



NETWORK OPERATIONS AND SERVICES AGREEMENT

This agreement for the provision of certain network operations and related support services (“Agreement”) is entered into this ____ day of _____, 20__, by and between the _____ Municipal Light Plant (“MLP”), a Massachusetts municipal light department of the Town of _____ (“Town”) established pursuant to the provisions of M.G.L. c. 164 with offices at _____ and WiredWest Communications Cooperative Corporation (“WiredWest”), a municipal light plant cooperative established pursuant to the provisions of M.G.L. c. 164, § 47C, with a principal place of business at 99 Main Street, Northampton MA 01060 (individually, a “Party” and collectively, the “Parties”).

WHEREAS, WiredWest was established for the benefit of its members in 2011;

WHEREAS, WiredWest seeks to reduce administrative burden, cost and risk to member MLPs;

WHEREAS, MLP plans to construct or has constructed a fiber optic network in the Town (“Network”) for the purpose of providing certain Internet-related services to its residents and businesses;

WHEREAS, in connection with operation and maintenance of the Network and the delivery of services over said Network, MLP requires certain network operations and support services in order to maintain and operate said Network;

WHEREAS, WiredWest is willing and able to provide certain network operations and support, and Internet-related services (together, the “Services”), through its subcontractors, to the MLP and the premises the MLP serves as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is understood and agreed as follows:

1. **DEFINITIONS.** All initially capitalized terms in the Agreement shall have the meanings ascribed herein, including as follow:
 - 1.1. **Affiliate** shall mean an entity that directly or indirectly controls or is controlled by or is under common control with another entity.
 - 1.2. **Attachment Database** shall mean, at a minimum, the as-built strand map and pole attachment licenses for the Network.
 - 1.3. **Best Effort** shall mean the delivery of service to Residential Customers and Business Class Customers on an “as-is” basis, with no warranties of any kind, including fitness for a particular purpose or uninterrupted use of services.
 - 1.4. **Board of Directors** shall mean the Board of Directors of WiredWest as defined in the WiredWest Bylaws.
 - 1.5. **Business Class Customer** is a for-profit or not-for-profit enterprise or government entity



that purchases Internet Services (“Business Class Services”) from WiredWest on a Best Effort basis.

- 1.6. **Bylaws** are the Bylaws of WiredWest, as may be amended from time to time.
- 1.7. **Commercial Customer** is a for-profit or not-for-profit enterprise or government entity purchasing Internet Services (“Commercial Services”) from WiredWest through a Service Level Agreement or “SLA” with a specified level of broadband speed and availability.
- 1.8. **Confidential Information** shall mean any information of WiredWest or MLP that is not generally known to the public and that, at the time of disclosure by one Party to the other Party, 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.
- 1.9. **Customer** means a person or entity receiving Residential Services, Business Class Services or Commercial Services through WiredWest.
- 1.10. **Customer Drop** shall mean the optical fiber connecting the Customer’s premises to the Distribution Network and the attendant Customer Premises Equipment.
- 1.11. **Customer Premises Equipment** shall mean the ONT, battery backup, router and any other electronic equipment installed at the Customer’s premises owned by MLP or Network Operator.
- 1.12. **Dark Fiber** shall mean optical fiber in the Network that is unused by the Member and available for lease to a third-party.
- 1.13. **Dark Fiber Customer** shall mean a lessee or an IRU holder of Dark Fiber on the Network pursuant to Section 3.3.3.
- 1.14. **Depreciation Reserve Account** shall mean a depreciation account that shall be maintained by MLP as set forth in M.G.L. c. 164, § 57.
- 1.15. **Discretionary Maintenance Spending** is any maintenance expense incurred by a Member that is not a repair and/or replace expense or recurring maintenance contract expense for network related equipment or a capital purchase.
- 1.16. **Distribution Network** shall mean the optical fiber cable that connects the Customer Drop to the POI.
- 1.17. **Effective Date** shall mean April 15, 2019.
- 1.18. **Excess Revenue** shall mean the gross revenue received by WiredWest from all sources during the fiscal year less the sum of all expenses incurred by WiredWest and all expenses



paid by WiredWest on behalf of all Members and any additions to cash reserves that the WiredWest Board of Directors may choose to set aside, as subject to the following: WiredWest's rates are set to cover the payment of all operating expenses for all Members. Depreciation reserve and debt service fees that may be collected from Customers on behalf of the Member are not included as part of the gross revenue of WiredWest.

- 1.19. **Executive Director** is the Chief Executive Officer of WiredWest.
- 1.20. **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.
- 1.21. **GASB** shall mean Governmental Accounting Standards Board.
- 1.22. **Indemnified Claim** shall mean a claim by an Indemnified Party for indemnification under the provisions of Section 8.
- 1.23. **Indemnified Claim Proceeding** shall mean any mediation, arbitration, legal and /or administrative action or other proceeding regarding an Indemnified Claim.
- 1.24. **Indemnified Party** shall mean, with respect to a Party, the other Party and its Affiliates, officers, directors, employees, agents, successors and assigns.
- 1.25. **Indemnifying Party** shall mean the Party from which another person seeks or is entitled to indemnification hereunder.
- 1.26. **Interconnection** shall mean any connection of fiber optic cable, either active or passive, to the Network.
- 1.27. **Intertown Connection** is defined as a pair of optical fibers from the POI to the MLP town's border where the town borders another Member MLP's town.
- 1.28. **IRU** stands for and shall mean an Indefeasible Right of Use.
- 1.29. **ISP** stands for and shall mean an Internet Service Provider.
- 1.30. **Member** is defined as a municipal light plant under M.G.L. c. 164 § 34 and authorized to construct a telecommunications system under M.G.L. c. 164 § 47E that is a Voting Member of the WiredWest cooperative under M.G.L. c. 164, § 47C.



