



# **Broadband Terms of Service**

**Holland Board of Public Works**

**Effective March 1, 2024**

# Table of Contents

Broadband Terms of Service	1
Holland Board of Public Works	1
Effective March 1, 2024	1
General Terms of Service	5
1. Definitions	5
2. General Provisions	6
A. Obligations	6
B. Continuity of Service	7
3. New Service Requirements	7
A. Residential Service	7
B. Business Service	7
4. Readiness to Serve	8
A. Discontinuation of Service	8
B. Suspension of Service	8
5. Responsibility for Payment of Bill	8
A. General	8
B. Estimated Consumption	9
C. Receipt of Payment	9
D. Late Charges	9
E. Billing Errors	9
F. Account Security Deposits	10
G. Lien as a Security for the Collection of Service Charges	12
I. Placement on Tax Rolls	12
II. Protection of Landlord, Notice of Lease and Security Deposit	13
6. Shut-Off Policy	13
A. Notice	13
B. Permissible Shut-Off	14
C. Shut-Off When Restoration Services Are Not Available	14

D. Contact to Customer	14
I. Generally	14
II. Remote Shut-Off	14
III. Documentation; Contact by Telephone	14
E. Restoration	15
F. Charges for Shut-Off and Restoration	15
G. Critical Care and Medical Emergency Residential Customers	15
I. Postponement	15
II. Restoration	15
III. Other Protections	15
H. Active Duty Customers	16
I. Shut-Off Prohibited	16
II. Notification	16
III. Duty Not Void	16
IV. Payment Plan	16
7. Complaint Resolution	17
A. Complaint	17
B. Initial Review	17
C. Final Review	17
8. Social Security Number Policy	17
9. E-Services Privacy, Terms & Conditions	18
10. Theft	18
11. Miscellaneous Provisions	19
A. Other Remedies	19
B. Forms	19
C. Right of Way and Easement Restoration	19
Broadband Terms of Service	20
12. Broadband Service Area	20
13. Definitions	20

14. Description of Broadband Service	21
A. Fiber Internet	21
B. Shared Gigabit	21
I. Transit Only	22
II. Internet Service	22
III. Enhanced Service	22
C. Active Ethernet	22
D. Dark Fiber	22
15. Service Conditions	23
A. Authorization for Service	23
B. Installation	23
I. Premises Wiring Agreement	24
C. Termination of Service	24
D. Service Level Agreement (SLA)	24
16. Use of Broadband Service	25
A. Access to Premises	25
B. Equipment	25
17. Appendix 1 – Premises Wiring Agreement	26
18. Appendix 2 – Dark Fiber Lease Agreement	32
19. Appendix 3 – Enhanced Service Level Agreement	44
20. Appendix 4 – Sales Agreements	47
A. Dark Fiber Sales Agreement	47
B. Active Ethernet Sales Agreement	48
C. Fiber Internet and Shared Gigabit Sales Agreement	49

# General Terms of Service

## 1. Definitions

- **Commercial Customer:** A classification used for businesses not involved with the direct manufacture of durable goods. A classification also used for multiple family residential structures with three (3) or more units.
- **Critical Care Customer:** A Customer who requires, or has a household member who requires, home medical equipment or a life support system, and who have provided appropriate documentation to HBPW identifying the equipment or system and certifying that an interruption of service would be immediately life-threatening.
- **Customer:** A purchaser of electrical, water, wastewater, and/or broadband service supplied by the HBPW.
- **Dwelling Unit:** A single room, suite or groups of rooms or suites with accommodations to sleep, eat, and have a bathroom
- **Estimated Consumption:** Consumption calculation based on prior use of the service or the operating characteristics of the building and equipment used.
- **HBPW:** When used in these Terms of Service, HBPW is an abbreviation for Holland Board of Public Works.
- **Industrial Customer:** A classification for businesses directly involved with manufacturing goods or services for sale as an organized action.
- **Medical Emergency:** An existing medical condition of a Customer, or member of the Customer's household, as defined and certified by a physician or public health official on official stationary or company-provided form, that will be aggravated by lack of utility service.
- **Meter Reading:** Electronic or manual effort to read the amount of electric or water used by a Customer.
- **Meter Constant:** A fixed value used to convert Meter Readings into Customer energy use.
- **Multi-Dwelling Structure or Multi-Dwelling Unit (MDU):** A building containing 3 or more Dwelling Units, including but not limited to apartments, condominiums or senior housing projects.
- **Person:** Any individual, corporation, partnership, company, limited liability corporation, organization or governmental entity.
- **Premises:** A tract of land including its buildings.
- **Rate:** The charges, fees and unit prices as established by HBPW's rate-making body and the quantities to which they apply.

- **Readiness to Serve:** A monthly fixed charge that covers the expenses to maintain and service a Customer's account. This includes billing, metering and customer service. The Readiness to Serve charge also funds a portion of the capital investments in equipment, structures and meters as well as engineering and construction services.
- **Residential Customer:** A classification reserved for one and two family residential structures and other multiple family structures where each Dwelling Unit is individually metered. Residential structures must accommodate a place to sleep, eat and have a bathroom.
- **Service Location:** The point at which HBPW has agreed to provide electric, water, wastewater, and/or broadband service.
- **Tenant:** Person(s) named responsible for the one or more utilities under an executed lease or similar document.

## 2. General Provisions

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

**A Customer that commences service with HBPW agrees to abide by all HBPW Terms of Service and Rates.** All Rates are subject to revision at any time upon approval by the HBPW Board of Directors and Holland City Council.

### A. Obligations

The obligations of both parties commence when HBPW begins to supply service and continues until either party has received from the other any form of communication (i.e. email, telephone call, or written notice) to discontinue service. After notice is given, service may continue until a reasonable time when HBPW can disconnect service, not to exceed ten (10) days. These Terms of Service shall be followed unless otherwise specified in a contractual agreement or as identified in the Terms of Service for each utility offering.

## **B. Continuity of Service**

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

1. May interrupt or suspend service at any time, either with or without notice, for inspection, repair, maintenance, alteration, or change on the Customer's premises or elsewhere; and
2. Shall have no duty, obligation, responsibility, or obligation for or by reason of any such interruption or suspension of service, or for any damage or loss resulting therefrom.

## **3. New Service Requirements**

The following information may be required to establish a new service.

### **A. Residential Service**

- Full Name
- Service Address via a mortgage/property tax statement or executed lease
- Mailing Address if different from Service Address
- Telephone Number
- Email Address
- Social Security Number
- State or Governmental issued Identification (i.e. Driver's License, Military ID, Passport)

### **B. Business Service**

- Legal Business Name and Tax ID Number (as registered in Michigan)
- Type of Business
- Tax Status (Taxable, Tax Exempt or partial Tax Exempt, documentation will be required)
- Telephone Number
- Email Address
- Contact Name(s)
- Owner or Business Agent Name
- Mailing Address if different from Service Address

A new Customer account may not be established for a service location if a delinquent Customer account holder resides at the same Premises or is listed as a Tenant on a new premise (service location) as the new Customer, unless the balance due and owing for the delinquent Customer account holder is paid in full and a deposit is collected according to Section 5F—Account Security Deposits.

## **4. Readiness to Serve**

All active accounts will be billed the readiness to serve charge based on account type and size. Service must be completely disconnected or suspended to eliminate the readiness to serve charge. Disconnect/Reconnect fees may apply.

### **A. Discontinuation of Service**

All requests for a discontinuation of service shall be made through HBPW Customer Service. Discontinuation of service is subject to applicable fees and charges.

### **B. Suspension of Service**

All requests for suspension of service shall be made through HBPW Customer Service. Except as otherwise set forth herein, HBPW shall not issue credits for service lapses due to vacations or other non-use of service. Notwithstanding the foregoing, a Residential Customer may request a suspension of service, which will be honored for a minimum period of three (3) months and a maximum period of six (6) months. The Customer shall provide HBPW with the date the suspension of service shall commence and the date the suspension of service shall be lifted so that services resume. Only one suspension of service shall be allowed per 12 month period. Readiness to Serve charges shall not be prorated for Customer requested suspension of service.

## **5. Responsibility for Payment of Bill**

### **A. General**

Each HBPW Customer is responsible to pay all utility bills as rendered on or before the due date shown thereon. The Customer remains responsible for payment of the bills until the Customer orders service to be discontinued and HBPW has had reasonable time to secure a final Meter Reading. Bills are rendered on a monthly basis. If a bill remains unpaid HBPW shall have the right to discontinue service as defined in the Shut-Off Policy.



HBPW will provide Customers their billing history at no charge, provided the information is currently stored on an active database. Customer requests for billing history that is no longer on an active database will be subject to record retention schedules and to payment of hourly fees based on the average burdened hourly wage of the HBPW employee assigned to perform the research and compilation of the data.

## **B. Estimated Consumption**

Readings may be estimated when conditions warrant. Until reconciled by an actual reading, bills rendered on Estimated Consumption have the same force and effect as bills rendered on actual Meter Readings. If for any reason all consumption used cannot be registered accurately, the unmetered portion shall be estimated by HBPW on the basis of prior consumption or the operating characteristics of the building and equipment.

