

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**THE CITY OF WARREN**

**AND**

**ATLANTIC BROADBAND (PENN), LLC**

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## CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed as of the 18 day of MAY, 2015 (hereinafter referred to as the "Effective Date") by and between the City of Warren, a City located in Warren County, Pennsylvania (hereinafter referred to as the "City") and Atlantic Broadband (Penn), LLC (hereinafter referred to as "Atlantic Broadband").

**WHEREAS**, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Pennsylvania law, the City is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City's jurisdiction; and

**WHEREAS**, Atlantic Broadband currently holds a cable franchise from the City by virtue of a cable franchise agreement dated November 22, 2005, originally granting a cable franchise to Atlantic Broadband (Penn), LLC; and

**WHEREAS**, Atlantic Broadband has requested that the City renew Atlantic Broadband's franchise to maintain, construct, operate, and maintain its Cable System over, under and along the aforesaid rights-of-ways for use by the City's residents; and

**WHEREAS**, the aforesaid Public Rights-of-Way used by Atlantic Broadband are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintenance of a technologically advanced Cable System, receive Franchise Fees for Atlantic Broadband's use of the City's rights-of-ways, obtain the use of an educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and provide for the current and future cable-related needs of its residents; and

**WHEREAS**, the City has held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the City's future cable-related community needs; and

**WHEREAS**, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Atlantic Broadband's franchise according to the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Atlantic Broadband agree as follows:

## **SECTION 1** **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Atlantic Broadband.

(b) Basic Service - The service tier that includes at least the retransmission of local broadcast television signals and any Educational and Governmental ("EG") access channel. For the avoidance of doubt, Basic Service shall not include any internet or phone/voice services.

(c) Cable Act - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; (5) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Channel - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by FCC regulation.

(g) Complaint - Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Atlantic Broadband's business or the operation of its Cable System.

(h) Communications Act - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(j) Educational and Governmental (EG) Channel - An access channel that consists of local educational and/or governmental programming.

(k) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable system in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(l) FCC - Federal Communications Commission.

(m) Force Majeure - Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of materials or equipment.

(n) Franchise - The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(o) Franchise Fee - The fee that Atlantic Broadband remits to the City for the use of the City's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(p) Gross Revenues - All revenue received directly or indirectly by Atlantic Broadband or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Atlantic Broadband's Cable System in the City to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any Cable Service tier other than Basic Service (fees charged to Subscribers for any internet or phone/voice services shall not be included);
- (3) fees charged for premium Cable Services;
- (4) fees for video-on-demand;
- (5) fees charged to Subscribers for any optional, per-channel or per-program Cable Services;
- (6) revenue from the provision of any other Cable Services;
- (7) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (8) fees for changing any level of Cable Service programming;
- (9) fees for service calls;
- (10) fees for Leased Access Channels;

- (11) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (12) rental or sales of any and all equipment used to provide Cable Service,, including converters and remote control devices;
- (13) any and all locally-derived advertising revenues, less agency fees;
- (14) revenues or commissions from locally-derived home shopping channels;
- (15) revenue from interactive television services to the extent deemed "Cable Services" under applicable law;
- (16) fees for any and all music services;
- (17) late payment fees solely for Cable Services;
- (18) billing and collection fees solely for Cable Services;
- (19) NSF check charges; and
- (20) Franchise Fees

Gross Revenues shall not include bad debts, investment income, Subscriber refunds or credits, refunded deposits, or any taxes on services furnished by Atlantic Broadband and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit.

(q) HD - High definition format.

(r) Leased Access or Commercial Access Channel - Any channel on Atlantic Broadband's Cable System designated for use by any entity that is unaffiliated with Atlantic Broadband pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(s) Multiple Dwelling Units or MDUs - Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for two (2) or more households.

(t) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(u) Normal Operating Conditions - Business conditions within Atlantic Broadband's service department which are within the control of Atlantic Broadband. Those conditions that are not within the control of Atlantic Broadband include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(v) Outlet - An interior receptacle that connects a television set to the Cable System.

(w) Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(x) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other

rights-of-way, as the same now or may thereafter exist, , including property over which the City has a sufficient easement or right-of-way, which are under the jurisdiction or control of the City.

(y) Service Interruption - The loss of picture or sound on one or more Channels.

