



Account No. \_\_\_\_\_

## MBI NETWORK CONNECTING AGREEMENT

This MBI Network Connecting Agreement is entered into on \_\_\_\_\_ (the "**Effective Date**"), by and between Customer and Axia NGNetworks USA, Inc. ("**Axia**").

Customer Information			
<b>Customer:</b>		<b>Address:</b>	
<b>Contact Name:</b>		<b>Telephone:</b>	
<b>Email:</b>		<b>Fax:</b>	

This MBI Network Connecting Agreement (the "**Agreement**") sets forth the terms and conditions under which the parties agree that Axia will provide Customer with certain colocation, bandwidth or other services ("**Services**") relating to the Massachusetts Broadband Initiative high-speed broadband network, operated by Axia ("**MBI Network**").

Axia will provide Services in accordance with (a) the terms of this Agreement and applicable Service Requests, and (b) the documentation on the Services (including without limitation terms and conditions, standards, procedures and specifications) made available by Axia to Customer (together, these documents are referred to as the "**Services Manual**"), as such documentation is designated and modified by Axia from time to time. Customer acknowledges and agrees that it is not relying on any statement or warranty not expressly provided in this Agreement.

In consideration of the mutual promises and covenants contained in this Agreement, Customer and Axia hereby covenant and agree to be bound by this Agreement. **BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES AND CONFIRMS THAT IT HAS READ, UNDERSTANDS, AND AGREES TO THE TERMS OF THIS AGREEMENT.**

	<b>Axia NGNetworks USA, Inc.</b> One International Place 100 Oliver Street, Suite 1400 Boston, MA. 02110
Contact Name: Email: Fax:	Contact Name: Phil Roberts E-mail: <a href="mailto:Philippe.Roberts@axia.com">Philippe.Roberts@axia.com</a> Fax: (617)-535 7650
Signature: <input type="text"/>	Signature: <input type="text"/>
Name: <input type="text"/>	Name: <input type="text"/>
Title: <input type="text"/>	Title: <input type="text"/>

## 1. DOCUMENTS

- 1.1 **Overview of Documents.** The terms and conditions governing the Services that Axia provides to Customer are set forth in this MBI Connecting Agreement, the Services Manual, Service Requests, the Customer Portal, and any other documents executed by the parties referencing this Agreement.
- 1.2 **Priority of Documents.** The order of priority (descending) of the documents is: the Services Manual, this MBI Connecting Agreement, the Customer Portal, and Service Requests.

## 2. SERVICES

- 2.1 **Service Requests.** Customer will request services pursuant to this Agreement or applicable services schedule and in accordance with Axia's process for ordering service ("**Service Request**").
- 2.2 **Charges.** Customer will pay Axia all applicable charges for the Services, as specified in each applicable Service Request and the Services Manual, as applicable ("**Charges**"). All Charges are due and payable to Axia on the due date stated on the invoice and in the manner specified by Axia. Axia will invoice Customer for all Charges monthly, in advance, commencing upon the date that such Service is installed, activated and available for use by Customer. Late payments will be subject to interest at the rate of one and a half percent (1.5%) per month compounded monthly. Applicable taxes, such as sales, use, service, value added or like taxes (other than Axia's income taxes), are not included in the Charges and will be invoiced as separate items. All Charges are subject to change by Axia on 90 days' notice to Customer.
- 2.3 **Additional Charges and Taxes.** Prices set forth in a pricing schedule or Service Manual are exclusive of, and Customer will pay, all current and future taxes (excluding those on Axia's net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or similar charges) relating to the provision of Services, except to the

extent Customer provides satisfactory proof of a valid exemption prior to the delivery of Services. To the extent Customer is required by law to withhold or deduct any applicable taxes from payments due to Axia, Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty, and Customer will furnish Axia with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that Axia may claim any applicable credit.

- 2.4 **Services.** Axia will use reasonable efforts to provide the Services in accordance with the terms of this Agreement and the Services Manual. Notwithstanding any other provision of this Agreement or the Services Manual, Axia does not warrant or guarantee that the Services will in all cases be unintercepted, uninterrupted, timely or error-free, or that the Services will continually and in all respects meet the performance measures, criteria, and targets set out in the Services Manual (the "**Service Levels**"). Except as set forth in the Services Manual, Axia shall not be responsible for any failure to meet the Service Levels. Axia may delegate or subcontract its obligations relating to the Services without Customer's consent. Axia will remain fully liable for all actions and omissions of subcontractors, including without limitation all obligations of Axia performed by subcontractors, to the same extent as if Axia itself had performed such obligations and such work will be deemed to be work performed by Axia.