## **C. Receipt of Payment**

Full and partial payments will be applied in the following manner:

1. To the oldest outstanding arrears
2. Electric account
3. On-bill loan account
4. Water account
5. Wastewater account
6. Broadband account
7. Refuse account
8. All other fees and services

Payment assistance received from third party providers will be applied to appropriate services as designated by the provider.

## **D. Late Charges**

A late payment charge of two percent (2) of the amount in arrears will be assessed when the next month's bill is issued. The late payment charge will not apply to any penalty portion of the Customer's bill. Customers may request a late charge waiver under extenuating circumstances.

## **E. Billing Errors**

Errors in billing can occur for a variety of reasons. In some cases the error can be clearly identified and quantified, while in other cases the error can only be estimated.

This policy establishes the rules for handling errors in billing. This policy does not apply to theft or unauthorized use of service or estimated bills.

Errors in billing can be caused by any of the following:

1. An incorrect meter read whether by Person or electronically.
2. An incorrect Meter Constant.
3. Installation of the incorrect metering equipment.
4. An incorrect calculation of the applicable rate.
5. A meter switched by the utility or a utility representative.
6. An incorrect application of the rate schedule.
7. A meter error (failure to measure or accurately record all usage).
8. Another similar act or omission by the utility in determining the amount of a Customer's bill.

An undercharge or overcharge that is caused by a non-registering meter, an estimated meter read or a Customer read is not considered a billing error.

If an error in billing occurs and results in overcharging a Customer, HBPW shall refund or credit the overcharge based on the actual time the overcharge occurred within the 36 month period immediately preceding the discovery of the error.

If an error in billing occurs and results in undercharging a Customer, the Customer is responsible for the undercharged amount for up to the 12 month period immediately preceding the discovery of the error. Amounts due to HBPW from the Customer will be subject to normal collection policies, procedures and practices. A Customer may request and be granted a payment plan up to the number of months used to calculate the undercharge amount.

## **F. Account Security Deposits**

HBPW requires account security deposits from all Tenants that do not have 12 consecutive months established good credit with HBPW. HBPW shall not provide services to the Premises until it receives a security deposit from the Tenant, or an individual or entity acting on behalf of the Tenant. Except as defined for Rate K Customers in Paragraph F.3 below, a security deposit may be reduced or waived if the Customer has at least 12 consecutive months established good credit with HBPW. Additionally, HBPW may employ a third party screening tool to determine good credit for those Customers with less than 12 consecutive months credit history with HBPW. The following shall be prima facie evidence that the Tenant does not have a good credit history: the Tenant has a prior service account that is delinquent with any utility within the last six (6) years; the Tenant misrepresents his or her identity or credit standing; the

Tenant, in an unauthorized manner, used, diverted or interfered with HBPW utility services within the last six (6) years; HBPW has shut off service to the Tenant for nonpayment of a delinquent account that is not in dispute; or HBPW has had more than one (1) payment from the Tenant's account returned within the last 12 months for insufficient funds or for no account, excluding bank error.

Security deposits shall be determined as follows:

1. A deposit required as a condition of obtaining a **new residential service**, or when it is required for providing or continuing residential service due to a prior outstanding account that is not in dispute, shall be equal to two (2) times the utility system average monthly bill for residential service as determined by HBPW.
2. A deposit required as a condition of obtaining a **new commercial or industrial service**, or when it is required for providing or continuing commercial or industrial service due to a prior outstanding account that is not in dispute, then the amount shall be equal to two (2) times the average or estimated monthly bill for a similar Commercial or Industrial Customer's service, or projected load of the new service as determined by the Customer and approved by HBPW.
3. An initial deposit equal to two (2) times the estimated monthly bill for the premise(s) is required for Tenant accounts that are placed on Rate K. Deposit amounts will be reviewed annually for deposit modifications based on load changes. Deposits on Rate K accounts shall be credited to the Tenant's account, or to the individual or entity that paid the deposit on behalf of the Tenant, only upon the termination of utility service(s) with the account in good standing.
4. The amount of the deposit required as a condition of providing, restoring, or continuing residential, commercial or industrial service due to shut-off for nonpayment shall be determined as follows:
  - a. If the Customer has been disconnected once within the last three years, then the deposit shall be two (2) times the average or estimated monthly billing for the Premises.
  - b. If the Customer has been disconnected twice within the last three years, then the deposit shall be three (3) times the average or estimated monthly billing for the Premises.
  - c. If the Customer has been disconnected three times within the last three years, then the deposit shall be four (4) times the average or estimated monthly billing for the Premises.
  - d. If the Customer has been disconnected more than three times within the last three years, then the deposit shall be six (6) times the average or estimated monthly billing for the Premises.

5. The amount of the deposit required as a condition of providing, restoring, or continuing residential, commercial or industrial service due to unauthorized use, diversion, or interference shall be four (4) times the average monthly bill for the Premises.
6. HBPW may also require payment of the delinquent account and approved charges as a condition of providing, restoring, or continuing service if the prior account is in the Customer's or applicant's name, is delinquent and owed to HBPW and accrued within the last six (6) years.
7. With the exception of deposits for Rate K Tenants as outlined in paragraph F.3 above, deposits shall be credited to the Tenant's account, or to the individual or entity that paid the deposit on behalf of the Tenant upon a minimum completion of twelve (12) consecutive months of good credit history or upon the termination of utility service with the account in good standing.
8. HBPW will pay simple interest accrued on account security deposits held annually or when the deposit is returned to the Customer. The interest rate will be updated on July 1 of each year. The interest rate used to calculate interest will be determined by The Federal Deposit Insurance Corporation (FDIC) National Deposit Rate for Savings as of June of the current year.

## **G. Lien as a Security for the Collection of Service Charges**

Except as otherwise provided or limited by state law, the city shall have as security for the collection of all charges for utility services as authorized by the Revenue Bond Act of 1933, as amended, a lien upon the Premises to which such services were supplied. Such liens shall become effective immediately upon the distribution or supplying of such service or services to such Premises. The term "charges for utility service" shall mean the rates, fees, rentals and all other charges for furnishing such service and all repairs, maintenance and alterations of such service which the City determines` to be the responsibility of the service Customer.

[City of Holland, MI Table of Contents \(ecode360.com\)](#)

## **I. Placement on Tax Rolls**

Those charges which are delinquent for three (3) months or more on June 30 of each year shall be reported by the City Auditor per Holland City Charter Sec.12-18 Lien to utility charges; collection of delinquent charges and as defined by agreements between HBPW and other governmental entities as well as applicable ordinances in the township where service is rendered.

## **II. Protection of Landlord, Notice of Lease and Security Deposit**

If the owner of a Premises which receives services provided by the HBPW shall lease the Premises to a Tenant who is responsible under the lease for the payment of the charges for specified services, and the property owner notifies HBPW in writing of the lease agreement by an affidavit of lease (including a copy of the lease executed by the owner and their Tenant), then the charges for electric services provided to such leased Premises shall not become a lien against the Premises after the date HBPW receives notice.

Immediately after filing of such notice, HBPW shall render no further service to the Premises until it receives a security deposit as security for the payment of the electric charges from the Tenant (or an individual or entity acting on behalf of the Tenant). Deposits shall be credited to the Tenant's account (or to the individual or entity that paid the deposit on behalf of the Tenant) upon a Customer's minimum completion of 12 consecutive months of good credit history or upon the termination of utility service with the account in good standing.

[City of Holland, MI Lien as Security for Collection of Service Charges \(ecode360.com\)](http://ecode360.com)

## **6. Shut-Off Policy**

This policy applies generally to all Customers of the HBPW who receive HBPW electric, water or broadband services. Policy statements that apply solely to Residential Customers are noted. - It is the policy of HBPW to conform to all requirements of [Michigan Legislature - Section 460.9g](#) (the "Act") with regard to residential utility shutoffs.

### **A. Notice**

Except where a shut-off is necessary to maintain service quality, prevent damage to the relevant distribution system, or prevent damage to property, HBPW shall not shut off service prior to sending a notice to the Customer by first-class mail not less than 10 days before the date of the proposed shut-off. HBPW shall maintain a record of the date the notice was sent.

## **B. Permissible Shut-Off**

HBPW may shut off service to a Customer on the date specified in the notice of shut-off or at a reasonable time following that date. If HBPW does not shut off service and mails a subsequent notice, then HBPW shall not shut off service before the date specified in the subsequent notice. Shut-off shall occur only between the hours of 8 a.m. and 4 p.m.

## **C. Shut-Off When Restoration Services Are Not Available**

HBPW shall not shut off service on a day, or a day immediately preceding a day, when the services of HBPW are not available to the general public for the purpose of restoring service.

## **D. Contact to Customer**

### **I. Generally**

For involuntary shut-off of electric, water or broadband services, at least one day before the service shut-off, HBPW shall make no less than one attempt, in addition to the notice of shut-off, to contact the Customer by one or more of the following methods:

1. A personal or automated telephone call where direct contact is made with a member of the Customer's household or a message is recorded on an answering machine or voicemail;
2. First-class mail;
3. A personal visit to the Customer;
4. A written notice left at or on the Customer's door; or
5. Any other method approved by the Michigan Public Service Commission for regulated utilities.