(z) Subscriber - A person or entity who contracts with Atlantic Broadband for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

## **SECTION 2** **GRANT OF FRANCHISE**

### **2.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the City hereby grants a non-exclusive and revocable franchise to Atlantic Broadband. Subject to the terms and conditions contained herein, the City hereby grants to Atlantic Broadband the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the City has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

### **2.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring ten (10) years thereafter, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

### **2.3 COMPETITIVE EQUITY**

(a) Atlantic Broadband acknowledges and agrees that the City reserves the right to grant one or more additional franchises to construct, operate, and maintain a Cable System within the City.

(b) The franchise granted to Atlantic Broadband is non-exclusive; however, if the City grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Atlantic Broadband, then Atlantic Broadband may request an amendment to this Agreement to provide Atlantic Broadband with competitive equity. If the City agrees with Atlantic Broadband that, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the City and Atlantic Broadband shall enter into discussions in order to modify this Agreement to the mutual satisfaction of both parties to provide Atlantic Broadband with such competitive equity.

(c) In the event an application for a new Franchise for Cable Service is submitted to the City proposing to serve Subscribers within the City, then the City shall notify Atlantic Broadband in writing of the submission of the application.

## **2.4 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS**

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolution of the City. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

## **SECTION 3** **SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

### **3.1 TECHNICAL REQUIREMENT**

(a) Atlantic Broadband shall operate, maintain, construct, and extend the Cable System so as to offer one-way and two-way Cable Services for all programming services throughout all parts of the City where the density requirements of Section 3.2 are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the generally applicable laws, ordinances and construction standards of the City.

(b) Stand-by power at the headend(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

### **3.2 AREA TO BE SERVED**

(a) Atlantic Broadband shall make Cable Service available to every dwelling occupied by a person requesting Cable Service provided that Atlantic Broadband is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act, and that such person pays all applicable fees and charges for such Cable Service. Atlantic Broadband shall extend the Cable System into all areas within the City where there is a minimum of twenty-five (25) dwelling units per linear plant mile of aerial cable and fifty (50) dwelling units per underground mile of cable, calculated from the end of the nearest trunk line. Atlantic Broadband shall complete said extensions within three (3) months of written notification to Atlantic Broadband by the City that an area has met the minimum density standard set forth herein (weather and environmental conditions permitting). Atlantic Broadband's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred twenty-five (125) feet aerial distance from the activated cable plant shall be entitled to a standard installation rate. For any dwelling unit further than one hundred twenty-five (125) feet aerial distance or that requires an underground installation, Atlantic Broadband shall extend the Cable Service at a rate not to exceed the actual cost of installation.

(c) The City has the right to require Atlantic Broadband to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities, including but not limited to telephone, broadband, cable data, and other communications companies. All installations of wires and/or equipment by Atlantic Broadband shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground; provided, however, that such underground locations are capable of accommodating Atlantic Broadband's facilities without technical degradation of the Cable System's signal quality. Atlantic Broadband shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals, provided that placing facilities underground does not preclude the use of ground-mounted appurtenances.

(d) In the event that public or private funds are made available to pay for the project, Atlantic Broadband may apply for reimbursement from said public or private funds.

### **3.3 CABLE SYSTEM SPECIFICATIONS**

(a) The parties understand and agree that Atlantic Broadband has designed, constructed and shall maintain a Cable System that has been built for digital television standards with addressable technology capable of making available video channels received for digital and/or analog transmission and shall allocate a sufficient portion of said bandwidth to deliver two-way Cable Services.

(b) Atlantic Broadband reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in Section 3.1.

### **3.4 SYSTEM TESTS**

(a) Atlantic Broadband shall conduct the required system tests as set forth below. Atlantic Broadband shall retain written reports of the results of any tests required by the FCC, and such reports shall only be submitted to the City within thirty (30) days of a written request from the City; provided, however, that Atlantic Broadband shall not be required to submit such reports more than one (1) time in any calendar year.

(b) Atlantic Broadband shall perform the following tests on its Cable System:

- (1) All tests required by the FCC; and
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement or in response to subscriber complaints.
- (c) If requested in writing by the City, Tests may be witnessed by representatives of the City,

### **3.5 EMERGENCY ALERT SYSTEM**

Atlantic Broadband shall comply with the Emergency Alert System requirements of the FCC.

### **3.6 RATE DISCRIMINATION**

Atlantic Broadband shall not discriminate between or among individuals in the availability of Cable Service based upon income in accordance with 47 U.S.C. § 541(a)(3) or based upon race or ethnicity. Nothing in this Section shall be construed to prohibit:

- (a) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; and
- (b) The offering of reasonable discounts to senior citizens.