- 2.5 **Changes to Services.** Customer may make changes to or cancel its Services as provided in the Services Manual. If Customer cancels any Services, or this Agreement or any Services are terminated due to the Customer's breach, Customer will pay any applicable termination charges, as set out in the Services Manual. Where Axia has incurred costs associated with the provisioning of the Services, Customer will pay Axia all such costs on a cost recovery basis or as set out in the Services Manual.

- 2.6 **Special Expenses.** Where it is necessary for Axia to install special equipment or to incur unusual expense in order to meet Customer's requests or requirements, Axia may assess reasonable charges, in

addition to the Charges set out in the Services Manual, to recover the costs of the special equipment or the unusual expense incurred. In such cases, and where Customer requests, Axia will provide to Customer estimates of such Special Expenses in advance.

- 2.7 **Changes to Service Facilities.** Axia will endeavor to provide Customer six months' prior written notice of changes affecting the existing design, function, operation or layout requirements of Customer Equipment, or of the connecting arrangements to the MBI Network at Points of Interconnection ("**POIs**"). When it is not possible to give Customer six months' notice, Axia will advise Customer as soon as practicable following a decision by Axia to proceed with any such change.

### 3. **OBLIGATIONS OF CUSTOMERS**

- 3.1 **Customer Responsibilities.** Customer will, at its own cost, perform the Customer actions, provide the specific Customer resources and facilities, and comply with the terms, standards, procedures and specifications for the Services set out in this Agreement and the Services Manual (collectively, the "**Customer Responsibilities**"). Customer will supply current, complete and accurate information to Axia for the delivery of the Services. If Customer fails to fulfill Customer Responsibilities in a proper and timely manner, Axia will not be liable for any resulting delay or failure to provide Services and Customer shall be liable to Axia for any costs or charges that result from the failure.

- 3.2 **Access Right.** Customer will in a timely manner allow Axia to access property and equipment that Customer controls as Axia may reasonably require to provide the Services, and Customer will obtain, at Customer's expense, timely access for Axia to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities as well as to use ancillary equipment space within a building, as necessary for Customer's connection to the MBI Network. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/ utilities, and other items

reasonably required to perform installation of the Services. Customer shall have the site ready for Axia to perform its work according to a mutually agreed schedule.

- 3.3 **Safe Working Environment.** Customer will ensure that the location at which Axia installs, maintains or provides Services is a suitable and safe working environment, free of hazardous materials.

- 3.4 **Restrictions.** Customer will comply with any restrictions on use of the Services in this Agreement and the Services Manual, and with any acceptable use, code of conduct or other policies, instructions or site requirements communicated to Customer by Axia. Customer will also require its users or agents to comply with such terms and conditions, where applicable. Customer will not itself, and will not permit or authorize any of its users to: (a) tamper with or change the Services, or any equipment, hardware, software, systems, cabling and/or facilities used by Axia to provide the Services, including without limitation the MBI Network ("**Service Facilities**"); (b) abuse the Services or use them in a manner that interferes with any Service Facilities or with the use of the Service Facilities by other persons, or in a manner that avoids the payment of any charges; (c) use the Services in violation of any applicable law, regulation, permit requirement, or other public or private authorization; (d) allow any third party to interconnect directly with the MBI Network, or with any other users, except through Customer; and (e) allow anyone who is not Customer's employee or agent to access any facility where Customer is permitted to connect to the Service Facilities.

- 3.5 **Customer's Users.** Customer is responsible for all dealings with its users pertaining to the Services. Customer is responsible for all fees or other costs under this Agreement incurred or caused by Customer's users, whether with or without the consent of Customer.

- 3.6 **Customer Equipment.** Customer is responsible at its cost for obtaining, installing, testing, operating and maintaining all equipment, hardware, software, systems, local access fiber optic cabling and other facilities provided by Customer and used in conjunction with the Service Facilities in order to obtain

Services ("**Customer Equipment**"). Axia is not responsible for the maintenance, compatibility or performance of Customer Equipment. Any non-operation or untimely installation of Customer Equipment will not relieve Customer of its obligations to pay Charges for Services. In the event that Axia, acting reasonably, believes that the Customer Equipment is likely to cause hazard or service obstruction, Customer will use commercially reasonable efforts to eliminate such likelihood at the request of Axia.