- 1.31. **MIIA** stands for Massachusetts Interlocal Insurance Association, which provides insurance services to its member towns.
- 1.32. **Network Expansion** shall mean any fiber optic cable and attendant infrastructure including Customer Drops installed and connected to the WiredWest Network after WiredWest has assumed operational responsibility for the MLP's network. A fiber optic cable expansion of or from the WiredWest Network shall become part of the WiredWest Network.
- 1.33. **Network Operator** shall be an entity with which WiredWest has contracted to provide services to Customers and MLP as described in this Agreement. For purposes of this Agreement, the Network Operator shall be considered a subcontractor of WiredWest.
- 1.34. **Network Segment** shall mean any portion of the WiredWest Network.
- 1.35. **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.
- 1.36. **OLT** shall mean Optical Line Terminal.
- 1.37. **ONT** shall mean Optical Network Terminal that is located in a Customer's premises.
- 1.38. **POI** stands for Point of Interconnection and shall mean a node that enables the Network Operator or Commercial Customer to connect to the WiredWest Network without splicing WiredWest Network optical fiber in order to provide services to customers, including but not limited to consumers, government entities, businesses and non-profit organizations that are not directly connected to the WiredWest Network. The MLP shall provide at least one POI for interconnection with the WiredWest Network.
- 1.39. **PURMA** stands for Public Utilities Risk Management Association, which provides risk management and insurance services to its members.
- 1.40. **Residential Customer** is a residential entity who subscribes to services from WiredWest where such services are rendered on a Best Effort basis.
- 1.41. **Scheduled Maintenance** shall mean routine scheduled maintenance and repair of the WiredWest Network as described herein.
- 1.42. **Intentionally blank.**
- 1.43. **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 WiredWest

Network.

- 1.44. **Unscheduled Maintenance** shall mean non-routine maintenance and repair of the WiredWest Network which is not included in Scheduled Maintenance.
- 1.45. **USF** stands for the Universal Service Fund collected and managed by the Federal Communications Commission.
- 1.46. **WiredWest Network** shall mean the combined networks of each Member and any tangible or intangible network assets owned by WiredWest.

2. **TERM.**

- 2.1. **Term.** The term of this Agreement will end June 30, 2024 (“Initial Term”), unless terminated earlier in accordance with the provisions of this Agreement. If MLP decides not to renew after the Initial Term, six (6) months’ notice is required prior to expiration thereof.
- 2.2. **Renewal.** This Agreement will automatically renew after the Initial Term for up to two (2) additional three (3) year terms (“Renewal Term”), unless six (6) months’ notice of termination is provided by MLP prior to the expiration of the then current Renewal Term.
- 2.3. **Notification.** WiredWest will notify MLP seven (7) months prior to the expiration of each of the then current Initial Term and Renewal Term of the impending notification deadline and the date of the expiration thereof.

3. **SERVICES.**

MLP acknowledges and agrees that WiredWest is a cooperative of municipal light plants. Therefore, MLP bears a responsibility to the other Members to actively participate in the cooperative to provide the best possible services at the best possible price and to ensure uniformity of network design, components, and network policies for the Members’ fiber optic networks. Pursuant to the terms of this Agreement, WiredWest by itself or through one or more subcontractors shall provide the following services to MLP.

- 3.1. **Management Services.** The Executive Director will procure various services required by WiredWest by using best practices and shall draft and negotiate contracts with vendors. Final contracts will be ratified by a two-thirds majority vote of the Board of Directors present and voting. The Executive Director will monitor and report to the Board of Directors quarterly the performance of the various vendors. WiredWest will provide management of the Attachment Database.

3.2. **Financial Services.**



- 3.2.1. WiredWest Revenue.** All revenue from all sources, except as noted in Section 3.2.2, including but not limited to Customer fees for Internet and VoIP service, insurance claims, and the maintenance portion of Dark Fiber leases/IRUs will be deposited in a WiredWest account and will be considered WiredWest revenue.
- 3.2.2. MLP Fees.** Fees collected from Customers on behalf of MLP for the explicit purpose of contributions to depreciation reserves and/or for debt service, or other MLP-related expenses (“MLP Fees”) will be deposited in the appropriate MLP accounts and will not be considered WiredWest revenue. Capital fees collected for the lease/IRU of Dark Fiber will be deposited in the appropriate MLP account and will not be considered WiredWest revenue.
- 3.2.3. MLP Responsibilities.** MLP is responsible for contracting for insurance of all types, membership fees for insurance cooperatives, pole license fees, electricity, generator fuel, etc. MLP will submit or cause to be submitted to WiredWest all invoices related to the operation of MLP’s Network, including but not limited to invoices for insurance of all types, membership fees for insurance cooperatives, pole license fees, electricity, generator fuel, etc. MLP is responsible for the payment of any costs associated with the design, engineering, installation, or construction of any Network Expansions or the costs associated with the connection of a new Customer.
- 3.2.4. Invoice Payment Services.** WiredWest will pay all of MLP’s invoices related to the operation of MLP’s Network from WiredWest Revenue. WiredWest will pay for all services contracted by WiredWest including but not limited to backhaul, tree trimming, HVAC maintenance, network operations and maintenance, accounting and bookkeeping, auditing, and legal services out of WiredWest Revenue. WiredWest will process all insurance claims and warranties associated with the physical plant of the Network.
- 3.2.5. Bookkeeping and Accounting Services.** WiredWest shall cause to be maintained a separate set of books for MLP and for WiredWest as a whole. Monthly warrants will be prepared and presented to the Board for approval for payment. Monthly, quarterly and annual income and expense statements will be prepared and presented to the Board for review and sent to MLP. An unaudited annual statement shall be produced within thirty (30) days after the end of the fiscal year to be used by the MLP manager to satisfy the MLP’s reporting requirements in a timely manner. The annual financial statements shall be accompanied by a certification that (a) the financial statements have been prepared from WiredWest’s or its Network Operator’s books and records in accordance with GASB standards and guidance and are true, correct and complete and fairly present in all material respects the financial condition of WiredWest operations as of the statement 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 statements, or any other financial documents, record or information.
- 3.2.6. MLP Manager’s Annual Financial Report.** M.G.L. c. 164, § 57 requires the MLP manager to submit annual financial reports to the MLP’s governing body. The annual



financial statements and the annual plan reports (see Section 3.5.1) may be used to satisfy the MLP manager's reporting requirements.

