

CONTRIBUTION AGREEMENT

Among

NOVA SCOTIA INTERNET FUNDING TRUST

and

DEVELOP NOVA SCOTIA LIMITED

and

[---name of ISP---]

Made effective []

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CONTRIBUTION AGREEMENT

THIS AGREEMENT made the ____ day of _____, 2020.

AMONG:

The Trustees of the NOVA SCOTIA INTERNET FUNDING TRUST, a trust governed by the laws of Nova Scotia, comprising, as at the Commencement Date, Chair of the Trust, Trustee 2, Trustee 3

(hereinafter referred to as “**NSIFT**”)

OF THE FIRST PART

DEVELOP NOVA SCOTIA LIMITED, a body corporate pursuant to the *Develop Nova Scotia Act*, SNS 2018, c 25

(hereinafter referred to as “**Develop Nova Scotia**”)

OF THE SECOND PART

(hereinafter referred to as the “**ISP**”)

OF THE THIRD PART

WHEREAS the Province of Nova Scotia established NSIFT via a Trust Indenture on March 27, 2018 (as amended) to fund projects to improve access to high-speed internet in Nova Scotia. As of the Commencement Date, the trustees of NSIFT are Chair of the Trust, Trustee 2 and Trustee 3;

AND WHEREAS NSIFT was established to fund projects that improve internet service to underserved areas throughout Nova Scotia, and has engaged Develop Nova Scotia to provide services to NSIFT in connection therewith;

AND WHEREAS Develop Nova Scotia has issued an RFP (as defined herein) in respect of the construction, maintenance and operation of a network connecting the end customers to a high-speed internet service;

AND WHEREAS the ISP submitted a Proposal describing one or more Projects to construct or improve its Network in one or more Zones (each as defined herein), to be funded in response to the RFP;

AND WHEREAS NSIFT is willing to provide Contributions (as defined herein) to the ISP for the Projects described on Exhibit 1 attached hereto, on and subject to the terms and conditions contained herein;

AND WHEREAS as a condition precedent to entering into this Agreement, Develop Nova Scotia and the ISP have entered into a Services Delivery Agreement setting out certain covenants and minimum service level commitments of ISP to Develop Nova Scotia in connection with the Network and Internet Services to be provided to Customers through the Network in applicable Zones.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the Parties contained herein, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties), it is hereby agreed as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) **“Acceptance”** means written acknowledgement by Develop Nova Scotia that the applicable Work, including reports, conforms to applicable requirements set out herein, and **“Accept”** shall mean the act of providing an Acceptance.
- (b) **“Acceptance Date”** means the date that the Work set out in a particular Project Schedule has been completed, ATP requirements for such Project have been met and Accepted.
- (c) **“Acceptance Date Deadline”** means the Acceptance Date deadline with respect to a Project, as set out in a Project Schedule which Acceptance Date Deadline may be amended pursuant to Section 5.10.
- (d) **“Affiliate”** means any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any Person.
- (e) **“Agreement”** means this agreement and all Schedules and Exhibits attached hereto or entered into in accordance with the terms and conditions set forth herein, and all amendments made hereto or thereto by written agreement among the Parties.
- (f) **“Applicable Law”** means any Law applicable to the ISP, the Project or the Internet Services.
- (g) **“Business Day”** means a day other than a Saturday, a Sunday, or any day on which banks are not open for business in Halifax.
- (h) **“Change Order”** means a written order issued in accordance with the provisions of Section 5.10, signed by Develop Nova Scotia and the ISP authorizing additions, deletions or revisions to the Work.

- (i) “**Claim**” means the report, the form of which is attached as EXHIBIT 3 hereto, detailing the Contribution Eligible Project Costs for the applicable Claim Period and a summary of all invoices pertaining to that Claim Period.
- (j) “**Claim Start Date**” means the date from which the NSIFT will reimburse Claims to the ISP and forms the start date for the calculation of the Total Contribution, as set out in a Project Schedule.
- (k) “**Commencement Date**” means the date hereof.
- (l) “**Contribution Eligible Project Costs**” means the type of costs more particularly described in Exhibit 8 hereto which may be funded through a Contribution by NSIFT as set forth in a Project Schedule for each particular Project. For greater certainty, Contribution Eligible Project Costs shall not include Non-Eligible Project Costs.
- (m) “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have corresponding meanings.
- (n) “**CRTC**” means the Canadian Radio-television and Telecommunications Commission, or any successor entity.
- (o) “**Customer**” means any Person that enters a contract with the ISP for the purchase of Internet Services in a Zone.
- (p) “**Default**” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.
- (q) “**Environmental Laws**” means any and all Applicable Laws as now or may at any time hereafter be in effect, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, decree or judgment, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or, to the extent relating to exposure of substances that are harmful or detrimental to the environment, or human health or safety, including but not limited to the *Canadian Environmental Assessment Act* and the *Environment Act* (Nova Scotia), and the rules and regulations promulgated thereunder.
- (r) “**First Nations**” means any first nation bands and communities located within Nova Scotia.
- (s) “**Good Industry Practices**” means any of the practices, methods, and acts engaged in or approved by a significant portion of the telecommunications industry in Canada during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of facts known at the time the decision was made, could have been expected to

accomplish the desired result at a reasonable cost consistent with good practices, reliability, safety, and expedition. Good Industry Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be practices, methods, and acts generally accepted in Canada.

- (t) **“Governmental Authority”** means (a) any court, tribunal, judicial body or arbitral body or arbitrator; (b) any domestic or foreign government or supranational body or authority whether multinational, federal, provincial, territorial, state, municipal or local, and any governmental agency, governmental authority, governmental body, governmental department, governmental tribunal, or governmental commission of any kind whatsoever; (c) any subdivision or authority of any of the foregoing.
- (u) **“Hazardous Substance”** means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other chemical, material, or substance designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.
- (v) **“INSI”** means the Internet for Nova Scotia Initiative, to provide high-speed internet access to unserved and underserved residents of Nova Scotia.
- (w) **“In Service Date”** means that date the ISP makes Internet Services available to potential Customers in a Zone pursuant to an applicable Project Schedule.
- (x) **“Internet Services”** means access to the internet provided by the ISP to Customers in each applicable Zone following each applicable In Service Date.
- (y) **“Law”** means any statute, law, ordinance, regulation, rule, instrument, code, order, constitution, treaty, common law, judgment, decree, orders and policies or other requirement or rule of law of any Governmental Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Permits.
- (z) **“Letter of Credit”** means an irrevocable standby, transferrable letter or letters of credit substantially in the form attached as Exhibit 6 (and as reasonably approved by the issuing Qualified Institution), duly completed and issued, naming NSIFT and Develop Nova Scotia as beneficiaries.
- (aa) **“Make-Ready”** means any tree-trimming, pole replacement or other work required and performed by a pole owner or third-party licensee of the owner of the pole, prior to attaching the ISP’s infrastructure to a pole.
- (bb) **“Milestone”** means a milestone determined in respect of a Project as set forth in a Project Schedule, which Milestone may be amended pursuant to Section 5.10.
- (cc) **“Milestone Date”** means the date by which a particular Milestone must be completed, as set forth in a Project Schedule, which Milestone Date may be amended pursuant to Section 5.10.

- (dd) “**Network**” means the high-speed internet network used by the ISP to offer Internet Services in Nova Scotia via fixed wireless, fixed wireline (fiber and/or coaxial) or other approved technology, including without limiting the generality of the foregoing, the equipment and software for such Network described in a Project Schedule.
- (ee) “**Non-Eligible Project Costs**” means any costs other than Contribution Eligible Project Costs, and, for greater certainty, include:
- (i) general overhead costs of the ISP, including operating costs related to the general maintenance, repair, and overhead costs of the ISP;
 - (ii) administrative costs not associated with Contribution Eligible Project Costs;
 - (iii) provincial sales tax and goods and services tax or harmonized sales tax, as applicable, unless otherwise specifically agreed to in writing by Develop Nova Scotia;
 - (iv) operating costs of a Network;
 - (v) existing capital assets including land, buildings, vehicles and other indirect, fixed, and/or capital;
 - (vi) Customer premise equipment (CPE) and their installation; and,
 - (vii) conference or travel costs not specifically required for a Project;
 - (viii) costs to decommission a Project; and
 - (ix) costs associated with preparation of the Proposal or the negotiation and entering into of this Agreement, the Services Delivery Agreement or any Project Schedule.
- (ff) “**OHS Laws**” means any and all Applicable Laws as now or may at any time hereafter be in effect, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, decree or judgment, regulating, relating to or imposing liability or standards of conduct concerning occupational health and safety.
- (gg) “**Party**” means any of the ISP, Develop Nova Scotia or NSIFT, and “**Parties**” means all Parties to this Agreement collectively.
- (hh) “**Permits**” means all permissions, consents, approvals, certificates, permits, licenses, statutory agreements, zoning and by-law amendments and variances, easements, leases, or other authorizations required from any Governmental Authority or third party, necessary for the ISP to carry out its obligations in accordance with this Agreement.

