



# **Broadband Rate Book General Terms & Conditions**

**Holland Board of Public Works (HBPW)**

Updated January 2021

# Table of Contents

<b>1.0</b>	<b>INTRODUCTION</b>	<b>3</b>
<b>2.0</b>	<b>DEFINITIONS</b>	<b>3</b>
<b>3.0</b>	<b>GENERAL PROVISIONS</b>	<b>5</b>
3.1	OBLIGATIONS	5
3.2	RULES AND REGULATIONS	5
3.3	NEW SERVICE REQUIREMENTS	5
3.4.1	E-SERVICES PRIVACY POLICY	8
3.5	TERMS AND CONDITIONS	11
3.5.1	E-SERVICES TERMS AND CONDITIONS	11
3.6	RATE REVISION	14
3.7	SERVICE GOVERNANCE	14
3.8	AUTHORIZATION FOR SERVICE	14
3.9	INITIAL TERM OF CONTRACT FOR SERVICE	14
<b>4.0</b>	<b>SERVICE CONDITIONS</b>	<b>15</b>
4.1	DESCRIPTION OF SERVICE	15
4.1.1	ACTIVE ETHERNET	15
4.1.2	SHARED GIGABIT	15
4.1.3	DARK FIBER	16
4.2	SERVICE INTERRUPTION	16
<b>5.0</b>	<b>USE OF SERVICE</b>	<b>18</b>
5.1	GENERAL	18
5.2	ACCESS TO PREMISES	18
5.3	CUSTOMER OWNED EQUIPMENT	18
5.4	THEFT	18
5.5	DISCONTINUATION OF SERVICE	19
5.6	EQUIPMENT LOCATION	19
<b>6.0</b>	<b>RESPONSIBILITY FOR PAYMENT OF BILLS</b>	<b>19</b>
6.1	GENERAL	19
6.2	PAYMENT RECEIPT	20
6.3	LATE CHARGES	20
6.4	BILLING ERRORS	20
<b>7.0</b>	<b>REVISIONS</b>	<b>19</b>
<b>8.0</b>	<b>APPENDICES</b>	<b>22</b>
8.1	APPENDIX A: PREMISES WIRING AGREEMENT	22
8.2	APPENDIX B: MEMORANDUM AND NOTICE OF PREMISES WIRING AGREEMENT	29
8.3	APPENDIX C: DARK FIBER LEASE AGREEMENT	31

## **1.0 Introduction**

The HBPW owns and operates a fiber-optic network in the greater Holland area. This backbone system was installed in 1992 to improve communications between electric substations, and has expanded to service the greater Holland area.

## **2.0 Definitions**

**ACTIVE ETHERNET** – Subscribed Ethernet service for data transit utilizing HBPW electronics with dedicated bandwidth typically measured in megabits per second.

**BROADBAND** - A method of communication where the signal is transmitted by being impressed on a high-frequency carrier.

**COLOCATION SERVICE** – Dark fiber service option allowing Customer to locate equipment at HBPW facilities.

**CONNECTION** – A physical and/or logical bandwidth termination.

**CUSTOMER** – A purchaser of broadband service supplied by the HBPW.

**DARK FIBER** - Optical fiber infrastructure that can be utilized by customers providing their own electronic equipment at the termination points.

**DEMARCATION POINT** – The physical point at which the HBPW's network ends and the customer's private network begins. This could also be referred to as the termination point.

**ETHERNET** - A standard protocol (IEEE 802.3) for a local area network (LAN) bus using carrier sense multiple access with collision detection (CSMA/CD) as the access method. Ethernet is a standard for using various transmission media, such as coaxial cables, unshielded twisted pairs, and optical fibers.

**FACILITIES** – A general term which includes devices, associated structures and the like, used as a part of or in connection with a fiber installation.

**FIBER OPTICS** - Communications systems that use optical fibers for transmission. Optical Fiber is thin glass wire designed for light transmission, capable of transmitting billions of bits per second. Unlike electrical pulses, light pulses are not affected by random radiation in the environment.

GPON (Gigabit Passive Optical Network – A point to multipoint network comprising of an Optical Line Terminal (OLT) and Optical Network Units (ONUs) used to provide Shared Gigabit Service.

HOLLAND BOARD OF PUBLIC WORKS (HBPW) - When used in these Rules and Regulations, HBPW is an abbreviation meaning the Holland Board of Public Works

ISP – Internet Service Provider, a company supplying connectivity to an Internet point of presence location.

MDU – Multi-dwelling Unit. A classification of a building where multiple separate tenants live or work within a single structure with a common landlord. A common form is an apartment building.

PREMISES – A building and its grounds.

RATE – The unit prices as established by the HBPW's rate-making body and the quantities to which they apply as specified in the Rate Schedule.

RATE SCHEDULE – A filed statement of the broadband rates and the terms and conditions governing its application as established by the HBPW's rate-making body.

SERVICE LOCATION – The point at which the HBPW has agreed to provide broadband service.

SHARED GIGABIT – Subscribed GPON service for data transit utilizing a shared Gigabit network transport.

## **3.0 General Provisions**

All national and state statutes and regulations that govern the provision of utility services apply and supersede the terms of service contained in this document. All local ordinances and codes of the governmental units within the service territory of the Holland BPW also govern the services provided by HBPW where applicable.

### **3.1 Obligations**

The obligations of both parties commence when the HBPW begins to supply service and continues until either party has received from the other any form of communication (i.e. email, telephone call, or written) notice to discontinue service, unless otherwise specified in a contractual agreement.

### **3.2 Rules and Regulations**

A customer that commences service under any of the HBPW rate schedules hereby agrees to abide by all of these Terms & Conditions.

### **3.3 New Service Requirements**

To establish new Broadband service the following information may be required.

1. Full Name / Legal Business Name
2. Service Address via a mortgage/property tax statement or executed lease
3. Mailing Address if different from Service Address
4. Telephone Number
5. Email Address
6. Social Security Number / Tax ID Number
7. Contact Name
8. Location of customer owned infrastructure such as sprinkler systems and utility lines

### **3.4 Privacy Policies**

In accordance with the Michigan Social Security Number Privacy Act, Act 454 of 2004 codified at MCL 445.81 *et seq.* (the "Act"), HBPW will not do any of the following:

- Publicly display all or more than four sequential digits of a social security number. The term "publicly display" is broadly defined to mean exhibit, hold up, post, or make visible or set out for open view on a computer device, computer network, website, or other electronic medium or device.

- Use all or more than four sequential digits of a social security number as the primary account number for an individual.
- Print all or more than four sequential digits of a social security number on any identification badge or card, membership card, permit, or license.
- Require an individual to use or transmit all or more than four sequential digits of a social security number over the internet or a computer system or network unless the connection is secure or the transmission is encrypted.
- Require an individual to use or transmit all or more than four sequential digits of a Social Security Number to gain access to an internet website or a computer system or network unless the connection is secure, the transmission is encrypted, or a password or other unique personal identification number or other authentication device is also required to gain access to the internet website or computer system or network.
- Include all or more than four sequential digits of a social security number in or on any document or information mailed or otherwise sent to an individual if it is visible on or, without manipulation, from outside of the envelope or packaging.
- Subject to certain statutory exceptions, include all or more than four sequential digits of a social security number in any document or information mailed to a person, unless any of the following apply:
  - State or federal law, rule, regulation, or court order or rule authorizes, permits, or requires that a social security number appear in the document.
  - The document is sent as part of an application or enrollment process initiated by the individual.
  - The document is sent to establish, confirm the status of, service, amend, or terminate an account, contract, policy, or employee or health insurance benefit or to confirm the accuracy of a social security number of an individual who has an account, contract, policy, or employee or health insurance benefit.

Notwithstanding the foregoing provisions, HBPW reserves to itself any rights, privileges, exceptions, etc. that may apply pursuant to the Act or other applicable law, including, but not limited to, making use of all or more than four sequential digits of a social security number that is authorized or required by state or federal statute, rule, or regulation, by court order or rule, or pursuant to legal discovery or process, or, making an administrative use of all or more than four sequential digits of a social security number in the ordinary course of business to:

- Verify an individual's identity, identify an individual, or do another similar administrative purpose related to an account, transaction, product, service, or employment or proposed account, transaction, product, service, or employment.
- Investigate an individual's claim, credit, criminal, or driving history.
- Detect, prevent, or deter identity theft or another crime.

- Lawfully pursue or enforce its legal rights, including, but not limited to, an audit, collection, investigation, or transfer of a tax, employee benefit, debt, claim, receivable, or account or an interest in a receivable or account.

HBPW is committed to properly preserving the privacy of social security numbers as provided by the Act and other applicable law. Physical, electronic, and managerial procedures have been employed by HBPW to safeguard the security of personal information, including social security numbers and information relating to the amount of utility usage, the amount of a customer's utility bill, and account history. Social security numbers are maintained in a secure environment and treated as confidential, and HBPW expects and requires that all employees and agents who use or have access to any social security number adhere to the highest degree of confidentiality.