3.2.7. Insurance Claim Documentation. WiredWest shall obtain and maintain or cause to be obtained and maintained such information and documentation regarding property damage to Network facilities 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. WiredWest through its Network Operator shall diligently prosecute and resolve, at its own expense, any claims under the applicable policies under Section 9 and any third-party policies that may be applicable, and shall apply any proceeds of such claims to the repair or replacement of the damaged property.

3.2.8. Auditing Services. WiredWest shall maintain a complete audit trail of all financial and non-financial transactions resulting from or arising in connection with this Agreement. WiredWest shall contract with an outside auditor to provide an annual audit of WiredWest's books and the books of MLP as set forth in Section 3.2.5. MLP may choose to perform an independent audit, at its own expense, of WiredWest books and WiredWest will provide to MLP, its auditors (including internal audit staff and external auditors), inspectors, regulators and other representatives as MLP may from time to time designate in writing, access at all reasonable times to data and records relating to the Services for the purpose of performing audits and inspections of either WiredWest or any of its subcontractors to verify the accuracy of charges and invoices and examine WiredWest's performance of the Services. WiredWest shall cooperate fully with MLP and its designees in connection with audit functions and with regard to examinations by regulatory authorities. MLP's auditors and other representatives shall comply with WiredWest's reasonable security requirements in connection with audit or examination. Work performed by WiredWest to satisfy MLP's audit requests that exceeds two (2) hours of WiredWest's accounting, bookkeeping, and auditing sub-contractors' time will be billed to MLP at the contract rates. WiredWest shall maintain financial and other records for at least seven (7) years after the end of the Initial Term and any Renewal Term. Access will require twenty-four (24) hour notice to WiredWest and will be provided during reasonable business hours.

3.3. Marketing and Sales Services.

3.3.1. Marketing Services. WiredWest will oversee the development of all marketing materials and buys of advertising space by sub-contractors as required to effectively promote WiredWest and the Services to maximize signup of Customers. WiredWest will work with Network Operator to develop all Customer contracts for the Services. All Customer contracts must be reviewed and approved by the Board of Directors.

3.3.2. Sales Services. WiredWest will contract for sales personnel to meet with potential Customers at sales events or in-home or in-business sales calls. A website will be provided for direct Customer signup for services.



3.3.3. Marketing of Dark Fiber Leases/IRUs to Dark Fiber Customers. WiredWest will work with Network Operator to negotiate Dark Fiber lease/IRU Agreements on the Network on behalf of MLP and in consultation with MLP, with any Dark Fiber Customer so requesting, on terms WiredWest and the MLP deem acceptable. WiredWest shall solely be responsible for management of such Dark Fiber lease/IRU Agreements.

3.4. Operations & Maintenance Service. WiredWest will operate and maintain the Network and perform necessary repairs to Network components through WiredWest's subcontractors. Such service includes but is not limited to periodic inspection of physical plant, monitoring of the Network, and tree trimming required minimizing outages from falling trees and tree limbs. Operations and maintenance service also includes Scheduled Maintenance and Unscheduled Maintenance and repair of any physical damage to the Network.

3.4.1. Maintenance.

3.4.1.1. Scheduled Maintenance. WiredWest shall perform appropriate Scheduled Maintenance on the Network in accordance with all applicable laws, codes and regulations, and with WiredWest's Network Operator's then current preventative maintenance procedures, which shall meet or exceed Good Industry Practice, which shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the telecommunications industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be practices, methods, or acts generally accepted in the region.

3.4.1.2. Notice of Scheduled Maintenance. Network Operator shall notify the MLP and all affected Customers at least seven (7) days prior to any Scheduled Maintenance which will or is reasonably likely to have a material impact on the Service. Network Operator will normally perform Scheduled Maintenance that is reasonably expected to produce any signal discontinuity during standard maintenance windows to be established by WiredWest. If Scheduled Maintenance must occur outside such standard maintenance windows, Network Operator shall use its best efforts to coordinate with the Parties and any affected Commercial Customer and will notify Residential and Business Class Customers of the scheduled outage. MLP may not prevent Network Operator from performing maintenance that WiredWest deems necessary. MLP shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as MLP does not interfere with WiredWest's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason, Network Operator shall notify MLP and all affected Customers at Network Operator's earliest opportunity, and will comply with the provisions of this section to reschedule any delayed activity.

3.4.1.3. Unscheduled Maintenance. Network Operator shall perform emergency and non-emergency Unscheduled Maintenance as required to minimize outages and outage durations. WiredWest shall notify MLP and all affected Customers connected to the WiredWest Network as soon as possible after becoming aware of the need for any non-emergency Unscheduled Maintenance.

3.4.1.4. Discretionary Maintenance Spending. Any Discretionary Maintenance Spending desired by a member in excess of \$10,000 per fiscal year must be approved by a unanimous vote of all members for the discretionary spending to be considered as a shared maintenance expense to be paid by WW. All discretionary spending by a member in excess of \$10,000 in a fiscal year not approved by the unanimous vote of all members will be paid by WW and booked to the member's expense account. All Discretionary Spending \$10,000 or less in a fiscal year will be paid by WW and booked as a WW maintenance expense

3.4.2. NOC. WiredWest, through its 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, which personnel shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. There shall be a toll-free telephone number for the contacting of personnel at the NOC. NOC personnel shall dispatch maintenance and repair personnel to handle and repair problems detected in the Network: through remote network monitoring equipment, upon notification by MLP, or upon credible notification by any third-party and verification thereof.