- (ii) “**Person**” means and includes any individual, company, corporation, partnership, trustee or trust or unincorporated association, and pronouns have a similarly extended meaning.
- (jj) “**Project**” means the construction, commissioning, and manufacturing of the Network in an applicable Zone as described in a Project Schedule, in accordance with the terms and conditions set forth in this Agreement.
- (kk) “**Project Schedule**” means a project schedule entered into in writing by the Parties with respect to a Project in substantially the same form as Exhibit 2 attached hereto, as may be amended pursuant to Section 5.10.
- (ll) “**Proposal**” means the proposal submitted by the ISP in response to the RFP, together with any addendums and supplementary responses, including answers to questions posed by Develop Nova Scotia and/or NSIFT.
- (mm) “**Qualified Institution**” means, in respect of the bank issuing a Letter of Credit, a Schedule “1” Canadian bank that maintains a credit rating of at least A- or A3 by S&P or Moody’s, respectively and having assets of at least \$10 billion.
- (nn) “**RFP**” means Request For Proposals titled the “INTERNET for NOVA SCOTIA INITIATIVE for Develop Nova Scotia on behalf of the Nova Scotia Internet Funding Trust, Connections Commencing in 2019, Request for Proposal Number: DNS-1920-001”.
- (oo) “**Services Delivery Agreement**” means the agreement between Develop Nova Scotia and the ISP governing the delivery of the Internet Services by the ISP through the Network in applicable Zones.
- (pp) “**Subcontractors**” means any Person having a contract with the ISP, and its affiliates, including the ISP’s channel partners, to perform a part or parts of the Work or to supply products or materials necessary for the Work.
- (qq) “**Sustainable**” means the ability of ISP to maintain and deliver its Internet Service at a minimum level described in the Services Delivery Agreement during peak traffic times for all anticipated retail and wholesale demand, including as provided for in the Proposal.
- (rr) “**Technical Requirements**” means (i) the technical descriptions, requirements, and specifications set out in Section D.2.5 of the RFP, as modified and clarified by the Proposal, and as further modified and clarified by this Agreement, and (ii) the technical requirements of the Network for a Project as set out in the applicable Project Schedule.
- (ss) “**Total Cost**” means the total cost expended by ISP in relation to a Project, including Contribution Eligible Project Costs and Non-Eligible Project Costs.
- (tt) “**Total Contribution**” means the total amount payable by NSIFT to ISP with respect to a Project, as set out in Exhibit 1 attached hereto.

- (uu) **“Work”** means all materials, equipment fixtures, services, supplies, and acts required to be done, furnished and/or performed by ISP or its agents or subcontractors, related to a Project pursuant to a Project Schedule or pursuant to this Agreement, as may be amended pursuant to Section 5.10.
- (vv) **“Zone”** means the area the Internet Services are to be offered by the ISP as set out in a Project Schedule.

1.2 Terms Defined in the Body of the Agreement

The following capitalized terms, when used in this Agreement, have the meanings assigned in the relevant sections of this Agreement:

Term	Where Defined
As Built Documentation	Section 21
ATP	Section 20.1
BLA	Section 3.1(c)
Certificate of Insurance	Section 7.2
Certificate of Substantial Completion	Section 20.4
Claim Period	Section 3.1(e)
Competitive Entities	Section 8.2
Construction Period	Section 9.2
Contribution	Section 3.1(a)
Dispute	Section 18.1
Event of Default	Section 12.1
Exhibits	Section 1.9
Final Report	Section 9.3
Force Majeure Event	Section 10.1
Holdback	Section 3.1(f)
Monthly Progress Report	Section 9.2
POP	Section 16(a)
Project Manager	Section 5.6(c)

Term	Where Defined
Project Plan	Section 5.6(b)
Project Percentage	Section 3.1(a)
Provincial Indemnitees	Section 5.12(b)
Schedules	Section 1.9
Security	Section 6
Substantial Performance	Section 3.1(f)
Term	Section 2
Workers Compensation Certificate	Section 5.11

1.3 Terms Defined in the Services Delivery Agreement

Any capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Services Delivery Agreement.

1.4 Headings

The division of this Agreement into Sections and the headings of Articles, Sections, Subsections, Schedules, and Exhibits in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Agreement.

1.5 Extended Meanings

In this Agreement words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

1.6 Industry Terms

Unless expressly defined herein, words having well-known technical or trade meanings within the telecommunication industry in Canada shall be construed according to Good Industry Practices.

1.7 Accounting Principles

Wherever in this Agreement reference is made to a calculation to be made in accordance with generally accepted accounting principles, GAAP or applicable Canadian accounting standards, it

shall mean generally accepted accounting principles from time to time approved by the Accounting Standards Board (Canada), or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with such accounting principles.

1.8 Currency

All references to currency herein are to lawful money of Canada.

1.9 Schedules and Exhibits

All exhibits (“**Exhibits**”) attached to or entered into pursuant to this Agreement and schedules thereto (“**Schedules**”) are incorporated by reference and deemed to be part hereof. Any matter declared in any numbered Section of this Agreement to be set out, stated, described or reflected in an Exhibit or Schedule shall be deemed to have been sufficiently disclosed for all purposes of this Agreement.

1.10 Knowledge

Where any representation, warranty or other provision in this Agreement is expressed to be made by any Party to its knowledge or is otherwise expressed to be limited in scope to matters known to a Party, or of which a Party is aware, it shall mean such knowledge as is actually known to such Party, or if such Party is a corporation, the officers or employees of such Party who have overall responsibility for or knowledge of the matters relevant to such representation, warranty or other provision.

1.11 Documents Incorporated by Reference and Priority of Documents

The ISP specifically acknowledges that the terms and conditions of the RFP and the Proposal are incorporated into this Agreement to the extent they are not contrary to the terms hereof. In the event of any inconsistency between a provision in the body of this Agreement and a provision in an Exhibit, Schedule, the RFP, or the Proposal, then:

- (i) a specific provision takes precedence over a general provision; and
- (ii) otherwise, the following order of precedence shall apply:
 - (A) this Agreement;
 - (B) the Exhibit;
 - (C) the Schedule;
 - (D) the Services Delivery Agreement;
 - (E) the Proposal; and
 - (F) the RFP.

2. TERM

The term of this Agreement shall commence on the Commencement Date and shall continue in full force and effect for a term ending on the date that is six months after the Final Report for the last Project is received and Accepted for the construction of the Work for all Projects, unless terminated earlier in accordance with this Agreement (the “**Term**”).

3. PAYMENT BY NSIFT

3.1 Payment

- (a) Subject to the terms and conditions contained herein, NSIFT will pay to the ISP funding contributions as set out in a Project Schedule (the “**Contribution**”) equal to the percentage as set out in Exhibit 1 attached hereto (the “**Project Percentage**”) of the Contribution Eligible Project Costs for a Project, provided the maximum aggregate amount of funding contribution to be advanced by NSIFT to ISP pursuant to this Agreement with respect to a Project shall not exceed the Total Contribution for such Project. For greater clarity: this Agreement is a funding agreement; the Contribution is provided by NSIFT to the ISP pursuant to the terms and conditions of this Agreement as financial assistance to support the ISP’s implementation of the Projects; and the ISP is not providing goods or services to NSIFT or Develop Nova Scotia pursuant to this Agreement.
- (b) This Agreement is intended to be a maximum price contract with no extras. All Work required or desired under the terms of this Agreement is to be included in the Total Cost and the Total Contribution is not to be subject to upward adjustment, including as a result of unknown or undisclosed conditions, increases in costs and taxes, cost of labour, unavailability of labour or materials, or increases in cost of materials.
- (c) All Claims shall be in Canadian dollars.
- (d) All prices for the Work shall include applicable taxes, customs duty, excise tax, freight, insurance and all other charges of every kind attributable to the Work, except for provincial sales tax and goods and services tax or harmonized sales tax, as applicable, which shall be Non-Eligible Project Costs, unless otherwise specifically agreed to in writing.
- (e) The ISP shall submit Claims for reimbursement of Contribution Eligible Project Costs on the following terms:
 - (i) The Contribution for a Project (minus Holdback) will be paid to the ISP in installments upon receipt and Approval of Claims in the amount of the Project Percentage of such Accepted Contribution Eligible Project Costs;
 - (ii) Claims shall be submitted for each month or quarter from the commencement until the Acceptance Date for each Project (each a “**Claim Period**”), except for the initial Claim, which may cover a longer period going back to the Claim Start Date;

- (iii) except in the case of the initial and final Claim, Claims shall be submitted no later than forty-five (45) days following the end of each Claim Period;
- (iv) Claims shall be accompanied by an itemized summary by cost category of Contribution Eligible Project Costs being claimed which have been incurred by the ISP during such Claim Period and which will be substantiated by such documentation as may be reasonably required by Develop Nova Scotia;
- (v) Claims shall be accompanied by a Monthly Progress Report pursuant to the requirements set out in the Project Schedule;
- (vi) ISP shall provide Security to Develop Nova Scotia which, at no point, shall be less than the amount of Contributions advanced to the ISP, with a total aggregate amount equal to the Total Contribution for all Projects, less the Holdback, in accordance with the terms and conditions set forth herein;
- (vii) Develop Nova Scotia shall perform its review to determine if the Work completed prior to the submission of such Claim conforms to applicable requirements set out herein and the ISP is in compliance with its covenants or obligations contained herein in all material respects, within fifteen (15) Business Days of the submission of each Claim or the submission of additional documentation provided pursuant to Section 3.1(e)(viii), as applicable, and, if it is determined such Work does not conform to the applicable requirements, such covenants or obligations have not been met, or that additional documentation is required to make such determination, provide notice thereof to the ISP within this fifteen (15) Business Day period. If no such notice is provided within such fifteen (15) Business Day period, the Claim shall be considered Accepted for payment pursuant to subsection 3.1(e)(xi));
- (viii) In the event that additional documentation is requested, the ISP shall provide such documentation within fifteen (15) Business Days of receiving notice of such request. Any failure on the part of the ISP to provide such documentation within this period shall extend the period in subsection 3.1(e)(xi) below. Upon the receipt of the additional documentation by Develop Nova Scotia, the Claim shall be considered for Acceptance pursuant to subsection 3.1(e)(vii);
- (ix) Contribution Eligible Project Costs and an initial sample of receipts therefore, not to exceed 10% of receipts, are subject to Acceptance as to their eligibility by Develop Nova Scotia;
- (x) For clarity, nothing in subsection (vii), (viii) and (ix) hereof shall be interpreted as restricting Develop Nova Scotia's rights in relation to Section 19 or Exhibit 7 hereof;