HBPW prohibits any unlawful disclosure of social security numbers and prohibits any employee or agent from maintaining, accessing, viewing, or using for their own personal purposes the social security number of another individual. For HBPW's business purposes, authorized personnel (i.e. employees and agents who have a business use for this information) are allowed to maintain, access, view, or transmit records and documents containing social security numbers as a means of identification, internal verification, or other administrative purposes, in addition to carrying out debt collection, in compliance with the Act and other applicable law.

When necessary, documents that contain social security numbers will be properly destroyed by a method that prevents display of the whole social security number. These methods include, but are not limited to, deletion from HBPW's computer systems and networks, partial redaction of information, and shredding or placement in a secure disposal removal system. HBPW prohibits the unauthorized removal of social security numbers, in any medium, from HBPW's business premises.

Any HBPW employee or agent who violates this privacy policy will be subjected to discipline up to and including discharge, as determined appropriate by HBPW, and any other liability or punishment imposed by the Act or other applicable law.

Any questions or concerns regarding social security number privacy should be promptly directed to customer service manager.

### 3.4.1 E-Services Privacy Policy

This Privacy Policy governs how HBPW ("we", "our" or "us"), uses Personal Information obtained from Customers who use our products and services, including our mobile software applications that are used in connection with our products (collectively, our "Service"). Furthermore, this Privacy Policy explains what Personal Information we receive and collect and how we use, process, retain, and transfer such Personal Information.

HBPW is fully committed to using its best efforts to maintain privacy protection and management of any Personal Information that is shared with us as a result of using our Service. As used in this Privacy Policy, "Personal Information" means any information that may be used, either alone or in combination with other information, to personally identify an individual, including, but not limited to, a first and last name, a phone number, an email address, and other contact information.

1. *End User License Agreements.* This Privacy Policy forms part of the Terms of Use Agreement or other licensing agreement that we enter into with our Customers. Capitalized terms not defined herein shall have the meaning ascribed to them in the Service Agreement.

2. *Modification and Changes in Policy.* HBPW reserves the right, at our discretion, to change the terms of this Privacy Policy at any time. Such change will be effective ten (10) days following the earlier of: (1) our posting of the revised Privacy Policy on our website at [www.hollandbpw.com](http://www.hollandbpw.com) (the "Site") or (2) an email notification to our Customers.

3. *Collection and Receipt of Personal Information.* We may receive and/or collect Personal Information in the following ways:

3.1 Customer Account Set-Up and Account Use: HBPW may collect certain Personal Information that a Customer chooses to provide as part of setting up and maintaining a Customer account to use the Service. This Personal Information may include a user ID, name, email address, phone number, address and other Personal Information that the Customer chooses to make available in connection with use of the Service. In order to access and use the Service, a separate user name and password will be created for individual Customers.

3.2 Location Based Services: Some of HBPW's Service products (individually "Location Based Service") are dependent on data related to the geographic location of the mobile device on which the Service is being used ("Location Data"). We use various technologies to determine location, such as global position system (GPS) signals, Wi-Fi access points, and cell tower ids. If you choose to use these Location Based Services, you agree that we may receive Location Data. If you don't want us to receive your Location Data, you may re-configure the settings on your mobile device to turn off location-sharing features. However, please be aware that turning off device location-sharing features may result in the inability to use our Location Based Service and your use of the Service may be negatively impacted.



3.3 Log Files: Our Service may make use of log files. The information inside the log files may include internet protocol (IP) addresses, application times taken to process Service user requests, Service user action details along with input parameters for debugging, Device IDs, public telephone numbers (PTNs), browser types, date/time stamps, referring/exit pages, clicked pages and any other information that a browser may send to us.

3.4 Cookies: The Service may utilize session "cookies" for authentication validation purposes. A "cookie" is a small text file that may be used, for example, to authenticate access to the Service. Most browsers allow you to control cookies, including whether or not to accept them and how to remove them. You may set most browsers to notify you if you receive a cookie, or you may choose to block cookies with your browser. Please be aware that if you choose to block a cookie, your login attempt to the Service may be unsuccessful.

#### 4. *The Way We Use Personal Information.*

4.1. Customer Information: We only use the Personal Information of a Customer to: (1) contact the Customer, (2) provide our Service to the Client, and (3) to identify and authenticate the Customer's access to our Service.

4.2. Affiliates: We may transfer Personal Information to the subsidiaries and affiliated companies (each an "Affiliate") that are within the HBPW group of companies, but only for the purpose of providing our Service. . Our Affiliates are required to process any such Personal Information in compliance with this Privacy Policy. Notwithstanding the foregoing, we will comply with applicable laws regarding Personal Information transfers as well as any transfer restriction that is specified in a specific Service Agreement between HBPW and a Customer.

4.3. Partners and Third Party Providers: We may transfer Personal Information to our third party service providers and partners, but only for purposes of carrying out our business operations and to enable us to provide our Service. Notwithstanding the foregoing, HBPW will comply with applicable law regarding Personal Information transfers as well as any transfer restriction that is specified in a specific Service Agreement between HBPW and a Customer. We use commercially reasonable efforts to only engage or interact with third party service providers and partners that also instate a privacy policy governing their use and processing of Personal Information.

4.4. Retention of Personal Information: We reserve the right to retain any Personal Information and other Service-related data in order to: (1) fulfill the purposes that are described in this Section 4 of this Privacy Policy, and (2) to comply with applicable law.

4.5. Other Disclosures: We may disclose your Personal Information or any information that is submitted to us via the Service if we have a good faith belief that disclosure of such information is helpful or reasonably necessary to: (i) comply with any applicable law, regulation, legal process or governmental request; (ii) enforce our End User License Agreement, including investigations of potential violations thereof; (iii) detect, prevent, or otherwise address fraud or

security issues; or (iv) protect against harm to the rights, property or safety of HBPW, our users, or the public.

5. *Anonymous Information.* Anonymous Information means any information which does not enable identification of an individual user, such as aggregated information, about use of the Service. We may use Anonymous Information or disclose it to third party service providers, to provide, improve and develop our Service, including analyzing trends and gathering demographic information.

6. *Push notifications.* If you access the Service via your mobile device, you may receive push notifications from HBPW. If you no longer wish to receive push notifications, you can disable them by re-configuring the settings on your mobile device to turn off push notifications for a specific mobile application. However, please be aware that if you choose to turn off push notifications, your use of the Service may be negatively impacted.

7. *Opting-Out of Promotional Emails.* You may choose not to receive future promotional or advertising emails from us by selecting an unsubscribe link at the bottom of each email that you receive from us. Please note that even if you opt out of receiving the foregoing emails, we may still send you a response to any "Contact Us" request as well as administrative, maintenance and operational emails (for example, in connection with a password reset request) that are necessary to facilitate use of the Service.

8. *Customer Choice.* Each of our Service users may choose whether or not to provide or disclose Personal Information in connection with its use of the Service. If a Service user chooses not to provide the Personal Information we request, it may still visit and use parts of the Service, but may be unable to access or use certain features, options, programs, and services that involve our interaction.

9. *Access and Accuracy - Customers.* To the extent that we are provided with Personal Information, we wish to maintain accurate Personal Information. Our Customers may log into their Service account and use the Service tools to access or correct a material inaccuracy in certain Personal Information that we may be storing. If a Customer would like to access, delete or correct any other Personal Information that we may be storing, the Customer may submit an access request by sending an email to [customerservice@hollandbpw.com](mailto:customerservice@hollandbpw.com). The email should include adequate details of the request.

10. *Links to Other Sites and Third Party Advertisements.* Third party advertisements may appear on some pages of the Service, for example on the Service account log-in page. Such third party advertisements, and other parts of the Service (for example, the Service account log-in page) may also contain links to third party websites and services that are not owned or controlled by HBPW. We are not responsible for the privacy practices or the content of third party websites, services and advertisements, and you visit them at your own risk.

*11. Enforcement/Verification.* HBPW uses the self-assessment approach to verify our compliance with this Privacy Policy. To do so, we conduct periodic compliance audits of our privacy practices. If we become aware that any of our employees or third party service providers are using or disclosing Personal Information in a manner that violates this Privacy Policy, we will take reasonable steps to prevent or stop the use or disclosure.

*12. Dispute Resolution.* Please feel free to direct any questions or concerns you may have regarding the use or disclosure of Personal Information to HBPW's Customer Service Department at [customerservice@hollandbpw.com](mailto:customerservice@hollandbpw.com). HBPW will investigate and attempt to resolve complaints and disputes regarding use and disclosure of Personal Information in accordance with the principles contained in this Privacy Policy.

*13. Security.* The security of Personal Information is important to us. We follow generally accepted industry standards to protect the Personal Information submitted to us, both during transmission and once we receive it. However, no method of transmission over the Internet, or method of electronic storage, is 100% secure. Therefore, while we strive to use commercially acceptable means to protect Personal Information, we cannot guarantee its absolute security.

*14. Privacy for Children.* HBPW's Service is not designed to be directed towards children under the age of 18. As such, we do not intend to knowingly collect Personal Information from any person who is under 18 years of age.

*15. How We Respond to Do Not Track Signals.* HBPW does not track Service users over time and across third party websites to provide targeted advertising. Accordingly, we do not currently respond or take any action with respect to web browser "do not track" signals or other mechanisms that provide consumers the ability to exercise choice regarding the collection of personal information about an individual consumer's online activities over time and across third-party web sites or online services.

