

SERVICES DELIVERY AGREEMENT

Between

DEVELOP NOVA SCOTIA LIMITED

and

[---name of ISP---]

Made effective []

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SERVICES DELIVERY AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2020.

BETWEEN:

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 FIRST PART

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

OF THE SECOND 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;

WHEREAS Nova Scotia Internet Funding Trust (“**NSIFT**”), Develop Nova Scotia and the ISP entered into a contribution agreement dated [insert date of contribution agreement], 2020 (the “**Contribution Agreement**”) under which Nova Scotia Internet Funding Trust agreed to contribute towards the total cost of the building of infrastructure to deliver Internet Services to Customers;

AND WHEREAS it was a condition of the Contribution Agreement that the Parties enter into this Agreement to set 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) “**Affiliate**” means any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any Person.

- (b) “**Agreement**” means this agreement and all Schedules 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.
- (c) “**Applicable Law**” means any Law applicable to the ISP or the Internet Services.
- (d) “**Business Day**” means a day other than a Saturday, a Sunday, or any day on which banks are not open for business in Halifax.
- (e) “**Change Order**” means a written order issued in accordance with the provisions of Section 3.8, signed by Develop Nova Scotia and the ISP authorizing changes to the Network and/or Internet Services.
- (f) “**Commencement Date**” means the date hereof.
- (g) “**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.
- (a) “**CRTC**” means the Canadian Radio-television and Telecommunications Commission, or any successor entity.
- (b) “**CRTC Regulations**” means all rules, regulations, guidelines, standards, policies, directives, and decisions of the CRTC applicable to the subject matter of this Agreement.
- (c) “**Customer**” means any Person that enters a contract with the ISP for the purchase of Internet Services in a Zone.
- (d) “**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.
- (e) “**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.
- (f) “**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.

- (g) “**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.
- (h) “**INSI**” means the Internet for Nova Scotia Initiative, to provide high-speed internet access to unserved and underserved residents of Nova Scotia.
- (i) “**In Service Date**” means that date the ISP makes Internet Services available to potential Customers in a Zone pursuant to an applicable Project Schedule.
- (j) “**Internet Services**” means access to the internet provided by the ISP to Customers in each applicable Zone following each applicable In Service Date.
- (k) “**Last Mile**” means optical line terminal (OLT), POP, wireless radio, headend, Node, or other portion of the Network that links Customers to the Middle Mile.
- (l) “**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.
- (m) “**Liquidated Damages**” means the amounts payable by the ISP as damages, pursuant to Article 11, in accordance with the terms and conditions set forth herein.
- (n) “**Middle Mile**” means the portion of the Network that links the backbone network to the Last Mile.
- (o) “**Network**” means the high-speed internet network used by the ISP in Nova Scotia to offer Internet Services via fixed wireless, fixed wireline (fiber and/or coaxial) or other approved technology throughout applicable Zones.
- (p) “**Node**” means an active network aggregation point which services Last Mile Customers.
- (q) “**Other Provider**” means any internet service provider or reseller of high-speed internet services to residential and commercial customers, other than the ISP.

- (r) **“Party”** means either the ISP or Develop Nova Scotia, and **“Parties”** means both of them.
- (s) **“POP”** means a point of presence.
- (t) **“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 pursuant to this Agreement.
- (u) **“Person”** means and includes any individual, company, corporation, partnership, trustee or trust or unincorporated association, and pronouns have a similarly extended meaning.
- (v) **“Privacy Laws”** means any and all Applicable Laws regarding the collection, retention, use, processing, disclosure, transfer, and protection of personal information, and all cyber incident, information security, and data breach notification and record-keeping requirements under such Applicable Laws, including but not limited to the *Freedom of Information and Protection of Privacy Act* (Nova Scotia), the *Personal Information International Disclosure Protection Act* (Nova Scotia), and *Personal Information Protection and Electronic Documents Act* (Canada).
- (w) **“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.
- (x) **“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”.
- (y) **“Retail Open Access”** means access to funded transport infrastructure available to non-carriers, including end-customers such as anchor institutions, businesses, and other government and non-government organizations.
- (z) **“Service Level Commitment”** or **“SLC”** means the service level commitment as set forth in the SLC table in Schedule "C" attached hereto, as measured in accordance with the terms and conditions more particularly described therein.
- (aa) **“Service Level Target”** or **“SLT”** means the SLC target for each SLC as set forth in the SLC table in Schedule "C" attached hereto.
- (bb) **“Service Level Target Default”** or **“SLT Default”** means the failure to meet an applicable SLT Target.

- (cc) **“Service Level LD Threshold”** or **“SLDT”** means the Service Level LD Threshold for each SLC as set forth in the SLC table in Schedule "C" attached hereto.
- (dd) **“Service Package”** means a service package provided by the ISP to a Customer for Internet Services of the speed, bandwidth allowance and rate required to be provided under this Agreement, including installation and equipment necessary to provide the Internet Services.
- (ee) **“Similar Service Package”** means a service package offering internet services as a whole that are substantially equivalent to or greater than the Internet Services offered in the applicable Service Package, that is offered either:
 - (i) to the ISP’s customers in Halifax, Nova Scotia; or
 - (ii) if the ISP does not offer such similar service packages in Halifax, Nova Scotia, in service packages offering internet services as a whole that are substantially equivalent to or greater than the Internet Services offered in the applicable Service Package that are offered by a majority of Other Providers in Halifax, Nova Scotia, as listed in the most recent survey distributed by Develop Nova Scotia to ISP.
- (ff) **“Sustainable”** means the ability of ISP to maintain and deliver its Internet Services at the minimum level required by this Agreement, or, if greater than required by this Agreement, the minimum level required by Applicable Law and applicable CRTC Regulations.
- (gg) **“Weighted Average”** means the average based on the relative market share of applicable facilities based Other Providers in Halifax, Nova Scotia, as listed in the most recent survey distributed by Develop Nova Scotia to ISP.
- (hh) **“Wholesale Open Access”** means the provision of a telecommunications service or facility to a service provider, regardless of whether that service provider rebills the service or facility to another entity or uses that service or facility internally to support the services it bills.
- (ii) **“Zone”** means the area the Internet Services are to be offered by the ISP as set out in the Zone 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
Accrued Liquidated Damages	Section 11.2