### **3.7 SERVICES FOR SUBSCRIBERS WITH DISABILITIES**

Atlantic Broadband shall work cooperatively with any third-party services that allow hearing-impaired Subscribers to contact Atlantic Broadband by telephone.

### **3.8 SERVICE TO MULTIPLE DWELLING UNITS ("MDUs")**

Atlantic Broadband and the City hereto acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Atlantic Broadband, which negotiations shall be conducted in accordance with the applicable procedures set forth in the Cable Act, as amended, applicable FCC regulations, and applicable state law.

### **3.9 REPAIRS AND RESTORATION**

(a) Whenever Atlantic Broadband or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private way or place, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of Atlantic Broadband to comply within the time specified and the City having notified Atlantic Broadband in writing of the restoration and repairs required, the City may

cause proper restoration and repairs to be made and the expense of such work shall be paid by Atlantic Broadband upon demand by the City.

(b) Whenever Atlantic Broadband or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Atlantic Broadband shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Atlantic Broadband's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Atlantic Broadband shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Atlantic Broadband personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Atlantic Broadband or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Atlantic Broadband shall adhere to any additional undergrounding requirements which the Commonwealth may establish in the future. Atlantic Broadband shall adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

### **3.10 SERVICE AREA MAPS**

Upon written request, but not more than annually, Atlantic Broadband shall provide to the City for its exclusive use and shall maintain at its local offices a complete set of Atlantic Broadband service area strand maps of the City on which shall be shown those areas in which its facilities exist and the location of all streets. The strand maps shall be provided to the City in hardcopy and also, if requested and available, in an electronic GIS format which is compatible with the City's GIS format. The strand maps shall also designate where the cable wires and other equipment are

aerial and where they are underground. Atlantic Broadband shall provide the City with updated maps within thirty (30) days after any such written request by the City.

### **3.11 DISCONNECTION AND RELOCATION**

(a) Atlantic Broadband shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure.

(b) In requiring Atlantic Broadband to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Atlantic Broadband the same as, and require no more of Atlantic Broadband than, any similarly situated entity.

### **3.12 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at any time, in case of an Emergency of such nature that poses an immediate threat to life or grievous physical harm in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Atlantic Broadband notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System pursuant to this Section 3.12, the City shall treat Atlantic Broadband the same as, and require no more of Atlantic Broadband than, any other similarly situated entity.

### **3.13 TREE TRIMMING**

(a) Atlantic Broadband, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Atlantic Broadband. Except in the case of emergency, reasonable notice will be given to the City prior to any trimming. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If Atlantic Broadband or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(k), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

### **3.14 CHANNEL CAPACITY**

Atlantic Broadband shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

**3.15 BROADCAST CHANNELS**

To the extent required by federal law, Atlantic Broadband shall make available to all Subscribers with Basic Service including, but not limited to, the following: a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any Educational and Governmental Channel pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

**3.16 SIGNAL SCRAMBLING**

Atlantic Broadband shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

**3.17 CONTINUITY OF SERVICE**

Subscribers shall continue to receive service from Atlantic Broadband provided their financial and other obligations to Atlantic Broadband are honored. Subject to Force Majeure provisions in Section 9.1, Atlantic Broadband shall use its commercially reasonable efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Atlantic Broadband shall use its commercially reasonable efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Atlantic Broadband shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

**3.18 PARENTAL CONTROL CAPABILITY**

Atlantic Broadband shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

**SECTION 4**  
**SUBSCRIBER SERVICE STANDARDS**

**4.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) Atlantic Broadband shall maintain a payment location that is conveniently located and shall be open during Normal Business Hours.

(b) Atlantic Broadband shall provide and maintain a toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to Subscriber telephone inquiries during Normal Business Hours.

After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis. Under Normal Operating Conditions, the Subscriber shall receive a busy signal less than three percent (3%) of the time.

(d) If an historical record of Complaints indicates a clear failure to comply, Atlantic Broadband may be required to perform surveys to measure compliance with the telephone answering requirements above. If the City determines, after receiving Complaints itself and/or receiving a record of Complaints made to Atlantic Broadband in accordance with Sections 4.5 and/or 5.7(a), that there is a clear failure to comply with the telephone answering requirements above, the City shall notify Atlantic Broadband in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the City with its results.

