

MASSACHUSETTS TECHNOLOGY COLLABORATIVE  
**Grant Disbursement Agreement**

This **GRANT DISBURSEMENT AGREEMENT** (the “Agreement”), is between Massachusetts Technology Park Corporation, an independent public instrumentality of the Commonwealth of Massachusetts, established, organized, and existing pursuant to Chapter 40J of the Massachusetts General Laws and doing business as the Massachusetts Technology Collaborative, 75 North Drive, Westborough, MA 01581, acting in accordance with G. L. c. 40J, S 6B (the “Mass Tech”), and Comcast of Massachusetts II, Inc., (a Delaware corporation), d/b/a Comcast (referred to as the “Grantee”). Mass Tech and Grantee is each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

WHEREAS, the Massachusetts Broadband Institute (“MBI”) at Mass Tech, a division of Mass Tech, is charged with supporting public and private initiatives to bring broadband internet service to communities in Western Massachusetts that do not currently have access to such service through terrestrial networks;

WHEREAS, Grantee submitted an expression of interest to Mass Tech for grant funding under NOFA No. 2018-MBI-01 (“NOFA”) to support a “Project” whereby Grantee shall design, build, own, operate, manage and maintain a hybrid fiber coaxial cable network that will provide access to broadband internet service in the Town of Worthington (“Covered Town”);

WHEREAS, Mass Tech has determined that Grantee possess the organizational capacity, financial resources and requisite experience to fulfill all grant obligations and effectively manage the construction risk and long-term operational risk associated with the Project;

WHEREAS, residents in the Covered Town voted at a Town Meeting to accept Grantee’s proposal made pursuant to the NOFA to provide access to broadband internet service and the Covered Town has expressed its intent to initiate the cable television licensing process;

WHEREAS, the Executive Committee of the Mass Tech Board of Directors and the Massachusetts Broadband Institute Boards of Directors authorized the Mass Tech Executive Director to award a grant to Grantee; provided that the Secretary of the Executive Office of Housing and Economic Development (“EOHED Secretary”) approves the amount of the grant award;

WHEREAS, the EOHED Secretary has approved the amount of the grant award to Grantee to support the Project in a total amount of TWO MILLION TWO HUNDRED THIRTEEN THOUSAND EIGHT HUNDRED AND NINE DOLLARS (\$2,213,809.00) (“Grant Funds”), subject to the terms of this Agreement; and

WHEREAS, EOHED and the Covered Town intend to execute a separate agreement whereby the Covered Town will reimburse the Commonwealth of Massachusetts for a certain portion of the Grant Funds (“Municipal Reimbursement Agreement”).

NOW THEREFORE, pursuant to the terms and conditions of this Agreement, Mass Tech and Grantee agree as follows:

1. Definitions.

- a) “Broadband Service” means high speed internet service that meets or exceeds the current Federal Communications Commission definition of broadband, which requires a minimum of 25 Mbps download speeds and 3 Mbps upload speeds.

- b) "Cable Television License Agreement" means a final cable television license agreement to be executed between Grantee and the Covered Town and which shall be attached as Exhibit A to this Agreement, when available.
- c) "Commonwealth" means the Commonwealth of Massachusetts.
- d) "Excusable Delay Event" means a delay that results from (1) an event described in Section 21 that directly impacts the schedule for Grantee to achieve Final Completion; or (2) make-ready work that is not completed within six (6) months of Grantee's submission of a proper application for utility pole attachments; or (3) the Cable Television License Agreement is executed after a date that is more than two (2) months after the later execution date of the Cable Television License Agreement or the Municipal Reimbursement Agreement.
- e) "Final Completion" means the date certified in writing by the Grantee that construction of the Network has been completed by the Grantee and the minimum percentage and corresponding number of Residential Premises in the Covered Town (as specified in Section 3(c)) are Serviceable.
- f) "Network" means the hybrid fiber coaxial cable communications network deploying DOCSIS 3.0 modems, or higher, that Grantee builds in the Covered Town.
- g) "Public Right of Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses in the Covered Town.
- h) "Residential Premise" means a single unit or multiple unit building, whether occupied or vacant, used or intended to be used primarily for dwelling purposes. A property with multiple dwelling units shall be counted as one Residential Premise.
- i) "Serviceable" means that a Residential Premise is passed by Network and the occupants of such Residential Premise have access to Broadband Service, subject to the subscriber installation provisions outlined in the Cable Television License Agreement.