- (xi) Subject to Section 3.1(f), NSIFT shall advance payment to the ISP an amount equal to the Contribution set forth in the Accepted Claim, within thirty (30) days from Acceptance of the Claim or any part thereof for the specified Claim Period; but in no event shall the date of such payment be greater than ninety (90) days from the ISP's initial submission of the applicable Claim, excluding any portion of a Claim that has not been Accepted and provided ISP has submitted any documentation requested pursuant to subsection (vii) at the times set forth therein;
 - (xii) Each representation and warranty of ISP contained in this Agreement shall be true on and as of the date of the Claim with the same force and effect as though such representation and warranty had been made on and as of that date;
 - (xiii) Develop Nova Scotia shall have Accepted all Milestones with a Milestone Date prior to the end of such Claim Period; and
 - (xiv) The ISP shall have performed and complied with all other terms and conditions contained set forth in this Agreement required to be performed or complied with by the ISP prior to or on the date of the Claim.
- (f) The ISP acknowledges and agrees that NSIFT will holdback 10% of the amount of the Total Contribution for each Project (the "**Holdback**"). NSIFT shall retain the Holdback after 80% of the Total Contribution has been paid. After the issuance of the Certificate of Substantial Completion of a Project, the ISP shall submit to Develop Nova Scotia:
- (i) an application for payment of the amount of the Holdback payable on substantial performance ("**Substantial Performance**") of the Project in accordance with the *Builders' Lien Act* (Nova Scotia) and all regulations and rules promulgated thereunder (the "**BLA**");
 - (ii) a legal opinion from a lawyer licensed to practice in Nova Scotia, or otherwise provide a report in substance and form acceptable to Develop Nova Scotia, in its sole discretion, confirming that no liens have been filed under the BLA in respect to the Project on any lands owned or leased by ISP comprising same; and
 - (iii) a sworn statement from a duly authorized representative of the ISP that all accounts for labour, subcontracts, products, construction machinery and equipment, and other indebtedness which may have been incurred by the ISP in performing its obligations under this Agreement and for which the ISP might in any way be held responsible have been paid in full, except for amounts properly retained as a Holdback.

Upon Acceptance of the above documents, Develop Nova Scotia will arrange to advance payment of the Holdback amount, within thirty (30) days of such Acceptance.

- (g) The ISP shall retain all records of its payments of Contribution Eligible Project Costs, including, without limitation, copies of all invoices and receipts, for a period of seven (7) years from the date the record is created for each Project for audit purposes and such documentation shall be made available by ISP to Develop Nova Scotia when requested by Develop Nova Scotia from time to time.
- (h) NSIFT may, in its sole discretion, withhold payment of any amounts hereunder where a Default or Event of Default has occurred and is continuing.
- (i) The ISP specifically acknowledges and agrees that the Total Cost for a Project in excess of the Total Contribution shall be the exclusive responsibility of the ISP and that any and all cost overruns and additional costs for the Project shall be the exclusive responsibility of the ISP, whatever the cause, including Force Majeure Events.
- (j) Except as specifically set forth in Exhibit 8, no amounts for Contribution Eligible Project Costs will be included in a Claim more than one (1) year after they were invoiced to or incurred by the ISP, and such amounts will not be considered Contribution Eligible Project Costs.

3.2 The ISP Shall Repay Overpayments

Any funds advanced to the ISP on or prior to the Acceptance Date for a particular Project under this Agreement shall not be construed as a final determination of the amount of Total Contribution applicable to such Project. Develop Nova Scotia will determine the final amount of Total Contribution on a Project pursuant to a final cost review or audit of a Project, which shall be conducted within six months of the Acceptance Date for the Project. The ISP agrees to repay to NSIFT, upon receipt of a written demand and within the period specified by NSIFT, that portion of the funds advanced to the ISP that exceeds the Total Contribution applicable to a Project, as well as any funds used for a purpose other than that stated in the terms of this Agreement, as determined by NSIFT.

3.3 Right to Set-Off

Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other right or remedy it has or may have, NSIFT may, without notice to the ISP, set off any portion of a Contribution against any liability for which NSIFT determines the ISP is liable to NSIFT or Develop Nova Scotia under this Agreement.

4. TECHNICAL REQUIREMENTS AND WARRANTIES

4.1 Design and Construction

The ISP shall design and construct the Network in accordance with the Technical Requirements and the terms and conditions set forth herein.

4.2 Ownership

For greater certainty, this Agreement does not require the ISP to transfer ownership of the Network or any equipment or facilities added to the Network in accordance with the Project to Develop Nova Scotia or NSIFT.

4.3 Service Level Commitments

The ISP covenants and agrees that the Network and Internet Services provided to Customers in each Zone following the In Service Date for each such Zone shall meet or exceed the applicable Performance Attributes and SLCs.

5. PROJECT EXECUTION

5.1 Time Lines

- (a) The ISP agrees to fully complete the Work for each Project by the Acceptance Date Deadline for such Project.
- (b) The ISP agrees to achieve the Milestones for each Project by each Milestone Date as more particularly described in the Project Schedule.

5.2 Standards of Construction

Except as specifically set forth in a Project Schedule: all materials and equipment to be supplied in connection with the Work shall be new materials in good condition and have all of the specifications and functionality provided for in the applicable Project Schedule, approved for consumer use in Canada, and compliant with the requirements of Industry, Science and Economic Development Canada; All towers new or modified supplied in connection with the Work must comply with the applicable sections of CSA S37-18; and all new radio frequency transmitter installations supplied in connection with the Work must meet Health Canada safety codes and requirements.

5.3 Defective Work

During the Term, the ISP shall promptly remove and replace or re-execute any defective Work that fails to conform to the terms and conditions set forth in this Agreement or the applicable Project Schedule, whether or not the defective Work has been incorporated in the Network and whether or not the defect is as a result of poor workmanship, design, use of defective products or damage through carelessness or other acts or omissions of the ISP.

5.4 Review and Inspection of Work

Develop Nova Scotia shall have the right, acting reasonably, to review and inspect the Work at reasonable intervals, provided Develop Nova Scotia provides the appropriate credentials and schedules each such visit not less than five (5) Business Days in advance and subject to compliance with any reasonable access policies of the ISP and third party holders of underlying rights that are applicable to ISP. The ISP shall provide sufficiently safe and proper facilities at all times for the review and inspection of the Work by authorized agents of Develop Nova Scotia.

5.5 Control of the Work

The ISP shall have total control of the Work and shall direct and supervise the Work so as to ensure conformity with the terms of this Agreement. The ISP shall be solely responsible for construction means, methods, techniques, sequences and procedures with respect to the construction and the coordination of the various parts of the construction under this Agreement and each Project Schedule. The ISP shall keep Develop Nova Scotia informed of the progress of the Work. The ISP shall be solely responsible for the quality of the Work and shall undertake any quality control activities specified or required or that are consistent with Good Industry Practices.

5.6 Schedule of Work/Project Management

(a) Milestones

The ISP shall deliver to Develop Nova Scotia for Acceptance a detailed description of Milestones and list of Milestone Dates for each Project prior to submitting the first Claim for such Project, which Accepted Milestone shall be attached as a Schedule to the applicable Project Schedule.

(b) Project Plan

The ISP shall deliver to Develop Nova Scotia for Acceptance a formalized project management plan (the “**Project Plan**”) for each Project to supervise, coordinate, communicate and control all stages (design, implementation, testing and operation) of the Work for such Project prior to submitting the first Claim for such Project, and shall thereafter perform all Work in accordance with the Accepted Project Plan which shall be attached as a Schedule to the applicable Project Schedule.

(c) Make-Ready Delays

The Project Plan, Project Schedule and applicable Milestone Dates shall be adjusted as reasonably necessary by Develop Nova Scotia, upon written request from ISP to account for delays in completing any required Make-Ready work by a pole owner or third-party licensee of a pole owner that are not contemplated in the Project Plan and are not within the reasonable control of ISP, without reference to the Change Procedures in Section 5.10 below.

(d) Government Authority Delays

The Project Plan, Project Schedule and applicable Milestone Dates shall be adjusted as reasonably necessary by Develop Nova Scotia, upon written request from ISP to account for delays in receiving any permits required from any Governmental Authority, which delays are not contemplated in the Project Plan and are not within the reasonable control of ISP, without reference to the Change Procedures in Section 5.10 below.

(e) Project Manager

Each of Develop Nova Scotia and the ISP shall identify, assign and maintain a dedicated project manager to serve as such Party's primary point of contact throughout the Term (each, a "**Project Manager**"). ISP shall promptly notify Develop Nova Scotia in the event of a change in its Project Manager.

(f) Project Review Meetings

Beginning no later than one (1) month after the Commencement Date, the ISP shall generate and conduct a Project review session with Develop Nova Scotia on a monthly basis or such other periodic basis agreed to in writing by Develop Nova Scotia. The periodic Project review session shall be presented by the ISP's Project Manager on a mutually acceptable recurring date, acceptable to Develop Nova Scotia. Each such session shall include a discussion of the ISP's performance of each Project Plan and provide a projection of the activities to be accomplished by the ISP during the upcoming months. Topics at such sessions shall include, but are not limited to:

- (i) Work performed, accomplished, forthcoming, missed;
- (ii) Milestones accomplished, forthcoming, and missed;
- (iii) Technical, programmatic and contractual problems and corrective actions;
- (iv) Risk mitigation plan and status;
- (v) Network installation status;
- (vi) Any new discussion topics;
- (vii) Action items; and
- (viii) Change control.

5.7 Construction Safety

The ISP will be solely responsible for the construction safety at the place of Work in compliance with Applicable Laws and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

5.8 Labour and Products

The ISP shall provide and pay for labour, tools, machinery and equipment, water, heat, light, hydro, transport, materials and all other facilities and services including Permits and design services necessary for the performance of the Work.

5.9 Non-Conforming Work

No payment by NSIFT under this Agreement shall constitute an Acceptance of any portion of the Work which is not in accordance with the requirements of this Agreement.