#### **4.2 INSTALLATIONS AND SERVICE CALLS**

(a) Atlantic Broadband shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. Atlantic Broadband shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Atlantic Broadband employee or agent, including any subcontractor, shall prominently display the Atlantic Broadband logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(c) Upon scheduling of appointments with the Subscriber for installations, service calls and other activities, Atlantic Broadband shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Atlantic Broadband may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

(d) Atlantic Broadband may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

#### **4.3 NOTICES**

(a) Atlantic Broadband shall provide written notice to each Subscriber upon initial subscription, and once per calendar year thereafter to each Subscriber and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions of programming carried on the Cable System;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Billing and Subscriber complaint procedures;
- (7) Atlantic Broadband's address, telephone number and office hours; and
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) In accordance with applicable law, Atlantic Broadband shall notify Subscribers and the City in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes provided that such change is within the control of Atlantic Broadband. Atlantic Broadband shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, Franchise Fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the City on the transaction between Atlantic Broadband and the Subscriber.

(c) In accordance with federal law, Atlantic Broadband shall maintain a file available to the public containing all written notices provided to Subscribers pursuant to the requirements contained herein by Atlantic Broadband during the previous twelve (12) months. Such file may be maintained electronically.

#### **4.4 BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Atlantic Broadband shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Atlantic Broadband.

(c) Atlantic Broadband shall provide the name, address, and telephone number of the City to Subscribers on the monthly bill, unless the City requests in writing that Atlantic Broadband omit such information in accordance with 47 C.F.R. § 76.952.

#### **4.5 SUBSCRIBER COMPLAINT PROCEDURES**

Atlantic Broadband shall establish clear written procedures for resolving all Subscriber Complaints, which shall include at least the following:

(a) Atlantic Broadband shall provide the Subscriber with a written response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the City is contacted directly about a Subscriber Complaint, it shall notify Atlantic Broadband promptly and in writing. When Atlantic Broadband receives such notification, the time period for Atlantic Broadband to respond as required by Section 4.5(a) shall commence. If the City notifies Atlantic Broadband in writing, then Atlantic Broadband shall respond in writing within the time period specified in Section 4.5(a).

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Atlantic Broadband has the option of withholding the disputed amount, without a late fee or disconnection, until Atlantic Broadband has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written Complaint to Atlantic Broadband in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Atlantic Broadband shall maintain Subscriber Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution.

#### **4.6 DISCONNECTION**

Atlantic Broadband may disconnect or terminate a Subscriber's service for cause:

(a) If at least forty-five (45) days have elapsed from the due date of the bill that Subscriber has failed to pay; and

(b) If Atlantic Broadband has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending written dispute with Atlantic Broadband regarding the bill; or

(d) If at any time and without notice, Atlantic Broadband determines in good faith that Subscriber has tampered with or abused Atlantic Broadband's equipment or service or is engaged in theft of Cable Service.

#### **4.7 SERVICE INTERRUPTIONS**

In the event that there is a Service Interruption to any Subscriber for twelve (12) or more consecutive hours, excluding those Service Interruptions which are the result of Force Majeure or not under the control of Atlantic Broadband and upon receipt of a request of the Subscriber, Atlantic Broadband shall grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

#### **4.8 PRIVACY**

(a) Atlantic Broadband shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Atlantic Broadband shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

(b) Atlantic Broadband shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Absent a court order or requirement of federal law, neither Atlantic Broadband nor its designee shall tap, monitor, arrange for the tapping or monitoring, any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber; provided, however, that Atlantic Broadband may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner consistent with the federal law. To the extent permitted under applicable law, Atlantic Broadband shall report to the affected parties any instances of monitoring or tapping of the Cable System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Atlantic Broadband. Atlantic Broadband shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, or other applicable law, neither Atlantic Broadband, nor its designee, nor its employees, shall make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure in conformance with Section 631 of the Cable Act, Atlantic Broadband shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

(e) Upon a request by a Subscriber, Atlantic Broadband shall make available for inspection at a reasonable time and place all personal Subscriber information that Atlantic Broadband maintains regarding said Subscriber. Atlantic Broadband shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.

(f) Atlantic Broadband shall make its Subscriber list or lists, or any portion thereof, available to any other person or entity, only in conformance with Section 631 of the Cable Act and other applicable law.