3.7 **Customer Portal Account.** Customer may receive an account designation for use of an online system to submit order and access information ("**Customer Portal**"). Any order placed by Customer using the Customer Portal is the equivalent of a signed purchase order. Customer agrees that it: (a) is bound by any additional terms and conditions found on the Customer Portal, including the Services Manual; (b) is responsible for all costs and charges incurred in order to use the Customer Portal; (c) is fully responsible for all activities on the Customer Portal and accepts all liability for any acts or omissions that occur under Customer's password or on Customer's account for the Customer Portal, even if such acts or omissions are not specifically authorized by Customer; (d) will immediately notify Axia of any unauthorized use of Customer's password or Customer's account for the Customer Portal or any other breach of security; and (e) is fully responsible for managing Customer's account for the Customer Portal, including but not limited to: maintaining the confidentiality of passwords and/or any Customer account information and for promptly updating such information to keep it true, accurate, current and complete.

3.8 **Customer Regulatory Approvals and Compliance.** Customer will obtain and continue in effect during the Term all regulatory approvals and other permissions applicable to its uses of the Services, and otherwise necessary to perform its obligations under this Agreement. Customer will comply with all applicable local, state and federal laws, including, but not limited to, the federal Universal Service Program (USP) and the Communications Assistance for Law Enforcement Act (CALEA), if applicable. Customer agrees to promptly provide

verification of such compliance upon specific request by Axia. If Customer fails to obtain or maintain the appropriate approvals or other permissions, Axia will not be liable for any delay or failure to provide Services as a result of Customer's failure. In its sole discretion, Axia may obtain or maintain any necessary approvals or permissions and charge Customer for all relevant costs, including Axia's time and expenses.

#### 4. REPRESENTATIONS AND WARRANTIES

4.1 **Both Parties' Representations and Warranties.** Each party represents, warrants and covenants that: (a) it is duly organized and validly existing under applicable law; (b) it has all right and authorization, and has obtained all consents necessary or desirable to execute, deliver and perform this Agreement; (c) this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms; (d) nothing in this Agreement, nor the performance of any obligations under this Agreement, will conflict with such party's constituting documents, any law or any other person's rights; (e) it is conducting its material business and operations in compliance with all applicable laws; and (f) to the best of its knowledge, there are no pending suits or actions threatened against such party that would affect the Services or performance of obligations hereunder.

4. **Axia's Representations and Warranties.** Axia represents, warrants and covenants that all Services provided under this Agreement will be provided and maintained in conformance and compliance with applicable national, state and local laws, administrative and regulatory requirements and requirements of any other authorities having jurisdiction over the subject matter of this Agreement and Axia will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities. Axia further represents, warrants and covenants that the Services: (a) will conform to and be provisioned in accordance with the description of the Services set forth in the Services Manual, with the exception of statements relating to Service Levels as described in Section 2.4; and (b) will be performed

by qualified personnel in accordance with reasonably applicable industry standards.

4.3 **Customer's Representations and Warranties.** Customer represents, warrants and covenants that: (a) it will not use the Services for any illegal, fraudulent or unlawful purpose; (b) if applicable, all Services resold by Customer will be resold in conformance and compliance with the terms of this Agreement, and all applicable national, state and local laws, administrative and regulatory requirements and requirements of any other authorities having jurisdiction of the subject matter of this Agreement; (c) it has obtained, and will continue to maintain, all registrations, certifications, and permissions that may be required by such authorities; (d) it has obtained, and will continue to maintain, any easements or other private permissions that it must have to provide its services; (e) it will comply with any restrictions on use of the Services in this Agreement and the Services Manual, and with any use policies or instructions made available in writing to Customer by Axia; and (f) it will not authorize, assist or permit any use of the Services by its users that is illegal, fraudulent or unlawful under applicable law or which otherwise is not in compliance with this Agreement, the Services Manual, and with any use policies or instructions made available in writing to Customer by Axia.

4.4 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AXIA MAKES NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY NATURE WHATSOEVER, EITHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, REPRESENTATION OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABILITY, DURABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO THE SERVICES, AND ALL WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY, ARE HEREBY DISCLAIMED BY AXIA AND WAIVED BY CUSTOMER. CUSTOMER ACKNOWLEDGES THE ABOVE AND AGREES THAT TO THE EXTENT CUSTOMER RELIES ON THE SERVICES IN CIRCUMSTANCES WHERE THE UNEXPECTED FAILURE OR

UNAVAILABILITY THEREOF MAY CAUSE ANY DAMAGE TO CUSTOMER OR ANY THIRD PARTY CUSTOMER WILL BE LIABLE FOR ANY SUCH DAMAGE. AXIA DOES NOT GUARANTEE ERROR-FREE OR UNINTERRUPTED OPERATION OF THE SERVICES.