5.10 Changes/Change Procedures

- (a) The ISP may, in accordance with the terms and conditions of this Agreement, request reasonable changes to the scope of the Work and Internet Services required pursuant to this Agreement, consisting of additions, deletions, or revisions to such Work and Internet Services and amendments to Project Schedules. All such changes in the Work and Internet Services and amendments to Project Schedules need to be authorized by a Change Order specifically agreed to in writing by Develop Nova Scotia. Notwithstanding, the ISP shall be permitted to make any changes to the Work that do not adversely affect its ability to provide Internet Services as required hereunder without a Change Order. The ISP acknowledges that any changes in the Work, including changes to the Network, shall not result in an increase to the Contribution and, except as specifically agreed to in writing by Develop Nova Scotia, there shall be no additional payment beyond the Total Contribution by NSIFT notwithstanding such changes. All cost overruns will be the sole responsibility of the ISP, including due to concealed or unknown conditions, whether physical or of any other nature and kind whatsoever, including those due as a result of any delays in this Agreement.
- (b) The ISP may, at any time, submit to Develop Nova Scotia a draft Change Order specifying proposed changes to the Work and Internet Services and draft amendments to Project Schedules. Within seven (7) days after Develop Nova Scotia receives a draft Change Order from the ISP, Develop Nova Scotia shall provide the ISP with a written statement specifying any suggested modifications to the proposed Change Order and Project Schedule amendment. Such draft Change Order shall be deemed to be Accepted if Develop Nova Scotia does not provide the ISP with a written statement specifying any suggested modifications to the proposed Change Order within thirty (30) days after Develop Nova Scotia receives a draft Change Order from the ISP. Upon agreement on a final Change Order, Develop Nova Scotia and the ISP shall execute such Change Order and Project Schedule amendment, and perform their obligations in accordance with the changes specified therein.

5.11 Worker Safety and Compensation

The ISP is solely responsible for any injury costs incurred by the ISP and/or Subcontractors and/or their employees, or for such of the ISP's unpaid workers' compensation insurance premiums. The ISP must furnish to Develop Nova Scotia upon request a workers' compensation insurance clearance certificate (the "**Workers' Compensation Certificate**") indicating that the ISP is in good standing.

5.12 Health and Safety

- (a) For the purposes of OHS Laws, the ISP shall be designated as the "constructor" for this Project and shall assume all of the responsibilities of the constructor as set out in the OHS Laws.

- (b) The ISP agrees to indemnify, defend, and hold harmless NSIFT and Develop Nova Scotia, and each of their respective shareholders, affiliates, directors, trustees, officers, employees, and agents (the “**Provincial Indemnitees**”), from and against any and all claims, costs, expenses, damages, and fines arising from any breach or breaches by the ISP of the OHS Laws and/or the ISP’s health and safety policies and procedures in the course of fulfilling its obligations under this Agreement.
- (c) The ISP further acknowledges and agrees that any breach or breaches of the OHS Laws, whether by the ISP or any of its Subcontractors, may result in the ISP and/or Sub-contractor being removed from any Work site.
- (d) Where any portion of the Work or Services in this Agreement is contracted to a Subcontractor, the ISP agrees that the provisions of this Section will apply to the Subcontractor and the ISP will enforce said provisions.

5.13 Permits

The ISP shall be solely responsible for obtaining all Permits in order to access any physical lands required as part of the Work and for the delivery of the Internet Services, including paying any fees required with respect thereto.

5.14 Environmental

- (a) The ISP shall be solely responsible in respect of all environmental matters including compliance with any and all Environmental Laws, any checklist or assessment required to be produced by the ISP in connection with the Work, construction and delivery of the Work and the operation of the Network or other facilities after its construction, including any environmental liabilities, any clean-up obligations, any fines, penalties or interest resulting from any condition of the Work, properties or the facilities, whether pre-existing, known or unknown, disclosed or undisclosed or which occur after the Commencement Date.
- (b) ISP shall indemnify, defend, and hold harmless the Provincial Indemnitees from and against any and all claims, costs (including costs of cleanup), expenses, damages, and fines arising, directly or indirectly, from or in connection with any environmental, health and safety liabilities arising out of or relating to any judgment, proceeding, claim, order, directive, injunction or the like related to environmental matters arising out of, resulting from, attributable to, or connected with ISP’s Work or performance or non-performance of obligations under this Agreement after the Commencement Date.
- (c) Where Hazardous Substances are used in the performance of the required Work, the ISP shall ensure compliance with the requirements under applicable Environmental Laws and OHS Laws.

6. SECURITY

The ISP shall provide to NSIFT and Develop Nova Scotia security for the performance of all of the obligations of ISP to NSIFT and Develop Nova Scotia under this Agreement (the “**Security**”) in accordance with the terms and conditions set forth in Section 3.1(e)(vi), which shall consist of (i) one or more Letters of Credit or (ii) one or more performance bonds in a form acceptable to Develop Nova Scotia. Such Security shall remain in place until the applicable Final Report is received and Accepted for the construction of the Work for the applicable Project(s), upon which any Security provided under this Section for such Accepted Work shall be promptly returned to the ISP.

7. INSURANCE

7.1 Insurance Requirements

The ISP shall put in effect and maintain for the Term at its own expense with insurers approved by Develop Nova Scotia acting in a commercially reasonable manner, all the necessary insurance that would be considered appropriate for a prudent company of this type, undertaking projects similar to the Projects undertaken pursuant to this Agreement including commercial general liability insurance with limits of not less than Five Million (\$5,000,000.00) Dollars inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, not less than Five Million (\$5,000,000.00) Dollars per occurrence and in the annual aggregate for product liability and completed operations including but not limited to the following coverage; (a) blanket contractual liability; (b) owners and contractors protective liability; (c) products/completed operations liability; (d) broad form property damage; (e) tenants legal liability; (f) non owned motor vehicle/automobile liability; and (g) contingent employer’s liability, covering the ISP’s activities at any premises and elsewhere. This insurance shall include both cross liability and severability of interest clauses.

- (a) The commercial general liability insurance policy shall contain waivers of subrogation against Develop Nova Scotia and NSIFT, but only arising from ISP’s legal liability arising from the performance of the Agreement, and any named insureds and shall be considered primary insurance.
- (b) All insurers shall be reputable and financially credit worthy insurers with an A.M. Best financial strength rating of A- or higher.
- (c) All insurance policies shall provide for thirty (30) days of notice of cancellation during the policy term to Develop Nova Scotia and NSIFT.
- (d) In the event that any insurance coverage provided by the ISP is underwritten at any time on a claims made basis, or replaced by a claims made policy, then the ISP shall provide Develop Nova Scotia with an extended reporting period of twenty-four (24) months after termination of the Agreement.

7.2 Certificate of Insurance

ISP shall provide to Develop Nova Scotia a valid certificate(s) of insurance evidencing the insurance required above (the “**Certificate of Insurance**”), and any replacements thereof, that references the ISP and confirms the coverage identified in Section 7.1 naming NSIFT and Develop Nova Scotia, as additional insureds on the commercial general liability policy promptly following execution hereof. On each renewal of the insurance policies, a further Certificate of Insurance shall be provided by the ISP to Develop Nova Scotia. Umbrella insurance may be used to achieve the required insurance limits for the above requirements.

8. LIABILITY AND INDEMNITY

8.1 Indemnity

Subject to Section 8.2, the ISP shall indemnify and save harmless the Provincial Indemnitees from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, and losses (including, without limitation, reasonable legal expenses) which the Indemnified Parties may incur as a result of or arising out of or in relation to:

- (a) the breach of or failure to observe or perform any covenant, condition or agreement contained in this Agreement by the ISP, its officers, servants, employees and agents, or Subcontractors, their officers, servants, employees and agents;
- (b) any claim for lien made pursuant to the BLA in connection with a Project;
- (c) any injury to persons (including injuries resulting in death) which may be or be alleged to be caused by or suffered as a result of the carrying out any Project or any part thereof, except to the extent caused by the gross negligence of the Provincial Indemnitees;
- (d) any loss of or damage to property which may be or be alleged to be suffered by a third party as a result of the ISP carrying out any Project or any part thereof, except to the extent caused by the gross negligence of the Provincial Indemnitees;
- (e) any omission or other willful or negligent act of the ISP, the Subcontractors or their respective employees, officers, servants or agents; or
- (f) any breach or inaccuracy in any representation or warranty given by the ISP under this Agreement or any certificate or document delivered pursuant hereto.

8.2 Limitation of Liability

- (a) IN NO EVENT SHALL DEVELOP NOVA SCOTIA, NSIFT OR (EXCEPT AS SPECIFICALLY SET FORTH HEREIN) ISP, HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- (b) Except as set forth in Section 8.1(c) and Section 8.1(d) hereof, no Party shall be liable for damages pursuant to this Agreement in excess of the amount of the aggregate amount of Total Contributions actually paid to the ISP by NSIFT pursuant to this Agreement.
- (c) The ISP hereby acknowledges that NSIFT may provide funding to numerous companies, entities and consortia, some of which may be competitive with the ISP (“**Competitive Entities**”). Neither NSIFT nor Develop Nova Scotia shall be liable to the ISP for any claim arising out of, or based on: (i) the provision of funding by NSIFT to any Competitive Entity; or (ii) actions taken by any partner, officer or other representative of NSIFT or Develop Nova Scotia to assist a Competitive Entity, whether or not such action has a detrimental effect on the ISP or any Project, provided that NSIFT and Develop Nova Scotia will in all circumstances maintain the confidentiality of all information provided to it by the ISP in accordance with the terms and conditions hereof.

8.3 Trustees Have No Personal Liability

The ISP acknowledges that the trustees of NSIFT are entering into this Agreement in their capacities as trustees on behalf of NSIFT. The obligations of NSIFT hereunder will not be personally binding on the trustees or the beneficiaries of NSIFT, except the ISP, in any manner. Any indebtedness, obligations or liability arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, if any (including, without limitation, claims based on negligence or otherwise tortuous behaviour), in relation to NSIFT will be limited to, and satisfied only out of, the assets of NSIFT.