#### **4.9 SENIOR CITIZEN DISCOUNT**

Atlantic Broadband shall offer eligible senior citizen a discount on the rate for the Basic Service Tier of no less than five percent (5%) per month. Senior citizen customers shall qualify for this discount if they are sixty-five (65) years in age or older and are the head of the household.

### **SECTION 5** **REGULATION BY THE CITY**

#### **5.1 RIGHT TO INSPECT**

(a) The City shall have the option, upon thirty (30) business days written notice and during Normal Business Hours, to inspect at the notice location for Atlantic Broadband specified in Section 9.3, all documents, records and other pertinent information maintained by Atlantic Broadband which relate to the terms of this Agreement.

(b) In addition, Atlantic Broadband shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

#### **5.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

The City or its representatives may conduct a full compliance review, not more frequently than every once every three years during the term, with respect to whether Atlantic Broadband has complied with the material terms and conditions of this Agreement so long as it provides Atlantic Broadband with thirty (30) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that Atlantic Broadband may organize the necessary

records and documents for appropriate review by the City. Within ninety (90) days of a written request, Atlantic Broadband shall provide the City with copies of records and documents that are kept in the normal course of business related to the cable compliance review.

### **5.3 RESERVED AUTHORITY**

The City reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way in a non-discriminatory manner.

### **5.4 POLICE POWERS**

Atlantic Broadband's rights under this Agreement are subject to the police powers of the City to adopt and enforce generally applicable laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

### **5.5 PERMITS**

Atlantic Broadband shall apply to the City for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. Atlantic Broadband shall not be required to obtain permits for Cable Service drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Atlantic Broadband shall pay any and all required permit fees.

### **5.6 REPORTING**

In addition to the other reporting requirements contained in this Agreement, Atlantic Broadband shall provide the following reports to the City:

(a) Subscriber Complaint Reports

Within thirty (30) days of a written request, Atlantic Broadband shall submit to the City a report showing the number of Complaints, as defined in Section 1(g), that required a work order and/or service call, originating from the City and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions, subject to Atlantic Broadband's right to exclude any personally identifiable subscriber information.

(b) Annual Financial Reports

Atlantic Broadband shall submit to the City, no later than thirty (30) days after a written request but not more than annually, its current financial statement, including a statement of income, balance sheet and a statement of sources and applications of funds which shall be verified by Atlantic Broadband's Chief Financial Officer in accordance with Generally Accepted Accounting Principles

(c) Government Reports

Atlantic Broadband shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Atlantic Broadband has submitted to any federal, state or local regulatory agencies if such documents relate specifically to Atlantic Broadband's Cable System within the City. Atlantic Broadband shall provide copies of such documents no later than thirty (30) days after their request. Atlantic Broadband shall have the right to claim confidential, privileged or proprietary rights to such documents if such documents have been determined to be confidential, privileged or proprietary in accordance with the terms and conditions regarding confidentiality as set forth in applicable law or this Agreement.

**SECTION 6**  
**COMPENSATION TO THE CITY**

**6.1 FRANCHISE FEES**

Atlantic Broadband shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. Atlantic Broadband shall not deduct or otherwise credit against the Franchise Fee any tax, fee or assessment of general applicability. The City may amend the Franchise Fee upon written notice to Atlantic Broadband provided that the Franchise Fee may not cover services not permitted by law or exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the City shall accompany such written notice. Any change in Atlantic Broadband's Franchise Fee obligation contained herein shall commence within ninety (90) days from such written notice and shall not result in the adjustment of any previously paid Franchise Fees.

**6.2 QUARTERLY PAYMENTS**

Franchise Fee payments to the City under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release

of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Atlantic Broadband may deposit the Franchise Fee payments electronically into an account as designated by the City.

### **6.3 QUARTERLY REPORTS**

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of Atlantic Broadband's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Atlantic Broadband's Cable System in the City and a brief description showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Atlantic Broadband.

### **6.4 FRANCHISE FEE REVIEW**

(a) No more than once every three (3) years during the term of the Agreement, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit or Franchise Fee review of Atlantic Broadband's records reasonably related to the sources, amounts and computation of Gross Revenues in accordance with generally accepted accounting principles. Any such review shall occur within sixty (60) months from the date the City receives such payment, after which period any such payment shall be considered final. Upon written request, but no more frequently than annually and within thirty (30) days of a written request, Atlantic Broadband shall provide the City with copies of financial records related to the Franchise Fee review or audit.