*16. Contacting HBPW.* Any comments, concerns, complaints, or questions regarding our Privacy Policy may be addressed to Customer Service at [customerservice@hollandbpw.com](mailto:customerservice@hollandbpw.com).

### **3.5 Terms and Conditions**

A customer that commences service with HBPW agrees to abide by all the terms and conditions of this rate book and HBPW rate schedules.

#### **3.5.1 E-Services Terms and Conditions**

Your access and use of MyHBPW (the "Application") is subject to your compliance with the following terms of use (the "Agreement") and all applicable laws. If you do not want to agree to these terms and conditions, you must not access or use this Application. By accessing and downloading the Application, you accept, without limitation or qualification,

that these terms and conditions may be revised at any time. Your continued use of the Application following the posting of any such revisions means that you accept and agree to the revisions. Your use of the Application is at your own risk.

In accessing and using the Application, users may provide personal information to Holland Board of Public Works, also known and referred to herein as HBPW (including names, addresses, email addresses and phone numbers). Any and all personal information transmitted by the Application is subject to our Privacy Policy, which can be found by clicking on the "Privacy Policy" link.

By using this Application, you consent to all actions taken by HBPW with respect to your information in compliance with the Privacy Policy.

This Application and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof) are owned by HBPW, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

Any links to third party websites contained in the Application are intended for informational purposes only. HBPW has no control over such third-party websites, makes no representations about such websites, does not endorse such websites and assumes no responsibility for any content or materials on or available from such websites.

HBPW expressly disclaims all warranties of any kind, whether express or implied, in connection with the content and services provided on or through the Application, including but not limited to warranties of merchant ability, non-infringement and fitness for any particular purpose. The information posted on this Application and in emails generated from this Application is given as of the date hereof. While HBPW strives to keep the information on the Application accurate, complete, and up to date, HBPW makes no warranty as to the accuracy of this information or otherwise, and assumes no obligation to update or supplement this information to reflect any facts or circumstances which may hereafter come to its attention or any changes in laws which may hereafter occur. HBPW makes no warranty that the quality of the information or materials obtained by you through this Application will meet your expectations. Any information obtained through the use of the Application is done at your own risk, and you agree that you will be solely responsible for any damage to your computer system or loss of data that results from the download or receipt of any such material.

HBPW, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns shall not be liable for any direct, indirect, special, incidental, reliance, consequential, or exemplary damages, including, but not limited to: loss of profits or data, loss of or damage to property, claims of third parties or any other damages whatsoever, whether arising as in contract, negligence or tort action, arising out of or in connection with this

Agreement, your use of, or inability to use, the Application, or any websites linked to it, or any services or items obtained through this Application or such other websites.

You agree to defend, indemnify and hold harmless HBPW, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to your violation of this Agreement or your use of the Application.

You agree that all disputes between you and the HBPW (whether or not such dispute involves a third party) with regard to your relationship with the HBPW under this agreement, including without limitation disputes related to this user agreement, your use of the services, and/or rights of privacy and/or publicity, will be resolved by binding individual arbitration under the American Arbitration Association's Rules for Arbitration of consumer related disputes that you and the HBPW hereby expressly waive trial by jury, discovery, and rights to appeal in arbitration are generally more limited than in a lawsuit, and other rights that you and the HBPW would have in court may not be available in arbitration. As an alternative, you may bring your claim in "small claims" court for Ottawa County, if permitted by that small claim court's rules and if within such court's jurisdiction, unless such action is transferred, removed, or appealed to a different court. You may bring claims only on your own behalf. Neither you nor the HBPW will participate in a class action or class-wide arbitration for any claims covered by this agreement to arbitrate. You are giving up your right to participate as a class representative or class member on any class claim you may have against us, including any right to class arbitration or any consolidation of individual arbitrations.

This Agreement may be revised at any time and you agree to be bound by the revised Agreement. Any such modifications will become effective on the date they are first posted to this Application. It is your responsibility to return to this Agreement from time to time to review the most current terms and conditions. The HBPW does not and will not assume any obligation to notify you of changes to this Agreement.

You agree to be bound by any affirmation, assent, or agreement you transmit through this Application, including but not limited to any consent you give to receive communications from the HBPW or its agents solely through electronic transmission. You agree that when you click on an "I agree," "I consent," or other similarly worded "button" or entry field with your mouse, keystroke, or other computer device, your agreement or consent will be legally binding and enforceable and the legal equivalent of your handwritten signature.

This Agreement and the Privacy Policy constitute the entire agreement between you and Holland Board of Public Works with respect to your use of the Application and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between you and the HBPW with respect to this Application. A printed version of this Agreement and of any notice given in electronic form shall be

admissible in judicial or administrative proceedings based on or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The failure of Holland Board of Public Works to exercise or enforce any right or provision of the terms and conditions of this Agreement shall not constitute a waiver of such right or provision. The HBPW does not waive any right at law, equity, or statute relating to non-payment for its utility services. If any provision of this Agreement is found to be invalid by a court of competent jurisdiction, the parties agree all other provisions of this Agreement shall remain in full force and effect. You agree that, regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of this Application or this Agreement must be filed within one (1) year after such claim or cause of action arose, otherwise, such claim or cause of action is permanently barred.

Any questions regarding this Agreement should be directed to:  
[customerservice@hollandbpw.com](mailto:customerservice@hollandbpw.com).

### **3.6 Rate Revision**

All rates herein are subject to revision at any time upon approval by HBPW's Board of Directors and Holland City Council.

### **3.7 Service Governance**

Service may be further governed by the HBPW standard rules and regulations.

### **3.8 Authorization for Service**

The Customer grants to the HBPW permission to construct, operate and maintain a communication line or system on, over, or under the above premises and in or upon all streets, roads, or highways abutting said land. The Customer agrees that in the event that the Customer does not own all private land or lands necessary to be crossed, as stated above, Customer shall obtain all necessary permission from the owner or owners of said land or lands, and shall submit same to HBPW prior to installation of service. The Customer grants to HBPW access to the premises at all reasonable times for the purpose of installing, repairing, maintaining or removing any service to the premises.

### **3.9 Initial Term of Contract for Service**

Initial term of contract for service under any rate shall be for a minimum of twelve (12) consecutive months, unless otherwise specified in a contractual agreement.

## **4.0 Service Conditions**

### **4.1 Description of Service**

#### **4.1.1 Active Ethernet**

This service provides an Ethernet interface at dedicated bandwidths from 0.5 to 2000 Mbps. Multiple connections are available. Point to point bandwidth service is also available between the customer building and one of our connected ISPs. This service is billed per connection. Construction costs, setup fees, and bandwidth rates are available upon request.

#### **4.1.2 Shared Gigabit**

This service provides an Ethernet interface at bandwidths from 100 to 1000 Mbps. Data transit is via a best effort shared network with no guarantee as to throughput. This service is best suited for Internet access. Construction costs, setup fees, and bandwidth rates are available upon request. Shared Gigabit service is subject to availability

Shared Gigabit Service is offered in the following service options:

##### **1) Transit Only**

Transit Only Shared Gigabit service provides connections between two or more points on the HBPW network. This option can be used to connect to a Partner Internet Service Provider for Internet service. This service is billed on a per connection basis.

##### **2) Internet Service**

Internet service provides connectivity between the customer's location and the Internet. Internet service is provided by HBPW.

##### **3) Enhanced Service**

The Enhanced Service Option may be added to either Transit Only or Internet Service. This option adds the following features:

- Static IP Addresses
- Service Level Agreement
- Enhanced reliability
- Proactive communication
- Priority restoration

#### **4) Multi-Dwelling Unit Option**

Property owners that have multiple tenants may subscribe to the Multi Dwelling Unit (MDU) Option. This option allows the subscriber to connect other tenants (sub-subscribers) to a single Shared Gigabit service. HBPW will provide a single Shared Gigabit service connection and the subscriber will be responsible for network connections to sub-subscriber. A maximum of 5 sub-subscribers is permitted.

#### **5) Premises Wiring Agreement**

Property owners that have multiple tenants and MDU's without the required building wiring installed to receive HBPW Shared Gigabit service may qualify for assistance to install the required wiring through the HBPW Premises Wiring Agreement (Appendix A and B).

### **4.1.3 Dark Fiber**

Dark Fiber is leased on a per strand, per foot, per month basis, with an aggregate minimum per month. This option allows the customer to design, install and maintain the electronic equipment required.

Dark Fiber is offered with a Colocation Service option that allows the customer to install and maintain network equipment at available HBPW facilities.

Installation estimates, setup fees, and lease rates are available upon request. A Dark Fiber Lease and Colocation requires a separate service agreement (Appendix C).

## **4.2 Service Interruption**

The HBPW and the City of Holland will use ordinary diligence in providing broadband service, but does not guarantee constant or continuous service. By applying for broadband service, each broadband customer shall be deemed to have agreed that the HBPW:

1. May interrupt or suspend service at any time, either with or without notice, for inspection, repair, maintenance, alteration, or change on the customer's premises or elsewhere; and



2. Shall have no duty, obligation, responsibility, or obligation for or by reason of any such interruption or suspension of service, or for any damage or loss resulting therefrom; and
3. Will make a diligent effort to notify customers of planned outages, and keep customers informed of the status of outages.
4. If the customer subscribes to a service that has an associated Service Level Agreement (SLA), the HBPW will execute the agreement as prescribed. The Service Level Agreement is available upon request.

