

**CONNECTING WINDSOR-ESSEX**  
**MEMBER SERVICES AGREEMENT**

This Member Services Agreement is made the 30<sup>th</sup> day of, April 2017 (the “**Effective Date**”) between the **CORPORATION OF THE COUNTY OF ESSEX**, having an address for service of 360 Fairview Avenue West, Essex, (the “**Member**”), and **CONNECTING WINDSOR-ESSEX (“CW-E”)**, Suite 700, 500 Ouellette Avenue, Windsor, Ontario N9A 1B3 upon the following terms and conditions:

**WHEREAS:**

- (A) Member wishes to retain CW-E to provide the Services as set out in this Agreement;
- (B) CW-E has represented to Member that it has the skills and ability to deliver the Services to Member in accordance with industry standards.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

**1. TERMS**

The following terms when used herein have the following meanings:

- a. "Applicable Laws" means, with respect to any person, property, transaction, event or other matter, any rule, statute, regulation, by-law, order, judgement, decree, treaty or other requirement having the force of law relating or applicable to such person, property, transaction, event or other matter, and includes, where appropriate, any interpretation of a rule, statute, regulation, order, decree, treaty or other requirement having the force of law by any person having jurisdiction over it, or charged with its administration or interpretation;
- b. “Association” mean the unincorporated entity known as Connecting Windsor-Essex;
- c. “CW-E” means Connecting Windsor Essex;
- d. “Effective Date” means the date first written above;
- e. “License” means the specific license for the provisioning of internet services granted to CW-E by Canadian Radio-television and Telecommunications Commission;
- f. “Member” means County of Essex;
- g. Parties means the parties to this Agreement; and Party refers to any one of them.

“Services” means the services to be provided by CW-E to the Member hereunder as set out in Schedule A

## **2. RIGHTS AND OBLIGATIONS**

### **a. Services.**

In consideration of the fee payable by the Member hereunder, CW-E shall provide the Services to the Member in accordance with the terms hereof.

### **b. Performance of the Services**

CW-E hereby covenants as follows:

- i. it shall carry out the Services set out in Schedule A attached hereto in a diligent, competent, efficient, economical, and timely manner to the standard achieved by the University of Windsor, as lead participant of the Association and, to the extent economically feasible, in accordance with best practices in the information technology industry;
- ii. it shall use and obtain, at its cost and expense, safe and effective equipment and supplies necessary for the delivery of the Services;
- iii. it shall comply at all times with the Applicable Law;
- iv. it shall comply at all times with the terms of this Agreement;
- v. it shall co-operate fully with any designate of the Member and do all things necessary to enable the Member to evaluate the Services as required (for clarity, the Member may but is not obligated to monitor and evaluate the Services, and the Member shall not be responsible for failing to do so or for doing so in any manner)

Each of the Member and CW-E acknowledge and agree that CW-E is being retained by the Member for the purpose of this Agreement in the capacity of an independent service provider of the Member and not as an agent, employee, partner or joint venturer of the Member. All employees of CW-E shall remain employees of CW-E.

Each of the Member and CW-E further acknowledge and agree that CW-E is the prime contractor under this Agreement and, as such, assumes full responsibility for the delivery and performance of the Services in accordance with the terms of this Agreement, including any Services provided by any subcontractors engaged by CW-E.

c. Representations and Warranties of the Parties

The Parties each represent, warrant and covenant to the other Party as follows and acknowledge that the other Party is relying upon such representations, warranties and covenants in entering into this Agreement and performing their respective obligations under this Agreement:

- i. it is, and throughout the remainder of the Term as the same may be extended, a legal entity legally established under the laws of its jurisdiction and will have all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
- ii. it has taken all necessary actions to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;
- iii. this Agreement has been duly executed and delivered by each Party and is a legal, valid and binding obligation of it, enforceable against it by the other Party respectively in accordance with its terms;
- iv. neither the execution and delivery by it of this Agreement nor the performance by it of its obligations under this Agreement will result in a violation of, (i) its constating documents or by-laws or any of the resolutions passed by its board of directors or members; or (ii) any Applicable Law; and
- v. it has and shall at all times have the right to perform all of its obligations set out in this Agreement.

d. Representations of CW-E

CW-E represents warrants and covenants to the Member as follows and acknowledges that the Member is relying upon such representations, warranties and covenants in entering into this Agreement and performing their respective obligations under this Agreement:

- i. there is no requirement for CW-E to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation by CW-E of the transactions contemplated by this Agreement or the provision of the Services or if there is such a requirement then such filing has been made and any such licence, permit, certificate, registration, authorization, consent or approval obtained and such licence, permit, certificate, registration, authorization, consent or approval shall remain in place during the entirety of the Term;