## 2. Term and Termination.

- a) This Agreement shall commence on July 30, 2018 ("the Effective Date") and shall expire on the date that is fifteen (15) years after the date of Final Completion. Mass Tech's and Grantee's obligations under this Agreement, are conditioned on (1) an affirmative Project Reconciliation Determination by the Covered Town's Selectboard to proceed with the Project (as described in Section 3(c)(iii)); (2) execution of a Municipal Reimbursement Agreement by EOHED and the Covered Town ("Municipal Reimbursement Agreement Contingency"); and (3) the execution of a Cable Television License Agreement by the Grantee and the Covered Town within the time frame allowable under M.G.L. c.166A ("Cable License Agreement Contingency"), except as provided otherwise in this Agreement, including in Section 7(b). Mass Tech or Grantee shall terminate this Agreement if the Municipal Reimbursement Agreement Contingency or the Cable License Agreement Contingency is not satisfied.

- b) This Agreement may be terminated by Grantee or Mass Tech at any time for a material breach of this Agreement, after written notice and opportunity to cure has been provided to the other Party.
  - c) Mass Tech may, in its sole discretion, terminate this Agreement for unexcused delays that result in a cumulative delay of one year or more, subject to the provisions in Section 3.
  - d) Grantee may terminate this agreement upon ninety (90) days' notice to Mass Tech in the event Grantee is not able to secure a Cable Television License Agreement or pole attachment authority through agreement with owners of utility poles.
  - e) Termination of this Agreement by either Party as permitted herein shall not limit the legal rights and remedies otherwise available to the terminating Party.
3. Performance of the Work and Coverage Requirements.
- a) The Parties mutually agree and acknowledge that this Agreement is principally intended to address access to and provision of Broadband Service over the same Network that will deliver cable television service in the Covered Town. In consideration of the Grant and in accordance with the terms of this Agreement, Grantee shall undertake and complete the Project, which shall require Grantee to design, build, own, operate, manage and maintain the Network that will provide access to broadband internet service in the Covered Town.
  - b) Grantee shall achieve Final Completion no later than two (2) years after the Effective Date provided, however, that the date for Final Completion will be extended for each day of delay caused by the occurrence of an Excusable Delay Event. Notwithstanding the foregoing, if Grantee and the Selectboard agree to an earlier date for Final Completion in the Cable Television License Agreement, then such earlier date shall govern.
  - c) Grantee shall achieve Final Completion in a manner that satisfies the following minimum requirements relative to the percentage and number of Residential Premises that are Serviceable
    - i. Minimum Percentage and Minimum Number of Residential Premises to Become Serviceable – The target goal is for ninety six percent (96%) of Residential Premises to Become Serviceable. The Parties agree and acknowledge that (1) Grantee has not performed field surveys to determine the existing conditions in the Covered Town; and (2) uncertainty exists regarding the extent of the buildout of the Network that can be achieved by the Grantee through the expenditure of the Grant funds. The Grantee has identified particular concerns related to Residential Premises that obtain electric and/or telecommunications services via a utility pole line or conduit infrastructure (i) originating in an adjacent town; or (ii) originating from an adjacent private property. ;
    - ii. Grantee shall perform field surveys and initial design and engineering work for and shall, within forty five (45) days after the Effective Date, provide MassTech and the Covered Town with preliminary coverage maps/reconciliation sheets that identify the percentage and number of Residential Premises that will be passed and become Serviceable through this Project.
    - iii. Grantee shall participate in reconciliation meeting(s) with MassTech and the Covered Town to review the preliminary coverage maps/reconciliation sheets. Based on these meetings, the Selectboard of the Covered Town will make a final determination on whether to proceed with the Project, which will involve approval of the percentage

and number of Residential Premises that will be included in the Project (“Project Reconciliation Determination”). The Selectboard will be communicate its Project Reconciliation Determination in writing to MassTech. The Parties agree that the geographic location of the Residential Premises in the Covered Town to be included in the Project and become Serviceable shall be addressed in the Cable Television License Agreement.