Term	Where Defined
Certificate of Insurance	Section 5.2
Compliance Certificate	Section 8.3
Contract Manager	Section 3.9
Cure Date	Section 3.4(d)
Customer Event of Default	Section 10.1
Dispute	Section 16.1
Event of Default	Section 10.1
Fees	Section 4.1
Force Majeure Event	Section 8.1
INSI Objectives	Schedule "B"
Indemnified Parties	Section 6.1
Initial Objectives	Schedule "B"
Liquidated Damages Investment Plan	Section 11.2
Open Access Services	Section 17.1
Open Access Services Fees	Section 17.1
Open Access Services Table	Section 17.1
Other Provider Event of Default	Section 10.3
Performance Attribute	Schedule "B"
Quarterly Report	Section 7.2
Remediation Plan	Section 3.4(d)
Schedules	Section 1.9
SLT Event of Default	Section 10.1
Term	Section 2

Term	Where Defined
Zone Schedule	Section 3.1

1.3 Terms Defined in the Contribution Agreement

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

1.4 Headings

The division of this Agreement into Sections and the headings of Articles, Sections, Subsections and Schedules 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 Schedules

All schedules (“**Schedules**”) attached to or entered into pursuant to this Agreement 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 a 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 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 a 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 Schedule;
 - (C) the Contribution Agreement;
 - (D) the Proposal; and
 - (E) 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 period of ten (10) years from the last In Service Date, unless terminated earlier in accordance with this Agreement (the “**Term**”).

3. SERVICE REQUIREMENTS

3.1 Zones

The ISP shall be responsible for the operation, maintenance, and repair of the Network and the delivery of Internet Services to Customers in each Zone identified in Schedule "A" (the "**Zone Schedule**").

3.2 CRTC Regulations

The ISP covenants to comply with all CRTC Regulations in carrying out its obligations under this Agreement. In the event the ISP is not regulated by the CRTC, or ordinarily subject to CRTC Regulations, the ISP agrees, notwithstanding the foregoing, to comply with all CRTC Regulations.

3.3 Customer Service Obligations

The ISP shall meet or exceed the following obligations in providing Internet Services to any Customer in each Zone for the ten year period commencing on the In Service Date for such Zone (the "**Zone Service Period**"):

- (a) Network performance shall meet or exceed the standards of Applicable Law and applicable CRTC Regulations; and
- (b) all Customer service activities performed by the ISP shall meet or exceed Good Industry Practices.

3.4 Service Level Commitments and Targets

- (a) The ISP shall meet or exceed the SLTs in each Zone during the applicable Zone Service Period.
- (b) Promptly and in any event within five (5) Business Days after the ISP has become aware thereof, it shall provide Develop Nova Scotia notice of any SLT Default, which notice shall include the nature and expected duration and effect of such SLT Default.
- (c) The ISP shall use its commercially reasonable efforts to: (a) overcome the effects of any SLT Default; (b) mitigate the effect of any delay occasioned by any SLT Default, including by recourse to alternative mutually acceptable sources of services, equipment and materials; and (c) cure the SLT Default as soon as reasonably practicable.
- (d) The ISP shall promptly provide to Develop Nova Scotia for Acceptance a detailed report and plan (as Accepted, the "**Remediation Plan**") to cure such SLT Default on or prior to a certain date (the "**Cure Date**"), if such SLT Default has continued for two months.

3.5 Scalability/Future Capacity/Upgrade Issues

The ISP represents, warrants and covenants that in each Zone for the applicable Zone Service Period:

- (a) the Network will be capable of scaling in bandwidth and subscriber capacity as and when required by Applicable Law and applicable CRTC Regulations;
- (b) The ISP shall ensure that the capacity of the Network shall be Sustainable and sufficient to deliver Similar Service Packages to Customers; provided that if ISP (or a majority of Other Providers in Halifax, Nova Scotia in the event that ISP does not offer Similar Service Packages) ceases to offer the Similar Service Package, the ISP shall treat the service package that it (or a majority of Other Providers in Halifax, Nova Scotia in the event that ISP does not offer Similar Service Packages) delivers in Halifax Nova Scotia with the closest bandwidth capacity to the Service Package, so long as it is greater than the bandwidth required for the Service Package, as the revised Similar Service Package, and shall increase the bandwidth allowance for the Service Package to align with the revised Similar Service Package; and
- (c) The ISP shall comply with the future upgrade and scalability policies and commitments set out in Schedule "D".

3.6 Surveillance

The Network shall be monitored in each Zone for the applicable Zone Service Period on a twenty-four (24) hour, seven (7) day per week, three hundred and sixty-five (365) day per year basis for the purpose of monitoring of alarms related to the Network equipment.