## **5.0 Use of Service**

### **5.1 General**

Broadband is supplied to a customer for exclusive use on the premises to which it is delivered by the HBPW. Service may not be shared with another, sold to another, or transmitted off the premises without written permission of the HBPW.

### **5.2 Access to Premises**

HBPW Staff will schedule appointments with the customer to enter the customer's premises to inspect, repair, or otherwise maintain HBPW equipment located on the customer's premise.

The customer will schedule appointments with HBPW to enter a colocation facility to maintain customer equipment located in a colocation facility. After-hours access is available for a fee.

### **5.3 Customer Owned Equipment**

The HBPW is NOT responsible for maintenance of customer equipment.

Customer owned equipment may reside within available HBPW facilities if the customer has a valid Dark Fiber Lease agreement and utilizes the colocation service option.

### **5.4 Theft**

All cases, where there is sufficient evidence, will be turned over to the Holland Public Safety Department and/or the City Attorney.

The HBPW will attempt to recover all charges that were intentionally avoided or not paid plus all monthly-accrued late fees. In addition, a 6% over prime rate recovery charge will be assessed to charges, fees and penalties. All costs relating to the investigation and remediation of theft of services will be assessed to the account.

If the actual amount of service lost to the theft or diversion cannot be determined, the amount applied will first be estimated using previous account history. If neither the actual amount of service nor the estimated amount of service for the particular account can be determined, the account will be assessed the average usage for the class of service prorated to the time the theft or diversion occurred.

There is no limitation on the time period for which past charges will be assessed.

Other actions, civil or criminal, will be decided by the General Manager and/or City Attorney, as appropriate.

## **5.5 Discontinuation of Service**

Broadband customers desiring to discontinue service must request discontinuation through the HBPW Broadband Department. Upon termination of service the Broadband staff will schedule an appointment to retrieve the HBPW owned electronic equipment from the customer premise.

Except as otherwise set forth herein, the BPW shall not issue credits for service lapses due to vacations or other non-use Broadband services. Notwithstanding the foregoing, a Residential Service User may request a seasonal hold which will be honored for a minimum period of three (3) months and a maximum period of six (6) months. The Residential Service User shall provide the BPW with the date the seasonal hold shall commence and the date the seasonal hold shall be lifted so that services resume. Only one seasonal hold shall be allowed per 12 month period.

## **5.6 Equipment Location**

Bandwidth service may require the location of HBPW equipment on the customer's premise. The customer is responsible for maintenance of a clean, safe, and hazard-free environment for this equipment. The Customer shall be held liable for damage to HBPW equipment from acts of carelessness, negligence, or willful damage performed by the owner or their tenants. The HBPW will repair or replace damaged equipment, and the cost shall be billed to the customer.

## **6.0 Responsibility for Payment of Bills**

### **6.1 General**

Each HBPW Customer is responsible to pay all utility bills as rendered on or before the due date shown thereon. The Customer remains responsible for payment of the bills until the Customer orders service to be discontinued. Bills are rendered on approximately a monthly basis. Bills are mailed to Customers approximately fifteen (15) days before the due date shown on the bill. The Customer shall pay the net amount if paid on or before the due date on the bill. Failure on the part of the Customer, through no fault of the HBPW, to receive the bill shall not entitle the Customer to pay the net amount after the due date of the bill. If a bill remains unpaid, the HBPW shall have the right to discontinue service. In extenuating circumstances, a Customer will be afforded the opportunity to make payment arrangements.

The HBPW will make billing history available to Customers at no charge, provided the information is currently stored on an active database. Customer requests for billing history that is no longer on an active database will be subject to payment of hourly fees

based on the average burdened hourly wage of the HBPW employee assigned to perform the research and compilation of the data.

The HBPW will charge a “Non-Sufficient Funds Fee” in accordance with Rule 15 for returned checks.

## **6.2 Payment Receipt**

Application of the payment received shall be as the customer elects and notes in the appropriate area of the HBPW invoice.

The election for crediting partial payment must be made with the payment and subsequent request to alter the payment shall not be permitted.

## **6.3 Late Charges**

A late payment charge of two percent (2) of the amount in arrears will be assessed when the next month’s bill is issued.

The late payment charge will not apply to any penalty portion of the customer’s bill.

## **6.4 Billing Errors**

Providing an accurate and timely bill to all customers is a very important goal for the HBPW. In the event an error occurs as the result of an unintentional mistake, either by the customer or the HBPW, the following policy is provided to guide the resolution of the mistake. Intentional actions such as theft or fraud on the part of the customer will be handled by the Theft of Service policy. Intentional actions such as theft or fraud on the part of HBPW personnel will be handled by this policy.

Specifically:

1. If the HBPW overcharges a customer due to a billing error caused by an unintentional mistake, the HBPW shall refund or credit the amount of the overcharge for a period of two years immediately preceding discovery of the billing error. In special circumstances, a longer period up to a maximum of six years may be used where there is no question as to the facts of the error such as when the error first occurred and the cause of the error. The facts of the error under consideration must not be disputed by either by the HBPW or the customer for consideration under these special circumstances. If the error is such that it is not possible to determine the effects on past decisions by the HBPW, the normal period of two years shall be used.
2. If the HBPW undercharges a customer, the HBPW will evaluate the circumstances and may bill the customer for the amount of the undercharge up

to two years immediately preceding discovery of the error. The customer will be offered a period of time to repay the amount up to a period equal to the length of time the error occurred.

3. It is the customer’s responsibility to request the initial rate and any subsequent rate changes for the service provided. All requests for initial rates and rate changes must be in writing. HBPW personnel will assist customers in determining the appropriate rates and make suggestions as to the best rate for the customer; however, it is the customer’s responsibility to select the rate they desire. The HBPW will not retroactively adjust billings just because it is determined that a different rate would have produced a lower cost to the customer.
4. There is no limit of time on the recovery of overcharges by customers for intentional errors by HBPW personnel.

## 7.0 Revisions

<b>Date</b>	<b>Initials</b>	<b>Revision Description</b>
<b>01/20/21</b>	<b>PH</b>	<b>Colocation added</b>
<b>04/12/21</b>	<b>TS</b>	<b>Premises Wiring Agreement language, Appendix added for Agreements</b>

Approved by HBPW’s Board of Directors April 12, 2021

Approved by Holland City Council April 14, 2021

## 8.0 Appendices

### APPENDIX A PREMISES WIRING AGREEMENT

THIS SERVICES AGREEMENT (this "Agreement") is made and entered into on February \_\_\_\_, 2021, by and between the **City of Holland, acting by and through its Board of Public Works** (the "HBPW") of 625 Hastings Ave., Holland, Michigan 49423 and \_\_\_\_\_ (the "Authorized Party") who owns or has control over certain real estate and improvements thereon located at \_\_\_\_\_, Holland, Michigan \_\_\_\_ (the "Premises"), consisting of \_\_\_\_\_ {commercial/residential} units.

WHEREAS, the HBPW is authorized to construct and maintain a broadband communications system in its service area in and around Holland, Michigan area. (the "Service Area");

WHEREAS, the Premises are either a multi-family unit building or a multi-condominium unit building.

WHEREAS, the Authorized Party is either the Owner of, or the homeowner's association for, the Premises and is authorized to enter into this Agreement and give the HBPW access to the Premises (other than access to individual condominiums units, if applicable);

WHEREAS, the Authorized Party desires to provide broadband services to the Premises, including, but not limited to, multi-channel video, high speed data, information and voice services (collectively, the "Services") and the HBPW is willing to install and maintain a broadband communications system for such purposes on the Premises in accordance with the terms and conditions below; and

WHEREAS, the various third party providers use the HBPW broadband system to provide Services.