- d) Grantee acknowledges that it is solely responsible for all Project decisions, the preparation of all plans and specifications, and for developing and completing the Project.

#### 4. Project Personnel.

- a) Each party shall provide a written notice to the other party within five (5) business days of the Effective Date identifying persons to serve as Project Managers to support effective communication and to report on the Project’s progress. The notice shall include the address, phone, and email address for the Project Manager. Each party shall provide prompt written notice of a change in the Project Manager. Written notice shall be provided in accordance with Section 23 of this Agreement. Each Party will endeavor to maintain the continuity of its respective Project personnel.

#### 5. Ownership of Project and Service Requirements.

- a) Grantee shall retain ownership and have exclusive use of all plant and equipment constructed and deployed in connection with the Project.
- b) For a minimum period of fifteen (15) years from the date of Final Completion, Grantee shall operate and maintain the Network consistent with appropriate industry standards and offer Broadband Service to Residential Premises and commercial properties that are Serviceable in the Covered Town under terms, conditions and prices reasonably consistent with what Grantee offers to subscribers in other towns in Massachusetts within a one hundred mile geographic radius that are served by Grantee.

#### 6. The Grant.

In consideration of Grantee’s agreement to complete the Project as outlined herein, Mass Tech shall pay to Grantee a Grant amount of TWO MILLION TWO HUNDRED THIRTEEN THOUSAND EIGHT HUNDRED AND NINE DOLLARS (\$2,213,809.00), according to the payment schedule in Section 7(a)(iii) and subject to the requirements contained herein. Grantee is responsible for all other costs necessary to complete the Project and to fulfill its other obligations under the Agreement.

#### 7. Grant Payments.

##### a) Reporting/Payment Schedule

- iv. Grantee shall address grant payment requests and Project status reports to the Mass Tech Project Manager.
- v. Mass Tech shall pay Grant Funds to Grantee within forty-five (45) days of receipt of a request for payment accompanied by a Project status report, with appropriate supporting documentation, describing and certifying to completion of the relevant Grant Milestone, which is subject to Mass Tech’s review and approval. Mass Tech shall provide reasonably prompt written notice of any disputed Project status report.

- vi. Mass Tech shall disburse the Grant Milestone payments to Grantee as specified below, upon satisfaction of the grant disbursement requirements specified below (as documented in a Project status report approved by Mass Tech):

<b>Grant Milestone</b>	<b>Disbursement Requirement</b>	<b>Percentage of Grant Amount Due</b>	<b>Payment Amount</b>
Payment #1	Completion of CAD design and preliminary coverage maps that will be presented to the Covered Town at a reconciliation meeting.	Not Applicable	Fixed Fee Amount of \$20,000
Payment #2	1. Execution of Supplemental Funding Agreement by EOHED and Covered Town  2. Execution of Cable Television License Agreement by Grantee and Covered Town	35% of remaining Grant amount	\$767,833
Payment #3	Initiation of make-ready work for the Project (as evidenced by submission of all pole license applications needed for the Project)	30% of remaining Grant amount	\$658,143
Payment #4	50% of Residential Premises are Serviceable (as evidenced by certification by the Grantee)	30% of remaining Grant amount	\$658,143
Payment #5	Holdback to be released upon certification by Grantee that the Project has achieved Final Completion	5% of remaining Grant amount	\$109,690

- b) Grantee shall be entitled to retain the Grant Milestone #1 payment regardless of whether the Covered Town's Selectboard issues an affirmative Project Reconciliation Determination pursuant to Section 3(c)(iii) or any of the conditions in Section 2(a)1-3 are satisfied.