9. REPORTING REQUIREMENTS

9.1 Notice of Certain Events

- (a) Promptly and in any event within five (5) Business Days after the ISP has received notice or has otherwise become aware thereof, it shall give Develop Nova Scotia notice of:
 - (i) the commencement of any material proceeding or investigation against the ISP by or before any governmental body or in any court or before any arbitrator which would be likely to have a material adverse effect on itself, Develop Nova Scotia or NSIFT, or on its ability to perform its obligations under this Agreement;
 - (ii) the occurrence or non-occurrence of any event: (a) which constitutes, or which with the passage of time or giving of notice or both would constitute, a Default by the ISP under this Agreement or (b) a default under the Services Delivery Agreement or any other material agreement to

which the ISP is a party or by which its properties may be bound that could reasonably be expected to have a material adverse effect on the ability of the ISP to perform its obligations under this Agreement; and

- (iii) the details in each case thereof and of the action being taken or proposed to be taken with respect thereto.
- (b) Promptly upon receipt thereof, the ISP shall deliver to Develop Nova Scotia copies of any material notice or report regarding any Permit that could reasonably be expected to have a material adverse effect on the ability of the ISP to complete the Work or deliver Internet Services in accordance with the terms and conditions set forth herein.

9.2 Monthly Progress Report

Within ten days of the end of each month during the period following the Commencement Date until the Acceptance Date for each Project (each, a “**Construction Period**”), the ISP shall deliver to Develop Nova Scotia a progress report in the format of Exhibit 4 or as otherwise required by Develop Nova Scotia (the “**Monthly Progress Report**”). At a minimum, the Monthly Progress Report shall include the following for all applicable Projects:

- (a) a high-level summary of Project activities, Milestone status, accomplishments, and problems and corrective actions having occurred during the previous month;
- (b) any identified variances in the scope of Work and/or the Project Plan; and
- (c) any upcoming events or scheduled meetings, and projected costs for the following month.

At the request of Develop Nova Scotia, one Monthly Progress Report in each fiscal year shall also include:

- (d) a reconciliation of the Contribution Eligible Project Costs incurred in each fiscal year prior to the date of the Monthly Progress Report; and
- (e) a Workers’ Compensation Certificate indicating that the ISP is in good standing.

9.3 Final Report

Within ninety (90) calendar days of the Acceptance Date for each Project, the ISP shall submit a final report to Develop Nova Scotia in the format of Exhibit 5 or as otherwise required by Develop Nova Scotia (the “**Final Report**”). At a minimum, the Final Report shall include the following for each applicable Project:

- (a) a financial report outlining all costs and expenditures incurred by the ISP, including Contribution Eligible Project Costs;
- (b) a Workers’ Compensation Certificate indicating that the ISP is in good standing; and

- (c) a Certificate of Substantial Completion for the Project.

9.4 Maintaining Records

ISP agrees to maintain records and documentation for each Project and keep copies of all records and documentation as required by this Agreement and Applicable Laws for the period required by Applicable Laws. Upon request, ISP shall submit or make available to Develop Nova Scotia, copies of such records and documentation, including, but not limited to work authorizations, invoices, time sheets, payroll records, estimates and actual costs of activities carried out pursuant to the Agreement, including final measurements, payment certificates, change orders, correspondence, memoranda, contracts and amendments thereto.

10. FORCE MAJEURE

10.1 Force Majeure Event

For the purpose of this Agreement, a “**Force Majeure Event**” means any circumstance whatsoever not within the reasonable control of the Party affected, but only if and to the extent that: (a) such circumstance cannot be prevented, avoided, remedied or removed despite the exercise of good faith and reasonable diligence by such Party; and (b) such circumstance materially and adversely affects the ability of the Party to perform its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof. Subject to the foregoing, a Force Majeure Event shall include, but not be limited to:

- (a) fire, chemical or radioactive contamination or ionizing radiation, earthquakes, lightning, cyclones, hurricanes, floods, droughts, tsunamis, tornadoes or such other extreme weather or environmental conditions, unanticipated geological or ground conditions, epidemic, public health emergency, communicable disease outbreak, famine, plague or other natural calamities and acts of God;
- (b) explosion, accident, breakage of a plant or equipment, structural collapse, or chemical contamination caused by any event not within the reasonable control of the Party;
- (c) strikes, lockouts, work stoppages, labour disputes, or such other industrial action by workers of the Party;
- (d) acts of war (whether declared or undeclared), invasion, acts of terrorists, blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and sabotage;
- (e) any action or failure to act without justifiable cause by any relevant Governmental Authority, other than a court or tribunal (including any action or failure to act without justifiable cause by any duly authorized agent of any Governmental Authority, other than a court or tribunal); or

- (f) any legal prohibition on a Party's ability to conduct the Party's business, including passing of a statute, decree, regulation or order by a relevant Governmental Authority prohibiting the Party from conducting the Party's business, other than as a result of the Party's failure to comply with the law or any order, consent, rule, regulation or other legislative or judicial instrument passed by a relevant Governmental Authority.

10.2 Effect of Force Majeure Event

No Party shall be in breach of its obligations under this Agreement or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by the other (other than under any express indemnity in this Agreement) if and to the extent that it is prevented in whole or in part from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this Section 10.2 shall not apply to that extent). No obligations of a Party which arose before the occurrence of a Force Majeure Event causing the suspension of performance shall be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible.

10.3 Procedure

If a Party wishes to claim protection in respect of a Force Majeure Event, it shall as soon as possible following the occurrence or date of commencement of such Force Majeure Event and in any event no later than five (5) Business Days after the commencement of the Force Majeure Event, notify the other Parties of the nature and expected duration and effect of such Force Majeure Event upon the performance of such Party's obligations and shall thereafter keep the other Party informed until such time as it is able to perform its obligations. The Party claiming the Force Majeure Event shall use its commercially reasonable efforts to: (a) overcome the effects of the Force Majeure Event; (b) mitigate the effect of any delay occasioned by any Force Majeure Event, including by recourse to alternative mutually acceptable sources of services, equipment and materials; and (c) ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable.

10.4 Right to Modify or Terminate

Should a single Force Majeure Event continue for a continuous period of more than one hundred twenty (120) days then: (a) the Parties shall endeavour to agree to any modifications to this Agreement which may be equitable having regard to the nature of the Force Majeure Event and which are consistent with Applicable Laws; or (b) Develop Nova Scotia may give written notice to the other Parties of the termination of the Agreement effective as of the date of the notice.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 The ISP's Representations, Warranties and Covenants

The ISP covenants, represents, and warrants to Develop Nova Scotia and NSIFT that:

- (a) Corporate Power and Authorization: The ISP is a corporation duly incorporated and validly organized and existing under the laws of its jurisdiction of incorporation and is in good standing with respect to the filing of annual returns thereunder;
- (b) Corporate Capacity: The ISP has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) Corporate Proceedings: All necessary corporate proceedings have been taken to authorize the ISP to enter into this Agreement and to execute and deliver this Agreement;
- (d) Funding: The ISP has secured its share of funding for each Project;
- (e) Proper Execution: The Agreement has been properly executed by the ISP and is enforceable against the ISP in accordance with its terms;
- (f) Sustainability of Operations: The ISP assumes full financial and legal responsibility for the contractual delivery and performance obligations related to the Projects, the Work and the Internet Services;
- (g) Work: The Work will be properly constructed and installed, free of defects and in compliance with the Technical Requirements and other terms and conditions set forth in this Agreement;
- (h) Compliance with Laws: The ISP: will comply with all pricing obligations under the Services Delivery Agreement, and the Network and rates to be charged to Customers will comply with all applicable laws rules regulations and orders, including the *Telecommunications Act* (Canada) and the decisions and policies of the CRTC; has filed all tax, corporate information, and other returns required to be filed by the laws of Nova Scotia and Canada; has complied with all workers' compensation legislation and other similar legislation to which it is subject; and has paid all taxes, fees and assessments due by the ISP under those laws as of the Commencement Date;
- (i) Business Permits: The ISP holds all Permits that are required by law to conduct its business;
- (j) Wages Paid: The ISP has paid and shall pay, as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (k) ISP has Investigated: The ISP has investigated and satisfied itself of all conditions affecting the Work, including all service and technical requirements of ISP under this Agreement;
- (l) No Reliance: The ISP's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation,

or information made or given by or on behalf of the NSIFT or Develop Nova Scotia;

- (m) Acceptance of Risks: The ISP accepts the risks assigned within this Agreement identified as being borne by the ISP;
- (n) Responsibility for Information: The ISP acknowledges that it has the responsibility for informing itself of all aspects of the Projects and all information necessary to perform the Work and deliver the Internet Services;
- (o) HST Registration: The ISP is registered for the purposes of the harmonized sales tax under the *Excise Tax Act* (Canada);
- (p) Legal Compliance: Neither the execution or delivery of this Agreement, nor compliance with the terms of this Agreement by the ISP: 1) has resulted in or shall result in any violation of any Applicable Laws; 2) has resulted in or shall result in a breach of or constitute a default under the ISP constating documents, any shareholders agreement to which it is a party or any shareholders or directors resolutions; 3) has resulted or shall result in a breach of or constitute a default under any instrument or agreement to which the ISP is a party or by which the ISP is bound; or 4) require the approval or consent of any Person, or governmental or regulatory authority, except as such as have been obtained as of the Commencement Date;
- (q) Litigation: There are no suits, actions, grievances, proceedings, judgements issued or outstanding, or to the knowledge of the ISP, threatened against or affecting the ISP or any of its assets by or before any court, tribunal, arbitrator or board or other governmental or regulatory authority that would, if adversely determined, have a material adverse impact on or materially adversely restrict or impair the performance by the ISP of its duties and obligations under this Agreement, or the performance of the Services pursuant to the terms of this Agreement;
- (r) Accuracy of Statements: All statements contained in the Proposal, and any other certificate or other document delivered to Develop Nova Scotia under this Agreement or connection with the Work or the RFP or Proposal, are true and correct as of the date hereof;
- (s) Solvency: As of the date hereof, the ISP is not insolvent, is able to pay its debts as they become due in the ordinary course of business and the entry into or performing of the obligations of this Agreement will not render the ISP insolvent or unable to pay its debts as they become due; and
- (t) Intellectual Property: The Work and Internet Services shall not infringe or constitute an infringement or misappropriation of any intellectual property rights of any third party, including patent, copyright or trademark rights or registrations, trade secrets, or utilize proprietary or other confidential information.