3.7 Network Requirements

The ISP covenants and agrees that the Performance Attributes of the Network shall meet or exceed the applicable Initial Objectives, INSI Objectives and Proposal Objectives set forth in Schedule "B" during the Term.

3.8 Changes/Change Procedures

- (a) ISP may, in accordance with the terms and conditions of this Agreement, request reasonable changes to the Network. All such changes in the Network 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 Network that do not adversely affect its ability to provide Internet Services as required hereunder without a Change Order. The ISP acknowledges that any changes to the Network and/or the Internet Services will be at the sole cost and expense of the ISP.
- (b) The ISP may, at any time, submit to Develop Nova Scotia a draft Change Order specifying proposed changes to the Network. 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. 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 perform their obligations in accordance with the changes specified therein.

3.9 Contract Manager

Each Party shall identify, assign, and maintain a contract manager to serve as such Party's primary point of contact throughout the term (each, a "**Contract Manager**"). Each Party shall ensure its Contract Manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity, in particular to facilitate the performance of the Parties' obligations hereunder. ISP shall promptly notify Develop Nova Scotia in the event of a change in its Contract Manager.

4. PRICING

4.1 Fees

ISP agrees that the fees charged to any Customer ("**Fees**") for a Service Package shall be equal to or less than (i) those fees charged by the ISP for Similar Service Packages offered by the ISP, or (ii) the Weighted Average of Similar Service Packages offered by Other Providers, if the ISP does not offer Similar Service Packages.

4.2 Existing Customers

The ISP agrees that any existing retail Customers of the ISP, who have current contracts with the ISP, will be permitted to opt out of their existing contract, excluding commercial Customers who have entered into written contracts with ISP, regardless of the length of the term, without payment of an early termination or cancellation fee, on the applicable In Service Date, provided such Customers subscribe for Service Packages at the prices and on the terms available under the terms of this Agreement.

5. INSURANCE

5.1 Insurance Requirements

- (a) 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, 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;

- (b) The commercial general liability insurance policy shall contain waivers of subrogation against Develop Nova Scotia, 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.
- (c) All insurers shall be reputable and financially credit worthy insurers with an A.M. Best financial strength rating of A- or higher.
- (d) All insurance policies shall provide for thirty (30) days of notice of cancellation during the policy term to Develop Nova Scotia.
- (e) 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.

5.2 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 5.1 naming Develop Nova Scotia as an additional insured 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.

6. LIABILITY AND INDEMNITY

6.1 Indemnity

Subject to Section 6.2, the ISP shall indemnify and save harmless Develop Nova Scotia, and its respective directors, officers, agents, appointees and employees, (the "**Indemnified Parties**") 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 Section 3.5, 4.1 or 17 of this Agreement by the ISP, its officers, servants, employees and agents, or subcontractors, their officers, servants, employees and agents;

- (b) the breach of or failure to perform any covenant, condition or agreement contained in this Agreement (other than Section 3.5, 4.1 or 17) by the ISP, its officers, servants, employees and agents, or subcontractors, their officers, servants, employees and agents;
- (c) any injury to persons (including injuries resulting in death) related to the operation, maintenance, and repair of the Network and the delivery of the Internet Services, except to the extent caused by the gross negligence of Indemnified Parties;
- (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 operation, maintenance, and repair of the Network and the delivery of the Internet Services by the ISP;
- (e) the ongoing operation, maintenance and repair of the Network and delivery of the Internet Services in each Zone set out in the Zone Schedule;
- (f) any omission or other willful or negligent act of the ISP, or its respective employees, officers, servants or agents; or
- (g) any breach or inaccuracy in any representation or warranty given by the ISP under this Agreement or any certificate or document delivered pursuant hereto.

6.2 Limitation of Liability

- (a) IN NO EVENT SHALL DEVELOP NOVA SCOTIA 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 6.1(c) and Section 6.1(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 pursuant to the Contribution Agreement, multiplied by the Total Contributions Percentage set forth in the table in Section 11.2(d) as applicable for the year of the Term in which this Agreement is terminated,

7. REPORTING REQUIREMENTS

7.1 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 date the ISP will commence, or intends to commence, providing Internet Services to Customers in each applicable Zone;
 - (ii) 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, or on its ability to perform its obligations under this Agreement;
 - (iii) 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 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
 - (iv) 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 deliver Internet Services in accordance with the terms and conditions set forth herein.

7.2 Quarterly Reports

Within 30 days of the end of each calendar quarter ending during the ten year period commencing on the first In Service Date for each applicable Zone, the ISP shall deliver to Develop Nova Scotia a status report for each such Zone in the format of Schedule "F" (the "**Quarterly Report**") executed by an authorized representative of the ISP, which shall include, without limitation, the following information, broken down by each month during the applicable quarter:

- (a) copies of all relevant communications and relevant public information materials related to the Network;
- (b) whether any upgrades to the Network have been undertaken as well as a summary of those upgrades;

- (c) a detailed description of any upgrades to the Network that have been undertaken pursuant to any Liquidated Damages Investment Plan;
- (d) number of Customers with access to Internet Services in each applicable Zone and number of Customers in each such applicable Zone who are receiving Internet Services; and
- (e) all other information respecting the performance of the Network in relation to the specifications of this Agreement or that the ISP becomes aware of that may have a material adverse effect on the Network.