3.5. Planning and Upgrade Service.

3.5.1. Planning Service. Prior to the end of the first year of the Initial Term, and thirty (30) days prior to the end of each fiscal year thereafter, the Executive Director shall submit to the WiredWest Board of Directors, an Annual Plan. The Annual Plan shall include a plan for the succeeding fiscal year and the next three (3) fiscal years. The Annual Plan shall specify, among other things, expected WiredWest Revenue, cash reserves, pricing, and all expected operating costs associated with the WiredWest Network, and all expenditures for capital and other improvements recommended to be undertaken on behalf of MLP within the respective one- and three-year periods. The Annual Plan shall be subject to approval by the WiredWest Board of Directors, at a meeting held within thirty (30) days of receipt thereof, by two thirds (2/3) of those present and voting, which approval shall not be unreasonably withheld.

3.5.2. Upgrade Service. WiredWest may periodically update or upgrade the electronics and other components on the WiredWest Network in order to maintain telecommunications industry carrier grade quality and reliability of services offered thereon and to meet Customer demands for bandwidth. Updates and upgrades of the optical fiber and other components of the WiredWest Network that occur in and for MLP's town will be funded by MLP. Updates and upgrades for the benefit of more than one Member's town will be funded by all such Member towns' municipal light plants, proportionally according to the benefit. All updates and upgrades will be scheduled in the one and three-year Annual Plan



described in 3.5.1 and approved by the WiredWest Board of Directors.

3.6. Legal Services.

3.6.1. Legal Reporting. WiredWest shall prepare and file, or cause to be prepared and filed, with all applicable governmental agencies, any reports required involving the Network.

3.6.2. Attorney Services. WiredWest shall retain and pay for an attorney well versed in the issues that may arise for an MLP or an MLP cooperative and any other attorneys whose expertise may be required by WiredWest or by MLP, except as noted in Section 10.

3.7. Customer Services.

3.7.1. Customer Service. WiredWest shall contract for all billing and collection functions, customer communications and technical support associated with the provision of services to Customers (“Customer Service”).

3.7.2. Residential Service. WiredWest will provide the following to Residential Customers: Internet access service and Voice over Internet Protocol (“VoIP”) telephone service (together, “Residential Services”) on a Best Effort basis. Additional broadcast television services and other Internet-based services may be added to Residential Services as they become available. WiredWest shall manage compliance with federal, state and local laws applicable to such Residential Services, including filing applicable regulatory forms and remittance of taxes.

3.7.3. Business Class Service. WiredWest will provide the following to Business Class Customers: broadband-based Internet access service and Voice over Internet Protocol (“VoIP”) telephone service (together, “Business Class Services”) on a Best Effort basis. Additional services and other Internet-based services may be added to Business Class Services as they become available. WiredWest shall manage compliance with federal, state and local laws applicable to such Business Class Services, including filing applicable regulatory forms and remittance of taxes.

3.7.4. Commercial Service. Commercial Customers shall contract directly for service with WiredWest (“Commercial Services”). WiredWest shall be responsible for all aspects of marketing, sales, contracting, contract management, billing, customer support and relations with Commercial Customers, including leasing/IRUs of Dark Fiber, entering into SLAs for service, development and deployment of Commercial Customer forms, answering Commercial Customer inquiries, tracking and resolving Commercial Customer requests and problems, provisioning services to Commercial 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 such Commercial Customers. 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 Commercial



Services, are deemed an inherent part of, or a necessary sub-part included within, the Commercial Services. WiredWest shall manage compliance with federal, state and local laws applicable to such Commercial Services, including filing applicable regulatory forms and remittance of taxes.

4. FINANCIAL RESPONSIBILITIES AND RIGHTS.

4.1. WiredWest Costs and Expenses. Beginning on the Effective Date, WiredWest will pay all costs of its compliance with the terms of this Agreement.

4.2. MLP Costs and Expenses.

4.2.1. Debt Service. MLP is solely responsible for any debt service payments due on any debt incurred as a result of building and provisioning the Network, Network Expansion(s), and Customer Drops.

4.2.2. Network Expansions. Following consultation and coordination with WiredWest, MLP may elect to develop Network Expansions within its service territory. The construction of any Network Expansion may be performed by an entity selected by the MLP independent of this Agreement. Any Network Expansion shall be designed and constructed in a manner fully consistent with the WiredWest Network architecture and equipment. MLP shall own any Network Expansions and WiredWest shall maintain and operate them as part of the WiredWest Network. MLP is responsible for the funding of the design, engineering, installation and construction of the Network, and any costs associated with the design, engineering, installation, or construction of Network Expansions.

4.2.3. Customer Drops. MLP may install new Customer Drops after WiredWest has assumed operational responsibility for the MLP's network by an entity selected by the MLP independent of this Agreement. Any Customer Drops shall be designed and constructed in a manner fully consistent with the WiredWest Network architecture and equipment. MLP shall own all Customer Drops and WiredWest shall maintain and operate them as part of the WiredWest Network. MLP is responsible for the funding of the design, engineering, and installation of the Customer Drops and any costs associated with the design, engineering and installation or construction of Customer Drops.

4.2.4. Network Equipment Upgrades. MLP agrees to maintain its Network equipment in compliance with the Annual Plan that has been approved by the WiredWest Board of Directors. If upgrades to MLP's Network equipment that are required to maintain the Network equipment compatibility are not performed in a timely manner the MLP will be in breach of this Agreement and subject to the Termination / Default process as stipulated in Section 7.

4.2.5. MLP Fees. WiredWest shall deposit MLP Fees collected into MLP's accounts on a monthly basis. MLP Fees are not considered part of WiredWest's or MLP's gross revenue.