### **II. Remote Shut-Off**

For an involuntary shut-off using a meter with a remote shut-off capability, any notice shall state that the disconnection of the service will be done remotely and that a provider representative will not return to the Premises before disconnection.

### **III. Documentation; Contact by Telephone**

HBPW shall document all attempts to contact the Customer. If contact is made by telephone, HBPW shall inform the Customer or other responsible Person that shut-off of service is imminent and of the steps necessary to avoid shut-off.

## **E. Restoration**

HBPW shall restore service upon a Customer's request when the cause for the shut-off has been cured or credit arrangements satisfactory to HBPW have been made.

In the event that the Customer qualifies for restoration and his or her household contains a meter that must be restored manually, HBPW shall make reasonable efforts to restore service to the Customer on the day requested, and no later than one working day after the Customer's request. If the meter has remote restoration capability, service shall be restored on the first working day after the Customer requests restoration, except in the case of documented equipment failure.

## **F. Charges for Shut-Off and Restoration**

HBPW will assess the Customer charges once a disconnect order has been issued and the meter has been disconnected and restored. Please refer to the fee schedule for applicable charges.

## **G. Critical Care and Medical Emergency Residential Customers**

### **I. Postponement**

For electric and water service, HBPW will postpone shut-off of service for up to 21 days if a Customer is a Critical Care Customer or has a Medical Emergency. The Customer shall identify the time period during which the shut-off will aggravate the Medical Emergency. If the Customer provides additional documentation or certification HBPW will postpone the shut-off for additional periods of up to 21 days for a total of not more than 63 days.

### **II. Restoration**

If a shut-off of service has occurred without postponement being obtained, HBPW will restore the service upon presentation of the appropriate documentation or certification. The service shall continue for up to 21 days. If the Customer provides additional documentation or certification, HBPW will postpone the shut-off for additional periods of up to 21 days for a total of not more than 63 days.

### **III. Other Protections**

Application for this protection does not prohibit a HBPW Customer from applying for separate protections.

## **H. Active Duty Customers**

Active Duty Customers are residential households where:

1. The household income is reduced because the Customer of record, or the spouse of the Customer of record, is called to full-time active military service by the President of the United States or the Governor of the State of Michigan during a time of declared national or state emergency or war, and
2. Assistance is needed by the residential household to maintain service, and
3. The residential household has notified the provider of the need for assistance and has proven verification of the call to active duty status.

## **I. Shut-Off Prohibited**

HBPW shall not shut off service to an active duty Customer during his or her service for a period of up to Ninety (90) days. In its sole discretion, HBPW can provide one or more extensions to the active duty Customer.

## **II. Notification**

An active duty Customer shall notify HBPW of the end of his or her active duty status as soon as that status is known.

## **III. Duty Not Void**

Unless waived by the provider, this shut-off protection does not void or limit the obligation of the active duty Customer to pay for services received during his or her time of service.

## **IV. Payment Plan**

In the event an active duty Customer receives assistance, HBPW shall:

1. Establish a payment plan requiring minimum monthly payments that allows the active duty Customer to pay any past amounts due over a reasonable time period not to exceed one year, and
2. Provide a qualifying Customer with information regarding any governmental, HBPW, or other assistance programs, and
3. Provide active duty Customers with access to existing information on ways to minimize or conserve their service usage.



## **7. Complaint Resolution**

### **A. Complaint**

In the event that an HBPW Customer believes that HBPW is in violation of this policy or, [Michigan Legislature - Section 460.9g](#) and that the Customer's service was shut off without merit, the Customer shall have the opportunity to file a complaint with HBPW Customer Service.

### **B. Initial Review**

Upon a Customer's filing of a complaint, HBPW Customer Service shall review the decision to shut off the Customer's service in a timely manner. If Customer Service finds that the service was improperly shut off, it shall restore service to the Customer. If Customer Service finds that the shut off was proper, it shall refer the complaint to the Utility Services Director, or in his/her absence the General Manager, for a final determination regarding the shut-off.

### **C. Final Review**

If the Utility Services Director or in his/her absence the General Manager finds that the service was improperly shut off, HBPW shall restore service to the Customer. If the Utility Services Director, or in his/her absence the General Manager, finds that the shut-off was proper, HBPW shall notify the Customer by first class mail of decision.

## **8. Social Security Number Policy**

HBPW shall act in accordance with the [Michigan Social Security Number Privacy Act, Act 454 of 2004 codified at MCL 445.81 et seq.](#) regarding social security number privacy, in writing or digitally.

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

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

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

Any questions or concerns regarding social security number privacy should be promptly directed to the Customer Service Manager.

## **9. E-Services Privacy, Terms & Conditions**

Please view our website for the most up to date privacy policy, terms, conditions and cookies associated with e-services. [www.hollandbpw.com/privacy](http://www.hollandbpw.com/privacy) ;  
[www.hollandbpw.com/myhbpw-terms](http://www.hollandbpw.com/myhbpw-terms)

Any questions regarding the privacy policy or terms and conditions should be directed to customerservice@hollandbpw.com.

## **10. Theft**

HBPW will investigate cases of suspected theft and fraud. All cases, where there is sufficient evidence, will be turned over to the City of Holland Police Department, Allegan County Sheriff's Office, Ottawa County Sheriff's Office and/or the City Attorney.

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

If the actual amount of service lost to the theft or diversion cannot be determined, the amount will be estimated using previous account history. If neither the actual amount of

service nor an estimated amount of service for the particular account can be determined, the account shall be assessed the average usage for the class of service prorated to the time the theft or diversion occurred. There is no limitation on the time period for which past charges will be assessed.

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

## **11. Miscellaneous Provisions**

### **A. Other Remedies**

The implementation of Terms of Service does not preclude HBPW from pursuing any of its legal rights, including the right to place liens of property, granted to HBPW, whether by statute, charter or other power.

### **B. Forms**

HBPW may develop any forms or documents needed to implement services so long as the developed forms or documents are consistent with the Terms of Service.

### **C. Right of Way and Easement Restoration**

HBPW utility equipment (fire hydrants, poles, transformers, etc.) is often located in the road right-of-way or in easements provided on Customer property. Landscaping (lawns, shrubs, trees, flowers, plants, stone, mulch, etc.) shall not be located so as to prevent access to HBPW utility equipment. In the event this policy is disregarded, and installed landscaping is disturbed during the course of work to maintain and/or replace HBPW utility equipment, HBPW shall not be held responsible for repair or replacement of disturbed landscaping, trees, fencing, structures or other items placed in the right-of-way. Restoration of work to maintain, repair or replace components in the right-of-way or designated utility is limited to replacement of any disturbed streets, driveways, curbs, sidewalks or parking lots and reseeded of turf areas for erosion control. For designated utility easements, restoration of paved surfaces is limited to those incorporated into the easement, or in existence at the time of execution of the easement.

# Broadband Terms of Service

## 12. Broadband Service Area

Please use the link below to view a map and description of the HBPW Broadband service territory: <https://www.hollandbpw.com/en/broadband>

## 13. Definitions

- **Active Ethernet:** Subscribed Ethernet service for data transit utilizing HBPW electronics with dedicated bandwidth typically measured in megabits per second.
- **Broadband:** A method of communication where the signal is transmitted by being impressed on a high-frequency carrier.
- **Colocation Service:** Dark Fiber service option allowing Customers to locate equipment at HBPW facilities.
- **Connection:** A physical and/or logical bandwidth termination.
- **Customer Premises Equipment (CPE):** Equipment located at a Customer premises.
- **Dark Fiber:** Optical fiber infrastructure that can be utilized by Customers providing their own electronic equipment at the termination points.
- **Demarcation Point:** The physical point at which the HBPW's network ends and the Customer's private network begins.
- **Ethernet:** A standard protocol (IEEE 802.3) for a local area network (LAN) bus using carrier sense multiple access with collision detection (CSMA/CD) as the access method. Ethernet is a standard for using various transmission media, such as coaxial cables, unshielded twisted pairs, and optical fibers.
- **Fiber Optics:** Communications systems that use optical fibers for transmission. Optical Fiber is a thin glass wire designed for light transmission, capable of transmitting billions of bits per second. Unlike electrical pulses, light pulses are not affected by random radiation in the environment.
- **Fiber Internet:** Internet Service provided by Fiber Optics.
- **Gigabit Passive Optical Network (GPON):** A point to multipoint network consisting of an Optical Line Terminal (OLT) and Optical Network Units (ONUs) used to provide Fiber Internet and Shared Gigabit Services.
- **Internet Service Provider (ISP):** Internet Service Provider, is a company supplying connectivity to an Internet point of presence location.
- **Multiple Dwelling Unit (MDU):** Multiple yet separate housing units in a single building or several buildings such as a duplex or an apartment building.

- **Shared Gigabit:** Subscribed GPON service for data transit utilizing a Shared Gigabit network transport.

