

**FRANCHISE AGREEMENT  
FOR  
TOWN OF CRANBERRY ISLES  
AND  
AXIOM**

**FRANCHISE GRANTED BY THE TOWN OF CRANBERRY ISLES, MAINE TO AXIOM**

THIS AGREEMENT is entered into on \_\_\_\_/\_\_\_\_/\_\_\_\_ by and between the Town of Cranberry Isles, a municipal corporation organized and existing under the laws of the State of Maine (hereinafter referred to as “The Town”), and Axiom Technologies LLC, a Limited Liability Corporation duly organized under the laws of the State of Maine, with a place of business located at 3 Water Street, Machias, ME 04654 (hereinafter referred to as “Axiom”).

WITNESSETH WHEAREAS The Town is interested in entering into an agreement for the purpose of granting an internet franchise within The Town and establishing procedures governing the internet system installation and operation, both of which being services to be provided by Axiom.

And NOW THEREFORE, the parties agree in consideration of the promises, mutual covenants and other good and valuable consideration as follows:

Axiom will build, operate and maintain a hybrid fiber optic and wireless internet system that connects premises on three of the Cranberry Isles islands- Great Cranberry, Little Cranberry (hereinafter, “Islesford”) and Sutton Islands. As described in detail in the sections below, Axiom is committed to serving up to one hundred and thirty nine (139) premises on Islesford by October 31, 2017, barring the caveats described in Section IV. Axiom is committed to providing service to up to one hundred and thirty four (134) premises on Great Cranberry and up to twenty (20) premises on Sutton Island by June 15, 2018 barring the caveats described in Section IV.

The Town will provide funding for this project of up to \$1.2M through municipal bonding or other means including grants and other funds available in a timely manner as to allow Axiom to meet the delivery of service goals provided in the above paragraph and in Section IV. In addition, Axiom will be provided exclusive rights to operate and generate appropriate revenue to sustain the internet system being built and to provide service to the citizens of The Town for a term described in Section III.

I. DEFINITIONS

- a. Internet system hereinafter referred to as “The System” means a hybrid solution of fiber optic and wireless technology serving every premise on each of the three islands of Great Cranberry, Islesford, and Sutton Island that desires a connection, up to the limits defined in section V subsection (g).
- b. Island Connections means two high-capacity wireless microwave links that utilize two towers to be built under this contract, one on Islesford and one on Great Cranberry, which together will serve as connection points between Great Cranberry, Islesford, and Sutton Island.

- c. Premise refers to any home, business, or municipal structure that will receive a fiber-optic or wireless connection
- d. Cranberry Select Board hereinafter referred to as “The Board” means any elected official or authorized agent of the Select Board empowered to negotiate, administer and interpret the terms of this Franchise

## II. COMPLIANCE WITH APPLICABLE LAWS AND ORDANANCES

Axiom shall comply with all, statutes, codes, ordinances, rules or regulations applicable to The System and its operation and will comply with the Equal Employment Opportunity Act.

## III. EFFECTIVE DATE AND TERM

- a. **Initial Term:** this agreement shall take effect and be in full force from the date of mutual signing of the agreement for a period of twelve (12) years, pursuant to the terms and conditions set forth in this document. During this term and any subsequent renewal term, Axiom shall have the exclusive right to use The System to provide internet services to the residents of The Town. If Axiom meets all terms and conditions of this Franchise Agreement, an option for renewal for an additional twelve (12) years may be exercised. This option shall be exercised by Axiom by providing notice, in writing, of Axiom’s decision to exercise this option within the last year of operation of the Initial Term.
- b. The Initial Term shall include a review of this agreement every three (3) years, which shall include:
  - i. Individual subscriber experience(s)
    - 1. Number of service complaints
    - 2. Reasons for service interruptions
    - 3. General service experience by customer survey
      - a. Response times
      - b. Review the performance of Axiom’s Island Representative
  - ii. Technological changes
    - 1. Review and discuss current technology
    - 2. Review any industry upgrades that are applicable to service on the islands
    - 3. Create a mutually shared investment strategy for any new upgrades agreed upon

## IV. OPERATIONAL TIMELINES

As described in the RFI released by The Town and in the Response by Axiom and described and refined in further detail in ongoing discussions between The Town and Axiom, the Construction timeline shall include the following key milestones:

October 31, 2017- Islesford begins service, barring any of the several caveats and areas of concern described below unduly delaying the work necessary to complete the project and to begin providing service to residents of Islesford by the date specified in this paragraph.