(b) In the event of an alleged over- or underpayment, the City shall provide Atlantic Broadband with a written statement indicating the basis for the alleged over- or underpayment. If the franchise fee audit or review reveals that there have been no over- or underpayments, the City shall provide written notice to Atlantic Broadband indicating that no over- or underpayments were found and that the franchise fee review is closed. Atlantic Broadband shall have thirty (30) days from the receipt of the statement regarding an alleged underpayment to provide the City with any written objection to the results of the review or audit, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the over- or underpayment(s), if any, within thirty (30) days of Atlantic Broadband's objection and shall provide Atlantic Broadband with written notice of the determination. If Atlantic Broadband disputes the City's final determination, it may submit the dispute to a mutually agreed upon mediator within thirty (30) days of receiving the City's written notice of determination. In the event that Atlantic Broadband fails to submit the matter to mediation or arbitration within the required time period, the City's final determination shall be binding on Atlantic Broadband. If Atlantic Broadband submits the matter to mediation and an agreement is not reached, either party may bring an action to have the dispute determined by a court of competent jurisdiction.

(c) Any Franchise Fee payment due to the City as a result of the Franchise Fee review shall be paid to the City by Atlantic Broadband within sixty (60) days from the date the City notifies Atlantic Broadband of its final determination, or if the matter is submitted to mediation or litigation, within sixty (60) days from the final disposition of such action. If the audit or Franchise

Fee review shows that Franchise Fees have been underpaid, then Atlantic Broadband shall pay the underpaid amount plus monetary fines of ten percent (10%) of the underpayment. If Franchise Fees have been underpaid by five percent (5%) or more, then Atlantic Broadband shall also pay the reasonable cost of the review or audit. If the audit or franchise fee review shows that franchise fees have been overpaid, then Atlantic shall may offset the overpaid amount against future Franchise fee payments until such time as the overpayment has been entirely recouped.

#### **6.5 NO LIMITATION ON TAXING OR FEE AUTHORITY**

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability, to the extent that such assessment is in accordance with applicable law. Such taxes, fees or assessments shall be in addition to Franchise Fees.

#### **6.6 BUNDLED SERVICES**

If Cable Services subject to the Franchise Fee required under this Section 6.5 are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, then the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

### **SECTION 7** **SERVICES TO THE COMMUNITY**

#### **7.1 SERVICES TO COMMUNITY FACILITIES**

(a) Upon written request, Atlantic Broadband shall, at no charge to the City, provide one (1) complimentary standard installation and complimentary services consisting of the Basic Service Tier and Expanded Basic Service Tier ("Standard") to the following: the City Building, police stations, fire companies, all public and private school buildings, and public libraries ("Permitted Free Locations"). In addition, Atlantic Broadband shall not terminate any complimentary courtesy Cable Service being provided to Permitted Free Locations as of the Effective Date of this Agreement.

(b) Within three (3) months of the Effective Date and upon written request, Atlantic Broadband shall provide or maintain one (1) standard cable Drop, outlet, converter box (and any other required end user equipment) and Standard level Cable Services (or equivalent) package to each Permitted Free Location, unless such Drop already exists. No charge shall be made for standard installation, except that Atlantic Broadband may charge for installation beyond one hundred twenty-five (125) feet from the cable plant or for more than one (1) drop in each Permitted Free Location, or if an existing Drop is already installed at a Permitted Free Location and the City requests such existing Drop to be relocated.

(c) For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, as amended, and does not include "home schools" or "cyber schools," or any other educational situation that does not meet the specific criteria set forth herein.

## 7.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNEL

(a) Atlantic Broadband shall provide to the City, within ninety (90) days of a written request and as set forth herein, one (1) Educational/Governmental ("EG") Channel in accordance with Section 611 of the Cable Act for exclusive use by the City. Such EG Channel shall be used for community programming related to educational and/or governmental noncommercial activities. Their purpose is to contribute to an informed citizenry by, among other things, showing local government at work, responding to local needs and bringing local education into the home. The City shall have complete control and responsibility over the programming, equipment, content, scheduling, administration and all other aspects of the EG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. However Atlantic Broadband may utilize the channel during periods where the channel is not in use by the City. Atlantic Broadband shall not exercise any editorial control over EG Channel programming. Whether operating on an analog or digital format, Atlantic Broadband shall cablecast the activated EG Channel so that it is received by all Atlantic Broadband Subscribers in the City. If requested by any neighboring municipality served by Atlantic Broadband from the same head-end or hub site as that providing service to the City, then the City agrees to cooperate with such municipality in the shared use of the EG channel.