## **14. Description of Broadband Service**

### **A. Fiber Internet**

A community-owned fiber network throughout the City of Holland. This network and service provides fiber optic interface at bandwidths from 100 to 10000 Mbps (10 Gbps). Service is provided via fiber-to-the-premises connections. Data rate is best-effort through a shared network with no guarantee as to throughput. Fiber Internet service is subject to availability.

Fiber Internet is offered with the following service options:

#### **I. Enhanced Service Add-on**

Enhanced Service provides priority support as defined in the Fiber Internet Enhanced Service Level Agreement (SLA) (Appendix 3).

#### **II. Additional IP Address**

Fiber service comes with one dynamically assigned IP address that is subject to change at any time. The Additional IP Address option allows for a statically assigned IP address or network. If a network is requested, additional ip address charges will include the network and broadcast addresses.

#### **III. WiFi Mesh Extender**

To improve WiFi coverage Customers may select the WiFi Mesh extender option. HBPW provides a mesh access point device that can be connected wired or wirelessly to an existing HBPW router to provide better wifi coverage.

### **B. Shared Gigabit**

This service provides an Ethernet interface at bandwidths from 100 to 1000 Mbps. Data transit is via a best effort shared network with no guarantee as to throughput. This

service is best suited for Internet access. Construction costs, setup fees, and bandwidth rates are available upon request. Shared Gigabit service is subject to availability.

Shared Gigabit is offered in the following service options:

### **I. Transit Only**

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

### **II. Internet Service**

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

### **III. Enhanced Service**

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

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

### **C. Active Ethernet**

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

### **D. Dark Fiber**

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

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

Installation estimates, setup fees, and lease rates are available upon request. A Dark Fiber Lease and Colocation requires a separate Dark Fiber Lease Agreement.

See Appendix 2 – Dark Fiber Lease Agreement for more information.

## **15. Service Conditions**

### **A. Authorization for Service**

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

See Appendix 4 – Sales Agreements

### **B. Installation**

Upon receiving an order for service HBPW shall perform service installation.

The Customer shall be responsible for costs, if any, associated with service installation as defined in the Broadband Rate Sheet associated with the service.

The Customer affirms that HBPW is authorized by the property owner of the site to install the necessary equipment to provide service to the Customer and that Customer will cooperate with HBPW to coordinate and gain approvals and rights of access as may be necessary to provide the service to Customer.

HPBW will be responsible for the Demarcation Point.

HPBW will not be responsible for inside premises wiring changes or charges.

## **I. Premises Wiring Agreement**

Property owners that have multiple tenants and MDUs without the required building wiring installed to receive HBPW Shared Gigabit service may qualify for assistance to install the necessary wiring through the HBPW Premises Wiring Agreement.

See Appendix 1 – Premises Wiring Agreement for more information.

## **C. Termination of Service**

The Customer may terminate the service at any time for any reason by providing notice to HBPW. The notice must be provided to the HBPW Customer service department and include the Customer's account information and the desired termination date.

If the Customer terminates the service before the end of the service term (if any), the Customer may be responsible for paying an early termination fee. The early termination fee will be equal to the total monthly charges for the remaining months of the contract term. If the HBPW terminates the service before the end of the contract term, the ISP will not charge the Customer an early termination fee.

HBPW may terminate the service at any time for any reason by providing written notice to the Customer. The notice must be sent to the Customer's email address on file and include the reason for termination and the termination date. HBPW will deactivate the service on the termination date specified in the notice. The Customer shall not be entitled to any refund of fees or charges paid for any unused portion of the service.

Upon termination of service, the Customer shall return all HBPW-owned equipment unless otherwise arranged with the HBPW. All requested equipment must be returned within 5 days. Unreturned equipment shall incur a charge as per the HBPW Fee Schedule.

HBPW will not be liable for any damages or losses incurred by the Customer as a result of the termination of the service, including but not limited to loss of data, loss of business, or other consequential damages.

## **D. Service Level Agreement (SLA)**

In addition to the Continuity of Service and Service Interruption sections in the HBPW General Terms of Service, HBPW will provide the service per its Service Level Agreement (SLA). The SLA is applicable only to Shared Gigabit Enhanced Service and the Fiber Internet Enhanced option. See Appendix 3 – Service Level Agreement



## **16. Use of Broadband Service**

Service is supplied to a Customer for exclusive use on the premises to which the HBPW delivers it.

HBPW prohibits the following activities:

- Sharing with or selling service to another
- Using the service for unlawful purposes
- Tampering with HBPW equipment
- Attaching unauthorized equipment to the HBPW network or any equipment that impairs the normal functioning of the HBPW network

### **A. Access to Premises**

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

### **B. Equipment**

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

HBPW is not responsible for the maintenance of Customer equipment. Customer-owned equipment may reside within available HBPW facilities if the Customer has a valid Dark Fiber Lease Agreement and utilizes the Colocation option.

# 17. Appendix 1 – Premises Wiring Agreement

## PREMISES WIRING AGREEMENT

THIS SERVICES AGREEMENT (this “Agreement”) is made and entered into on February \_\_\_, 202\_, by and between the **City of Holland, acting by and through its Board of Public Works** (the “HBPW”) of 625 Hastings Ave., Holland, Michigan 49423 and \_\_\_\_\_ (the "Authorized Party") who owns or has control over certain real estate and improvements thereon located at \_\_\_\_\_, Holland, Michigan \_\_\_\_\_ (the "Premises"), consisting of \_\_\_\_\_ {commercial/residential} units.

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

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

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

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

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

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

### 1. **Wiring.**

a) **Premises Wiring.** The HBPW will install all facilities necessary to transmit the Services to the Premises, including, but not limited to, distribution cables, amplifiers, pedestals, lock boxes, equipment and occupant devices up to and including the HBPW’s Point of Demarcation (“DEMARC”) (collectively, the “HBPW Wiring”). The HBPW agrees to install and maintain the wiring within the Premises after the HBPW’s DEMARC to the service location(s) (the “Home Run Wiring”). The service locations are those points of connection on the wall(s) of the units where the customer connects to the Home Run Wiring. The HBPW will provide wiring to 1 service location per unit at no cost for each unit once the occupant signs up for HBPW broadband service, additional service locations will be billed to the customer at the HBPW’s normal rates.

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

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

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

2. Access. The Authorized Party shall allow HBPW personnel to enter all common areas of the Premises for the purposes of auditing, selling services, connecting, or disconnecting service, and installing, maintaining, repairing, replacing, or removing equipment and apparatus connected with the provision of the Services, and shall use reasonable efforts to assure the HBPW access to any parts of the Premises over which it does not have control for the same purposes. The Authorized Party shall supply unit numbers of occupants at reasonable intervals. The Authorized Party shall cooperate with the HBPW to prevent the unauthorized reception of the Services.
3. Delivery of Services. The Authorized Party has the authority to grant and does hereby grant to the HBPW during the term hereof the right to deliver the Services to the Premises, unless otherwise required by applicable law. The Authorized Party shall not enter into a bulk services agreement with another service provider to provide services similar to the Services during the term of this Agreement regardless of the method used to deliver such services to the Premises.
4. Fees and Charges for Services. The terms, conditions, charges, and fees for the Services provided to occupants at the Premises shall be contained in rates adopted by the HBPW from time to time. The Authorized Party assumes no liability or responsibility for service charges contracted for by occupants. All billing and collections from occupants will be accomplished by the HBPW.

5. **Customer Service.** The HBPW shall provide Services in accordance with its Terms and Conditions and other rules and procedures. The HBPW will maintain a local telephone number which will be available to its subscribers 24 hours a day, 7 days a week. The HBPW representatives will be available to respond to customer telephone inquiries during normal business hours. The HBPW will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the HBPW.
6. **Private Reception Devices.** Notwithstanding anything else in this Agreement to the contrary, the HBPW shall not interfere with the right of an occupant to install or use his own private reception device so long as the occupant has contracted for service with the HBPW.
7. **Term.** This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Authorized Party and the HBPW and their respective successors and assigns for a term of 10 years from the date first set forth above. This Agreement shall automatically renew for successive periods of 60 days unless either party shall provide the other with a minimum 60 days' notice of its intention not to renew at the end of the then current term.
8. **Insurance.** The HBPW agrees to maintain workers' compensation insurance with statutory limits and commercial general and automobile liability insurance. Upon request, the HBPW will provide the Authorized Party with a certificate evidencing such insurance.
9. **Indemnification.** The HBPW shall indemnify, defend and hold harmless the Authorized Party, its personnel, directors, agents and representatives from and against any and all claims, damage or expense arising out of the acts or omissions of the HBPW or its personnel, directors, agents or representatives in the operation, maintenance or removal of the HBPW Wiring, interconnection with and use of the Home Run Wiring, the Services provided to occupants at the Premises pursuant to this Agreement or a breach of this Agreement. The Authorized Party shall indemnify, defend and hold harmless the HBPW, its personnel, directors, agents and representatives from and against any and all claims, damage or expense (including attorney fees) arising out of the acts or omissions of the Authorized Party, its personnel, directors, agents and representatives in the operation and maintenance of the Premises, the interference with the Services by another provider authorized by the Authorized Party to provide its services at the Premises or a breach of this Agreement.
10. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
11. **Termination.**
  - b) **Permanent Loss of Authority.** This Agreement shall terminate automatically without any further liability on the part of the HBPW in the event the HBPW lacks authority to continue to provide the Services to the Premises due to loss of governmental authorization.

