outages within the target timeframes established excluding dispatch and travel time to the site.

Mean Time To Repair (MTTR) SLA:

Specification	Units	MTTR
Replacement of failed electronics	Hours	2
Resolution of configuration issues	Hours	4
Fiber cable breaks	Hours	24 hours to restore on at least a temporary basis

MTTR is measured from the initial trouble call or receipt of network alarm to the trouble is resolved or isolated outside of the network demarcation points.

2.6. Customer Service Performance

Network Operator will provide WW monthly reporting on the following response times: When truck rolls are required they will be dispatched the same day if the notification is before 2pm otherwise the truck will be dispatched the next day.

Subscriber-Sales & Billing			
	Intake	Active Hours	Response Goal
	Phone	8 to 7 Mon-Fri	:60 Sec./After hours=next day
	email	" "	1 Hour/After hours=next day
Subscriber-Tech Help Desk			
	Intake	Active Hours	Response Goal
Outage	Call	24 X 7	:60 Sec
Tech Support	Phone	7 to 6 Mon-Sat.	:60 Sec./After hours=next day
	email	" "	1 Hour/After hours=next day
	ONT alarm	" "	:60 Sec./After hours=next day
Streaming TV	Phone support only	" "	:60 Sec./After hours=next day
Subscriber - Field Tech			
	Intake	Active Hours	Response Goal
	WCF Dispatch	7 to 6 Mon-Sat.	Same day <2pm, then Next Day
	WCF Dispatch	7 to 6 Mon-Sat.	Same day <2pm, then Next Day

2.7. Trouble Ticket Performance KPIs

Network Operator will provide WW monthly reporting on the following related to the handling of trouble tickets.

Specification	Units	Measurement
Residential Customer Reported Tickets	Count	Max open at any given time Number of tickets opened Average, Minimum, Maximum time to close, count by time of day, count by day of week, TTR, TTAO, and MTTR for each ticket
Commercial Customer Reported Tickets	Count	Max open at any given time Number of tickets opened Average, Minimum, Maximum time to close, count by time of day, count by day of week, TTR, TTAO, and MTTR for each ticket
NOC Reported Tickets	Count	Max open at any given time Number of tickets opened Average, Minimum, Maximum time to close, count by time of

		day, count by day of week, TTR, TTAO, and MTTR for each ticket
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2.8. Service Installation KPIs

Service installations, move, adds and changes are typically evaluated on a case by case basis regarding cost and completion timeframes. The exception to this is “Administration” changes. These changes are logical changes to existing services that do not require any physical intervention to complete. Typically these are changes to services such as bandwidth increases, adding VPNs, etc. Service Installations are measured from the time that the Member Town where the service is to be installed or changed agrees to fund the new installation or the Move, Add, or Change of Installation.

New Service Installation	KPI: 45 business days provided no pole licenses, conduit lease, or construction are required, else per quote
Move, Add, Change Installation	KPI: 15 business days provided no pole licenses, conduit leases, or construction are required, else per quote
Administration Changes Change of Service	KPI: close of Next Business Day Note: order received outside normal business hours are considered received on the following business day.

3. Outage Calculations and Caps

3.1. Distribution Network Availability

This KPI is defined as the percentage of time that services are operational during a calendar month. The measurement is based on the total amount of loss of service time (Unplanned Outage Minutes) for each WW Member Town’s Distribution Network. A WW Member Town’s Distribution Network includes all network assets owned by the Member town.

The Distribution Network calculation is based on the duration of unplanned, service affecting outages. The Distribution Network Availability calculation is shown below:

$$\frac{\text{Customer Available Minutes} - \text{Unplanned Outage Minutes} \times 100}{\text{Customer Available Minutes}}$$

Customer Available Minutes are the total number of customers multiplied by the number of minutes per month.

Unplanned Outage minutes are service affecting unplanned outages as a result of a non-Core network problem. This failure only includes outages where the root cause is determined to be within the Network Operator’s network demarcation points. For example customer premise power outages are excluded. Unplanned Outage Minutes are the number of customer affected during an outage multiplied by the number of minutes of the outage.

A sample Distribution Network Availability calculation is described as follows. Assume there are 4000 customers and the total number of Unplanned Outage Minutes for all clients in the month of September is 1234. The total Customer Available Minutes for September is 4000 x 43,200 = 172,800,000 minutes. Applying these values to the calculation then becomes:

$$\frac{172,800,000 - 1234 \times 100}{172,800,000} = 99.99928\%$$

3.2. Core Availability Calculation

This KPI calculates the availability of the core network during a calendar month. Only outages that were caused by a failure within the network core are included in calculated outage minutes. A Core Network

failure is a failure outside the distribution network that causes an entire Member Town's distribution network to be inoperable.