The parties, for good and valuable consideration, intending to be legally bound, agree as follows:

1. **Wiring.**

a) **Premises Wiring.** The HBPW will install all facilities necessary to transmit the Services to the Premises, including, but not limited to, distribution cables, amplifiers, pedestals, lock boxes, equipment and occupant devices up to and including the HBPW's Point of Demarcation ("DEMARC") (collectively, the "HBPW Wiring"). The HBPW agrees to install and maintain the wiring within the Premises after the HBPW's DEMARC to the service location(s) (the "Home Run Wiring"). The service locations are those points of connection on the wall(s) of the units where the customer connects to the Home Run

Wiring. The HBPW will provide wiring to 1 service location per unit at no cost for each unit once the occupant signs up for HBPW broadband service, additional service locations will be billed to the customer at the HBPW's normal rates.

b) Quality of Work. All work shall be done by the HBPW in a proper and workmanlike manner in accordance with Federal Communications Commission ("FCC") regulations, industry standards and local codes, unless otherwise provided in this Agreement. The HBPW will be responsible for obtaining all necessary permits, licenses and approvals in connection with the HBPW's operation of the wiring as set forth in this Section.

c) Use and Maintenance of Wiring. The Authorized Party has the authority to grant and does hereby grant to the HBPW, at the HBPW's expense, during the term hereof the right to operate, maintain, repair and replace, as necessary, the HBPW Wiring to the Premises and to interconnect with and use the Home Run Wiring. Neither the Authorized Party nor any third party shall tap into, use, or otherwise interfere with the HBPW Wiring or the Home Run Wiring or any portion thereof for any purpose not authorized by the HBPW. The HBPW, at HBPW's expense, shall maintain the Home Run Wiring. The HBPW shall repair and maintain any portion of the Home Run Wiring and related equipment if damaged by acts of the Authorized Party, Authorized Party's contractors, employees, agents, invitees, or occupants and charge the Authorized Party for all materials and labor expended by the HBPW. If the Authorized Party fails to reimburse the HBPW for Authorized Party's expenses under this section the HBPW may, at its option, suspend delivery of the Services to the Premises until the required reimbursement is paid. The HBPW shall have the right to interconnect with and use any telecommunications wiring owned or controlled by the Authorized Party within the units that may become necessary or useful for the provision of the Services to the occupants, whether or not such facilities are owned, installed, controlled or maintained by the HBPW.

d) Ownership of Wiring. The HBPW Wiring is and will remain the personal property of the HBPW. The Home Run Wiring is and will remain the property of the HBPW.

2. Access. The Authorized Party shall allow HBPW personnel to enter all common areas of the Premises for the purposes of auditing, selling services, connecting, or disconnecting service, and installing, maintaining, repairing, replacing, or removing equipment and apparatus connected with the provision of the Services, and shall use reasonable efforts to assure the HBPW access to any parts of the Premises over which it does not have control for the same purposes. The Authorized Party shall supply unit numbers of occupants at reasonable intervals. The Authorized Party shall cooperate with the HBPW to prevent the unauthorized reception of the Services.

3. **Delivery of Services.** The Authorized Party has the authority to grant and does hereby grant to the HBPW during the term hereof the right to deliver the Services to the Premises, unless otherwise required by applicable law. The Authorized Party shall not enter into a bulk services agreement with another service provider to provide services similar to the Services during the term of this Agreement regardless of the method used to deliver such services to the Premises.
4. **Fees and Charges for Services.** The terms, conditions, charges, and fees for the Services provided to occupants at the Premises shall be contained in rates adopted by the HBPW from time to time. The Authorized Party assumes no liability or responsibility for service charges contracted for by occupants. All billing and collections from occupants will be accomplished by the HBPW.
5. **Customer Service.** The HBPW shall provide Services in accordance with its Terms and Conditions and other rules and procedures. The HBPW will maintain a local telephone number which will be available to its subscribers 24 hours a day, 7 days a week. The HBPW representatives will be available to respond to customer telephone inquiries during normal business hours. The HBPW will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the HBPW.
6. **Private Reception Devices.** Notwithstanding anything else in this Agreement to the contrary, the HBPW shall not interfere with the right of an occupant to install or use his own private reception device so long as the occupant has contracted for service with the HBPW.
7. **Term.** This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Authorized Party and the HBPW and their respective successors and assigns for a term of 10 years from the date first set forth above. This Agreement shall automatically renew for successive periods of 60 days unless either party shall provide the other with a minimum 60 days' notice of its intention not to renew at the end of the then current term.
8. **Insurance.** The HBPW agrees to maintain workers' compensation insurance with statutory limits and commercial general and automobile liability insurance. Upon request, the HBPW will provide the Authorized Party with a certificate evidencing such insurance.
9. **Indemnification.** The HBPW shall indemnify, defend and hold harmless the Authorized Party, its personnel, directors, agents and representatives from and against any and all claims, damage or expense arising out of the acts or omissions of the HBPW or its personnel, directors, agents or representatives in the operation, maintenance or removal of the HBPW Wiring, interconnection with and use of the Home Run Wiring, the Services



provided to occupants at the Premises pursuant to this Agreement or a breach of this Agreement. The Authorized Party shall indemnify, defend and hold harmless the HBPW, its personnel, directors, agents and representatives from and against any and all claims, damage or expense (including attorney fees) arising out of the acts or omissions of the Authorized Party, its personnel, directors, agents and representatives in the operation and maintenance of the Premises, the interference with the Services by another provider authorized by the Authorized Party to provide its services at the Premises or a breach of this Agreement.

10. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **Termination.**

a) **Default.** In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. The defaulting party shall have 45 days to either (i) notify the non-defaulting party that no default occurred and provide reasonable proof thereof, (ii) cure the default, or (iii) if such default is incapable of cure within such 45-day period, commence curing the default within such 45 day period and diligently pursue such cure to completion. In the event the defaulting party fails to do so within such 45-day period, the non-defaulting party may terminate this Agreement upon 30 days written notice without further liability of either party.

b) **Permanent Loss of Authority.** This Agreement shall terminate automatically without any further liability on the part of the HBPW in the event the HBPW lacks authority to continue to provide the Services to the Premises due to loss of governmental authorization.

12. **Removal of Wiring upon Termination.**

a) **Removal.** Upon expiration or termination of this Agreement for any reason, the HBPW shall have a period of 3 months during which it shall be entitled, but not required, to remove the HBPW Wiring and/or Home Run Wiring. The HBPW shall promptly repair any damage to the Premises caused by such removal.

b) **Tolling of Removal Period.** Notwithstanding anything to the contrary contained in this Agreement, the removal period referenced in Section 12(a) shall be tolled for as long as the HBPW has the right under applicable law to continue to provide any or all of the Services to any or all of the units on the Premises after the termination or expiration of this Agreement, in which case the HBPW shall have the right to continue to own and use the HBPW Wiring and the

Home Run Wiring to provide the Services. This Section shall survive the termination of this Agreement

c) Abandonment. If the HBPW does not remove the Home Run Wiring before expiration of the removal period set forth in this Section 13(a), the Home Run Wiring shall be deemed abandoned and the HBPW shall have no further obligation with respect to the Home Run Wiring. Upon abandonment, the Home Run Wiring shall be deemed property of the Authorized Party.

### 13. Miscellaneous.

a) Force Majeure. Neither party shall be liable for failure to perform its obligations under this Agreement due to acts of God, the failure of equipment or facilities not owned or controlled by a party (including, but not limited to, utility service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the party with the performance obligation.

b) Assignability; Binding Effect. This Agreement may be assigned by either party. The assignee shall agree in writing to be bound by all the terms and conditions hereof. In the event the Authorized Party sells, assigns, transfers or otherwise conveys the Premises to a third party, the Authorized Party shall give the HBPW prior written notice of such change of ownership or control. The Authorized Party shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. This Agreement shall be binding upon the parties and their respective successors and assigns.

c) Applicable Law. This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the State of Michigan, without regard to its choice of law principles.

d) Dispute Resolution. If the parties are not able to resolve disputes, they agree that the court of competent jurisdiction for the State of Michigan serving Ottawa County shall be the exclusive jurisdiction and venue for resolution of any dispute relating to the terms and performance of this Agreement.

e) Invalidity. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

f) Recording. The HBPW may record this Agreement (or a memorandum summarizing the material terms) in the public records of the county in which the Premises are located.

g) Notices. All notices, demands, requests or other communications (other than invoices) given under this Agreement shall be in writing and be given by personal delivery, United States Postal Service by certified mail, postage prepaid and return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to the Authorized Party:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the HBPW:

Holland Board of Public Works  
Attn: Broadband Services Superintendent  
625 Hastings Ave.  
Holland, Michigan 49423

h) Entire Agreement; Amendments. This Agreement, including all exhibits attached hereto, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

i) Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

{Signatures on next page}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**AUTHORIZED PARTY**

\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_, 2021

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HBPW**

City of Holland, acting by and through its  
Board of Public Works

Dated: \_\_\_\_\_, \_\_\_\_, 2021

By: \_\_\_\_\_

Name: David G. Koster

Title: General Manager

Approved as to form:

\_\_\_\_\_

Ronald J. VanderVeen  
City Attorney

Dated: \_\_\_\_\_, \_\_\_\_, 2021

**APPENDIX B**

**MEMORANDUM AND NOTICE OF  
PREMISES WIRING AGREEMENT**

**THIS MEMORANDUM AND NOTICE** is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and between \_\_\_\_\_, of \_\_\_\_\_ (the “Authorized Party”) and the **City of Holland, acting by and through its Board of Public Works**, a Michigan municipal corporation, of 625 Hastings Ave., Holland, MI 49423 (the “HBPW”).

**WITNESSETH:**

**WHEREAS**, the Authorized Party is \_\_\_\_\_ {an individual, a Michigan corporation, a Michigan non-profit corporation, a Michigan limited liability company, etc. - insert status}\_\_\_\_\_.