7.3 Compliance Certificate

- (a) Within 30 days of the end of (i) each calendar quarter after the Commencement Date for each applicable Zone or (ii) each month, upon the occurrence and during the continuance of any SLT Default, the ISP shall deliver to Develop Nova Scotia a compliance certificate in the format of Schedule “G” (the “**Compliance Certificate**”), executed by an authorized representative of the ISP.

7.4 Maintaining Records

ISP agrees to 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 copies of such records to Develop Nova Scotia.

8. FORCE MAJEURE

8.1 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.

8.2 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 8.2 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.

8.3 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 Party 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.

8.4 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 ISP of the termination of the Agreement, in all affected Zones, effective as of the date of the notice.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 The ISP's Representations, Warranties and Covenants

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

- (a) Corporate Power and Authorization: it 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: it 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 it to enter into this Agreement and to execute and deliver this Agreement;
- (d) Proper Execution: The Agreement has been properly executed by it and is enforceable against it in accordance with its terms;
- (e) Sustainability of Operations: it assumes full financial and legal responsibility for the contractual delivery and performance obligations related to the Network;
- (f) Privacy Policy. it has a privacy policy regarding the collection, use, and disclosure of personal information in its possession, custody or control, or otherwise held or processed on its behalf and is in compliance with such privacy policy.
- (g) Security Measures. it has established and implemented policies, programs, and procedures that are commercially reasonable and in compliance with Privacy Laws and Good Industry Practices, including administrative, technical, and physical safeguards to protect the confidentiality, integrity, and security of personal information in its possession, custody or control against unauthorized access, use, modification, disclosure or other misuse.

- (h) Business Permits: it holds all Permits that are required by law to conduct its business;
- (i) No Reliance: its 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 Develop Nova Scotia;
- (j) Acceptance of Risks: it accepts the risks assigned within this Agreement identified as being borne by the ISP;
- (k) Legal Compliance: neither the execution or delivery of this Agreement, nor compliance with the terms of this Agreement by it: 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 its constituting 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 it is a party or by which it is bound; or 4) require the approval or consent of any Person, or governmental or regulatory authority;
- (l) Litigation: there are no suits, actions, grievances, proceedings, judgements issued or outstanding, or to the knowledge of it, threatened against or affecting it 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 it of its duties and obligations under this Agreement, or the performance of the Services pursuant to the terms of this Agreement;
- (m) 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 the RFP or Proposal, are true and correct as of the date hereof;
- (n) 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
- (o) Intellectual Property: the Network and the delivery of the Internet Services under this Agreement, do 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.

9.2 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.

10. EVENTS OF DEFAULT AND TERMINATION

10.1 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 has not met any SLT (an "**SLT Event of Default**") for a period of no less than twelve consecutive months;
- (e) The ISP fails to observe or perform the covenants or obligation contained in Section 4.1 (a "**Customer Event of Default**") for a period of no less than twelve consecutive months;
- (f) The ISP fails to observe and abide by the Applicable Laws or fails to perform any covenant or obligation contained herein (except as set forth in clauses (d) or (e) above) 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
- (g) 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.

10.2 Rights and Obligations Arising Prior to Termination

Notwithstanding anything to the contrary contained herein, no termination or expiry of this Agreement shall affect the rights or obligations of the ISP with respect to any Events of Default or the obligation to make any payment hereunder with respect to obligations accruing prior to the date of termination or expiration.

10.3 Remedies

- (a) In the event that the ISP is in Default, then in any such case, Develop Nova Scotia 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) terminating this Agreement in whole, or in part as it relates to a particular Zone set out in the Zone Schedule.
- (b) If Develop Nova Scotia terminates the Agreement, it:
 - (i) is entitled to set off any amounts owing to Develop Nova Scotia by the ISP against any amounts owed by NSIFT or Develop Nova Scotia under this Agreement as of the date of termination of the Agreement; and
 - (ii) reserves, without prejudice, all other rights and remedies NSIFT may have at law or in equity.
- (c) If Develop Nova Scotia terminates the Agreement as it relates to a particular Zone, it:
 - (i) is entitled to set off any amounts owing to Develop Nova Scotia by the ISP against any amounts owed by NSIFT or Develop Nova Scotia under this Agreement as of the date of termination of the Agreement as it relates to a particular Zone; and
 - (ii) reserves, without prejudice, all other rights and remedies NSIFT may have at law or in equity.
- (d) In addition to the foregoing, if Develop Nova Scotia terminates this Agreement in whole or in part as it relates to a particular Zone due to the ISP's Default, Develop Nova Scotia is entitled to recover from ISP any loss, damage and expense incurred by Develop Nova Scotia by reason of ISP's Default up to the amount of Contribution paid for the particular Zone, in the case of a partial termination of the Agreement.

11. LIQUIDATED DAMAGES

11.1 Right to Liquidated Damages

In addition to the rights set out in Article 10 above, it is acknowledged specifically by the Parties that in the event of an SLT Event of Default or Customer Event of Default, loss will be suffered

by Develop Nova Scotia, the Customers and Other Providers and, although the funding for the Network and Internet Services has in part been provided by Nova Scotia Internet Funding Trust and therefore actual damages are very difficult to determine, the Parties have agreed that the following provisions shall apply with respect to Liquidated Damages in the event of an SLT Event of Default or Customer Event of Default and that Develop Nova Scotia shall have the right to such Liquidated Damages pursuant to Sections 11.2(a) and 11.2(b) without termination of the Agreement.