11.2 NSIFT's Representations, Warranties and Covenants

NSIFT covenants, represents, and warrants to the ISP that:

- (a) Capacity: The trustees of NSIFT have the power and capacity to enter into this Agreement and to comply with the terms and conditions of this Agreement;
- (b) Proceedings: All necessary proceedings have been taken to authorize NSIFT to enter into this Agreement and to execute and deliver this Agreement; and
- (c) Proper Execution: The Agreement has been properly executed by the trustees of the NSIFT and is enforceable against the trustees in accordance with its terms.

11.3 Develop Nova Scotia's Representations, Warranties and Covenants

Develop Nova Scotia covenants, represents, and warrants to the ISP that:

- (a) Capacity: Develop Nova Scotia has the power and capacity to enter into this Agreement and to comply with the terms and conditions of this Agreement;
- (b) Proceedings: All necessary proceedings have been taken to authorize Develop Nova Scotia to enter into this Agreement and to execute and deliver this Agreement;
- (c) Proper Execution: The Agreement has been properly executed by an authorized signatory of Develop Nova Scotia and is enforceable against Develop Nova Scotia in accordance with its terms.

12. EVENTS OF DEFAULT AND TERMINATION

12.1 Events of Default

The occurrence of any one or more of the following events, after the expiry of any applicable cure period set out below, shall constitute an "**Event of Default**" under this Agreement:

- (a) The ISP has ceased to carry on its business and operations;
- (b) The ISP has committed any act of bankruptcy, a receiver is appointed on account of the ISP's insolvency or in respect of any of its property, or the ISP makes a general assignment for the benefit of its creditors;
- (c) any steps are taken or any action or proceedings are instituted by the ISP or by any other party including, without limitation, any court or governmental body of competent jurisdiction, for the dissolution, winding-up or liquidation of the ISP or its assets;
- (d) The ISP fails to observe and abide by the Applicable Laws or fails to perform any covenant or obligation contained herein in a material respect and such breach or omission shall continue unremedied for more than thirty days after the ISP receiving notice from Develop Nova Scotia of such breach or omission; or

- (e) Any representation or warranty given by the ISP whether under this Agreement or the Proposal is untrue or incorrect in a material respect and such untruth or incorrectness shall continue unremedied for more than thirty days after the ISP receiving notice from Develop Nova Scotia of such untruth or incorrectness; or
- (f) NSIFT or Develop Nova Scotia fails to observe and abide by the Applicable Laws or fails to perform any covenant or obligation contained herein in a material respect, and such failure is not cured within thirty (30) days of Develop Nova Scotia and NSIFT receiving notice from ISP of such breach or omission.

12.2 Rights and Obligations Arising Prior to Termination

Notwithstanding anything to the contrary contained herein, no termination by NSIFT or Develop Nova Scotia under Section 12.3(a), nor the expiry of this Agreement or a Project shall affect the rights or obligations of ISP with respect to any Event of Default or the obligation to make any payment hereunder with respect to obligations accruing prior to the date of termination or expiration.

12.3 Remedies

- (a) In the event that the ISP is in Default, then, in any such case, Develop Nova Scotia or NSIFT may upon notice to ISP, exercise any or all rights and remedies available under this Agreement and at law or in equity, including but not limited to:
 - (i) Require the ISP to repay some or all of the Contribution it has received hereunder in relation to any Project for which the Default relates to;
 - (ii) In the event that the ISP fails to repay such amount as outlined in subsection (i) above, enforcing Security; and
 - (iii) terminating this Agreement in whole if applicable, or in part as it relates to the Project associated with the Default.
- (b) In the event that NSIFT or Develop Nova Scotia is in Default, then, in any such case, the ISP may upon notice to NSIFT and Develop Nova Scotia, terminate this Agreement in whole if applicable, or in part as it relates to the Project associated with the Default. In the event of such termination, ISP reserves, without prejudice, all other rights and remedies it may have at law or in equity.
- (c) If NSIFT or Develop Nova Scotia terminates the Agreement, it:
 - (i) is entitled to withhold any further payments to ISP and cease to perform any further obligations under this Agreement until such time as the ISP's liability to NSIFT is ascertained;
 - (ii) is entitled to set off any amounts owing to NSIFT by the ISP under this Agreement against any amounts owed by NSIFT as of the date of termination of the Agreement; and

- (iii) reserves, without prejudice, all other rights and remedies NSIFT may have at law or in equity.
- (d) If NSIFT or Develop Nova Scotia terminates this Agreement as it relates to a particular Project, it:
 - (i) is entitled to withhold any further payments to ISP for such Project and cease to perform any further obligations under this Agreement until such time as the ISP's liability to NSIFT in connection with such Project is ascertained;
 - (ii) is entitled to set off any amounts owing to NSIFT by the ISP under this Agreement against any amounts owed by NSIFT as of the date of termination of such Project; and
 - (iii) reserves, without prejudice, all other rights and remedies NSIFT may have at law or in equity.
- (e) In addition to the foregoing, if NSIFT or Develop Nova Scotia terminates this Agreement in whole or in part as it relates to a particular Project due to the ISP's Default, NSIFT is entitled to recover from ISP, subject to Section 8.2, any loss, damage and expense incurred by NSIFT by reason of ISP's Default.

13. COMPLIANCE WITH APPLICABLE LAWS AND PERMITS

- (a) The ISP shall comply with all Applicable Laws pertaining to the Work and its performance under this Agreement, including, without limitation, Environmental Laws, OHS Laws, and the *Telecommunications Act* (Canada). The ISP shall be responsible for ensuring similar compliance by its Subcontractors.
- (b) The ISP shall be responsible for obtaining all Permits necessary for the Work at its sole cost and expense.

14. CONFIDENTIALITY

- (a) Except as required by the *Freedom of Information and Protection of Privacy Act* (Nova Scotia) or the *Personal Information International Disclosure Protection Act* (Nova Scotia), the Parties shall keep confidential all matters respecting technical, commercial and legal issues relating to or arising out of any Project or the performance of this Agreement and shall not, without the prior written consent of the other, disclose any such matters, except in strict confidence, to its directors, officers, employees, agents, subcontractors and professional advisors on a need-to-know basis.
- (b) The foregoing restriction does not apply to any information which is or becomes generally available to the public or which is known to such Person prior to its receipt of the information from the other Party or which was obtained from any third party who obtained the information lawfully, and under no obligation of secrecy. The foregoing restriction does not apply to the extent disclosure is

required by law or by the applicable regulations or policies of any governmental authority or other regulatory agency of competent jurisdiction or any stock exchange.

- (c) To the extent that any information about identifiable individuals is obtained by the Parties, the Parties agree to treat such information in accordance with the standards of the *Personal Information Protection and Electronic Documents Act* (Canada).
- (d) All public communications and advertising of this Agreement or any Project are subject to the prior written approval of NSIFT, Develop Nova Scotia and the ISP.

15. SUBCONTRACTORS

- (a) The ISP shall be as fully responsible to Develop Nova Scotia and NSIFT for acts and omissions of its Subcontractors and of persons directly or indirectly employed by them as for the acts and omissions of persons directly employed by ISP.
- (b) Nothing contained in this Agreement shall create any contractual or other relationship between any Subcontractor and NSIFT or Develop Nova Scotia or any employee of a Subcontractor and NSIFT or Develop Nova Scotia.

16. FIRST NATIONS CONSULTATION

- (a) The ISP acknowledges that NSIFT, Develop Nova Scotia or Nova Scotia may have a duty to consult with First Nations in respect of this Agreement, and the Work and Internet Services provided under this Agreement, including the potential location of and services delivered from the point-of-presence (“**POP**”).
- (b) The ISP agrees:
 - (i) If NSIFT or Develop Nova Scotia have advised that no construction of a Project can occur in a particular location until NSIFT is satisfied that any legal duty to consult with, and where appropriate, to accommodate First Nations has been met and continues to be met, that such construction shall be held until Develop Nova Scotia advises it can proceed; and
 - (ii) to participate in and make a liaison person available in respect of any consultation with First Nations required or desired by NSIFT and Develop Nova Scotia.
- (c) The ISP agrees to do and cause all things to be done as may be commercially reasonable to assist NSIFT and Develop Nova Scotia in complying with any obligations relating to consultation or accommodation with First Nations located within the Province of Nova Scotia, including without limitation, assisting with NSIFT and Develop Nova Scotia as they consult with First Nations that might be affected by a Project, explain the Project to them, including NSIFT’s role.
- (d) ISP will assist NSIFT and Develop Nova Scotia in complying with any Aboriginal and First Nations consultations required under Section 35 of the

Constitution Act, 1982 (Canada), in connection with either federal or provincial permits and authorizations required to be obtained for the performance of this Agreement.

17. INDEPENDENT CONTRACTOR

The relationship of ISP to the other Parties shall be that of independent contractor. Neither ISP nor its agents will have authority to make any agreement or incur any liability on behalf of another Party, except as set forth in this Agreement.

18. DISPUTE RESOLUTION

18.1 Disputes

Questions and disputes between ISP and the other Parties with respect to this Agreement (each, a “**Dispute**”), if not otherwise resolved by the Project Managers shall be escalated, by any Party, for resolution at the director level (or equivalent level of authority as between the ISP and NSIFT or Develop Nova Scotia). If any such Dispute is not able to be resolved at the director-management level within ten (10) Business Days of the date on which the Dispute was escalated for resolution under this Section 18.1, any Party shall be entitled, by written notice to the other Parties, to escalate the Dispute for resolution in accordance with Section 18.2.

18.2 Escalation to Senior Executive

Further to Section 18.1, to the extent the Parties are unable to resolve any Dispute at the director-management level, the Parties agree that any Party shall be entitled to escalate the said Dispute to be resolved by them at a senior management level (or equivalent level of authority as between the ISP and NSIFT or Develop Nova Scotia). If the Dispute is not resolved at the senior management level as contemplated herein, within ten (10) Business Days of the date on which the Dispute was escalated for resolution under this Section 18.2, any Party shall be entitled to seek resolution of such Dispute in accordance with the arbitration process set out in Section 18.3.