- 4.2.6 Insurance Claims and Government Reimbursements.** MLP will promptly remit to WiredWest all insurance claim payments and government reimbursements received by MLP for damages to MLP's Network to repay WiredWest for the cost of making repairs to MLP's Network which are the subject of such payments upon the completion of said repairs. MLP shall promptly file for and diligently pursue any disaster recovery funds that become available for such damage.
- 4.3. Income Shortfall.** WiredWest will collect a one-time \$99 activation fee ("Activation Fee") from all Customers. These Activation Fees will be deposited in a cash reserve account ("Cash Reserve Account"). If in any month the net of revenue minus expenses is negative, the shortfall will be paid with an advance from the Cash Reserve Account. Any advance from the Cash Reserve Account will be repaid as soon as practicable from net revenues to the extent that the Cash Reserve Account is not reimbursed from other sources. If the shortfall is greater than twenty (20) percent of the balance of the Cash Reserve Account then the Chairman of the WiredWest Board of Directors will convene an emergency session of the WiredWest Board of Directors within ten (10) days of the recognized shortfall. The Executive Director will make recommendations to the WiredWest Board of Directors for curing the shortfall which may, among other alternatives, cause an increase in Customer fees. Should the WiredWest Board of Directors fail to approve a course of action by a majority vote of those present and voting, the Executive Director will set the Customer fees. The changes to the Customer fees will be announced in the next monthly billing cycle and will take effect the following billing cycle as needed to balance the shortfall.
- 4.4. Revenue Sharing.** MLP shall be entitled to share in the Excess Revenue received by WiredWest in connection with the Services provided by WiredWest. As set forth in Appendix A, "Town Portion of NWWR" is the MLP's potential share of Excess Revenue. All income and expense calculations are based on the previous WiredWest fiscal year performance. Revenue sharing calculations will be performed within thirty (30) days of the completion of the Annual Audit and presented to the WiredWest Board of Directors at the next regularly scheduled board meeting. The WiredWest Board of Directors will review and vote on the Revenue sharing distribution prior to release of the Member's portion of the Excess Revenue .
- 4.5. MLP Rights to WiredWest Cash and Cash Equivalents.**
- 4.5.1.** Should this Agreement terminate for any reason, MLP shall be eligible to receive a portion of the WiredWest cash and cash equivalents to which MLP is entitled as calculated in accordance with this Agreement, after all current invoices and obligations have been paid, assuming MLP is not in breach of this Agreement (7.1) and has not given notice of non-renewal (7.2). The MLP's portion of the cash and cash equivalents shall be calculated as either the average of the previous five (5) years or the average of the number of years since the Effective Date of this Agreement of the "Town Percentage of Net WiredWest Revenue (TP)" as calculated by the formula in Appendix A. The MLP's portion of the WiredWest cash and cash equivalents will be distributed to MLP within one-hundred and eighty (180) days of MLP's withdrawal from WiredWest.



4.5.2. Any MLP that is a member on the last day of a fiscal year is eligible to receive a distribution of cash and cash equivalents as calculated by the formula in Appendix A.

4.5.3. In the event that the WiredWest Board votes to dissolve WiredWest or WiredWest becomes insolvent during the Initial Term of this agreement or any Renewal Term, all of the physical assets owned by WiredWest will be disposed of in accordance with its Bylaws. IRUs held by WiredWest for Inter-town Connections will be canceled and revert to the MLP owning the optical fiber. Any cash balances remaining after disposition of the WiredWest physical assets and all current invoices and obligations have been paid will be divided among the Members based on the previous five (5) years, or the average of the number of years of Members' participation in the WiredWest Network, worth of the "Town Percentage of Net WiredWest Revenue (TP") as calculated by the formula in Appendix A.

4.5.4.

4.6. Resources and Facilities.

4.6.1. **Payment for Resources.** Except as otherwise provided in this Agreement, WiredWest 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 WiredWest to provide, perform and deliver the Services as described in the Agreement.

4.6.2. **Personnel.** WiredWest will contract for and 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.

4.6.3. **Access to Network.** MLP will provide reasonable access to any portion of the Network and appurtenant infrastructure used by WiredWest necessary to provide and perform its Services hereunder (including, without limitation, the attendant Network infrastructure, rights-of-way, access points, etc.) to WiredWest's subcontractors' 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 Network and for the operation, maintenance, upgrade, support and use of the Network.

4.6.4. **Intertown Connections.** MLP shall provide a 20-year IRU to WiredWest at no cost for Intertown Connections.

4.6.5. **Spares.** WiredWest's Network Operator will maintain an inventory of spare electronics and equipment necessary to maintain the WiredWest Network at its expense. WiredWest will pay for all replacements of spare electronics and equipment out of WiredWest Revenue.

- 4.7. Security of WiredWest Network Infrastructure.** WiredWest shall establish and comply with written policies and procedures for ensuring the security of the Network consistent with Good Industry Practice, 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. WiredWest will provide MLP with the policies and procedures that it will follow, and cause its subcontractors to follow, with respect to Criminal Offender Record Information or “CORI” checks to be conducted on all personnel of WiredWest’s subcontractors, or its subcontractors’ contractors, that will enter Residential, Business, or Commercial Customers’ premises.
- 4.8. Exclusivity.** WiredWest shall be the sole and exclusive provider of Services to MLP and MLP shall not contract with any third-party for the provision of Services contemplated under this Agreement during the Initial Term or any Renewal Terms of this Agreement.
- 5. REPRESENTATIONS AND WARRANTIES.** As a material inducement to entering into this Agreement, each Party (or the Party specified, as applicable), with respect to itself, represents and warrants to the other Party as of the date of signature of this Agreement:
- 5.1.** With regard to MLP, it is a municipal light plant under M.G.L. c. 164, §§ 34 *et seq.*, validly existing and is in good standing under the laws of the Commonwealth of Massachusetts.
- 5.2.** With regard to WiredWest, it is a municipal light plant cooperative under M.G.L. c. 164, § 47C, validly existing and is in good standing under the laws of the Commonwealth of Massachusetts.
- 5.3.** The Parties have all requisite 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 and all acts necessary to the valid execution, delivery and performance of this Agreement have or will be taken and performed as required under all applicable laws with which the Parties are obligated to comply.
- 5.4.** This Agreement constitutes a legal, valid and binding obligation of each Party, enforceable against it in accordance with its terms.
- 5.5.** The execution, delivery and performance of this Agreement by a Party 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).
- 5.6.** Neither Party nor any of its respective officers, directors or Affiliates has been subject to any criminal proceeding or investigation.
- 5.7.** At their own cost and expense, each of the Parties have obtained (or will obtain when necessary to perform their respective obligations hereunder) and will maintain, at WiredWest’s expense, all



necessary licenses, permits, franchises and regulatory approvals applicable to its business and the performance of their respective obligations under this Agreement.