11.2 Liquidated Damages

- (a) In the event that an SLT Event of Default has continued for a period equal to or greater than the applicable SLT LD Threshold, Develop Nova Scotia shall defer seeking and accruing the amount of Liquidated Damages for such SLC set forth in the SLC table in Schedule "C" attached hereto provided that (i) it has Accepted a Remediation Plan in connection with such SLT Event of Default, (ii) the ISP is using commercially reasonable efforts to implement such Remediation Plan and (iii) the ISP cures such SLT Default on or before the Cure Date.
- (b) In the event that:
- (i) the ISP has not satisfied the conditions set forth in clauses (i) to (iii) of Section 11.2(a), Develop Nova Scotia shall accrue an amount equal to the amount of Liquidated Damages for such SLC set forth in the SLC table in Schedule "C" attached hereto for each month during the continuance of such SLT Event of Default; or
 - (ii) a Customer Event of Default has continued for a period of no less than two consecutive months, Develop Nova Scotia shall accrue an amount equal to one hundred (100%) per cent of the difference between the Fees required to be provided to Customers pursuant to Section 4.1 and the actual Fees offered to Customers for each month for each Customer for whom such Fees were not offered
- (such accrued Liquidated Damages herein referred to collectively as “**Accrued Liquidated Damages**”).
- (c) Develop Nova Scotia shall provide the ISP with an annual written notice setting forth the amount of Accrued Liquidated Damages within 30 days of the end of each calendar year. Within 30 days of receiving such report, the ISP shall provide to Develop Nova Scotia for Acceptance a detailed plan (as Accepted, the “**Liquidated Damages Investment Plan**”) to invest an amount equal to the aggregate amount of Accrued Liquidated Damages outstanding in underserved areas of the Network in Nova Scotia within 12 months of the date of such Liquidated Damages Investment Plan or a date mutually agreed to in writing by the Parties. Develop Nova Scotia shall not seek Accrued Liquidated Damages provided that (i) it has Accepted a Liquidated Damages Investment Plan, (ii) the ISP is using commercially reasonable efforts to implement such Liquidated

Damages Investment Plan and (iii) the ISP has invested the amounts in accordance with the terms set forth in such Liquidated Damages Investment Plan.

- (d) In the event that an SLT Event of Default or Customer Event of Default has continued for a period of more than twelve (12) months and Develop Nova Scotia has terminated this Agreement, ISP shall pay an aggregate amount of Liquidated Damages to Develop Nova Scotia as the sole remedy resulting from such termination, in an amount equal to the Total Contributions paid by NSIFT to ISP for all Projects (as such terms are defined in the Contribution Agreement) multiplied by the Total Contributions Percentage set forth in the table below for the year of the Term in which such termination occurs, upon receipt of written notice from Develop Nova Scotia setting forth the amount of such Liquidated Damages:

Total Contributions Percentage	Year of the Term
100%	1
90%	2
80%	3
70%	4
60%	5
50%	6
40%	7
30%	8
20%	9
10%	10

- (e) The Parties intend that the Liquidated Damages set out above constitute compensation and not a penalty, and are a reasonable estimate of the anticipated or actual harm or actual damages that might arise from an SLT Event of Default or Customer Event of Default.
- (f) Liquidated Damages shall be due and payable by the ISP within thirty (30) days of receipt of an applicable notice from Develop Nova Scotia.

12. COMPLIANCE WITH APPLICABLE LAWS AND PERMITS

- 12.1 The ISP shall comply with all Applicable Laws pertaining to the Network, Internet Services and its performance under this Agreement.
- 12.2 The ISP shall comply with all applicable CRTC Regulations pertaining to the Network, Internet Services, and its performance under this Agreement.
- 12.3 The ISP shall be responsible for obtaining all Permits necessary to provide the Internet Services to its Customers at its sole cost and expense.

13. PATENTS AND COPYRIGHTS

- 13.1 ISP shall, at its expense, defend all claims, actions or proceedings against Develop Nova Scotia, or otherwise based on any allegations that the Network or Internet Services (or any part thereof) constitutes an infringement of any patent, copyright or other proprietary right, and shall indemnify Develop Nova Scotia for all costs, damages, charges and expenses, including its lawyers' fees on a solicitor-client basis, occasioned to Develop Nova Scotia by reason thereof.
- 13.2 The ISP shall pay all royalties and patent license fees required for the Network and Internet Services. If the Network or Internet Services (or any part thereof) is, in any action or proceeding, held to constitute an infringement, the ISP shall forthwith either secure the necessary right to continue using the Network and providing the Internet Services, or shall, at the ISP's expense, replace the infringing items with non-infringing items or modify the infringing items to render them non-infringing.
- 13.3 The ISP shall be responsible for obtaining all patent, copyright or other intellectual proprietary rights required or desired in connection with the Network and delivery of the Internet Services.

14. CONFIDENTIALITY

- 14.1 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 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.
- 14.2 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.

- 14.3 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).
- 14.4 All public communications regarding this Agreement and the subject matter of this Agreement are subject to the prior written approval of the Parties.

15. INDEPENDENT CONTRACTOR

The relationship of the Parties shall be that of independent contractors. No Party 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.

16. DISPUTE RESOLUTION

16.1 Disputes

Questions and disputes between the Parties with respect to this Agreement (each, a “**Dispute**”), if not otherwise resolved by the Contract Managers shall be escalated, by any Party, for resolution at the director level (or equivalent level of authority as between the ISP and 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 16.1, any Party shall be entitled, by written notice to the other Parties, to escalate the Dispute for resolution in accordance with Section 16.2.