## 12. Removal of Wiring upon Termination.

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

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

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

## 13. Miscellaneous.

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

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

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

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

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

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

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

If to the Authorized Party:

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

If to the HBPW:

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

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

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

{ Signatures on next page }

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

**AUTHORIZED PARTY**

\_\_\_\_\_

Dated: \_\_\_\_\_

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

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

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

**HBPW**

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

Dated: \_\_\_\_\_

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

Name: Nathan Bocks

Title: Mayor

Dated: \_\_\_\_\_

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

Name: Kathy Grimm

Title: Clerk

Approved as to form:

\_\_\_\_\_  
Ronald J. VanderVeen

City Attorney

Dated: \_\_\_\_\_

# 18. Appendix 2 – Dark Fiber Lease Agreement

**DARK FIBER LEASE AGREEMENT**  
**BETWEEN**  
**THE CITY OF HOLLAND, ACTING BY AND THROUGH**  
**THE HOLLAND BOARD OF PUBLIC WORKS**  
**AND**

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This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ with its principal offices located at \_\_\_\_\_

(the “**Lessee**”), and the **City of Holland, a Michigan Municipal Corporation of Ottawa and Allegan Counties, Michigan, acting by and through Holland Board of Public Works, (the “HBPW”)** with its principal offices located at 625 Hastings Avenue, Holland, Michigan.

**RECITALS**

- A. The HBPW is a provider of broadband fiber optics transport and access services and owns, operates and maintains an area-wide fiber optic network, the “HBPW Network”, through which communication signals can be transmitted.
- B. The Lessee is a \_\_\_\_\_ (INSERT BUSINESS ENTITY) desiring to use a portion of HBPW Network between and among several of its facilities.
- C. The Lessee’s **Dark Fiber Lease Schedule (DFLS – Exhibit A)** defines and describes fiber routes leased by the HBPW to Lessee. It includes, but is not limited to: points of demarcation, footage, number of strands, locations, routes, and non-refundable development fees for each of the routes leased by the HBPW to Lessee. Footages will be determined by the post-construction OTDR tests that are provided for under paragraph 9 of this agreement.
- D. Fiber connectivity shall be provided in accordance to the specifications identified in the **Fiber Specifications (Exhibit B)**.
- E. The Lessee’s **Colocation Service Schedule (CSS – Exhibit C)** defines and describes colocation services provided by the HBPW to Lessee. It includes, but is not limited to: Rack usage, feeder cable use, fiber meet points, cross connections, and non-refundable development fees for each of the routes leased by the HBPW to Lessee.
- F. The HBPW desires to lease to the Lessee fiber optic cable, Colocation Service, and other necessary equipment in order to meet the requirements of the Lessee.
- G. The HBPW will lease the “Leased Facilities”, to provide the Lessee with point to point connections of dark fiber, as identified in the **DFLS**.
- H. Leased Facilities and/or Colocation Service may be added to this Agreement upon written request of the Lessee, and approval of the HBPW, in its sole and complete discretion. Additional leased facilities shall be added to this Agreement by an



amended DFLS - **Exhibits A and/or C**. Leased Facilities and Colocation Service may be removed from this Agreement upon written sixty day notification from the Lessee or written sixty day notification from the HBPW.

- I. The HBPW will retain all ownership, right, title, and exclusive control over the operation and maintenance of the Leased Facilities.

### **TERMS**

- 1) **Use of Leased Facilities**. Upon the In Service Date, as defined in paragraph 5, the Lessee may utilize the Leased Facilities. The HBPW shall not limit the amount of data traffic that Lessee may place over the Leased Facilities and shall not permit others to use or interrupt Lessee's use of the Leased Facilities. The Lessee and Lessee's subsidiaries, employees and agents may use the Leased Facilities for those uses, expressly or incidentally operated by the Lessee. The Lessee may not assign, transfer, sublease, or provide transport services to third parties over the Leased Facilities without the express written consent of the HBPW. The sole interface to the Leased Facilities is the location of the demarcation points identified in the **DFLS**. No other connections to the Leased Facilities are permitted without the express written consent of the HBPW, in its sole and complete discretion.
- 2) **Connectivity**. Lessee is responsible for the design, construction, and installation of any splices, fiber jumpers, electronics, or other ancillary equipment beyond the demarcation points listed in the **DFLS**. Lessee shall design, construct, or alter Lessee equipment at its own expense and shall ensure that its equipment is compatible with the specifications for the Leased Facilities as described in this Agreement. The HBPW shall have the right to suspend Lessee's use of the Leased Facilities if Lessee's facilities shall interfere or adversely affect the Leased Facilities.
- 3) **Specifications for Leased Facilities**. The Leased Facilities shall meet the following minimum requirements:
  - a) **Fiber Capacity**  
The Leased Facilities shall provide Lessee with the number of dedicated strands of fiber optic cable as identified in the **DFLS**.
  - b) **Quality of Service**
    - i) Each fiber filament shall have optic continuity throughout the Leased Facilities, as set forth in the attached **Exhibit B**, to the demarcation points as identified in the **DFLS**.
    - ii) Each fiber filament shall be designed to achieve the Performance Requirements specified in paragraph 9 of this agreement.
  - c) **Colocation Service**  
As an option, the Lessee may utilize available HBPW-owned facilities to house network terminations and equipment as defined in HBPW Terms and Conditions
- 4) **Leased Facilities**. As part of the Leased Facilities and during the Term of this Agreement, the HBPW shall provide fiber terminations at each demarcation point on each fiber strand as identified in the **DFLS**. The demarcation point is further defined as the termination connectors at locations using connectors.

The installation and construction of the Leased Facilities within Lessee's property, whether performed by the Lessee or (by the HBPW if the HBPW shall so agree), shall meet, at a minimum, the following requirements:

- a) All point-of-entrance stubs shall penetrate the exterior walls through a core drilled hole, be secured, then mortared and finished to provide an adequate seal between interior and exterior spaces. This penetration shall not be made by breaking out building siding or structures.
- b) Subsurface point of entrances shall be sealed on the exterior surface with a moisture resistant sealant, to prevent possible seepage or moisture egress into the building.
- c) If indoor runs of fiber cable exceed fifty (50) feet from the point of entrance into a facility, the Lessee shall be responsible for installing conduits from the point of entrance into the building to the location of the demarcation point. For the purpose of this subparagraph only, these conduits shall be constructed in accordance with Telcordia/Bellcore NEBS construction rules and regulations.
- d) Indoor cables shall be plenum-rated, non-metallic, with a minimum National Electrical Code (NEC) rating of OFN. If EMT conduit is used, PVC jacketed fiber may be used. Higher NEC ratings of OFNR or OFNP may be installed if required.
- e) Indoor cables shall be pulled continuously from the fusion splice to outdoor cables to the telecommunications equipment room where all terminations shall be placed. No splices shall be allowed in these runs. The indoor cable shall be terminated with mechanical type connectors.
- f) A minimum 30' maintenance loop shall be provided at both ends of the indoor cable for new installations.
- g) All outdoor conduits within Lessee property shall continue to the point of entrance into the Lessee facilities. The outdoor fiber optic cable shall be terminated, with fusion spliced factory pigtails into a wall-mounted fiber optic enclosure or fusion spliced to indoor fiber optic cable within 50' of the building's entrance.
- h) All fiber optic cable shall be continued through the building, using an indoor plenum-rated fiber optic cable installed in non-metallic plenum-rated tubing or sealed EMT conduit to the telecommunications equipment room as designated; then fusion spliced, with factory pigtails, into a HBPW approved fiber optic tray.
- i) Service entrances that are within 50' of the telecommunications room may be routed directly to a rack-mounted fiber optic tray without the additional wall-mounted splice cabinet or fusion splice.
- j) All sleeves and cores (if needed) shall be 2" outside diameter and equipped with nylon bushings to protect the inner-duct / fiber.
- k) Fiber cable or sheathing shall not be exposed below suspended ceilings where possible.
- l) All inner-duct (if used) shall be supported every 6'.
- m) HBPW shall install fiber cables inside Lessee building from the point of entrance into the building to the demarcation point between the HBPW and Lessee irrespective of whether the HBPW or Lessee installs the inside conduits.
- n) All fire-rated walls shall be sealed or resealed with UL approved fire-stopping material after all cables have been placed. The fire-stopping material shall be removable to allow for placement of additional facilities at a later time.