(b) To enable the City to utilize the EG Channel, the City shall select, and Atlantic Broadband shall connect to the Cable System, an origination point corresponding to such Channel. Specifically, Atlantic Broadband shall provide and install, within ninety (90) days of a written request by the City and at Atlantic Broadband's sole cost and expense, provided such designated location is within one hundred twenty-five (125) feet of the existing system, cable, wire, lines, and/or other necessary signal distribution equipment such that live or tape playback of cablecasts or other programming can originate from these selected location and be distributed via the Cable System to Subscribers in the City. This cable and other signal distribution equipment shall be collectively known as the "Return Line." The installation and maintenance of the Return Line by Atlantic Broadband shall meet or exceed all technical performance and other technical standards of the FCC, the National Electrical Safety Code, the National Electric Code, and any other applicable laws and regulations.

(c) Atlantic Broadband shall be responsible for maintaining the Return Line to the video origination point of the EG Channel so long as the City provides Atlantic Broadband with access to such location and access to the EG Channel equipment within such location. Atlantic Broadband shall provide, install and maintain in good working order the equipment and the appropriate technical method approved by Atlantic Broadband necessary for transmitting the signal to the channel aggregation site for further processing and distribution to Subscribers. Atlantic Broadband shall not be liable for any content programmed on the designated EG Channel.

(d) Atlantic Broadband shall deliver the EG Channel signals at a level of technical quality and reliability that complies with the levels of technical quality and reliability provided by Atlantic Broadband for signals of commercial channels transmitted to Subscribers; provided, however, that Atlantic Broadband shall have no responsibility to improve upon or modify the signal quality of any EG Channel content provided to Atlantic Broadband by any EG Channel programmer.

## **SECTION 8**

### **ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

#### **8.1 VIOLATIONS AND OPPORTUNITY TO CURE**

(a) If the City has reason to believe that Atlantic Broadband violated any provision of this Agreement, it shall notify Atlantic Broadband in writing by certified mail of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Atlantic Broadband of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Atlantic Broadband shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Atlantic Broadband must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Atlantic Broadband shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) above, then Atlantic Broadband may request that the City schedule a public hearing to provide Atlantic Broadband with the opportunity to demonstrate that Atlantic Broadband continues to make reasonable steps to cure. Alternatively, the City may conduct a public hearing following written notice to Atlantic Broadband that it intends to impose liquidated damages. If the City determines as a result of such hearing that Atlantic Broadband has not taken reasonable steps to cure the violation, then the City may deem that Atlantic Broadband is liable for liquidated damages and/or any other right or remedy and the City's costs in accordance with Section 8.2.

#### **8.2 LIQUIDATED DAMAGES**

(a) Because Atlantic Broadband's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Atlantic Broadband (after affording Atlantic Broadband due process in accordance with Section 8.1(c) above) in the amount of One Hundred Fifty Dollars (\$150.00) per day for each day the violation continues, provided Atlantic Broadband has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by Atlantic Broadband or legal action by the City, but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction before, during, or after the assessment of liquidated damages.

### **8.3 REVOCATION**

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Atlantic Broadband practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Atlantic Broadband repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) Atlantic Broadband repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Atlantic Broadband or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Atlantic Broadband shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the City Council after an appropriate public hearing that shall afford Atlantic Broadband due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Atlantic Broadband at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Atlantic Broadband of mitigating circumstances or good cause for the existence of such grounds. Nothing in this Section shall be deemed to deprive Atlantic Broadband of any rights of process afforded it under state or federal law, and Atlantic Broadband does not waive such rights by submitting to the process set forth in this Section. The City shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Atlantic Broadband.

#### **8.4 PERFORMANCE BOND**

(a) Atlantic Broadband shall obtain and maintain, within thirty (30) days of the Effective Date and throughout the term of this Agreement, at its sole cost and expense, a performance bond with a surety company licensed to do business in the Commonwealth of Pennsylvania to ensure Atlantic Broadband's faithful performance of its obligations. The performance bond shall provide that the City may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the City for Atlantic Broadband's violations of this Agreement, after notice, hearing and opportunity to cure, in accordance with Sections 10.1 and 10.2 above.

(b) The performance bond shall be in the amount of Twenty-Five Thousand Dollars (\$25,000). Atlantic Broadband shall not reduce, cancel, or materially change said bond from the requirement contained herein without the express prior written permission of the City.