16.2 Escalation to Senior Executive

Further to Section 16.1, 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 the senior management level (or equivalent level of authority as between the ISP and 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 16.2, any Party shall be entitled to seek resolution of such Dispute in accordance with the arbitration process set out in Section 16.3.

16.3 Arbitration

Further to Section 16.2, 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.

16.4 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, non-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 16.

17. OPEN ACCESS

- 17.1 During the Term, the ISP shall make non-discriminatory Retail Open Access and Wholesale Open Access to its services ("**Open Access Services**") available from the Network, on a wholesale basis to Other Providers, and on a retail basis to businesses and government.
- 17.2 To the extent the ISP is subject to regulation by the CRTC for provision of Open Access Services, the ISP shall comply with such CRTC regulations.
- 17.3 ISPs who are not subject to regulation by the CRTC for provision of Open Access Services shall provide Open Access Services in accordance with the following terms and conditions:
 - (a) Wholesale Open Access shall be provided in connection with Middle Mile transport infrastructure funded with the Contributions as reasonably necessary to (i) enable Other Providers to expand their serving territory within a Zone and extend the Middle Mile transport infrastructure to neighbouring communities, and

- (ii) result in the further deployment of mobile wireless technology to underserved communities and along major transportation roads;
- (b) Such Wholesale Open Access shall be provided at each of the proposed POPs at or in excess of one of the following minimum speeds: 100 megabits per second (Mbps), 1 Gbps, or 10 Gbps, at the rates (“**Open Access Services Fees**”) set out in the Open Access Services Table attached hereto as Schedule "H" (the “**Open Access Services Table**”).
- (c) Retail Open Access shall be provided in connection with Middle Mile transport infrastructure funded with the Contribution consistent with the CRTC’s objective to provide broadband internet access services in underserved communities. Such Retail Open Access shall be provided at the Open Access Services Fees set out in the Open Access Services Table.
- (d) Timelines for providing Open Access Services shall be reasonable. There shall be no explicit “head start” periods, which favour the incumbent provider or the ISP.

18. AUDITS

18.1 Co-operation

The ISP shall at all times co-operate with Develop Nova Scotia to allow Develop Nova Scotia to complete its audit rights and obligations as set out in this Agreement.

18.2 Develop Nova Scotia Audits

Develop Nova Scotia may conduct audits at all reasonable times in accordance with Schedule "E" which shall not be more frequent than once in a given calendar year. The ISP shall make available to Develop Nova Scotia, within five (5) Business Days of receiving a request, such information as Develop Nova Scotia may reasonably require to facilitate the audits as contemplated under Schedule E.

18.3 Network Information and Access Requests

The ISP shall provide access to Develop Nova Scotia, within five (5) Business Days of receiving a request, to such information in respect of the Network including, without limitation, specifications related to the Network as Develop Nova Scotia may require, in the event that the ISP has committed an SLT Event of Default. 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 (as the same relates to auditing the Network), and staff and to the Network sites at all reasonable times during the continuance of any SLT Event of Default.

19. MAINTENANCE AND REPAIRS

- 19.1 The ISP will be solely and exclusively responsible for all costs and expenses in operating and maintaining the Network and delivering the Internet Services. The ISP specifically warrants and represents that the Network will be maintained in accordance with Good Industry Practices.
- 19.2 The ISP covenants and agrees to maintain a capital repair and maintenance program which is commercially reasonable and sufficient to maintain and restore the Network to keep it operating at the highest commercially reasonable technological standards and ISP shall set aside sufficient sums in its budget each year for capital repairs for replacement and refreshment to meet such standard.

20. SURVIVAL

- 20.1 All representations and warranties of ISP shall survive until the expiration of any applicable statute of limitations.
- 20.2 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.

21. GENERAL

21.1 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 Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

21.2 Time of the Essence

Time shall be of the essence of this Agreement.

21.3 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.

21.4 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.

21.5 Entire Agreement

This Agreement and the Contribution 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 the Parties other than as expressly set forth in this Agreement and the Contribution Agreement.

21.6 Assignment

The ISP shall not assign this Agreement in whole or in part without the prior written consent of Develop Nova Scotia, such consent not 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 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. Develop Nova Scotia may assign its rights and obligations under this Agreement, in whole or in part, in its sole discretion.

21.7 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.

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

or to such other address, individual or electronic communication number as may be designated by notice given by a Party to the other. 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.

21.9 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.

ISP acknowledges and agrees that the covenants in this Agreement are reasonable in the circumstances and are necessary to protect Develop Nova Scotia and maintain or preserve the benefits to be obtained through the Contributions made by NSIFT pursuant to the Contribution Agreement.

21.10 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.

21.11 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.

21.12 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.

DEVELOP NOVA SCOTIA LIMITED

Per: _____
Authorized Signing Officer

[ISP]

Per: _____
Authorized Signing Officer

SCHEDULE "A"
ZONES SCHEDULE

SCHEDULE "B"
NETWORK REQUIREMENTS

Wireline: The ISP covenants that each performance attribute set forth in the table below (each, a “**Performance Attribute**”) of the Last Mile of the Network in each Zone for the applicable Zone Service Period will meet or exceed the greater of (i) the minimum INSI data transmission objectives (“**INSI Objectives**”) set forth in the table below and (ii) the minimum data transmission objectives set forth in the ISP’s Proposal (“**Proposal Objective**”) set forth in the table below, for Internet Services provided by wireline:

Minimum Performance Specifications		
Performance Attribute	INSI Objective	Proposal Objective
Minimum Download Speed	50 Mbps	● Mbps
Minimum Upload Speed	10 Mbps	● Mbps
Round Trip Latency	< 50 ms	< ● ms
Packet Loss Threshold	< .25%	< . ●%
Jitter Threshold	< 5ms	< ●ms

Wireless: The ISP covenants that each performance attribute set forth in the table below (each, a “**Performance Attribute**”) of the Last Mile of the Network in each Zone for the applicable Zone Service Period will meet or exceed (i) the greater of (a) the minimum initial data transmission objectives (“**Initial Objectives**”) set forth in the table below and (b) the minimum data transmission objectives set forth in the ISP’s Proposal (“**Proposal Objective**”) set forth in the table below, for Internet Services provided by wireless during the first five years of the applicable Zone Service Period, and (ii) the greater of (a) the minimum INSI data transmission objectives (“**INSI Objectives**”) set forth in the table below and (b) the minimum data transmission objectives set forth in the ISP’s Proposal (“**Proposal Objective**”) set forth in the table below, after the fifth anniversary of the commencement of the applicable Zone Service Period:

Minimum Performance Specifications			
Performance Attribute	Initial Objective	INSI Objective	Proposal Objective
Minimum Download Speed	25 Mbps	50 Mbps	● Mbps
Minimum Upload Speed	5 Mbps	10 Mbps	● Mbps
Round Trip Latency	< 50 ms	< 50 ms	< ● ms
Packet Loss Threshold	< .25%	< .25%	< . ●%
Jitter Threshold	< 5ms	< 5ms	< ●ms

Satellite: The ISP covenants that each performance attribute set forth in the table below (each, a “**Performance Attribute**”) of the Last Mile of the Network in each Zone for the applicable Zone

Service Period will meet or exceed (i) the greater of (a) the minimum data transmission objectives for fixed wireless (“**Initial Objectives**”) set forth in the table below and (b) the minimum data transmission objectives set forth in the ISP’s Proposal (“**Proposal Objective**”) set forth in the table below, for Internet Services provided by satellite during the first five years of the applicable Zone Service Period, and (ii) the greater of (a) the minimum INSI data transmission objectives (“**INSI Objectives**”) set forth in the table below and (b) the minimum data transmission objectives set forth in the ISP’s Proposal (“**Proposal Objective**”) set forth in the table below, after the fifth anniversary of the commencement of the applicable Zone Service Period:

Minimum Performance Specifications			
Performance Attribute	Initial Objective	INSI Objective	Proposal Objective
Minimum Download Speed	25 Mbps	50 Mbps	● Mbps
Minimum Upload Speed	2 Mbps	10 Mbps	● Mbps
Round Trip Latency	< 750 ms	< 50 ms	< ● ms
Packet Loss Threshold	< .25%	< .25%	< . ●%
Jitter Threshold	< 5ms	< 5ms	< ●ms

MIDDLE MILE REQUIREMENTS

The ISP covenants and agrees that the Middle Mile will meet or exceed the following minimum INSI data transmission objectives during the Term:

Minimum Performance Specifications		
Performance Attribute	INSI Objective	Proposal Objective
Round Trip Latency	< 50 ms	< ● ms
Packet Loss Threshold	< .25%	< . ●%
Jitter Threshold	< 5ms	< ●ms

SCHEDULE "C"
SERVICE LEVEL COMMITMENTS
AND MEASUREMENT

Item	Service Level Commitment (SLC)	Service Level Target (SLT)	Service Level LD Threshold (SLDT)	Liquidated Damages
1 Network & Service Performance				
1.1	Zone Network Availability	99.9%	SLT not met for two consecutive months	\$2,500 for each month SLT not met for 500 or less impacted Customers per Zone; \$5,000 for greater than 500 impacted Customers per Zone; or \$0 if Liquidated Damages are also payable pursuant to section 1.2, 1.3 or 1.4
1.2	Test Modem per the Last Mile Node/POP of the Network that met or exceeded the applicable Initial Objective, INSI Objective or the median Proposal Objective for the download and upload speed Performance Attributes set forth on Schedule "B".	90% of the Nodes/POPs if 10 or more Nodes/POPs, or 80% if less than 10 Nodes/POPs	SLT not met for two consecutive months	\$2,500 for each month SLT not met for 500 or less impacted Customers per Zone; \$5,000 for greater than 500 impacted Customers per Zone; provided that if Liquidated Damages are also payable pursuant to section 1.3 for such month, then the total Liquidated Damages pursuant to Section 1.2, 1.3 and 1.4 for such month shall be \$2,500 or \$5,000, as applicable.
1.3	Test Modem per the Last Mile Node/POP of the Network that met or exceeded the applicable Initial Objective, INSI Objective or Proposal Objective for the Latency, Packet Loss and Jitter Performance Attributes set forth on Schedule "B"	90% of the Nodes/POPs if 10 or more Nodes/POPs, or 80% if less than 10 Nodes/POPs	SLT not met for two consequence months	\$1,000 for each month SLT not met for POP/Node with 500 or less Customers per Zone; or \$2,000 for POP/Node with greater than 500 Customers per Zone; provided that if Liquidated Damages