- o) Lessee shall provide room and rack space for rack-mounted splicing and termination panel unless the demarcation point is in an HBPW Colocation Facility.
  - p) The HBPW may, during the term of this Lease, modify or require additional construction requirements of the Lessee in order to meet the performance standards contained herein.
- 5) In Service Date. If the Leased Facilities require new fiber cable or other components to be installed, the "In Service Date" is estimated to be \_\_\_\_\_ weeks after the Lessee's payment of the Development Fee as described in paragraph 12 of this Agreement. If the Leased Facilities do not require new fiber cable to be installed, the In Service Date is estimated to be \_\_\_\_\_ weeks from the execution of this Agreement. HBPW shall provide a written notice to Lessee establishing the In-Service Date for the Leased Facilities.
- 6) Access.
- a) HBPW may locate any equipment necessary to provide, construct, or install the Leased Facilities within the Lessee's facilities in mutually agreed upon locations. Lessee agrees to allow HBPW direct ingress and egress to Lessee facilities at such times as may be required for the HBPW to perform any installation, maintenance, repair, or removal of its Leased Facilities. Lessee, at its sole option, may require that its representative accompany any representative of HBPW having or needing access to Lessee facilities. HBPW shall on a regular basis provide to Lessee a list of employees and /or authorized contractors, temporary or contracted employees who are performing work on, or who have or need access to Leased Facilities on Lessee's property. Lessee shall have the right to exclude any of the employees or agents of HBPW for any reasonable cause.
  - b) Colocation facilities are accessible by appointment and under escort of HBPW staff.
- 7) Operation, Maintenance and Repair – Leased Facilities.
- a) The HBPW shall be responsible for operating and maintaining in good repair the Leased Facilities and any easements or right-of-ways associated with them, such that the Leased Facilities continue to perform according to the design specifications and performance requirements specified in this agreement. To the extent the HBPW shall be required to utilize the Lessee's property which is not subject to an easement or other right of entry, the Lessee shall provide all necessary easements and rights-of-way to effectuate the terms of this agreement, and shall cooperate with the HBPW to permit the installation, operation, and maintenance of the Leased Facilities.
  - b) The HBPW shall use its best efforts to coordinate outage times with Lessee's Project Manager. HBPW outages to expand, rebuild, or upgrade the Leased Facility shall not constitute a "service interruption" for purposes of paragraph 9.
- 8) Operation, Maintenance and Repair – Lessee Facilities. The Lessee shall be solely responsible for operating and maintaining the Lessee facilities, including the interconnection to the Leased Facilities.
- 9) Performance Requirements. The Leased Facilities shall be available for the Lessee's dedicated use on a seven days per week, twenty-four hours per day basis subject to the following provisions as set forth on the attached **Exhibit B**. Upon request, the HBPW shall supply the Lessee with test results generated by an Optical Time Domain Reflectometer

("OTDR") for the leased fiber optic filaments. The OTDR Test will be performed on each strand in both directions. Testing shall be performed at 1310 nm and 1550 nm on each segment. The Lessee shall notify the HBPW of any interruption in service ("Service Interruption") resulting from the Leased Facilities. The HBPW shall make the necessary repairs to the Leased Facilities in order to restore Lessee's service within six (6) hours of its receipt of notice of the Service Interruption. For unplanned incidents, after initial damage assessment, if the HBPW cannot restore Lessee's service within six (6) hours, the HBPW shall notify the Lessee of the estimated time to restore the service. The duration of each Service Interruption shall be measured from the time Lessee notifies the HBPW of the interruption until the time the service has been restored. For purposes of this paragraph, notice shall be deemed effective when communicated either verbally or in writing by Lessee to the HBPW. A service interruption shall not include force majeure events as set forth in paragraph 15.

10) Alteration of Route. The HBPW may re-locate all or any part of the Leased Facilities to one or more alternate routes or rights-of-ways, provided that the relocation will not degrade the optic continuity of the Leased Facility below the Performance Requirements specified in this agreement. The HBPW shall coordinate any service outages related to route alteration with the Lessee Project Manager for the scheduling of any route alteration that will interrupt Lessee's service over the Leased Facilities. The HBPW shall notify the Lessee Project Manager at least 10 business days in advance of any planned interruption in service for route alteration. Such outages shall not constitute a "service interruption" for purposes of paragraph 9.

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

a) The Lessee shall pay charges for work for modification and/or movements requested by Lessee. The HBPW may require the Lessee to pay a deposit based upon the reasonable estimate of cost for any modification or movement requested by Lessee. Upon completion of the work for modification and/or movement, the Lessee shall pay the actual cost incurred by the HBPW for such work. The charges for labor and use of equipment shall be based on the HBPW Unit Price Contract then in effect. For each instance where charges for any modifications or movement are billed to Lessee, the HBPW shall provide to Lessee a statement detailing the unit price charges for labor and use of equipment and the costs of all materials to be charged.

b) The Lessee shall provide the HBPW and/or its authorized representatives with reasonable access into its facilities in order to make any modifications and/or movements that the HBPW deems necessary at the HBPW's cost or which may be required as a result of changes necessitated by changes in any rights-of-way, easements, permits, licenses or pole attachment requirements.

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

12) Rent Payment/Fees.

- a) The Lessee shall be solely responsible for all costs and expenses associated with the developing, constructing, installing, operating, maintaining, and repairing the Leased Facilities, including any easements or rights-of-way associated with them, including, without limitation, labor and costs for all equipment and other components which may be constructed or installed by the HBPW. The HBPW may require the Lessee to pay a deposit based upon the reasonable estimate of cost for the Leased Facilities. The HBPW, upon completion of the Leased Facilities, shall bill the Lessee for the total development costs incurred by the HBPW. The Lessee shall pay such amount within thirty (30) days of invoicing by the HBPW and prior to the In-Service Date. The amount invoiced to the Lessee shall incur interest at the rate of one and one-half percent (1.5%) per month until paid and the HBPW shall be reimbursed for its reasonable attorneys fees and costs incurred to collect such amounts.
- b) Lessee shall also pay to the HBPW a Monthly Rent Payment according to the monthly HBPW Dark Fiber Rate as listed on the HBPW Broadband Service Rate, as may be amended by the Holland Board of Public Works and Holland City Council. Leased Facilities may be added to this Agreement upon written request of the Lessee, and approval of the HBPW. Leased Facilities may be removed from the Lessee's DFLS upon written sixty day notification from the lessee or written sixty day notification from the HBPW.

The total Monthly Rent Payment due shall be paid in advance of the month for which Leased Facilities are provided for use to Lessee and shall be calculated, and prorated, if necessary, starting the next business day after the Lessee begins use of Leased Facilities until the next business day after Lessee discontinues use of any Leased Facilities. Should any such use start on a date other than the first business day of any month, then the Monthly Rent Fee paid in advance shall include a prorated monthly payment for the month in which such use begins and the next month thereafter. The HBPW shall submit to the Lessee on a monthly basis, a bill in the amount of the total Monthly Rent Payments. In the event the Lessee shall fail to pay the Monthly Rent Payment when due, interest shall accrue on the unpaid balance at the rate of 1½ % per month until paid, The HBPW, upon default by the Lessee, may accelerate the remaining Monthly Rent Payments for the Term and may declare the remaining balance of such payments due and owing. The reasonable attorneys fees and costs incurred by the HBPW to collect such amounts shall be paid by Lessee.

13) Term. This Agreement shall commence on the date entered as first stated above and shall continue for an initial term of five years (the "Term"). This Agreement may be renewed for an additional Term of five years subject to the following:

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

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

- 14) Default. In the event of a material default, the non-defaulting party shall notify the other party in writing of the nature of the breach and the party's intent to terminate the agreement. If a default occurs and remains uncured by the defaulting party for thirty days after the other party has given a notice of default, the non-defaulting party shall have the right to terminate this agreement and bring proceedings to recover damages that flow from the defaulting party's breach of this agreement. The right to terminate and seek damages shall be cumulative and in addition to any and all other rights and remedies available to the parties, including specific performance and other equitable relief. Notwithstanding anything in this agreement to the contrary, however, the amount of damages recoverable by the HBPW or by Lessee shall not exceed in the aggregate the sum of all of the Monthly Rent Payments for the Term of this agreement. Events of default shall include without limitation:
- a) The HBPW fails to provide the Leased Facilities to Lessee by the In Service Date, provided the Lessee does not materially delay the installation of any the Leased Facilities;
  - b) The Lessee fails to pay the Rent Payment or any other fees or charges required to be paid by the Lessee under this agreement after thirty days written notice of such failure;
  - c) Either party fails to comply in good faith with any other material terms and material conditions of this agreement; or
  - d) Either party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of its creditors, or becomes a party to any judicial or administrative proceeding in bankruptcy, receivership or reorganization.
- 15) Force Majeure. Neither party shall be in default by reason of any failure or delay in the performance of any obligation under this agreement where such failure or delay arises out of any cause, act, or event beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party pursuant to this Agreement. Such causes, acts, or events shall include, without limitation, acts of God, landslides, sink holes, vehicle accidents, lightning, hurricanes, earthquakes, fires, explosions, floods, acts of public enemy, wars, blockades, terrorism, insurrections, riots, or civil disturbances; labor disputes, strikes, work-downs, or work stoppages; orders, writs, decrees or judgments of any federal, state or local court, administrative agency, or governmental body, so long as these are not the result of wanton or willful action or inaction of the party relying thereon; provided, however, the contesting and good faith by such party of any such order or judgment, or the good faith failure by such party to contest any such order or judgment, shall not constitute or be construed to constitute a wanton or willful act or inaction of such parties; suspension, termination, interruption, denial, or failure to renew any permit, license, consent, authorization, or approval necessary to the operation, maintenance or management of the HBPW's Network as such act or event is not the result of wanton or willful action of the party relying thereon; adoption of or change, after the date of execution of this agreement in the federal, state, or local laws, rules, regulations, ordinances, provisions, or licenses, or changes in the