18.3 Arbitration

Further to Section 18.2, to the extent the Parties are unable to resolve any Dispute at the senior management level, then, upon written notice by any Party to the others, the Dispute shall be finally settled by arbitration in accordance with the expedited procedure set out in the *Commercial Arbitration Act* (Nova Scotia), subject to the following:

- (a) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties, or in the event of failure to agree within ten (10) Business Days, any Party may apply to a court of competent jurisdiction to appoint an arbitrator.
- (b) The arbitrator shall be instructed that time is of the essence in proceeding with the determination of any Dispute and, in any event, the arbitration award shall be rendered within thirty (30) Business Days of the submission of such Dispute to arbitration.

- (c) The arbitration award shall: (i) be rendered in writing; (ii) contain a brief recital of the facts upon which the decision is made and the reasons thereof; (iii) be final and binding on the Parties; (iv) deal with the question of costs; (v) not be subject to any appeal.
- (d) Any arbitration shall be conducted in Halifax, Nova Scotia.

18.4 Equitable Remedies / Injunctive Relief

Notwithstanding the foregoing, the Parties agree that certain matters may arise that require resolution more quickly than by negotiation or arbitration, and that injunctive relief may be the only effective relief for a breach of certain covenants in this Agreement, which breach may cause a Party irreparable harm if not remedied immediately, and may not be compensable by damages alone. Each Party agrees that the other Parties shall be entitled, provided they act in good faith, to seek equitable and injunctive relief on an interim and interlocutory basis in any court of competent jurisdiction or specific performance or other equitable remedies, in addition to any other remedies available to it, to enforce a Party's covenants in the event of such a breach or threatened breach thereof, without first complying with the other dispute resolution procedures described in this Section 18.

19. AUDITS

19.1 Co-operation

The ISP shall at all times co-operate with Develop Nova Scotia to allow Develop Nova Scotia to exercise its audit rights and obligations as set out in this Agreement, including providing Develop Nova Scotia and/or its agents or employees with reasonable access to any Project, any Project site, and Project documentation, subject to compliance with any reasonable access policies of the ISP and third party holders of underlying rights that are applicable to ISP.

19.2 Develop Nova Scotia Audits

Develop Nova Scotia may conduct audits of any Project at all reasonable times during the Term in accordance with Exhibit 7; provided that such audits shall not interfere with the delivery of any Project and shall not be more frequent than once in a given calendar year.

19.3 Information or Access Requests

The ISP shall make available to Develop Nova Scotia, within five (5) Business Days of receiving a request, such information in respect of any Project and its results including, without limitation, all agreements, plans and specifications related to a Project as Develop Nova Scotia may reasonably require. Subject to compliance with any reasonable access policies of the ISP and third party holders of underlying rights that are applicable to ISP, the ISP shall provide Develop Nova Scotia and/or its external auditors with access to the ISP's premises where a Project deliverables are located (as the same relates to auditing any Project and funding in respect thereof), and staff and to the applicable Project site(s) at all reasonable times to:

- (a) inspect the progress and monitor any Project;
- (b) perform cost reviews and audits of any Project; and

- (c) complete any other auditing or monitoring that may be required in relation to any Project.

20. ACCEPTANCE TESTING

- 20.1 The ISP shall provide for in the first Milestone for each Project a complete acceptance test plan incorporating the outline, which has been provided as part of its Proposal describing the procedures for the test and verification of the performance of the Network for such Project. The acceptance test plan (the “ATP”) shall outline the ISP’s inspection check list, test procedures, and submission and approval process that the ISP shall accomplish as integrated into the overall Project Schedule. The ATP shall be subject to the Acceptance of Develop Nova Scotia, not to be unreasonably withheld. The Accepted ATP shall be attached as a Schedule to the Project Schedule. The ISP shall be responsible for all Network and Customer site tests and inspections identified in the ATP, and provide the necessary personnel, equipment and materials to perform these tests and inspections. The ISP shall also be responsible for the conducting of the tests and inspection procedures and all record keeping. Develop Nova Scotia may, at its sole discretion and cost, provide a representative to witness a sample of or all of the tests. The ISP shall use commercially reasonable efforts to arrange Develop Nova Scotia’s attendance at any tests and inspections which they will be conducting, provided that Develop Nova Scotia gives five (5) Business Days prior notice to ISP of its interest to attend such tests.
- 20.2 As part of final completion of the Work for each Project, ISP shall demonstrate to Develop Nova Scotia that the applicable Network is complete and acceptable to Develop Nova Scotia in accordance with the Technical Requirements. If Develop Nova Scotia does not Accept the Network build as complete in accordance with the Technical Requirements, such Acceptance not to be unreasonably withheld, Develop Nova Scotia shall indicate the Network does not meet the Technical Requirements provided for in this Agreement and the Project Schedule and shall give notice to the ISP of any issues related to the Network build. The ISP shall correct any deficiencies and resubmit the Work and the Network for further acceptance testing. The ISP shall cooperate and provide Develop Nova Scotia with additional documentation to allow Develop Nova Scotia to evaluate the ability of the ISP to perform the Work and provide Internet Services in accordance with the terms and conditions of this Agreement and the Services Delivery Agreement. Such Acceptance of the Network shall not constitute Acceptance of defective Work or that the Work is in compliance with the terms of this Agreement or has met any warranty or other terms and conditions of this Agreement.
- 20.3 After Acceptance of the ATP and the Network build for each Project, the ISP shall present to Develop Nova Scotia as part of the Final Report a written certificate that the Network has been built and tested in accordance with, and is in compliance with the terms of this Agreement and the Project

Schedule as well as the ATP and is ready to be placed into operation and commence providing Internet Services (the “**Certificate of Substantial Completion**”). Develop Nova Scotia shall then promptly provide an Acceptance Date notice.

21. DOCUMENTATION

ISP shall, at its option either (i) deliver to or (ii) permit Develop Nova Scotia to review in ISP’s facility, documentation regarding the “as built” condition of the Network within ninety (90) days of Acceptance of the ATP (hereinafter referred to as “**As Built Documentation**”) for each Project, which shall consist of the following:

- (a) As built drawings prepared in accordance with the specifications as set out hereto in the Project Schedule;
- (b) Names of all manufacturers whose towers, transmitters, optical fiber cable, routers, switches and other equipment are used in installing and providing the Network;
- (c) Summary of rights-of-way and easement providers and recurring fee schedule; and
- (d) A fully completed and updated, as built, Equipment Detail Requirement based on Template IV in the RFP.

22. RIGHTS-OF-WAY AND ACCESS

The ISP shall obtain on or before each Acceptance Date:

- (a) any and all rights-of-way, agreements, easements, licenses, spectrum licenses, indefeasible rights to use, co-location agreements, rights or other agreements necessary for use of poles, conduit, cable, wire, physical plant facilities, buildings and/or access to real property required in connection with the applicable Project; and
- (b) any and all rights, licenses, franchises, authorizations, agreements, permits and approvals (including, without limitation, any necessary local, provincial or federal authorizations and environmental permits) that are necessary for the installation and operation of the Network and delivery of the Internet Services to be provided in connection with the applicable Project.

23. SURVIVAL

- 23.1 All representations and warranties of ISP shall survive until the expiration of any applicable statute of limitations.
- 23.2 Upon delivery of a notice of termination of this Agreement, this Agreement shall thereupon be terminated and all rights and obligations of the Parties under this Agreement shall cease, subject to any obligations outstanding as of the date of such termination. Notwithstanding the foregoing, all

obligations of the Parties which, by their nature, require performance or fulfilment following the expiry or sooner termination of this Agreement, shall survive the expiry or sooner termination of this Agreement, including without limitation the obligations to retain documents and records and the rights to audit same contained herein.

24. GENERAL

24.1 Further Assurances

ISP shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Parties may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

24.2 Time of the Essence

Time shall be of the essence of this Agreement.

24.3 Legal Fees

Each of the Parties shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

24.4 Benefit of the Agreement

This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Parties.

24.5 Entire Agreement

This Agreement and the Services Delivery Agreement constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between any of the Parties other than as expressly set forth in this Agreement and the Services Delivery Agreement.

24.6 Assignment

The ISP shall not assign this Agreement in whole or in part without the prior written consent of NSIFT and Develop Nova Scotia, such consent not to be unreasonably withheld; provided that no such consent is required in connection with an assignment to an Affiliate or a sale of all or substantially all the assets of the ISP if notice thereof is promptly provided to NSIFT and Develop Nova Scotia together with written commitment from the assignee to assume all of the obligations of ISP under this Agreement. In the event of a change of ownership or Control of the ISP, the ISP shall provide written notice to Develop Nova Scotia. NSIFT may assign its rights and obligations under this Agreement, in whole or in part, to Develop Nova Scotia in its sole discretion.

24.7 Amendments and Waiver

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both of the Parties and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

24.8 Notices

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

- (a) To NSIFT: c/o Develop Nova Scotia
Old Red Store, Historic Properties
Suite 301 – 1875 Upper Water Street
Halifax, Nova Scotia B3J 1S9

- (b) To Develop Nova Scotia: Old Red Store, Historic Properties
Suite 301 – 1875 Upper Water Street
Halifax, Nova Scotia B3J 1S9

- (c) To ISP: [•]

or to such other address, individual or electronic communication number as may be designated by notice given by a Party to the others. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third (3rd) Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

24.9 Rights and Remedies

For greater certainty, all of the rights and remedies under this Agreement may be exercised alone or in any combination or order and are without prejudice to any other remedies at law or in equity, in contract or in tort.

24.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein.

24.11 Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

24.12 Counterparts

This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute one and the same instrument. Counterparts may be delivered by telecopier or email or portable document file (PDF) provided that the party so delivering forthwith delivers an original executed copy thereof by personal delivery or registered mail, in accordance with this Agreement.