The Core Availability percentage calculation is based on the duration of unplanned, service affecting outages within the core network segment. The core Network Availability calculation is shown below:

$$\frac{\text{Customer Available Minutes} - \text{Unplanned Outage Minutes} \times 100}{\text{Customer Available Minutes}}$$

Customer Available Minutes are the number of customers multiplied by the number of minutes per month. Unplanned Outage Minutes are the number of clients affected during an outage multiplied by the number of minutes of the outage

A sample Core Network Availability calculation is described as follows. Assume there are 4000 customers and a 10 minute outage occurs in the core in September which affects 50 customers. The total Customer Available Minutes for September is $4000 \times 43,200 = 172,800,000$ minutes.

$$\frac{172,800,000 - 500 \times 10}{172,800,000} \times 100 = 99.99971\%$$

3.3. Mean Time to Repair Calculation

MTTR calculates the average time it took to repair unplanned outages during a calendar month. All unplanned outages are included in this calculation.

Outage time 1 + outage time 2 (include all outages in the given month) = Months total outage time.

Months total outage time / number of outages = MTTR

4. Network Operator Measurable Timeframes (Outages)

Criteria must exist to determine if a ticket should be in a tracking (or pending) state versus an open state. Any time a ticket is deemed eligible for an open state it will be measured against SLAs and KPIs. Any time a ticket is deemed eligible for a pending or tracking state it will not be measured against SLAs or KPIs (known as tracking time). The criteria will be slightly different for out of service versus degraded service trouble reports. Both situations are described further within this section.

4.1. Out of Service

Typically a service shall be classified as out of service, if measured packet loss (using NOC PL Test Procedure) is greater than or equal to 2%. Alternatively, if a customer reports an out of service condition it will remain classified under this category until determined within the established SLAs by the Network Operator NOC.

Measurable hours are a count of the time a customer service is out of service minus the tracking time. A ticket shall be placed in an open state if the time is deemed measurable. These hours will result in the measurement given to outage time for a specific trouble report.

Measurable hours shall commence if all of the following conditions exist:

- An out of service report is received by the Network Operator NOC
- Power to the device in question has been confirmed onsite by the customer
- If requested by the Network Operator NOC the customer has rebooted any device in question
- Access hours to the site in question have communicated to the Network Operator NOC, the site is currently open.

Measurable hours shall be tracked if any of the following conditions are met:

- No Access – During timeframes in which access to the customer's premise, network right of way, or facility is unavailable the time will be tracked. (Ex. Access hours are 09:00 – 17:00. Time tracking will take place from 17:01 – 08:59 the following day).

- Release Denied – if further resolution requires services to be rendered inoperative and the customer denies this action, time is suspended until permission is granted.
- Service Monitoring – If the issue requires the service be monitored for an agreed upon period of time due to the intermittent nature of the trouble report degradation.
- Non-Service Affecting – The issue reported by the customer is deemed to be non-service affecting by the Network Operator NOC.
- Force Majeure – if Network Operator personnel are unable to access required locations due to a force Majeure event as defined in the Master Service Agreement
- Network Operator Cleared – The source of the reported out of service condition is deemed to be outside Network Operator demarcation points.
- Third party OSP work in the critical path to restoration – Third party OSP facilities need to be repaired before Network Operator can begin restoration, for example, if a power utility needs to clear damaged electric lines or replace a broken utility pole. This exclusion applies when the Network Operator has notified said third party facility owner.

Measurable hours shall cease if the following condition has been met

- The service in question has been restored and is within SLA parameters.

4.2. Service Degradation

A service shall be classified as degraded if measured packet loss (Using NOC RL Test Procedure) is greater than 2%. Alternatively if a customer reports a degraded condition it will remain classified under this category until proved with the established SLA by the NOC.

Measured hours shall commence if all of the following conditions exist:

- A degraded service report is received by the Network Operator NOC.
- Power to the device has been confirmed on site by customer (if deemed necessary by the Network Operator NOC).
- If requested by the Network Operator NOC the customer has rebooted any device in question.
- Access hours to the site have been communicated to the Network Operator NOC and the site is currently open.

Measurable hours shall be tracked if any of the following conditions have been met.

- No Access – During timeframes in which access to the customer's premise, network right of way, or facility is unavailable the time will be tracked. (Ex. Access hours are 09:00 – 17:00. Time tracking will take place from 17:01 – 08:59 following day).
- Degraded Resolution Arrangement – An agreement between Network Operator and the customer is made to resolve the service degradation at a specific time. Time will then be tracked until the agreed time for resolution. (Ex. Access hours are 09:00 – 17:00. An agreement is made to have a technician arrive the following day at 13:00 to resolve service degradation. Time is tracked until 13:00 the following day)
- Release Denied – if further resolution requires services to be rendered inoperative and the customer denies this action, time is suspended until permission is granted.
- Service Monitoring – if the issue requires the service be monitored for an agreed upon period of time due to the intermittent nature of the trouble report degradation.
- Non-Service Affecting – the issue reported by the customer is deemed to be non-service affecting by the Network Operator NOC.
- Force Majeure – if Network Operator personnel are unable to access required locations due to a Force Majeure event as defined in the Master Agreement.