Spring of 2018- Great Cranberry and Sutton Island construction commences and is completed by June 1, 2018 with service beginning by June 15<sup>th</sup>, barring any of the several caveats and areas of

concern described below unduly delaying the work necessary to complete the project and begin to provide service to the residents of Great Cranberry and Sutton Island.

Those caveats and concerns are described in detail hereinafter:

- Full funding of all necessary costs shall be secured and conveyed to Axiom in the timeframe required, as determined by Axiom's sole professional opinion, to meet the construction deadlines as described in Appendix A. Should funding be delayed beyond the timeframe required by Axiom, the construction timeline and deadlines for service commencement shall be modified with no penalty to Axiom in any way, including but not limited to fines, withholding of funds or other penalties.
- Should weather or other natural events delay or shorten construction season or the ability to work, thus causing delays in meeting construction deadlines, the timeline as described in Appendix A shall be modified with no penalty to Axiom in any way, including but not limited to fines, withholding of funds or other penalties conveyed onto Axiom for events or happenings out of its control.
- Should vendor or upstream contractor delays in work scheduled or equipment availability that are outside of Axiom's control cause delays in meeting construction deadlines, the timeline as described in Appendix A shall be modified with no penalty to Axiom in any way, including but not limited to fines, withholding of funds or other penalties conveyed onto Axiom for events or happenings out of its control.

#### V. CONDITIONS OF CONSTRUCTION

**Any construction of The System within the limits of any public ways or public lands of The Town shall conform to the following requirements:**

- a. All transmission and distribution structures, lines and equipment erected by Axiom shall be located as to cause minimal interference with the proper use of streets and public ways and to cause minimal interference, during the construction phase, with the rights and reasonable conveyance of property owners whose land may adjoin any street or public ways
- b. The Town hereby conveys to Axiom the rights, privileges, authority and easements necessary to acquire, construct, erect, suspend, install, renew, maintain, repair, replace, extend, enlarge and operate throughout The Town, in, upon, along, across, above, over and under the streets, easements, public right of ways and Town owned land The System, which may include underground conduits, trenches, splice boxes, amplifying equipment, wires, cables, and pole attachments as related to providing internet, phone and/or television services to the residents of The Town. The Town shall further convey to Axiom the same considerations detailed above as required for Axiom to make connections between The System and individual subscribers' premises, either separately or in conjunction with any public easement and authority within the limits of The Town.
- c. Construction materials, including towers, poles and equipment related to The System may be located on the public land of The Town upon approval of The Board and Axiom to maximize convenience and reduce construction costs
- d. In cases of disturbances of any streets, sidewalks and public ways, Axiom will assign the cost of repair to The Town as part of The System construction. After construction is completed per Construction Timeline in Appendix A disturbances that occur in the general operation of The System will be a shared responsibility worked out between

Town and Axiom, assuming The Town owns The System and Axiom is the operator of The System

- e. Construction activities related to interconnecting subscriber Premises to The System, especially, but not limited to, earthwork required to trench conduit paths, is likely to cause damage and disruption to subscriber property, including but not limited to driveways, lawns, plantings, and other landscaping elements. While Axiom and its contractors will make all reasonable efforts to minimize disruption to subscriber property, conduit paths and service entrances are ultimately planned to maximize the reliability of The System, and to minimize construction costs. As such, the cost of all post-interconnection restoration of landscape elements and other property damage shall be the sole responsibility of the property owner.
- f. All construction and installation on private property that relates to The System delivering service to individual subscribers if damaged by the property owner while undertaking outside construction, landscaping or general maintenance of property and requires Axiom to fix, will result in the individual owner of the property being billed for the cost to repair.
- g. Up to one hundred and thirty nine (139) Premises on Islesford, and up to one hundred and thirty four (134) Premises on Great Cranberry shall receive a fiber connection, upon approval by the property owner. On Sutton Island up to twenty (20) homes shall receive either a fiber to the home connection or a microwave wireless connection upon approval by the property owner.