## 5. INDEMNIFICATION AND LIMITATIONS OF LIABILITY

5.1 **Disclaimer.** Axia will not be liable for any interruption in Customer's business or interference with the operation of Customer Equipment or any facilities or equipment of Customer arising in any manner from the Services provided to Customer under this Agreement, and to the extent permitted by law, Customer indemnifies Axia and its directors, officers, employees, agents, suppliers and contractors (collectively, the "**Axia Indemnities**") in relation to the foregoing. Customer assumes all responsibility for the results obtained from using the Services, for the use of Customer Equipment, and for all facilities and equipment of Customer in connection with the Services provided by Axia pursuant to this Agreement, notwithstanding any Axia approval or requirements relating to, among other things, standards. Customer represents and warrants to Axia that it has selected the specific item(s) comprising Customer Equipment and has not relied in any way upon Axia regarding the suitability, choice, function, design or operation of such Customer Equipment as it relates to Customer's fiber optic system, network or services. Customer acknowledges and agrees that it is responsible to ensure that Customer Equipment meets its requirements.

5.2 **Indemnity by Customer.** To the extent permitted by law, Customer agrees to indemnify Axia from and against any and all costs, liabilities, losses, expenses (including, without limitation, reasonable legal fees and expenses), claims, suits, actions, or proceedings arising from any one or more of the following: (a) Customer's and its users' use of the Services, (b) any act or omission of any of Customer's users that would be a breach of this Agreement if committed by Customer, (c) the placement, installation, use (or inability to use), operation, maintenance or removal of Customer Equipment by Customer in, upon or

from the POI or otherwise in relation to the MBI Network, (d) any failure of Customer to comply with applicable laws, and (e) personal injury and property damage caused by the negligence or willful misconduct of Customer, its employees or agents.

5.3 **Acknowledgement.** Customer acknowledges and agrees with Axia that any and all rights and remedies that it has with respect to the Services provided by Axia under this Agreement will be available solely from or against Axia, as applicable, and from or against no other party.

5.4 **No Consequential Damages.** IN NO EVENT WILL AXIA OR ITS AFFILIATES BE LIABLE TO CUSTOMER OR ANY PARTY CLAIMING THROUGH OR UNDER CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF PROFITS OR BUSINESS, LOST REVENUE OR LOSS OF OR DAMAGE TO DATA, FAILURE TO REALIZE EXPECTED SAVINGS, COMPETITIVE ADVANTAGE OR GOODWILL OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND) ARISING FROM OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE TYPE OF CLAIM, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT FORESEEABLE, AND REGARDLESS OF THE CAUSE OF SUCH DAMAGES, EVEN IF AXIA HAD KNOWLEDGE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.5 **Limitation of Liability.** AXIA'S AGGREGATE LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT FOR ANY REASON AND UPON ALL CLAIMS OR CAUSES OF ACTION UNDER THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO LIABILITY RELATED TO ANY PERFORMANCE OR FAILURE TO PERFORM HEREUNDER) WILL BE LIMITED IN THE AGGREGATE TO THE AMOUNT OF THE CHARGES PAID TO AXIA BY CUSTOMER, FOR THE SERVICES UNDER THIS AGREEMENT, DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE DAY ON WHICH THE LIABILITY AROSE.

## 6. CONFIDENTIALITY

6.1 **Confidential Information.** During or before the Term, either party may receive or have access to technical information, as well as information about product plans and strategies, promotions, customers and related non-technical business information which the disclosing party considers to be confidential. Each party will keep all such information of the other party confidential in accordance with reasonable industry practices. Each party will only use such information of the other party for the purposes of this Agreement, and will make such information only available to its employees, agents and contractors on a need to know basis and who are obligated to maintain the confidentiality of such information. Upon any termination or expiration of this Agreement each party will return or, at the discretion of the other party destroy the confidential Information of the other party in the party's possession or control. This Section will not apply to any information of a party which (i) is known by the receiving party without an obligation of confidentiality prior to receipt from the disclosing party; (ii) is or becomes public knowledge through no fault or acts of the receiving party; (iii) is or becomes lawfully available to the receiving party from a third party without an obligation of confidentiality; (iv) is independently developed by the receiving party without use of any such confidential information; or (v) is required to be disclosed pursuant to a governmental agency or law so long as the receiving party provides the other with timely written prior notice of such requirements.