**WHEREAS**, the Authorized Party owns Premises known as \_\_\_\_\_, Holland, Michigan and is legally described as:

{insert legal description}

Tax Parcel # \_\_\_\_\_

(the “Premises”)

**WHEREAS**, the HBPW and the Authorized Party have entered into a Premises Wiring Agreement of even date herewith under which the HBPW will construct or install and maintain fiber or cable for broadband services on, under or over the Premises and/or in the building on the Premises and market, sell and provide broadband services to occupants of the Premises (the “Agreement”); and

**WHEREAS**, the parties desire to enter into this Memorandum to give record notice of existence of the Agreement.

**NOW THEREFORE**, for other good and valuable consideration, the Authorized Party and the HBPW acknowledge and the parties give notice that:

1. They have entered into the Agreement to construct or install and maintain fiber or cable for broadband services to the Premises.
2. That the fiber or cable is owned by the HBPW and may not be used by others without HBPW written approval.



**APPENDIX C**

**DARK FIBER LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF HOLLAND, ACTING BY AND THROUGH**

**THE HOLLAND BOARD OF PUBLIC WORKS**

**AND**

---

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ with its principal offices located at \_\_\_\_\_ (the "Lessee"), and the **City of Holland, a Michigan Municipal Corporation of Ottawa and Allegan Counties, Michigan, acting by and through Holland Board of Public Works, (the "HBPW")** with its principal offices located at 625 Hastings Avenue, Holland, Michigan.

**RECITALS**

- A. The HBPW is a provider of broadband fiber optics transport and access services and owns, operates and maintains an area-wide fiber optic network, the "HBPW Network", through which communication signals can be transmitted.
- B. The Lessee is a \_\_\_\_\_ (INSERT BUSINESS ENTITY) desiring to use a portion of HBPW Network between and among several of its facilities.
- C. The Lessee's **Dark Fiber Lease Schedule (DFLS – Exhibit A)** defines and describes fiber routes leased by the HBPW to Lessee. It includes, but is not limited to: points of demarcation, footage, number of strands, locations, routes, and non-refundable development fees for each of the routes leased by the HBPW to Lessee. Footages will be determined by the post-construction OTDR tests that are provided for under paragraph 9 of this agreement.
- D. Fiber connectivity shall be provided in accordance to the specifications identified in the **Fiber Specifications (Exhibit B)**.

- E. The Lessee's **Colocation Service Schedule (CSS – Exhibit C)** defines and describes colocation services provided by the HBPW to Lessee. It includes, but is not limited to: Rack usage, feeder cable use, fiber meet points, cross connections, and non-refundable development fees for each of the routes leased by the HBPW to Lessee.
- F. The HBPW desires to lease to the Lessee fiber optic cable, Colocation Service, and other necessary equipment in order to meet the requirements of the Lessee.
- G. The HBPW will lease the "Leased Facilities", to provide the Lessee with point to point connections of dark fiber, as identified in the **DFLS**.
- H. Leased Facilities and/or Colocation Service may be added to this Agreement upon written request of the Lessee, and approval of the HBPW, in its sole and complete discretion. Additional leased facilities shall be added to this Agreement by an amended DFLS - **Exhibits A and/or C**. Leased Facilities and Colocation Service may be removed from this Agreement upon written sixty day notification from the Lessee or written sixty day notification from the HBPW.
- I. The HBPW will retain all ownership, right, title, and exclusive control over the operation and maintenance of the Leased Facilities.

## **TERMS**

1. **Use of Leased Facilities.** Upon the In Service Date, as defined in paragraph 5, the Lessee may utilize the Leased Facilities. The HBPW shall not limit the amount of data traffic that Lessee may place over the Leased Facilities and shall not permit others to use or interrupt Lessee's use of the Leased Facilities. The Lessee and Lessee's subsidiaries, employees and agents may use the Leased Facilities for those uses, expressly or incidentally operated by the Lessee. The Lessee may not assign, transfer, sublease, or provide transport services to third parties over the Leased Facilities without the express written consent of the HBPW. The sole interface to the Leased Facilities is the location of the demarcation points identified in the **DFLS**. No other connections to the Leased Facilities are permitted without the express written consent of the HBPW, in its sole and complete discretion.
2. **Connectivity.** Lessee is responsible for the design, construction, and installation of any splices, fiber jumpers, electronics, or other ancillary equipment beyond the demarcation points listed in the **DFLS**. Lessee shall design, construct, or alter Lessee equipment at its own expense and shall ensure that its equipment is compatible with the specifications for the Leased Facilities as described in this Agreement. The HBPW shall have the right to suspend Lessee's use of the



Leased Facilities if Lessee's facilities shall interfere or adversely affect the Leased Facilities.

3. Specifications for Leased Facilities. The Leased Facilities shall meet the following minimum requirements:
  - a. Fiber Capacity
  - b. The Leased Facilities shall provide Lessee with the number of dedicated strands of fiber optic cable as identified in the **DFLS**.
  - c. Quality of Service
    - i. Each fiber filament shall have optic continuity throughout the Leased Facilities, as set forth in the attached **Exhibit B**, to the demarcation points as identified in the **DFLS**.
    - ii. Each fiber filament shall be designed to achieve the Performance Requirements specified in paragraph 9 of this agreement.
  - d. Colocation Service
  - e. As an option, the Lessee may utilize available HBPW-owned facilities to house network terminations and equipment as defined in HBPW Terms and Conditions
4. Leased Facilities. As part of the Leased Facilities and during the Term of this Agreement, the HBPW shall provide fiber terminations at each demarcation point on each fiber strand as identified in the **DFLS**. The demarcation point is further defined as the termination connectors at locations using connectors.
5. The installation and construction of the Leased Facilities within Lessee's property, whether performed by the Lessee or (by the HBPW if the HBPW shall so agree), shall meet, at a minimum, the following requirements:
  - a. All point-of-entrance stubs shall penetrate the exterior walls through a core drilled hole, be secured, then mortared and finished to provide an adequate seal between interior and exterior spaces. This penetration shall not be made by breaking out building siding or structures.
  - b. Subsurface point of entrances shall be sealed on the exterior surface with a moisture resistant sealant, to prevent possible seepage or moisture egress into the building.
  - c. If indoor runs of fiber cable exceed fifty (50) feet from the point of entrance into a facility, the Lessee shall be responsible for installing conduits from the point of entrance into the building to the location of the demarcation point. For the purpose of this subparagraph only, these conduits shall be constructed in accordance with Telcordia/Bellcore NEBS construction rules and regulations.

- d. Indoor cables shall be plenum-rated, non-metallic, with a minimum National Electrical Code (NEC) rating of OFN. If EMT conduit is used, PVC jacketed fiber may be used. Higher NEC ratings of OFNR or OFNP may be installed if required.
- e. Indoor cables shall be pulled continuously from the fusion splice to outdoor cables to the telecommunications equipment room where all terminations shall be placed. No splices shall be allowed in these runs. The indoor cable shall be terminated with mechanical type connectors.
- f. A minimum 30' maintenance loop shall be provided at both ends of the indoor cable for new installations.
- g. All outdoor conduits within Lessee property shall continue to the point of entrance into the Lessee facilities. The outdoor fiber optic cable shall be terminated, with fusion spliced factory pigtails into a wall-mounted fiber optic enclosure or fusion spliced to indoor fiber optic cable within 50' of the building's entrance.
- h. All fiber optic cable shall be continued through the building, using an indoor plenum-rated fiber optic cable installed in non-metallic plenum-rated tubing or sealed EMT conduit to the telecommunications equipment room as designated; then fusion spliced, with factory pigtails, into a HBPW approved fiber optic tray.
- i. Service entrances that are within 50' of the telecommunications room may be routed directly to a rack-mounted fiber optic tray without the additional wall-mounted splice cabinet or fusion splice.
- j. All sleeves and cores (if needed) shall be 2" outside diameter and equipped with nylon bushings to protect the inner-duct / fiber.
- k. Fiber cable or sheathing shall not be exposed below suspended ceilings where possible.
- l. All inner-duct (if used) shall be supported every 6'.
- m. HBPW shall install fiber cables inside Lessee building from the point of entrance into the building to the demarcation point between the HBPW and Lessee irrespective of whether the HBPW or Lessee installs the inside conduits.
- n. All fire-rated walls shall be sealed or resealed with UL approved fire-stopping material after all cables have been placed. The fire-stopping material shall be removable to allow for placement of additional facilities at a later time.
- o. Lessee shall provide room and rack space for rack-mounted splicing and termination panel unless the demarcation point is in an HBPW Colocation Facility.

- p. The HBPW may, during the term of this Lease, modify or require additional construction requirements of the Lessee in order to meet the performance standards contained herein.
6. In Service Date. If the Leased Facilities require new fiber cable or other components to be installed, the “In Service Date” is estimated to be \_\_\_\_\_ weeks after the Lessee’s payment of the Development Fee as described in paragraph 12 of this Agreement. If the Leased Facilities do not require new fiber cable to be installed, the In Service Date is estimated to be \_\_\_\_\_ weeks from the execution of this Agreement. HBPW shall provide a written notice to Lessee establishing the In-Service Date for the Leased Facilities.
7. Access.
- a. HBPW may locate any equipment necessary to provide, construct, or install the Leased Facilities within the Lessee’s facilities in mutually agreed upon locations. Lessee agrees to allow HBPW direct ingress and egress to Lessee facilities at such times as may be required for the HBPW to perform any installation, maintenance, repair, or removal of its Leased Facilities. Lessee, at its sole option, may require that its representative accompany any representative of HBPW having or needing access to Lessee facilities. HBPW shall on a regular basis provide to Lessee a list of employees and /or authorized contractors, temporary or contracted employees who are performing work on, or who have or need access to Leased Facilities on Lessee’s property. Lessee shall have the right to exclude any of the employees or agents of HBPW for any reasonable cause.
  - b. Colocation facilities are accessible by appointment and under escort of HBPW staff.
8. Operation, Maintenance and Repair – Leased Facilities.
- a. The HBPW shall be responsible for operating and maintaining in good repair the Leased Facilities and any easements or right-of-ways associated with them, such that the Leased Facilities continue to perform according to the design specifications and performance requirements specified in this agreement. To the extent the HBPW shall be required to utilize the Lessee’s property which is not subject to an easement or other right of entry, the Lessee shall provide all necessary easements and rights-of-way to effectuate the terms of this agreement, and shall cooperate with the HBPW to permit the installation, operation, and maintenance of the Leased Facilities.