- 5.8. The Parties are and will be in compliance with all laws, orders including court orders, and regulatory requirements applicable to the performance of their obligations under this Agreement.
- 5.9. The Parties will perform their 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.
- 5.10. With respect to WiredWest, it makes no representations or warranties to MLP for continuous service. The Parties acknowledge that service interruptions may occur from time to time, in which case WiredWest will use commercially reasonable efforts to cause its Network Operator to restore service in a prompt manner.
- 5.11. The Parties agree that they will notify each other immediately in writing of the occurrence of any event that renders any of the foregoing warranties or representations incorrect.

6. **CONFIDENTIALITY.**

- 6.1. **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 the Party receiving the information (“Receiving Party”), regardless of whether such information is disclosed intentionally or inadvertently or 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 later 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 6.3, below.
- 6.2. **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.

6.3. Required Disclosure. Notwithstanding anything in Section 6.2 to the contrary, and subject to all terms and provisions of this Section 6.3, 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 6.3, 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 6.3. 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 and regulations.

7. TERMINATION/DEFAULT.

7.1. Termination for Breach. Either Party may terminate this Agreement for the following reasons:

- 7.1.1.** A material breach of this Agreement that remains uncured for a period of thirty (30) days after receipt of written notice thereof or in the case of a breach under Section 9, remains uncured for a period of ten (10) days; or
- 7.1.2.** A Party 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
- 7.1.3.** A Party assigns this Agreement without the consent of the other in violation of this Agreement.
- 7.1.4.** For the purposes of this Agreement, and with respect to the Services provided by WiredWest hereunder, a material breach under Section 7.1.1 above shall be deemed to include a series of non-material or persistent breaches by WiredWest or its subcontractors that, when taken in the aggregate, have a material and significant adverse impact on the Services to MLP, including the operational management of the Network, thereby damaging MLP.
- 7.1.5.** In addition, either Party may terminate this Agreement for an event of Force Majeure that



is not cured within one hundred and eighty days (180) of the commencement thereof.

7.2. Notice of Non-Renewal by MLP. MLP must give WiredWest notice of its intent to not renew this Agreement no less than one hundred eighty (180) days before the end of the Initial Term of this Agreement or of any Renewal Terms of this Agreement. Notice of non-renewal shall be signed by a majority of the members of the MLP's governing body or its authorized designee with documentation of a majority vote of the MLP's governing body and delivered to WiredWest by certified or registered mail. In addition, failure to give the required non-renewal notice within the required time period shall mean that the non-renewal shall not be effective until the end of the twelve month period following the end of the current term. In accordance with Section 2.3 WiredWest will notify MLP of the impending notification deadline.

7.3. Remedies for Breach. In the event of a Breach, the non-breaching Party may, in its sole discretion, terminate this Agreement and have no further obligations or liability hereunder. The non-breaching Party shall also have the right to pursue any and all rights it may have against the breaching Party now or hereafter under the law, subject to the limitations of Section 7.4. hereof, including without limitation, the right to seek (i) injunctive relief to prevent the breaching Party from continuing to Breach its obligations under this Agreement, and (ii) reasonable attorney and other fees of the non-breaching Party. In addition, the non-breaching Party shall also have the right to any direct damages incurred as a result of such breach.

7.4. Limitation of Liability. IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY OR TO ITS CUSTOMERS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STRICT LIABILITY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS. IN THE CASE OF INDEMNIFICATION CLAIMS ASSERTED IN CONNECTION WITH SECTION 8, THE TOTAL LIABILITY OF A PARTY SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED THE LIMITS OF INSURANCE PROVIDED IN SECTION 9.

8. INDEMNIFICATION. For purposes of Sections 8.1 and 8.2, the term "WiredWest" shall include each and all of its subcontractors, assignees, and any other third-party acting at the direction of it or them.

8.1. Indemnification by WiredWest. To the extent permitted by law, and subject to the limitations of the Massachusetts Tort Claims Act, as applicable, WiredWest shall indemnify, defend and hold harmless MLP, its board members, if any, and Board of Selectmen, as applicable, 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 WiredWest, (b) claims by third-parties for breach by WiredWest of, or default by WiredWest under, any contract between WiredWest and such third-party, (c) any loss, cost, damage or expense resulting from WiredWest's non-compliance with applicable laws, regulations, orders, or rules of any governmental authority, or (d) any loss, cost, damage or expense resulting from WiredWest's infringement or misappropriation of any patent, trade secret, copyright or other proprietary right of any third-

party. The foregoing indemnity shall be subject to the provisions of Section 7.4 and 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. Notwithstanding the foregoing, nothing in this section shall be construed as a waiver by WiredWest of any governmental immunity or limitation of damages that may be extended to it by operation of law.

- 8.2. Indemnification by MLP.** To the extent permitted by law, and subject to the limitations of the Massachusetts Tort Claims Act, as applicable MLP shall indemnify, defend and hold harmless WiredWest, its Affiliates, officers, directors, employees, agents, successors 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 MLP of, or default by MLP under, any contract between MLP and such third-party, (b) any loss, cost, damage or expense resulting from MLP's non-compliance with applicable laws, regulations, orders, or rules of any governmental authority, or (c) bodily injury, death, personal injury or property damage resulting from the negligence or willful misconduct of MLP. 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. Notwithstanding the foregoing, nothing in this section shall be construed as a waiver by MLP of any governmental immunity or limitation of damages that may be extended to it by operation of law.
- 8.3. Notice of Claims; Indemnification Procedures.** The Indemnified Party shall provide written notice immediately to the Indemnifying Party of any loss, event, happening or occurrence that could be the basis of an Indemnified Claim. So long as the Indemnified 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 Section 8 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).
- 8.4. Apportionment.** In the event that an Indemnifying Party defends an Indemnified Party pursuant to the terms hereof, and the final adjudication of the court or body ruling on the Indemnified Claim 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 Section 6.