interpretation of such laws, rules, regulations, ordinances, permits, or licenses by a court or public agency having jurisdiction; failure of any subcontractor or any supplier to furnish labor, services, materials, or equipment in accordance with its contractual obligations, provided such failure is itself due to an event of Force Majeure or its adverse affect and the party relying thereon cannot obtain substitute performance within a reasonable time; or a defect in manufactured components; provided, however, that in any case where such equipment or component was manufactured by the party (or an affiliate of such party) seeking to rely upon such defect as an event of Force Majeure, such defect shall be deemed an event of Force Majeure only to the extent that the defect was caused by an independent event of Force Majeure. The HBPW shall repair, restore or replace any portion of the Lease Facilities that is damaged due to a Force Majeure Event, at the HBPW's sole expense. Either party may terminate this agreement if an event of Force Majeure prevents either party from performing their respective obligations under this agreement for a continuous period of forty-five (45) days.

16) Nondisclosure. The Lessee and the HBPW acknowledge that, in the course of maintaining and repairing the Leased Facilities, it may be necessary for the HBPW to monitor the Lessee's Transport layer or Data Link layer on the Leased Facilities. Other than work necessary for the maintenance, repair or installation of fiber or associated equipment, the HBPW does not monitor network traffic. The HBPW shall not disclose any of the Lessee's information without the prior consent of the Lessee. The HBPW shall also ensure that its employees, contractors and agents do not disclose to any third party Lessee's information without the Lessee's prior consent. The provisions of this paragraph shall not apply to information which (1) is or becomes generally available to the public; or (2) is, prior to disclosure, already in the possession of the receiving party and was not received from the other party; or (3) is rightfully received from a third party who did not receive the same from the disclosing party, or (4) is required by the Michigan Freedom of Information Act, MCLA 15.231, et seq. by other law or governmental agency to be disclosed, after the receiving party notifies the disclosing party of the disclosure requirements and affords the disclosing party an opportunity to object and minimize such disclosure.

17) Limitation of Liability. The HBPW or the Lessee's liability on any claim for damages under this Agreement, except for a claim for unpaid Rent or any other charges owed by Lessee, shall be limited to direct damages and shall not exceed the total Monthly Rent Payment under this Agreement. Notwithstanding any other provision of this Agreement, neither Lessee nor the HBPW, their affiliates or subsidiaries, their officers, directors, employees, or agents shall be liable to the other for any indirect, incidental, or consequential damages, (including, but not limited to lost profits, lost revenue, or the failure to realize expected savings or cost) sustained or incurred in connection with the performance or non-performance of any services, or the use or operation of the equipment provided hereunder, regardless of the form of action and whether or not such damages are foreseeable. Any claim or cause of action arising from or in connection with any defect or failure in any equipment provided by the HBPW, or the performance or non-performance of any services provided by HBPW must be brought within two years after the acceptance of such equipment or services by the Lessee. This paragraph shall survive the termination of this Agreement and shall constitute a mutually agreed limitation of liability by the parties.

18) Indemnification.

a) In the event any claim, demand, lawsuit or liability is made or asserted against the HBPW by any third party and the same arises out of or is caused by any act or omission

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

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

19) Insurance. The Lessee shall be responsible for obtaining and maintaining in full force and effect comprehensive general liability, property and casualty insurance for the Leased Facilities. Such insurance shall provide comprehensive general liability coverage in an amount no less than two million dollars (\$2,000,000.00) for property damage for each occurrence and in an amount no less than two million dollars (\$2,000,000.00) for bodily injury for each occurrence. Each insurance policy obtained by Lessee in satisfaction of its obligation hereunder shall have an Additional Insured Endorsement naming the "City of Holland, acting by and through its Board of Public Works, its officers, agents, directors, and employees" as an additional named insured. The Certificate of Insurance shall include a waiver of subrogation against all parties named as additional insureds. HBPW shall likewise obtain and maintain the same levels of insurance coverage for property damage and bodily injury damage. HBPW may through a combination of self-insurance, primary insurance or excess insurance provide for such coverage. HBPW and Lessee agree to secure any other reasonable amounts of insurance necessary to secure permits and rights of way required for installation and operation of the Leased Facilities.

20) Labor. The HBPW may, in its sole discretion, hire contractors and consultants to assist the HBPW in performing its duties under this agreement, provided that all contractors hired by the HBPW to construct, install, repair and maintain the Leases Facilities have reasonable insurance coverage. Under no circumstances shall the HBPW's employees, agents, consultants or contractors be considered employees, agents or contractors of Lessee. The HBPW shall be solely responsible for hiring, firing, paying, supervising and providing an



adequate working environment for these employees, agents, consultants and contractors. The HBPW shall notify Lessee immediately of any labor disputes that jeopardize the HBPW's timely performance of its obligations under this agreement.

- 21) Ownership of Leased Facilities. The HBPW shall own and hold legal title to the Leased Facilities which include, but are not limited to, the fiber cabling and equipment which may be located at the Lessee's facilities up to the Demarcation Point throughout the duration and after the termination of this agreement.
- 22) Dispute Resolution. No party may elect to have any controversy or dispute arising between the parties under this agreement resolved by arbitration unless mutually agreed in writing. If the parties do not agree on a mutually agreeable arbitrator, the dispute shall be resolved by the commencement of an action in the Ottawa County Circuit Court, which shall be the forum of exclusive jurisdiction.
- 23) Assignment; Successors in Interest. This Agreement shall not be assigned by either party without the other party's prior written consent. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the Lessee and the HBPW; however, no assignment of this agreement, whether by act of the parties or by operation of law, and no sublease by or from the Lessee in violation of any of the provisions, covenants, and conditions of this agreement shall vest in the assignee or sub-lessee any right, title, or interest whatsoever in the Leased Facilities or any rights created herein.
- 24) Third-Party Beneficiaries. No third-party shall have any rights under this agreement as a third-party beneficiary.
- 25) Entire Agreement; Modification. This agreement and any documents executed in connection herewith constitute the entire agreement and understanding among the parties to this agreement and supersede any and all prior agreements, understandings, and arrangements, oral or written, between the parties with respect to the subject matter hereof. This agreement may be modified or amended only by a written instrument executed by all of the parties hereto. The parties acknowledge joint review and drafting of this Agreement, and no rule of interpretation or construction shall be made against the drafter of the Agreement.
- 26) Captions. Article, section, and paragraph titles or captions contained in this agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this agreement or the intent of any provision hereof.
- 27) Enforceability. If any provision of this agreement is determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of the other provisions of this agreement. If, in the good faith opinion of either party, the severance of the unenforceable provision destroys the economic benefits of this agreement to either

party, the parties shall in good faith negotiate an amendment to this agreement to restore as much as possible the economic benefits to the parties.

- 28) Counterparts. This agreement may be executed in one or more counterparts, and any party to this agreement may execute and deliver this agreement by executing and delivering any of such counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 29) Waiver. One or more waivers of any breach of any representation, warranty, or covenant in this agreement by any party shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition.
- 30) Governing Law. This agreement and the obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Michigan.

31) Notice. Any notice, statement, or demand furnished or made by a party to this agreement shall be deemed given, furnished, or made when delivered to the other party's Project Manager via the U.S. mail system or other overnight package service at the address below, or to such other address as the party may from time to time specify by written notice.

If to Lessee:

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If to the HBPW:

Broadband Services Superintendent  
Holland Board of Public Works  
625 Hastings Ave  
Holland, MI 49423  
Attention: 616-355-1500  
Facsimile: 616-355-1550

IN WITNESS WHEREOF, the Lessee and the HBPW have executed this Agreement on the date first written above.

**LESSEE:** \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

**HOLLAND BOARD OF PUBLIC WORKS**

By Dave Koster \_\_\_\_\_

\_\_\_\_\_

Its General Manager \_\_\_\_\_

Dated: \_\_\_\_\_

## **19. Appendix 3 – Enhanced Service Level Agreement**

# **Holland Board of Public Works Broadband Enhanced Service Level Agreement**

Holland Board of Public Works (HBPW ) provides the following Service Level Agreement (SLA) for applicable Enhanced Broadband service.

### **Definitions**

- Calendar Month: The period beginning at 12:00 AM midnight on the first day of the month and ending at 11:59 PM on the last day of that month.
- Customer: A customer that orders the Service from HBPW pursuant to an agreement.
- Service: Active Ethernet Service or Business Class Internet Service as provided by the HBPW
- Service Address: Building where Customer receives Service.
- Customer Premises Equipment (CPE): Customer-owned network equipment located at Customer's Service Address.