- c) The Parties agree that they have a shared interest in pursuing options that would expedite the construction and completion of the Project, in order to accelerate access to Broadband Service in the Covered Town. In furtherance of this shared interest, the Parties shall cooperate to identify appropriate mechanisms to accelerate the Project, A side letter shall be executed by the Parties to memorialize any modifications to the grant payment schedule contained in Section 7(a)(iii) of this Agreement and any other related changes to the terms and conditions of the Agreement resulting from any effort to accelerate the Project.

8. Cooperation with the Covered Town.

After completion of the design and engineering work for the Project performed by Grantee, upon written request of the Board of Selectmen of the Covered Town, Grantee agrees to provide to said Board of Selectmen a cost estimate to expand the Network to Residential Premises that would otherwise remain unserved upon completion of the Project; provided, however, that such a request must state that the request is being made in connection with consideration by the Board of available municipal funds or to secure other alternative sources of financing to cover the reasonable cost of expanding the Network to otherwise unserved Residential Premises.

9. Performance Bond.

At such time as the Covered Town's Selectboard makes an affirmative Project Reconciliation Determination to proceed with the Project Grantee shall be required to procure and maintain a performance bond in an amount that is not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). Grantee shall submit a copy of said performance bond to Mass Tech. The bond shall also run to Mass Tech with a surety company to guarantee the completion of the Project until the date that is ninety (90) days after the date of Final Completion.

10. Records Review and Retention.

Mass Tech will have the right to examine Grantee's records relating to the Project at reasonable intervals to confirm Grantee's compliance with the requirements of this Agreement, including but not limited to, completion of the Project. Grantee shall maintain books and records related to the Project for a period of seven (7) years starting on the first day after final payment under this Agreement (the "Retention Period"). If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later.

11. Publicity.

Grantee shall coordinate with Mass Tech on any press releases, events, signs and to plan for any news conference concerning the Project. In any media produced by Grantee, Grantee will not represent that positions taken or advanced by it represent the opinion or position of Mass Tech.

12. Assignment and Subcontracting.

Grantee shall not assign or in any way transfer any interest in this Agreement without the prior written consent of Mass Tech. The subcontracting of any of Grantee's obligations under this Agreement will not relieve Grantee from any obligation or liability under this Agreement. Grantee will remain responsible for all services performed by subcontractors and

their respective agents and employees to the same extent as if those services were performed by Grantee.

13. Governance.

Upon Final Completion, the Network funded under the Project will be deemed to be a part of the cable television system under the Cable Television License Agreement.

14. Nondiscrimination.

Grantee agrees to comply with all applicable federal and state statutes, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, gender identification, or for exercising any rights afforded by law.

15. Insurance.

Grantee shall carry insurance throughout the term of this Agreement that complies with the requirements of M.G.L. Chapter 166A, §5(c) and the Cable Television License Agreement. Mass Tech shall be named on such insurance policies as an additional insured, on a primary and non-contributing basis with respect to losses for which Grantee is responsible, defending and indemnifying Mass Tech as additional insured and the Grantee as a named insured from and against all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation or maintenance of the network. Mass Tech reserves the right to establish reasonable and appropriate insurance coverage requirements in the event the Cable Television License Agreement is terminated during the term of this Agreement.

16. Indemnification.

To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the Commonwealth, Mass Tech and each of their respective agents, officers, directors and employees (together with the Commonwealth and Mass Tech, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Grantee under this Agreement, or (ii) any negligent acts or omissions or reckless misconduct of Grantee. Without limiting the foregoing, Grantee shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or are imposed because of the failure to comply with the provisions of applicable law by Grantee or any of its agents, officers, directors, employees or subcontractors arising from the performance of its obligations under this Agreement. The foregoing notwithstanding, Grantee shall not be liable for (i) any Damages sustained, incurred or suffered by or imposed upon any Covered Person resulting from any negligent acts or omissions or reckless misconduct of Mass Tech, and (ii) except for liability for death or personal injury caused by the negligence or willful misconduct of Grantee or for claims of infringement of a third party's intellectual property by Grantee, the aggregate liability of Grantee under this Agreement shall not exceed the greater of the amount of the Grant or the amount recovered under any applicable insurance coverage.