- 8.5. Settlement.** Any settlement of an Indemnified Claim shall be subject to the written approval of both of the Parties, which approval shall not be unreasonably withheld.

9. INSURANCE.

- 9.1. Insurance.** During the Initial Term and any Renewal Term of the Agreement, the Parties shall each obtain and keep in full force and effect public liability insurance in the amount of One Million (\$1,000,000) Dollars combined single limit for bodily injury, death and property damage arising out of any one occurrence, protecting the other Party against any and all claims for bodily injury, death or property damage arising directly or indirectly out of the Agreement or acts or omissions in connection therewith, including an Indemnified Claim under this Agreement.

- 9.2. Network Operator Insurance.** During the Term of the Agreement, WiredWest shall cause Network Operator and any other subcontractor acting on behalf of WiredWest under the Agreement to maintain and keep in force, at its own expense, the following minimum insurance coverages.

- 9.2.1.** Workers' Compensation Insurance in compliance with state law. Such Workers' Compensation Insurance policy(ies) shall include coverage for statutory workers' compensation benefits, voluntary compensation coverage and all appropriate state specific endorsements. Such policy(ies) shall also provide Employer's Liability Insurance per state law, with not less than the following limits:

- 9.2.1.1.** Bodily Injury with Accident - \$1,000,000 (one million) per accident;
- 9.2.1.2.** Bodily Injury with Disease - \$1,000,000 (one million) policy limit; and
- 9.2.1.3.** Bodily Injury with Disease - \$1,000,000 (one million) per employee.

- 9.2.2.** Comprehensive Automobile Liability Insurance, 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 designed 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.

- 9.2.3.** 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:

- 9.2.3.1.** \$1,000,000 (one million) per occurrence;

- 9.2.3.2. \$1,000,000 (one million) personal injury and advertising injury; and
- 9.2.3.3. \$2,000,000 (two million) annual aggregate
- 9.2.3.4. 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 and will be provided on a Claims Made Form, with a retroactive date which precedes the Effective Date of this 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 Initial Term or any Renewal 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 Effective Date of the Agreement.

9.3. Endorsements. The policies listed in Section 9.2 above, other than Workers' Compensation Insurance and other statutory insurances where it would be inappropriate, must be endorsed to name MLP as additional insured on a primary and noncontributory basis.

9.3.1. All insurance policies shall be written by insurance companies authorized to do business in the Commonwealth of Massachusetts. WiredWest 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.

9.3.2. The above referenced insurance policies shall be provided to MLP within ten (10) days following the signature of this Agreement.

9.3.3. WiredWest will provide MLP with a copy of any notice it receives of cancellation, material change or non-renewal of the coverage within 20 calendar days after receipt of such a notice. No such cancellation or material modification shall affect WiredWest's subcontractors' obligation to maintain the insurance coverages required by the Agreement. Network Operator's Excess Liability insurance carrier(s) may not seek contribution from primary liability policies other than Network Operator's own. Network Operator shall be responsible for payment of any and all deductibles for insured claims under its policies of insurance. If Network Operator or any other subcontractor fails to comply with any of the insurance requirements herein, upon written notice to WiredWest and a ten (10) day cure period, WiredWest shall, in addition to any other remedies WiredWest may have, procure such insurance and WiredWest shall cause its applicable subcontractor(s) to pay WiredWest the cost thereof.

9.4. Property Insurance. MLP shall be required to acquire and maintain insurance for all Network assets for the Network Segment owned by the MLP.

10. DISPUTE RESOLUTION. Disputes arising under this Agreement shall be resolved according to the following procedures.

10.1. In the event that there is any controversy, claim or dispute between the Parties arising out of this Agreement, or the breach hereof, that has not been resolved by informal discussions and negotiations, then either Party may, by written notice to the other, invoke the dispute resolution



procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the sixty (60) day period following a Party's receipt of said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute.

- 10.2.** In the event that any such controversy, claim or dispute cannot be settled or resolved amicably by the Parties during the sixty (60) day period provided for above, then either Party may pursue all available legal and equitable remedies. Each Party will retain and pay for its own legal counsel.
- 10.3.** The Parties agree to continue performing their respective obligations under the Agreement while the dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement.

11. GENERAL PROVISIONS.

- 11.1. Entire Agreement, Updates Amendments and Modifications.** The Agreement constitutes the entire agreement of the Parties with regard to the Services and matters addressed herein, and all prior agreements, memoranda of understanding, letters, proposals, discussions and other documents regarding the Services and the matters addressed in the Agreement are superseded. Updates, amendments and modifications to the Agreement may 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.
- 11.2. 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.
- 11.3. Survival.** The provisions of Sections 5, 6, 7 and 8 and any other provisions that by their terms would survive the expiration or earlier termination of this Agreement, shall survive such expiration or termination for any reason.
- 11.4. 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.
- 11.5. Severability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or governmental body having jurisdiction thereof, 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).
- 11.6. Counterparts.** This Agreement shall be executed in two counterparts. Each such counterpart shall be an original and together shall constitute but one and the same document.
- 11.7. Governing Law, Venue.** This Agreement and any and all claims and disputes arising hereunder



shall 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.

- 11.8. Binding Nature and Assignment.** This Agreement shall 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 WiredWest may assign its rights and obligations under the Agreement to an Affiliate, a subsidiary of WiredWest or a special purpose entity established and owned in whole or in the majority by WiredWest which expressly assumes its obligations and responsibilities hereunder. 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 7.1. If WiredWest intends to assign its rights or obligations to an Affiliate or other entity in accordance with this Agreement, WiredWest shall provide written notice thereof to MLP together with a copy of the proposed assignment document, thirty (30) days prior to the proposed date of such assignment.
- 11.9. 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.
- 11.10. 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.
- 11.11.** WiredWest agrees that in the event more favorable terms are negotiated with another Member municipal light plant for services of like kind to the Services hereunder, those terms will apply to the MLP under this Agreement.
- 11.12. Notices.** Whenever one Party is required or permitted to give notice to the other Party under the Agreement, such notice shall 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, or (d) when received electronically, if sent by email and one of the delivery methods in (a) through (c) above.
Notifications will be addressed as follows:

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

In the case of WiredWest:



In the case of WiredWest:
WiredWest
28 Wilder Road
Cummington, MA 01026
Attn: Executive Director

with a copy to:
Diedre Lawrence
Duncan & Allen N.E., LLC
35 Braintree Hill Office Park
Suite 201
Braintree, MA 02184

In the case of [MLP]

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 Corporation and MLP have caused this Agreement to be signed by their respective duly authorized representatives as of the day and year first above written.