- b. The HBPW shall use its best efforts to coordinate outage times with Lessee's Project Manager. HBPW outages to expand, rebuild, or upgrade the Leased Facility shall not constitute a "service interruption" for purposes of paragraph 9.
9. Operation, Maintenance and Repair – Lessee Facilities. The Lessee shall be solely responsible for operating and maintaining the Lessee facilities, including the interconnection to the Leased Facilities.
10. Performance Requirements. The Leased Facilities shall be available for the Lessee's dedicated use on a seven days per week, twenty-four hours per day basis subject to the following provisions as set forth on the attached **Exhibit B**. Upon request, the HBPW shall supply the Lessee with test results generated by an Optical Time Domain Reflectometer ("OTDR") for the leased fiber optic filaments. The OTDR Test will be performed on each strand in both directions. Testing shall be performed at 1310 nm and 1550 nm on each segment. The Lessee shall notify the HBPW of any interruption in service ("Service Interruption") resulting from the Leased Facilities. The HBPW shall make the necessary repairs to the Leased Facilities in order to restore Lessee's service within six (6) hours of its receipt of notice of the Service Interruption. For unplanned incidents, after initial damage assessment, if the HBPW cannot restore Lessee's service within six (6) hours, the HBPW shall notify the Lessee of the estimated time to restore the service. The duration of each Service Interruption shall be measured from the time Lessee notifies the HBPW of the interruption until the time the service has been restored. For purposes of this paragraph, notice shall be deemed effective when communicated either verbally or in writing by Lessee to the HBPW. A service interruption shall not include force majeure events as set forth in paragraph 15.
11. Alteration of Route. The HBPW may re-locate all or any part of the Leased Facilities to one or more alternate routes or rights-of-ways, provided that the relocation will not degrade the optic continuity of the Leased Facility below the Performance Requirements specified in this agreement. The HBPW shall coordinate any service outages related to route alteration with the Lessee Project Manager for the scheduling of any route alteration that will interrupt Lessee's service over the Leased Facilities. The HBPW shall notify the Lessee Project Manager at least 10 business days in advance of any planned interruption in service for route alteration. Such outages shall not constitute a "service interruption" for purposes of paragraph 9.

12. Modifications and Movement. All modifications and/or movement of the cable sheath containing any fiber optic filaments and other equipment along the “Leased Facilities” described in this Agreement, shall be performed by the HBPW or an individual or entity authorized by the HBPW.

- a. The Lessee shall pay charges for work for modification and/or movements requested by Lessee. The HBPW may require the Lessee to pay a deposit based upon the reasonable estimate of cost for any modification or movement requested by Lessee. Upon completion of the work for modification and/or movement, the Lessee shall pay the actual cost incurred by the HBPW for such work. The charges for labor and use of equipment shall be based on the HBPW Unit Price Contract then in effect. For each instance where charges for any modifications or movement are billed to Lessee, the HBPW shall provide to Lessee a statement detailing the unit price charges for labor and use of equipment and the costs of all materials to be charged.
- b. The Lessee shall provide the HBPW and/or its authorized representatives with reasonable access into its facilities in order to make any modifications and/or movements that the HBPW deems necessary at the HBPW’s cost or which may be required as a result of changes necessitated by changes in any rights-of-way, easements, permits, licenses or pole attachment requirements.

13. Provide Fiber to Others. The HBPW shall retain the right to provide fiber optic network services to other persons or entities over the HBPW network and to install and permit others to install additional communications capacity within the HBPW Network provided that the additional activities will not degrade the optic continuity over the Leased Facilities.

14. Rent Payment/Fees.

- a. The Lessee shall be solely responsible for all costs and expenses associated with the developing, constructing, installing, operating, maintaining, and repairing the Leased Facilities, including any easements or rights-of-way associated with them, including, without limitation, labor and costs for all equipment and other components which may be constructed or installed by the HBPW. The HBPW may require the Lessee to pay a deposit based upon the reasonable estimate of cost for the Leased Facilities. The HBPW, upon completion of the Leased Facilities, shall bill the Lessee for the total development costs incurred by the HBPW. The Lessee shall pay such amount within thirty (30) days of invoicing by the HBPW and prior to the In-Service Date. The amount

invoiced to the Lessee shall incur interest at the rate of one and one-half percent (1.5%) per month until paid and the HBPW shall be reimbursed for its reasonable attorneys fees and costs incurred to collect such amounts.

- b. Lessee shall also pay to the HBPW a Monthly Rent Payment according to the monthly HBPW Dark Fiber Rate as listed on the HBPW Broadband Service Rate, as may be amended by the Holland Board of Public Works and Holland City Council. Leased Facilities may be added to this Agreement upon written request of the Lessee, and approval of the HBPW. Leased Facilities may be removed from the Lessee's DFLS upon written sixty day notification from the lessee or written sixty day notification from the HBPW.
15. The total Monthly Rent Payment due shall be paid in advance of the month for which Leased Facilities are provided for use to Lessee and shall be calculated, and prorated, if necessary, starting the next business day after the Lessee begins use of Leased Facilities until the next business day after Lessee discontinues use of any Leased Facilities. Should any such use start on a date other than the first business day of any month, then the Monthly Rent Fee paid in advance shall include a prorated monthly payment for the month in which such use begins and the next month thereafter. The HBPW shall submit to the Lessee on a monthly basis, a bill in the amount of the total Monthly Rent Payments. In the event the Lessee shall fail to pay the Monthly Rent Payment when due, interest shall accrue on the unpaid balance at the rate of 1½ % per month until paid, The HBPW, upon default by the Lessee, may accelerate the remaining Monthly Rent Payments for the Term and may declare the remaining balance of such payments due and owing. The reasonable attorney's fees and costs incurred by the HBPW to collect such amounts shall be paid by Lessee.
16. Term. This Agreement shall commence on the date entered as first stated above and shall continue for an initial term of five years (the "Term"). This Agreement may be renewed for an additional Term of five years subject to the following:
- a. The Lessee must notify the HBPW, in writing, six months prior to the expiration of the initial Term that it desires to renew this Agreement;

- b. The HBPW must agree, in writing, to renew this Agreement within two months after receiving the above notice from the Lessee in its sole and complete discretion; and
- c. The renewal of this Agreement for the additional Term shall be subject to the review, negotiation and adjustment of the terms and conditions of this Agreement.

17. In the event of termination of this agreement, by either written notice or by default, the HBPW shall be permitted, at its option, to access the Lessee's facilities for purposes of removing any Leased Facilities previously installed at such locations by the HBPW.

- a. Default. In the event of a material default, the non-defaulting party shall notify the other party in writing of the nature of the breach and the party's intent to terminate the agreement. If a default occurs and remains uncured by the defaulting party for thirty days after the other party has given a notice of default, the non-defaulting party shall have the right to terminate this agreement and bring proceedings to recover damages that flow from the defaulting party's breach of this agreement. The right to terminate and seek damages shall be cumulative and in addition to any and all other rights and remedies available to the parties, including specific performance and other equitable relief. Notwithstanding anything in this agreement to the contrary, however, the amount of damages recoverable by the HBPW or by Lessee shall not exceed in the aggregate the sum of all of the Monthly Rent Payments for the Term of this agreement. Events of default shall include without limitation:

- a. The HBPW fails to provide the Leased Facilities to Lessee by the In Service Date, provided the Lessee does not materially delay the installation of any the Leased Facilities;
- b. The Lessee fails to pay the Rent Payment or any other fees or charges required to be paid by the Lessee under this agreement after thirty days written notice of such failure;

- c. Either party fails to comply in good faith with any other material terms and material conditions of this agreement; or
- d. Either party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of its creditors, or becomes a party to any judicial or administrative proceeding in bankruptcy, receivership or reorganization.