In no event shall any Covered Person be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to Grantee's actions, performance or failure of performance of its obligations under this Agreement.

17. Public Records.

As a public entity, Mass Tech is subject to the Massachusetts Public Records Law (set forth at Massachusetts General Laws Chapter 66) and thus documents and other materials made or received by the Mass Tech and/or its employees are subject to public disclosure. All information received by Mass Tech shall be deemed to be subject to public disclosure, except as otherwise provided herein. If Grantee wishes to have Mass Tech treat certain information or documentation as confidential, Grantee shall submit a written request to Mass Tech's General Counsel that precisely identifies the information and/or documentation that is the subject of the request along with a detailed explanation supporting the application of the statutory exemption(s) from the Massachusetts Public Records Law cited by Grantee. Mass Tech's General Counsel shall issue a written determination within a reasonable period of time upon receipt of the written request. By signing this Agreement, Grantee acknowledges, understands and agrees that the procedures set forth herein are applicable to any documents submitted by Grantee to Mass Tech and that Grantee shall be bound by these procedures and the determination of the Mass Tech's General Counsel.

18. Conflict of Interest.

Grantee acknowledges that all Mass Tech employees are subject to the Massachusetts Conflict of Interest statute, located at Massachusetts General Laws Chapter 268A.

19. Lobbying.

No Grant Funds may be used to pay for or otherwise support any activities intended to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agents" or "executive agents" set forth in the Massachusetts Lobbying Law, M.G.L. c.3, §39.

20. Choice of Law.

This Agreement shall be construed under, and governed by, the laws of the Commonwealth, without giving effect to its conflict of laws principles. Grantee agrees to bring any federal or state legal proceedings arising under this Grant in which the Commonwealth or Mass Tech is a party in a court of competent jurisdiction within the Commonwealth. This Section shall not be construed to limit any other legal rights of the parties.

21. Force Majeure.

Neither party shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

22. Waivers.

Conditions, covenants, duties and obligations contained in this Agreement may be waived only by written agreement between the parties. Forbearance or indulgence in any form or

manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

23. Notice.

Any notice provided in accordance with this Agreement shall be in writing and shall be sent to the Project Manager with a copy sent to the individuals listed below.

Mass Tech:

Massachusetts Technology Collaborative  
75 North Drive  
Westborough, MA 01581  
Phone: (508) 870-0312, ext. 222  
Fax: (508) 898-2275  
Attn: Michael Baldino, Associate General Counsel

Grantee:

Comcast  
3303 Main Street  
Springfield, MA 01107  
Phone: (413) 730-4571  
Fax: (860) 505-3397  
Attn: Daniel M. Glanville, Vice President of Government and Regulatory Affairs

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the receiving party.

24. Amendments, Entire Agreement and Exhibits


All conditions, covenants, duties and obligations contained in this Agreement may be amended only through a written amendment signed by Grantee and Mass Tech unless otherwise specified in this Agreement. The parties understand and agree that this Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the matters contained herein. The following are attached and incorporated into this Agreement:

Exhibit A – Cable Television License Agreement Executed by Grantee and Covered Town (to be attached when available)

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IN WITNESS WHEREOF, this Grant Disbursement Agreement has been duly executed by the parties as of the first date above here written.

**COMCAST OF MASSACHUSETTS II, INC.**

By   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MASSACHUSETTS TECHNOLOGY PARK  
CORPORATION D/B/A MASSACHUSETTS  
TECHNOLOGY COLLABORATIVE**

By  8/8/18  
Name: \_\_\_\_\_  
Title: Interim Executive Director

**Exhibit A**

**Cable Television License Agreement Executed by Grantee and Covered Town**