### **Availability Objective**

HBPW offers the following SLA for Service with a minimum of one year Service term. The SLA is effective on the first day of the month after initial installation and Customer acceptance of Service.

### **Service Availability**

Customer will be entitled to receive from HBPW a credit if the availability ("Service Availability") of a particular Service for any Calendar Month falls below the percentage shown in the applicable credit schedule included below. HBPW guarantees the Service availability only to the point to which HBPW can perform connectivity tests to HBPW network termination equipment at Customer Address. The Service will be deemed to be unavailable to the Customer only if the Service is subject to an interruption that results in a total disruption of the Service ("Outage") for longer than 3 minutes.

Service Availability Percentage is calculated as follows:

$$((\text{Applicable Days in Calendar Month} * 24 * 60) - (\text{Minutes of Outage on Affected Service in Calendar Month})) / (\text{Applicable Days in Calendar Month} * 24 * 60) * 100$$

Outage minutes are calculated by HBPW monitoring and Trouble Management systems.

Circuit Availability		Amount of Credit	Downtime Per Month *
Upper Level	Lower Level		
< 99.99%	99.9%	10%	≤43.8 minutes
< 99.9%	99.5%	25%	≤ 3.6 hours
< 99.5%	0%	50%	> 3.6 hours

The credit (“Outage Credit”) to which the Customer may be entitled under this section will be equal to the applicable credit percentage identified in the table below of Customer’s monthly recurring charges for the affected Service.

### **Service Restoration**

In the event of an Outage, HBPW will notify the Customer within 1 hour of the incident, and will provide the Customer with regular updates and an Estimated Time to Repair (ETTR).

In the event of an Outage, HBPW will operate to achieve a 4 hour or better Mean Time to Restore (MTTR).

### **Chronic Outage**

In the event Customer experiences chronic Outages with respect to any Service, Customer will be entitled to terminate the affected Service. A Service suffers from chronic Outages if such Service, measured over any Calendar Month, experiences more than five Outages, or more than 48 aggregate hours of Outages. Customer may at its sole and exclusive remedy for chronic Outages, upon 30 days prior written notice to HBPW, terminate the Affected Service without incurring any early termination charges

### **Terms and Conditions**

HBPW is offering the Service in accordance with the HBPW Rate Book and applicable Service agreement. In the event of a conflict between the terms of this document and the Rate Book, the terms of this document will control.

To be eligible for an Outage Credit under this SLA, the Customer must, in addition to complying with the other terms included in this SLA, be in good standing with HBPW and current on their obligations, and submit necessary supporting documentation and request reimbursement within 30 days of the conclusion of the service month in which the Outage occurs.

HBPW will determine the Outage Credit to be provided to the Customer. Customer may receive Outage Credit for a particular impacted service for a maximum of four months in any 12 month period.

### **Restrictions and Exclusions**

An Outage will not be deemed to have occurred in the event that the Service is unavailable or impaired due to any of the following:

- a) Interruptions caused by the negligence, error or omission of Customer or others authorized by Customer to use or modify Customer's service;
- b) Interruptions due to failure of power at Customer's Service Address;
- c) Interruptions due to poor performance of Customer Premises Equipment (CPE);
- d) Interruptions during any period in which HBPW technicians are not given access to the Service Address;
- e) Interruptions during planned maintenance which HBPW communicated to the Customer;
- f) Interruptions during any period when the Customer elects not to release the service for testing and/or repair and continues to use it on an impaired basis;
- g) Interruptions resulting from force majeure events beyond control of HBPW including, but not limited to, acts of God, pest damage, government regulation, labor strikes or national emergency;
- h) Interruptions resulting from the inability to secure component parts;
- i) Interruptions resulting from incorrect, incomplete or inaccurate orders and/or network specifications from the Customer;
- j) Interruptions resulting from a failure of a carrier other than HBPW providing service.

## 20. Appendix 4 – Sales Agreements

### A. Dark Fiber Sales Agreement

Board of Public Works  
Holland Michigan  
Commercial/Industrial

Application for an Extension of Fiber Optic Cable

Applicant:  
Location Address:  
Service Description

Contract

The above named applicant(s) and/or property owner are responsible for the following:

1. To provide acceptable easements for the extension, grading within 0.5 feet of final grade before fiber construction, and to maintain final grading after completion of project, specifications of interface type and quality of service, site plans, etc., needed to properly install the fiber optic cable and interface.
2. To provide tree trimming and/or tree removal prior to fiber construction.
3. To provide adequate truck and other access for construction and maintenance of the fiber optic cable and interface.
4. To install, own, and maintain the building cabling from the interface to and in the building.
5. To make a payment to the BPW as provided in the Quote Number 10374 incorporated in and made a part of this agreement.
6. To continue BPW fiber service at the locations covered by this agreement and existing Dark Fiber Lease Agreement terms.
7. To pay the monthly or other charges described in the Quote and pay the rates set by the BPW from time to time thereafter and to abide by and be bound by the rules of service and security policies adopted by the BPW from time to time to govern use of the fiber optic infrastructure. The rules of service and security policies are or will be maintained at the offices of the BPW and will be available upon request.

Applicant Signature \_\_\_\_\_ Date: \_\_\_\_\_

## B. Active Ethernet Sales Agreement

Board of Public Works  
Holland Michigan  
Commercial/Industrial

### Application for an Extension of Fiber Optic Cable

Applicant:  
Location Address:  
Service Description

#### Contract

The above named applicant(s) and/or property owner are responsible for the following:

1. To provide acceptable easements for the extension, grading within 0.5 feet of final grade before fiber construction, and to maintain final grading after completion of project, specifications of interface type and quality of service, site plans, etc., needed to properly install the fiber optic cable and interface.
2. To provide tree trimming and/or tree removal prior to fiber construction.
3. To provide adequate truck and other access for construction and maintenance of the fiber optic cable and interface.
4. To install, own, and maintain the building cabling from the interface to and in the building.
5. To make a payment to the BPW as provided in the Quote Number 10376 incorporated in and made a part of this agreement.
6. To continue BPW fiber service at the locations covered by this agreement and existing Dark Fiber Lease Agreement terms.
7. To pay the monthly or other charges described in the Quote and pay the rates set by the BPW from time to time thereafter and to abide by and be bound by the rules of service and security policies adopted by the BPW from time to time to govern use of the fiber optic infrastructure. The rules of service and security policies are or will be maintained at the offices of the BPW and will be available upon request.

Applicant Signature \_\_\_\_\_ Date: \_\_\_\_\_



## C. Fiber Internet and Shared Gigabit Sales Agreement

These terms and conditions are important to our ability to provide cost-effective and quality service. Signing this form means that you agree to these terms and conditions for the build of your service:

1. Broadband services include Fiber Internet, Shared Gigabit, Active Ethernet, Dark Fiber, and Transit. Review the complete description of services in the [Terms and Services](#).
2. Holland Board of Public Works (HBPW) will provide acceptable easements for the extension, grading within 0.5 feet of final grade before network construction, and to maintain final grading after completion of the project, specifications of interface type and quality of service, site plans, etc., needed to properly install the fiber optic cable, network cable, and/or interface.
3. Customer to provide completed [Fiber Build Authorization](#).
4. HBPW to provide tree trimming and/or tree removal before network construction as required.
5. Customer to provide adequate access for construction and maintenance of the network cable and interface.
6. HBPW to install, own, and maintain the building cabling from the interface to and in the building.
7. HBPW will provide a optional Wi-Fi router with no monthly rental fees and Customer is to acknowledge that HBPW (Holland Board of Public Works) is not responsible for the maintenance of customer-owned equipment.
8. To make a payment to HBPW (Holland Board of Public Works) as selected above incorporated in and made a part of this agreement. Past-due payments are subject to a 2% charge in the amount of arrears and will be assessed in the next billing cycle.
9. To continue HBPW broadband service at the locations covered by this agreement with no contract period. The customer may terminate the service at any time for any reason by providing notice to HBPW. The notice must be provided to the HBPW Fiber Customer Service department and include the customer's account information and the desired termination date.
10. To pay the monthly or other charges as described for the Initial Service Period and pay the rates set by the HBPW from time to time thereafter and to abide by and be bound by the rules of service and security policies adopted by the HBPW from time to time to govern the use of the Broadband Service. The rules of service and security policies are or will be maintained at the offices of HBPW and will be available upon request.
11. To provide one seasonal hold per 12-month period with the understanding there is a 3-month minimum and a 6-month maximum time frame for this request. A one-time service fee of \$20 will be assessed during both the disconnection and reconnection of service.
12. To return all HBPW-owned equipment upon termination of service<sup>2</sup>. <sup>1</sup> If you occupy a building with multiple tenants you can qualify for a 1-year Initial Service Period. <sup>2</sup> Failure to return equipment within 5 days. Unreturned equipment shall incur a charge of \$200 equipment fee. Review the complete [Terms and Conditions and Rate book](#).

<sup>1</sup> If you occupy a building with multiple tenants you can qualify for a 1 year Initial Service Period.

<sup>2</sup> Failure to return equipment at service termination will result in a \$200 equipment fee.