(signatures on the following page)

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

NOVA SCOTIA INTERNET FUNDING TRUST, by its duly authorized trustees

Chair of the Trust

Trustee 2

Trustee 3

DEVELOP NOVA SCOTIA

Per: _____
Authorized Signing Officer

[ISP]

Per: _____
Authorized Signing Officer

EXHIBIT 1
PROJECTS

EXHIBIT 2
PROJECT SCHEDULE

This Project Schedule is entered into as of _____, 20____ in accordance with and pursuant to the Contribution Agreement (the “**Agreement**”) dated as of __, 2020 between Nova Scotia Internet Funding Trust, Develop Nova Scotia and **[ISP]**.

ISP and Develop Nova Scotia hereby agree to the Project and the terms and conditions related thereto as set forth in the schedules attached hereto (which are incorporated by reference and deemed to be part hereof), pursuant to the terms and conditions set forth in the Agreement.

AGREED AND ACCEPTED:

DEVELOP NOVA SCOTIA LIMITED

Per: _____
Authorized Signing Officer

[ISP]

Per: _____
Authorized Signing Officer

SCHEDULES

TECHNICAL DESCRIPTION:

PROJECT SUMMARY

LOGICAL NETWORK DIAGRAM

TABLE OF EQUIPMENT

TABLE OF FIBRE SEGMENTS

TABLE OF POINTS OF PRESENCE

TABLE OF PROJECT SITES

CONTRIBUTION ELIGIBLE PROJECT COSTS

MILESTONES AND MILESTONE DATES [to be attached as a schedule to the applicable Project Schedule pursuant to Section 5.6(a)]

PROJECT PLAN (GANTT CHART) [to be attached as a schedule to the applicable Project Schedule pursuant to Section 5.6(b)]

ATP [to be attached as a schedule to the applicable Project Schedule pursuant to Section 20.1]

**EXHIBIT 3
CLAIMS FORM**

EXHIBIT 4
MONTHLY PROGRESS REPORT

EXHIBIT 5
FINAL REPORT

EXHIBIT 6
LETTER OF CREDIT

Applicant:

[ISP]

Beneficiaries:

Nova Scotia Internet Funding Trust
and Develop Nova Scotia

Old Red Store, Historic Properties
Suite 301 – 1875 Upper Water Street
Halifax, Nova Scotia B3J 1S9

Re: Standby Letter of Credit in connection with the Contribution Agreement (“Contribution Agreement”) between Applicant and Beneficiaries dated ●, 2020.

At the request of [ISP] (our “Applicant”), we, [Qualified Institution] hereby establish our irrevocable standby letter of credit in your favour for an amount [of \$● CAD] OR [to be determined by the following schedule: ●]. Such amount shall be available to you against presentation of the under-mentioned original documents:

- (a) a statement purportedly signed by an officer of Develop Nova Scotia on its own behalf and as agent on behalf of Nova Scotia Internet Funding Trust, stating that in Develop Nova Scotia’s reasonable opinion:
 - (i) Applicant is in breach of its obligations under the Contribution Agreement and as a result a Beneficiary has incurred or will incur damages for which Develop Nova Scotia believes the Applicant is liable under the Contribution Agreement to the extent and for the amount of such damages as set out in such Develop Nova Scotia officer’s statement;
- (b) the original of this standby letter of credit.

Except as otherwise specified herein, this standby letter of credit will expire on the date which is ● years from the date of this letter of credit, on (insert date – ● year from issuance date) (the ‘Expiry Date’).

However, it is a condition of this Standby letter of credit that it shall be deemed automatically extended without amendment for one year from its expiry date or from any future expiry date, unless at least thirty (30) days prior to any such expiry date we shall send you a notice in writing by courier to the address above that we elect not to consider this Standby letter of credit renewed for any such additional period. In case of non-renewal you shall have the right to draw upon this letter of credit on or prior to any such expiry date, and up to the full amount outstanding by

returning us the original of the letter of credit accompanied by an original declaration, purported to be signed by an officer of Develop Nova Scotia, stating that the drawing is made as the letter of credit has not been renewed. For such request, the document mentioned under section (a) above will not be required.

We shall honour your demand for payment made in accordance herewith, without inquiring whether you are entitled to make such demand, notwithstanding all and any disputes or objections between you and our Applicant.

This Standby letter of credit is not transferable nor assignable.

Partial drawings permitted.

In the event of any partial drawing, we will:

- a) note the amount of the drawing on the original of this standby letter of credit; and
- b) immediately return the original of this Standby letter of credit directly to you.

We hereby undertake that any claims made by you on us under our irrevocable standby letter of credit will be duly honoured on presentation of any demand presented under and in compliance with the terms and conditions of this Standby letter of credit.

Any demand(s) for payment may be presented to us by courier or in person at our office at ●

All correspondence and/or demands shall be addressed to us at ●

This Standby letter of credit is subject to the “Uniform Customs and Practice for Documentary Credits” (2007 Revision) International Chamber of Commerce, Publication 600.

[●]

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT 7 AUDITS

Compliance Audit(s)

Compliance audits may be conducted by Develop Nova Scotia or at its option, an independent external certified specialist.

The key objectives of the compliance audit(s) are to:

- (a) Determine whether funds were expended for the purposes intended and with due regard to economy, efficiency and effectiveness;
- (b) Determine compliance with the Agreement;
- (c) Ensure that Project and financial information is complete, accurate and timely, in accordance with the terms and conditions of the Agreement;
- (d) Ensure that information and monitoring processes and systems are sufficient for the identification, capture, validation and monitoring of achievement of intended benefits;
- (e) To assess the overall management and administration of any Project;
- (f) Provide recommendations for improvement or redress; and
- (g) Ensure that prompt and timely corrective action is taken on audit findings.

Technical Audit(s)

- (a) Technical audits shall be conducted by Develop Nova Scotia or external certified specialists.
- (b) The technical audits will consist of, but not be limited to, the following activities; on-site inspection of access, infrastructure equipment and mounting structures; inspection of equipment located at central offices; verifying deployed equipment as invoiced; and confirming end user bandwidth speed to confirm it meets minimum rates, based on agreed upon random sampling methods;
- (c) Technical audits will identify deficiencies of Technical Requirements and remedial action is the responsibility of the ISP to verify and correct in a timely fashion;
- (d) Technical audits will be conducted before the release of the Holdbacks and can be conducted at various stages of a Project before its completion.

Audit Plans

- (a) Develop Nova Scotia is responsible for establishing, overseeing, managing and implementing an audit plan, including any required corrective actions.
- (b) Such audit plan along with the audit scope shall be provided to the ISP at a reasonable time prior to the audit to allow the ISP to prepare resources needed to support the endeavour or if necessary clarify the terms of the audit engagement.

Audit Reports

- (a) Develop Nova Scotia shall use reasonable efforts to make draft audit reports available to the ISP for review and providing a reasonable period of time for the ISP to comment prior to finalizing such audit reports.

EXHIBIT 8

Contribution Eligible Project Costs

Contribution Eligible Project Costs shall be the direct Project specific costs, which, in the opinion of NSIFT, are reasonably and properly incurred or allocated, to the performance of a Project.

Contribution Eligible Project Costs include the following direct costs:

- a) **Direct Labour Costs**, meaning the portion of gross wages or salaries incurred for Work which can be specifically identified and measured as having been performed or to be performed on the Project and which are identified and measured consistently by the ISP's cost accounting system, as accepted by the NSIFT.
 - i. The ISP may claim the direct labour costs for the time worked directly on the Project by its employees. The payroll rate is the gross pay of the ISP's employees (normal periodic remuneration before deductions) unless otherwise specifically agreed to in writing by NSIFT; and
 - ii. All eligible personnel must be employees on the ISP's payroll.
- b) **Direct Equipment and Material Costs**, meaning those costs for equipment and materials which can be specifically identified and measured as having been used or to be used in the performance of the Project in accordance with the following;
 - i. Equipment and materials may include, in addition to equipment and materials purchased solely for the Project and processed by the ISP, or obtained from subcontractors, any other equipment and materials issued from the ISP's general stocks charged to the Project in accordance with the method as used consistently by the ISP in pricing inventories; and
 - ii. Equipment and materials purchased solely for the Project or subcontracts shall be charged to the Project at the net laid down cost to the ISP, net of any taxes and after deducting trade and cash discounts, if applicable for prompt payment.
- c) **Direct Satellite Capacity Costs**, meaning the portion of the direct costs incurred since • in connection with the purchase, lease or development of bandwidth or capacity delivered over the physical medium of satellite, including capacity deposits, gateway and ground station expenses, capacity costs and expenses, and costs associated with enabling applicable satellites to be connected to the Internet, in each case which can be specifically identified and measured (based on a proportionate share of the satellite capacity allocated to the Province of Nova Scotia in respect of the Project, calculated based on the percentage of the satellite beam capacity (in GB) allocated to the Province of Nova Scotia in respect of the Project divided by the total satellite capacity (in GB) of the applicable satellite) as having been used or to be used in the implementation of the Project.
- d) **Direct Travel Costs**, meaning the cost of travel which is deemed necessary to the performance of the Project. To be eligible, travel costs must be clearly documented as to the purpose of each trip.

Travel expenses, at economy rates, shall be charged as at actual costs, but only to the extent that they are considered reasonable by the NSIFT.

- e) **Other Direct Costs**, meaning those applicable costs, not falling within the categories of direct labour, direct equipment, direct material, direct satellite capacity, or direct travel costs, but which can be specifically identified and measured as having been incurred or to be incurred in the performance of the Project and which are so identified and measured consistently by the ISP's cost accounting practices as accepted by the NSIFT. This includes labour performed by Subcontractors.

Contribution Eligible Project Costs claimed must reflect actual costs incurred by the ISP and not include any allocation for profit (i.e. mark-up).

Contribution Eligible Project Costs shall be determined in accordance with the ISP's cost accounting system and applied consistently over time. The cost accounting system should clearly establish an audit trail that supports all Contribution Eligible Project Cost claims.