#### VI. CONDITIONS ON STREET OCCUPANCY

- a. If at any time during the period of this Franchise the Town shall lawfully elect to alter or change the grade, alignment or routing of any street, sidewalk, public right of way or public property Axiom will contribute the labor cost to remove, relay and relocate its internet equipment, while the costs of any new equipment needed due to the above mentioned construction would be the responsibility of The Town.
- b. Axiom shall have the authority, under the supervision of The Town, to trim trees and clear debris or brush as needed to allow access to The System equipment as necessary
- c. At the request of any person holding a building-moving permit, or relocation permit or who requires for whatever reason a relocation of the fiber entrance to their Premise and/or a relocation of the Customer Premise Equipment on their property, Axiom shall move, relocate, raise or temporarily uninstall System equipment as needed. All expenses of such requests, as determined by Axiom's then-prevailing rate for onsite professional services plus any third-party costs required by the job at hand, shall be paid for by the person making the request. Axiom shall be given a minimum of thirty (30) business days' notice to arrange for this work to occur.

#### VII. LIABILITY AND INDEMNIFICATION

- a. The Town specifically agrees to protect, indemnify and save Axiom from and against any loss, damage, liability or expense, including attorneys' fees and other legal costs, because of any damage to person or property caused or alleged to have been caused by Axiom, its agents, employees, guests, or any other person in connection with the construction and operation of The System.
- b. Town agrees to hold Axiom harmless and to indemnify Axiom for any liability that may occur as the result of Town's acts or omissions under this agreement or otherwise

- c. Axiom shall maintain throughout the terms of its franchise, liability insurance in agreement with industry norms. Proof of such insurance is included in Appendix B, and shall be provided to The Town in future years upon request.

#### VIII. SERVICE STANDARDS AND REQUIREMENTS

**Axiom shall construct, operate and maintain The System in strict compliance with all laws, ordinances, rules and regulations that affect The System.**

#### IX. SAFETY REQUIREMENTS

- a. Axiom shall, at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries or nuisances to the public
- b. Axiom shall install and maintain its wires, cables, fixtures, and equipment in accordance with the requirements of all applicable federal, state and local ordinances, codes, laws and regulations.
- c. All structures, equipment, cabling and lines in or over, under or upon the streets sidewalks and public right of ways or public places shall be maintained in a safe, suitable, substantial condition and in good order and repair by Axiom.

#### X. SUBSCRIBERS and SYSTEM USERS

- a. All aspects of subscriber fees, Exchanges of Service and other matters related to subscriber cost, service levels and equipment functionality will be reviewed by The Town and Axiom every three (3) years upon the execution of this Franchise as described in Section III b.
- b. Those who refuse a connection in the initial construction phase described in Appendix A shall be charged Axiom's then-prevailing rate for onsite professional services plus any third-party costs incurred in completing the customer installation. Axiom further reserves the right to charge a "set up fee" on top of the cost of construction related to the connection.
- c. Once System is fully operational across all three islands, Axiom will begin to contribute a monthly fee of 5% of gross monthly revenue to a Technology Fund that is established by The Town, barring the following caveats
  - i. Town and Axiom come to a mutually beneficial agreement on service levels and monthly fees in regard to year round and seasonal residents and that agreement allows Axiom to make a customary and ordinary amount of profit each month as discussed with The Town
  - ii. Take Rates reach level which allows a sustainable rate of financial return for Axiom

#### XI. PREFERENTIAL or DISCRIMINATORY PRACTICES PROHIBITED

Axiom shall have the right to establish different classifications of service for residential and commercial users. In its rates, Axiom shall not make or grant any preference or advantage to any person to any prejudice or disadvantage, within the same classification of service.

#### XII. NEW DEVELOPMENTS

It shall be the policy of The Town to favorably amend this Agreement as needed upon the request of Axiom, when necessary to enable Axiom to take advantage of any technological developments

in the field of fiber optic transmission and related services, to allow Axiom to more effectively, efficiently or economically serve its customers.