## 7. TERM AND TERMINATION

7.1 **Term.** This Agreement will become effective on the Effective Date and will continue in full force and effect for so long as any Service Request is in effect until terminated in accordance with this Agreement (the "Term").

7.2 **Suspension or Termination.** Axia may restrict, suspend or terminate some or all of the Services with or without notice to Customer: (a) to prevent damage or degradation to the Service Facilities that may be caused by Customer or any person using the Services; (b) to comply with any law, regulation, court order or other governmental request or order; or (c) to protect Axia from legal liability or

- from other acts or omissions of Customer that may be deemed, in Axia's sole discretion, to be unlawful or in violation of this Agreement. In addition to Axia's rights above, either Axia or Customer may terminate this Agreement and the Services by giving written notice that the other Party: (i) is in material default of any provision of this Agreement, including, without limitation in the case of Customer, any failure by Customer to pay any Charges when due that is not remedied within 30 days after receipt of notice of default; or (ii) becomes insolvent or makes an assignment for the benefit of its creditors or there is filed by or against the other party any bankruptcy, receivership, reorganization or similar proceeding under any present or future debtor relief law. In the event that this Agreement or a Service Request is terminated pursuant to this Section 7.2, Customer will pay to Axia all Charges for Services provided up to the date of termination plus all termination charges (if any) with respect to such Service(s) as set forth in the Services Manual. Notice of termination of any Service Request will not be considered notice of termination of this Agreement unless specifically stated in the notice.
- 7.3 **Termination by Axia.** In addition to Axia's rights above, Axia may terminate this Agreement or the Services in whole or in part (a) as provided in the Services Manual, or (b) if Axia ceases to provide Services to its general customer base, or (c) if Axia loses a material third party supplier or service provider for the Services, or there is a legal or regulatory impediment, in any case which renders it impractical for Axia to continue providing the Services, provided that for any termination under subsections (b) or (c) Axia will give Customer prior written notice of the termination corresponding to the lesser of six months or the remaining balance of the Term.
- 7.4 **No Liability of Axia.** Termination, restriction or suspension of Services, as set forth in this Section 7, will not affect Customer's obligation to pay for the Services rendered prior to the termination, restriction or suspension. Axia will not be liable for any loss, damage or inconvenience suffered by Customer as a result of any termination, restriction or suspension pursuant to this Section.
- 7.5 **Survival.** Sections 2.2, 4.4, 5, 6, 7, 8.1, 8.2 will survive any termination or expiration of this Agreement.
- 8. DISPUTE RESOLUTION**
- 8.1 **Dispute Resolution.** If Customer or Axia have a dispute regarding the Services or any other aspect of this Agreement (a "**Dispute**"), the parties agree to use reasonable good faith efforts to resolve such Disputes. Either party may give the other notice of a Dispute by informing the other party in writing of the nature of the Dispute with all relevant information (the "**Dispute Notice**"). Within five days of the receipt of the Dispute Notice, each party will appoint a senior executive who will meet with the objective of resolving the Dispute.
- 8.2 **Legal Proceedings.** The parties will not initiate legal proceedings for the resolution of Disputes until the earlier of: (a) 15 days after the receipt of the Dispute Notice; or (b) 30 days before the expiration of the applicable limitations period governing any claim or cause of action relating to such Dispute would expire. Notwithstanding the foregoing or any other term of this Agreement, either party may apply at any time to a court of competent jurisdiction for an injunction to preserve the status quo or prevent irreparable harm.
- 9. GENERAL PROVISIONS**
- 9.1 **Assignment.** Customer shall not assign all or any part of this Agreement without the prior written consent of Axia. **Relationship.** This Agreement does not create or imply any partnership, agency or other joint relationship between the parties. **Ownership.** Title to, ownership of, and all intellectual property rights in and to any Services Facilities, systems, processes and documentation used to provide the Services to Customer will remain with Axia, or its suppliers and licensors. **Force Majeure.** Axia is not responsible for performance of, or in default of, any obligation or provision of this Agreement where delayed, hindered or prevented by failure of the networks of other companies, casualties, civil disturbances, strikes or other labour disruptions, legislation, regulation, judicial order, acts of civil or military authorities, accidents, fires, natural disasters or other catastrophes or events

9.1

END OF AGREEMENT