#### **8.5 INSURANCE**

(a) Atlantic Broadband shall maintain insurance throughout the term of this Agreement with an insurance company that is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than A-minus VII in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be not less than Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The City, its officials and employees, shall be designated as additional insureds under each of the commercial general liability insurance policies required in this Section 8.5.

(c) Atlantic Broadband shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.. Atlantic Broadband shall provide the City with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

(d) Atlantic Broadband shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the City.

(e) The limits above may be satisfied with a combination of primary and excess coverage.

## **8.6 INDEMNIFICATION**

Atlantic Broadband shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Atlantic Broadband, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, Atlantic Broadband's construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Atlantic Broadband. The City shall give Atlantic Broadband timely written notice of its obligation to indemnify and defend the City. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by Atlantic Broadband, the cost for such separate counsel shall be the responsibility of the City. Atlantic Broadband shall not indemnify the City for any claims resulting solely from acts of willful misconduct or negligence on the part of the City.

## **SECTION 9** **MISCELLANEOUS**

### **9.1 FORCE MAJEURE**

If for any reason of force majeure, Atlantic Broadband is unable in whole or in part to carry out its obligations hereunder, Atlantic Broadband shall not be deemed in violation of this Agreement during the continuance of such inability.

### **9.2 REMOVAL OF SYSTEM**

(a) Upon lawful termination or revocation of this Agreement, Atlantic Broadband shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition, reasonable wear and tear excepted. If such removal is not completed within six (6) months of such lawful denial of renewal or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Atlantic Broadband's cost.

(b) During the term of the Agreement, if Atlantic Broadband decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The City shall have the right to either require Atlantic Broadband to remove the property, remove the property itself and charge Atlantic Broadband with the costs related thereto, or transfer ownership of the property to the City's designee provided fair market value is paid to Atlantic Broadband.

(d) Notwithstanding the above, Atlantic Broadband shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Atlantic Broadband from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

### **9.3 NOTICES**

Every notice or payment to be served upon or made to the City shall be sent to:

City of Warren  
Attn: City Manager  
318 W. Third Avenue  
Municipal Building  
Warren, PA 16365

The City may specify any change of address in writing to Atlantic Broadband. Every notice to be served upon Atlantic Broadband shall be sent to:

Atlantic Broadband  
2 Batterymarch Park  
Suite 205  
Quincy, MA 02169

With copies to:

Atlantic Broadband  
General Counsel  
2 Batterymarch Park  
Suite 205  
Quincy, MA 02169

AND

Atlantic Broadband  
Attn: VP/GM  
2 Batterymarch Park  
Suite 205  
Quincy, MA 02169

Atlantic Broadband may specify any changes of address in writing to the City. Each delivery to Atlantic Broadband or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

**9.4 EQUAL EMPLOYMENT OPPORTUNITY**

Atlantic Broadband is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

**9.5 CAPTIONS**

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

**9.6 GOVERNING LAW; VENUE**

This Agreement shall be governed and construed by and in accordance with the federal laws and the laws of the Commonwealth of Pennsylvania. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Warren, or in the United States District Court for the Western District of Pennsylvania.

**9.7 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(c) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty-five percent (25%) of its equitable ownership in the Cable System without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Atlantic Broadband in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Atlantic Broadband.

(e) Atlantic Broadband shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City shall have thirty (30) days from the receipt of FCC Form 394 to notify Atlantic Broadband of any additional information it needs to make an informed decision on

the transfer or assignment. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement unless such one hundred twenty (120) day period shall have elapsed.

**9.8 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Atlantic Broadband. This Agreement supersedes all prior agreements or cable ordinances, or parts of agreements or cable ordinances, that are in conflict with the provisions herein.

**9.9 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

**9.10 NO WAIVER OF RIGHTS**

No course of dealing between the City and Atlantic Broadband, nor any delay on the part of either party in exercising any rights hereunder, shall operate as a waiver of any such rights of such party or acquiescence in the actions of the other party in contravention of such rights, except to the extent expressly waived by such party.

**9.11 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Atlantic Broadband may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Atlantic Broadband may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Atlantic Broadband.

**9.12 COMPLIANCE WITH LAWS**

Atlantic Broadband shall comply with all federal, state and local laws and regulations.

**9.13 THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

**9.14 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Atlantic Broadband, the City and their respective successors and assigns.

[SIGNATURE PAGE TO FOLLOW]