- Network Operator Clear – the source of the reported degraded condition is deemed to be outside Network Operator demarcation points
- Third party OSP work in the critical path to restoration – Third party OSP facilities need to be repaired before Network Operator can begin restoration, for example, if a power utility needs to clear damaged electric lines or replace a broken utility pole. This exclusion applies when the Network Operator has notified said third party facility owner.

Measurable hours shall cease if the following condition has been met:

- The service in question has been restored and is within SLA parameters.

Appendix F
WiredWest Communications Cooperative Corp
Policy and Procedures regarding submission of “Sensitive Information”

WiredWest Communications Cooperative Corp (WW) is subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (the “Public Records Act”), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, “public records” include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by WW. As a result, any information submitted to WW by a “Submitting Party” may be subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, “public records” do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including WW’s enabling law, M.G.L. c. 164, § 47C. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by WW that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the “Trade Secrets Exemption”).

It is WW’s expectation that the majority of documents it receives from a submitting party do not contain any information that would warrant an assertion by WW of an exemption from the Public Records Act. Submitting Parties should therefore take care in determining which documents they submit to WW, and should assume that all documents submitted to WW are subject to public disclosure without any prior notice to the Submitting Party and without resort to any formal public records request.

In the event that a Submitting Party wishes to submit certain documents to WW and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

1. At the time of the Submitting Party’s initial submission of documents to WW, the Submitting Party must provide a cover letter, addressed to WW’s General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents’ disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party’s responsibility and obligation to provide detailed explanations for each such document.
2. At the time of the Submitting Party’s initial submission of document to WW, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as “Sensitive Information.” It is the Submitting Party’s responsibility and obligation to ensure that all such documents are sufficiently identified as “Sensitive Information” and Submitting Party’s designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

Information submitted to WW in any form other than a hard copy document will not be subject to the procedures set forth in this policy. For example, information submitted by e-mail, facsimile and/or verbally will not be subject to these procedures and may be disclosed at any time without notice to the Submitting Party

3. Documents that are not accompanied by the written notification to WW’s General Counsel or are not properly identified by the Submitting Party as “Sensitive Information” at the time of their initial submission to WW are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Submitting Party with notice of any formal public records request for documents, as set forth below, shall be inapplicable.

4. At the time WW receives documents from the Submitting Party, any such documents designated by Submitting Party as “Sensitive Information” shall be segregated and stored in a secure filing area when not being utilized by appropriate WW staff. By submission of any information to WW, the Submitting Party certifies, acknowledges and agrees that (a) WW’s receipt, segregation and storage of documents designated by Submitting Party as “Sensitive Information” does not represent a finding by WW that such documents fall within the Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) WW is not liable under an circumstances for the subsequent disclosure of any information submitted to WW by the Submitting party, whether or not such documents are designated as “Sensitive Information” or WW was negligent in disclosing such documents.
5. In the event that WW receives an inquiry or request for information submitted by a Submitting Party, WW shall produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has previously designated as “Sensitive Information” in strict accordance with this Policy, the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as “Sensitive Information”, and, if not already submitted, that a formal, written public records request must be submitted by the requesting party to WW’s General Counsel for a determination of whether the subject documents are exempt from disclosure.
6. Upon the General Counsel’s receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as “Sensitive Information”, the Submitting Party shall be notified in writing of WW’s receipt of the public records request, and WW may, but shall not be required to provide Submitting Party an opportunity to present WW with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.
7. The General Counsel shall review the subject documents, the Public Records Act and the Exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

The General Counsel is the sole authority within WW for making determination on the applicability and/or assertion of an exception to the Public Records Act. No Employee of WW other than the General Counsel has any authority to address issues concerning the status of “Sensitive Information” or to bind WW in any manner concerning WW’s treatment and disclosure of such documents.

Furthermore, the potential applicability of an exemption to the disclosure of documents designated by the Submitting Party as “Sensitive Information” shall not require WW to assert such an exemption. WW’s General Counsel retains the sole discretion and authority to assert an exemption, and he/she may decline to exert such an exemption if, within his/her discretion the public interest is served by the disclosure of any documents submitted by the Submitting Party
8. WW shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
9. In the event that WW determines that the subject documents are exempt from disclosure, the requesting party may seek review of WW’s determination before the Supervisor of Public Records, and WW shall notify the Submitting Party in writing in the event that the requesting party pursues a review of WW’s determination.
10. In the event the requesting party pursues a review of WW’s determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders WW to disclose such documents to the requester, WW shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.
11. In the event that WW determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his/her discretion, WW shall not assert an exemption, WW shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

The Submitting Party's submission of documentation to WW shall require a signed certification that Submitting Party acknowledges, understands and agrees with the applicability of the foregoing procedures to any documents submitted to WW by Submitting Party at any time, including but not limited to the acknowledgements set forth herein, and that submitting party shall be bound by these procedures.