Item	Service Level Commitment (SLC)	Service Level Target (SLT)	Service Level LD Threshold (SLDT)	Liquidated Damages
				are also payable pursuant to section 1.2 for such month, then the total Liquidated Damages pursuant to Section 1.2, 1.3 and 1.4 for such month shall be \$2,500 or \$5,000, as applicable.
1.4	Zone Network Mean Time to Repair	<12hrs	SLT not met for two consequence months	\$2500 for each month SLT not met for 500 or less impacted Customers per Zone; \$5,000 for greater than 500 impacted Customers per Zone; or \$0 if Liquidated Damages are also payable pursuant to section 1.1, 1.2 or 1.3.
2 Installation				
2.1	Zone Average Installation Timeframe for new Internet Service	10 days	SLT not met for two consecutive months	\$1,000 for each month SLT not met
3 Customer Care				
3.1	Zone Average Customers Trouble Call Repair Time	7 days	SLT not met for two consecutive months	\$2,500 for each month SLT not met
4 Open Access				
4.1	Open Access Services Fees	As set forth in the Open Access Services Table or as required by Applicable CRTC Regulations	As set forth in the Open Access Services Table or as required by Applicable CRTC Regulations	The actual Open Access Services Fees being charged less the Open Access Services Fees set forth in the Open Access Services Table or as required by Applicable CRTC Regulations.
4.2	New Open Access Connection Complete (based on available facilities)	● Months	6 Months	\$5,000 for each month SLT not met

MEASUREMENT

The ISP shall measure applicable SLC 1.2 and 1.3 and other standards of the Network in accordance with CRTC Telecom Decision 2018-241 (Section 44), or any applicable revisions, amendments or replacements thereto. For the purposes of the Quarterly Report and Compliance Report, as applicable, the ISP shall measure the SLCs and other standards, and shall report as to whether each meets or does not meet the SLT.

Measurements to be taken 4 times a month (once per week) during peak times (i.e. from 7 p.m. to 11 p.m. local time on weekdays),

DEFINED TERMS

“Average Customers Trouble Call Repair Time” means the mean length of time in calendar days it takes the ISP to resolve a Customer issue from the time the ticket is first opened with respect to that issue to the time the ticket is closed, exclusive of delays to the extent caused solely by the Customer. This measure includes tickets requiring dispatch of a service representative to the premises of the Customer.

“Average New Installation Timeframe” means the time in calendar days from the date of Customer’s request to the date of installation, provided the installation date can be scheduled within such time frame with Customer.

“Network Availability” is defined as the percentage of time the Network (including Middle Mile and Last Mile equipment) is available so that Customers are able to connect to the internet using computers, personal devices, and other internet enabled devices, to access and use the Internet Services including email, websites and file servers. The Network Availability measure is exclusive of: (i) planned outages that result from authorized maintenance; (ii) Customer drop and customer premise equipment; and (iii) weather conditions that cause the Network to exceed the link margins or make repair unsafe; and (iv) other Force Majeure Events, subject to compliance with the terms and conditions set forth in Article 8.

“Network Mean Time to Repair” means the mean length of time it takes the ISP to resolve a Network issue from the time the ticket is first opened with respect to that issue to the time the ticket is closed.

“New Open Access Connection Complete” means the time from the date of Other Provider’s request for Open Access Services to the date of connection.

“Test Modem” is defined as the furthest Customer or test site modem from the Last Mile Node/POP.

**SCHEDULE "D"
SCALABILITY AND FUTURE
UPGRADE POLICIES**

SCHEDULE "E" **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 compliance with the Agreement;
- (b) Ensure that Network and financial information is complete, accurate and timely, in accordance with the terms and conditions of the Agreement;
- (c) Ensure that information and monitoring processes and systems are sufficient for the identification, capture, validation and monitoring of achievement of required reporting; and
- (d) 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; visiting network operations centre and speaking with staff; 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 required technical standards and remedial action is the responsibility of the ISP to verify and correct in a timely fashion;

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.

SCHEDULE "F"
FORM OF QUARTERLY REPORT

SCHEDULE "G" FORM OF COMPLIANCE CERTIFICATE

TO: DEVELOP NOVA SCOTIA

I, _____, the _____ of [ISP] (the "ISP"), in such capacity and not personally, hereby certify that as of the date hereof:

1. I am the duly appointed _____ of the ISP and as such I am providing this certificate for and on behalf of the ISP pursuant to Section 7.3 of the services delivery agreement dated as of [●], 2020 (the "Agreement"). Unless the context otherwise requires, capitalized terms in the Agreement which appear herein without definitions shall have the meanings ascribed thereto in the Agreement.
2. The ISP has met or exceeded the SLCs during the calendar quarter/month ended [●]. Appendix A attached sets out the calculations of the SLCs for each month during such calendar quarter/month and provides detailed support for such calculations and, if applicable, supporting information and explanations regarding any failure to meet an SLT.
3. The Fees charged by the during the calendar quarter/month ended [●] have been equal to or less than those fees charged for Similar Service Packages. Appendix B attached sets out for such calendar quarter/month a detailed list of (i) Fees charged during such year by ISP for each Service Package offered to Customers in each Zone for each month during such calendar quarter/month and (ii) for each Service Package, Fees charged during such year by ISP for Similar Service Packages for each month during such calendar quarter/month.
4. The representations and warranties made in Section 9.1 of the Agreement, other than those expressly stated to be made as of a specific date, are true on and as of the date hereof with the same effect as if such representations and warranties had been made on and as of the date hereof.
5. There is no notice required to be given pursuant to Section 7.1 of the Agreement [*except as set forth in Appendix A attached hereto*].
6. No Default or Event of Default has occurred and is continuing on the date hereof [or as the case may be].

Per: _____

Name:

Title:

SCHEDULE "H" OPEN ACCESS SERVICES TABLE