18. Force Majeure. Neither party shall be in default by reason of any failure or delay in the performance of any obligation under this agreement where such failure or delay arises out of any cause, act, or event beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party pursuant to this Agreement. Such causes, acts, or events shall include, without limitation, acts of God, landslides, sink holes, vehicle accidents, lightning, hurricanes, earthquakes, fires, explosions, floods, acts of public enemy, wars, blockades, terrorism, insurrections, riots, or civil disturbances; labor disputes, strikes, work-downs, or work stoppages; orders, writs, decrees or judgments of any federal, state or local court, administrative agency, or governmental body, so long as these are not the result of wanton or willful action or inaction of the party relying thereon; provided, however, the contesting and good faith by such party of any such order or judgment, or the good faith failure by such party to contest any such order or judgment, shall not constitute or be construed to constitute a wanton or willful act or inaction of such parties; suspension, termination, interruption, denial, or failure to renew any permit, license, consent, authorization, or approval necessary to the operation, maintenance or management of the HBPW's Network as such act or event is not the result of wanton or willful action of the party relying thereon; adoption of or change, after the date of execution of this agreement in the federal, state, or local laws, rules, regulations, ordinances, provisions, or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits, or licenses by a court or public agency having jurisdiction; failure of any subcontractor or any supplier to furnish labor, services, materials, or equipment in accordance with its contractual obligations, provided such failure is itself due to an event of Force Majeure or its adverse affect and the party relying thereon cannot obtain substitute performance within a reasonable time; or a defect in manufactured components; provided, however, that in any case where such equipment or component was manufactured by the party (or an affiliate of such party) seeking to rely upon such defect as an event of Force Majeure, such defect shall be deemed an event of Force Majeure only to the extent that the defect was caused by an independent event of Force Majeure.



The HBPW shall repair, restore or replace any portion of the Lease Facilities that is damaged due to a Force Majeure Event, at the HBPW's sole expense. Either party may terminate this agreement if an event of Force Majeure prevents either party from performing their respective obligations under this agreement for a continuous period of forty-five (45) days.

19. Nondisclosure. The Lessee and the HBPW acknowledge that, in the course of maintaining and repairing the Leased Facilities, it may be necessary for the HBPW to monitor the Lessee's Transport layer or Data Link layer on the Leased Facilities. Other than work necessary for the maintenance, repair or installation of fiber or associated equipment, the HBPW does not monitor network traffic. The HBPW shall not disclose any of the Lessee's information without the prior consent of the Lessee. The HBPW shall also ensure that its employees, contractors and agents do not disclose to any third party Lessee's information without the Lessee's prior consent. The provisions of this paragraph shall not apply to information which (1) is or becomes generally available to the public; or (2) is, prior to disclosure, already in the possession of the receiving party and was not received from the other party; or (3) is rightfully received from a third party who did not receive the same from the disclosing party, or (4) is required by the Michigan Freedom of Information Act, MCLA 15.231, *et seq*, by other law or governmental agency to be disclosed, after the receiving party notifies the disclosing party of the disclosure requirements and affords the disclosing party an opportunity to object and minimize such disclosure.
  
20. Limitation of Liability. The HBPW or the Lessee's liability on any claim for damages under this Agreement, except for a claim for unpaid Rent or any other charges owed by Lessee, shall be limited to direct damages and shall not exceed the total Monthly Rent Payment under this Agreement. Notwithstanding any other provision of this Agreement, neither Lessee nor the HBPW, their affiliates or subsidiaries, their officers, directors, employees, or agents shall be liable to the other for any indirect, incidental, or consequential damages, (including, but not limited to lost profits, lost revenue, or the failure to realize expected savings or cost) sustained or incurred in connection with the performance or non-performance of any services, or the use or operation of the equipment provided hereunder, regardless of the form of action and whether or not such damages are foreseeable. Any claim or cause of action arising from or in connection with any defect or failure in any equipment provided by the HBPW, or the performance or non-performance of any services provided by HBPW must be brought within two years after the acceptance of such equipment or services by the Lessee. This paragraph shall survive the termination of this Agreement and shall constitute a mutually agreed limitation of liability by the parties.

21. Indemnification.

- a. In the event any claim, demand, lawsuit or liability is made or asserted against the HBPW by any third party and the same arises out of or is caused by any act or omission of the Lessee or its agents or representatives, then and in such event, the Lessee, to the extent permitted by law, shall indemnify, defend and hold harmless the HBPW its agents and representatives from any and all such claims, demands, causes of action and liability, including the payment of the HBPW's reasonable attorney's fees and costs in defending against such claims, demands, causes of action or liability. The Lessee shall reimburse the HBPW for any loss, or damages to any optical fiber, cable, or other facilities owned by the HBPW that is caused by liability covered hereunder. In the event of any claim, demand, lawsuit, or liability made or asserted which is covered by this paragraph, the Lessee shall have no liability to the HBPW unless it is notified, in writing, of such claim, demand, lawsuit or liability and given the opportunity to defend and/or settle same through counsel of its own choosing. This paragraph shall survive the termination of this Agreement.
  
- b. In the event any claim, demand, lawsuit or liability is made or asserted against the Lessee by any third party and the same arises out of or is caused by any act or omission of the HBPW or its agents or representatives, then and in such event, the HBPW, to the extent permitted by law, shall indemnify, defend and hold harmless the Lessee its agents and representatives from any and all such claims, demands, causes of action and liability, including the payment of the Lessee's reasonable attorney's fees and costs in defending against such claims, demands, causes of action or liability. The HBPW shall reimburse the Lessee for any loss, or damages to any optical fiber, cable, or other facilities owned by the Lessee that is caused by liability covered hereunder. In the event of any claim, demand, lawsuit, or liability made or asserted which is covered by this paragraph, the HBPW shall have no liability to the Lessee unless it is notified, in writing, of such claim, demand, lawsuit or liability and given the opportunity to defend and/or settle same through counsel of its own choosing. This paragraph shall survive the termination of this Agreement.

22. Insurance. The Lessee shall be responsible for obtaining and maintaining in full force and effect comprehensive general liability, property and casualty insurance for the Leased Facilities. Such insurance shall provide comprehensive general liability coverage in an amount no less than two million dollars (\$2,000,000.00) for property damage for each occurrence and in an amount no less than two

million dollars (\$2,000,000.00) for bodily injury for each occurrence. Each insurance policy obtained by Lessee in satisfaction of its obligation hereunder shall have an Additional Insured Endorsement naming the "City of Holland, acting by and through its Board of Public Works, its officers, agents, directors, and employees" as an additional named insured. The Certificate of Insurance shall include a waiver of subrogation against all parties named as additional insureds. HBPW shall likewise obtain and maintain the same levels of insurance coverage for property damage and bodily injury damage. HBPW may through a combination of self-insurance, primary insurance or excess insurance provide for such coverage. HBPW and Lessee agree to secure any other reasonable amounts of insurance necessary to secure permits and rights of way required for installation and operation of the Leased Facilities.

23. Labor. The HBPW may, in its sole discretion, hire contractors and consultants to assist the HBPW in performing its duties under this agreement, provided that all contractors hired by the HBPW to construct, install, repair and maintain the Leases Facilities have reasonable insurance coverage. Under no circumstances shall the HBPW's employees, agents, consultants or contractors be considered employees, agents or contractors of Lessee. The HBPW shall be solely responsible for hiring, firing, paying, supervising and providing an adequate working environment for these employees, agents, consultants and contractors. The HBPW shall notify Lessee immediately of any labor disputes that jeopardize the HBPW's timely performance of its obligations under this agreement.
24. Ownership of Leased Facilities. The HBPW shall own and hold legal title to the Leased Facilities which include, but are not limited to, the fiber cabling and equipment which may be located at the Lessee's facilities up to the Demarcation Point throughout the duration and after the termination of this agreement.
25. Dispute Resolution. No party may elect to have any controversy or dispute arising between the parties under this agreement resolved by arbitration unless mutually agreed in writing. If the parties do not agree on a mutually agreeable arbitrator, the dispute shall be resolved by the commencement of an action in the Ottawa County Circuit Court, which shall be the forum of exclusive jurisdiction.
26. Assignment; Successors in Interest. This Agreement shall not be assigned by either party without the other party's prior written consent. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the Lessee and the HBPW; however, no assignment of this agreement, whether by act of the parties or by operation of

law, and no sublease by or from the Lessee in violation of any of the provisions, covenants, and conditions of this agreement shall vest in the assignee or sublessee any right, title, or interest whatsoever in the Leased Facilities or any rights created herein.

27. Third-Party Beneficiaries. No third-party shall have any rights under this agreement as a third-party beneficiary.
28. Entire Agreement; Modification. This agreement and any documents executed in connection herewith constitute the entire agreement and understanding among the parties to this agreement and supersede any and all prior agreements, understandings, and arrangements, oral or written, between the parties with respect to the subject matter hereof. This agreement may be modified or amended only by a written instrument executed by all of the parties hereto. The parties acknowledge joint review and drafting of this Agreement, and no rule of interpretation or construction shall be made against the drafter of the Agreement.
29. Captions. Article, section, and paragraph titles or captions contained in this agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this agreement or the intent of any provision hereof.
30. Enforceability. If any provision of this agreement is determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of the other provisions of this agreement. If, in the good faith opinion of either party, the severance of the unenforceable provision destroys the economic benefits of this agreement to either party, the parties shall in good faith negotiate an amendment to this agreement to restore as much as possible the economic benefits to the parties.
31. Counterparts. This agreement may be executed in one or more counterparts, and any party to this agreement may execute and deliver this agreement by executing and delivering any of such counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
32. Waiver. One or more waivers of any breach of any representation, warranty, or covenant in this agreement by any party shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition.