For MLP

For WiredWest

By: _____

By: _____

Title: _____

Title _____

Date _____

Date _____

By: _____

Title: _____

Date _____

By: _____

Title: _____

Date _____



Appendix A

Excess Revenue Sharing Formula

Total Net Repair Expense (TNRE) = Sum of all maintenance and repair related expenses for all Members in the past fiscal year minus all insurance claim payments received by WiredWest

Total Town Expenses (TTE) = pole license fees + pole bond fees + PURMA and or MIIA (as applicable) insurance + electricity + all regulatory fees (sales tax, USF, etc.) + credit card fees + vendor wholesale fees + backhaul + any other charges that can be directly attributed to the Member.

Total Town Revenue (TTR) = All fees collected from Customers in a town for all services provided by WiredWest. TTR does not include revenue from leases of Dark Fiber received by Member, activation fees paid by the customer, or any pass through fees collected on behalf of the Member.

Net Town Revenue (NTR) = TTR - TTE

Total Net Town Revenue (TNTR) = Sum NTR for all Members with positive NTR

Total WiredWest Expense (TWWE) = TNRE + Total of all TTE + auditing + legal + accounting + any other charges that WiredWest pays that are not directly attributable to a specific town

Total WiredWest Revenue (TWWR) = All fees collected from Customers in all towns for services excluding activation fees paid by the customer, or any pass through fees collected on behalf of the Member.

Net WiredWest Revenue (NWWR) = TWWR – TWWE

Town Percentage of NWWR (TP) = if $NTR > 0$, then $NTR/TNTR$; if $NTR \leq 0$, then 0

Town portion of NWWR = TP x NWWR

Appendix B

Services Performed by WiredWest Subcontractors

ISP Services for Customers will be performed by Westfield Gas & Electric as the Network Operator for the Initial Term of this Agreement unless Westfield Gas & Electric is in breach of its agreement with WiredWest or that agreement otherwise terminates.

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 8:30am to 5pm, Monday – Friday, and
- Call Center Account Agents available 8:30am to 5pm, Monday - Friday, answering as WiredWest 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 provisioning 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
- Negotiate and implement SLAs with Commercial Customers
- Negotiate Lease/IRU agreements for Dark Fiber on the Network

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 WiredWest
- Reporting, Customer Relationship Management Item

Billing will include

- Billing Template setup
- Customer surcharges by WiredWest Member Town
- Custom branding as WiredWest
- Rates management
- Online bill presentment
- Collections

- Reporting
- Tax payments, as required
- Remit revenue from billing to WiredWest daily

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. **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

Data Security

- Compliance with M.G.L Chapter 93H and 201 CMR 17.00 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
- Tracking customer use of the Network for capacity planning purposes
- Detecting and resolving performance degradations

Legal and Regulatory

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

Construction and repair personnel as required

- Construction equipment, materials
- Traffic control
- Testing
- Splicing
- Repair stock
- Supervision
- Manage and operate the physical plant of the Network
- Develop and publish policies, procedures, systems and controls for effective operation of the Network
- Perform all maintenance and repair of the Network
- Dig Safe mark out of Member owned conduit
- Tree trimming on WiredWest and Member owned poles
- Periodic inspection of facilities
- Resolving engineering issues
- Managing relationships with vendors and service providers
- Perform all Network upgrades as specified in the 1-and 3-year plans

Planning

- Recommending and implementing equipment maintenance strategies and upgrades (1- and 3-year plans)

Record Keeping and Reporting

- Maintain records of all fiber in the Network
- Maintain a pole attachment database



- Develop and maintain a Fiber Management Plan
 - Detailed records on splice case configuration
 - Fiber optic strand continuity
 - Splice map
 - Path panel configuration
 - Outside plant elements like slack loops, patch panels, cabinets and splice cases
- Provide monthly KPI reports

Insurance Claims

- Maintain all records necessary to file insurance claims for property loss
- File insurance claims as appropriate (MLP insurer and/or third-party insurer)
- Remit revenue from insurance claims to WiredWest

Accounting and Bookkeeping

- Monthly reconciliation of all accounts
- Maintain income and expense accounts for WiredWest and each Member
- Prepare a monthly warrant for all WiredWest and Member invoices to be paid
- Pay all invoices approved by the /WiredWest Board of Directors
- Prepare monthly and quarterly profit and loss statements for WiredWest and each Member
- Prepare an annual profit and loss statement pre audit and post audit for WiredWest and each Member
- Prepare monthly, quarterly, and annual cash statements for WiredWest
- Work with the WiredWest Board of Directors to develop an annual budget for WiredWest and each Member
- Provide monthly report comparing actual to budget
- Make monthly deposits to Member Depreciation Reserve Accounts for those Members that charge the customers in their town a Depreciation Reserve Fee
- Make monthly deposits to Member account for debt service for those Members that charge the customers in their town a debt service fee
- Work with the auditor to produce the annual audit report

Auditing

- Prepare an annual audit of all WiredWest accounts
- Prepare an annual audit of each Member's accounts

Tree Trimming

- Trim and grind tree branches where designated by the MLP Manager

HVAC Maintenance

- Perform annual maintenance on Member HVAC system
- Respond to trouble calls and effect repairs as needed.

Generator Maintenance

- Perform annual maintenance on Member Generator and backup power
- Respond to trouble calls and effect repairs as needed

Legal

- Perform legal services as required