### XIII. COMPLAINTS & TECHNICAL SUPPORT

Upon reasonable notice, Axiom shall investigate and resolve complaints regarding the quality of service, equipment malfunctions and similar matters. Upon request, subscribers shall be notified of the procedure for reporting and resolving complaints related to the operation of The System.

- a. Axiom will maintain business hour telephone support for subscribers
- b. Axiom will make every reasonable effort to hire and maintain a service technician on the island(s) to handle day to day operational issues involving customer subscriber issues that cannot be resolved by phone
- c. Axiom will maintain 24/7 network operational oversight and resolve systemic network operation issues as they arise
- d. Axiom will maintain Field Crew in the Machias area that can be dispatched to maintain, fix or otherwise trouble shoot network issues in The Town as needed
- e. The Town will coordinate emergency access to the affected island as necessary to maintain operations in as timely a manner as can reasonably be expected in a remote island community

### XIV. MODIFICATIONS BY REASON OF STATUES AND GOVERNMENT REGULATIONS

If at any time, any section of this agreement conflicts with operation under or compliance with any federal or state statutes or with regulations of the Federal Communications Commission or any other State or Federal regulatory agency, said section shall be altered to conform to said statute or regulations.

### XV. ASSIGNMENT: CHANGE OF CONTROL

**This agreement is binding upon Axiom, its successors and assigns. Axiom shall notify The Town of any substantial change in its ownership or financial condition.**

### XVI. SEPARABILITY

If any section, section, clause, phase or portion of this Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this agreement.

### XVII. TRANSFER OF AGREEMENT

Axiom shall not transfer or assign any rights under this agreement to any other person without prior written approval of The Town, which approval shall not be unreasonably withheld. Any such transfer shall be in writing, which shall include an express acceptance of all terms and conditions of this Agreement. In addition, a duly executed copy of the acceptance shall be filed with The Town prior to the effective date of such transfer or assignment. Any assignment or transfer without prior written consent shall constitute a material breach of this Agreement, which may result in the revocation of the Franchise. In making such a determination of whether to approve or reject a transfer or assignment, The Town may consider the following:

- a. The experience of the proposed transferee or assignee;
- b. The financial, technical and legal qualifications of the proposed transferee or assignee;

- c. If requested by The Town, submittals for the proposed transferee or assignee, on what, if any, changes it intends to make to the operations and maintenance of the present Franchise;
- d. Any corporate or other connections between Axiom and the proposed transferee or assignee; and
- e. Any other aspect if the proposed transferee or assignee's background, which could affect health, safety and welfare of the citizens of The Town as it relates to operation of The System

Upon written request by The Town, the transferor shall provide an attested statement that a transfer of the Franchise has been effectuated.

XVIII. OTHER ISSUES OR ACKNOWLEDGEMENTS

**The Town and Axiom further agree that the following commitments shall be included as a part of this Franchise Agreement:**

- a. Digital Literacy- Axiom agrees to provide, at their cost, 3 months of Digital Literacy training on Cranberry Isles and commits to work with the Cranberry Select Board and/or Cranberry Broadband Committee to effectively deliver and execute classes at a mutually convenient date, time and location on Island(s).
- b. Marketing- The Town agrees to work closely with Axiom to help inform residents of the Cranberry Isles of the existence and benefits of The System and to promote the available levels of service through both official (town website, town report, etc.) and non-official (Facebook, email lists, bulletin boards, etc.) channels to encourage participation and high take-rates.
- c. Measure first year of service- Axiom commits to working with the University of Maine or other college to help quantify the potential changes that might occur during the first full year of operation of The System for the purposes of broadcasting the benefits of a fiber-optic system of connectivity on the island(s).

**IN WITNESS WHEREOF, THE TOWN OF Cranberry Isles has caused this Franchise to be duly executed in its name by the Board of Selectpersons, and Axiom has caused this Franchise to be duly executed in its name and behalf by Mark Ouellette, President, all being duly authorized to act in their respective capacities, as of the date of signing.**

Town of Cranberry Isles

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

Date: \_\_\_\_\_

Axiom

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

Date: \_\_\_\_\_