- ii. CW-E has and will have, the skills, qualifications, expertise and experience necessary to perform and manage the Services;
- iii. CW-E holds and will continue to hold throughout the Term as the same may be extended all municipal, provincial or federal licences, approvals and permits required to perform its obligations hereunder;
- iv. none of the intellectual property rights CW-E uses or will use to provide Services or to discharge its obligations will infringe or violate the intellectual property rights, industrial property, privacy, moral or other rights of any third party; and
- v. CW-E is under no current obligation or restriction, nor will it knowingly assume any such obligation or restriction that does or would in any way interfere or conflict with, or that does or would present a conflict of interest concerning the performance to be rendered, or the rights granted, under this Agreement.

CW-E covenants and agrees to take all steps necessary to cause each of its representations and warranties contained in this Agreement to remain true and correct throughout the Term as the same may be extended. The representations and warranties expressed in this Agreement are in addition to all other warranties express or implied by statute or otherwise and are in addition to all obligations or liabilities on the part of CW-E arising out of, or in connection with, the performance of its obligations under this Agreement.

e. Fee for Services

The Member agrees to pay CW-E a fee, determined and payable in accordance with the fee and payment schedule, attached hereto as Schedule B, and incorporated herein, as it may be amended by written agreement of the Member and CW-E from time to time. The Parties agree that notice of any change to the fee in Schedule B shall be provided to the Member no less than 60 days' prior to the expiry of the term or renewal term as the case may be.

The first payment shall be due upon execution of this Agreement. Subsequent payments shall be made in accordance with the payment schedule set out in Schedule B.

f. Member Obligations

It shall be the duty of the Member to:

- i) pay fees in accordance with paragraph 2(e) above;
- ii) recommend contracts and configuration of the network, including appointing at least one representative to serve on working groups or committees that may be established by the Board of CW-E from time to time;

- iii) establish and maintain an appropriate infrastructure to interface with communication networks and to support their applications;
- iv) follow information management and project milestones and deliverables as advised by CW-E;
- v) assist and agree to work on shared applications, proposals, or approaches to minimize duplication of infrastructure needs in the region, including the provision of information on appropriate contacts within its organization who have the potential to enhance the communications and or information transfer capabilities of the Member within the purposes of CW-E;
- vi) share in the identification of costs to implement, operate and sustain CW-E; and
- vii) explore in collaboration with other Members a number of sources of funds to offset the cost of CW-E, such as government funding and business partner donations.

g. Confidential Information

- i. In the performance of the Services, CW-E and the Member may have access to or be exposed to information of the other and other parties having signed similar Member Services Agreements and General Services Agreements with CW-E not generally known to the public, including, but not limited to software, product plans, marketing and sales information, customer lists, “know-how,” or trade secrets which may be designated as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, “**Confidential Information**”);
- ii. CW-E and the Member agree not to disclose Confidential Information of one another or any other party having signed a similar Member Service Agreement or General Services Agreement with CW-E without the prior written consent of the particular party and agree to take such care to protect the confidentiality of the Confidential Information as would be taken by a reasonable party to protect its own Confidential Information from disclosure;
- iii. Except where agreed, intellectual property is to be considered Confidential Information, and further, it is to be considered for all intents and purposes to be owned solely by the authors of such;
- iv. All rights and obligations under this section survive any termination of this Agreement by any party.

h. Indemnity

The Member shall defend, indemnify and hold harmless CW-E, its officers, directors, members, managers, employees, agents and contractors (“**Indemnified Persons**”) from and against any and all liability, claims, losses, damages, costs or expenses (including reasonable solicitors fees)

which the Indemnified Persons may hereafter incur, suffer or be required to pay by reason of any use of the Services by the Member, its officers, directors, managers, employees, agents and contractors that violates this Agreement, or any laws of Canada or of the Province of Ontario. This indemnity shall not apply to any liability, claims, losses, damages costs or expenses arising out of the wilful acts or negligence of the Indemnified Persons.

CW-E shall defend, indemnify and hold harmless the Member, its officers, directors, shareholders, members, managers, employees, agents and contractors (“**Indemnified Persons**”) from and against any and all liability, claims, losses, damages, costs or expenses (including reasonable solicitors fees) which the Indemnified Persons may hereafter incur, suffer or be required to pay by reason of any negligence or wilful acts of CW-E in the provision of the Services, breach by CW-E of this Agreement, or any violation by CW-E of any laws of Canada or of the Province of Ontario. This indemnity shall not apply to any liability, claims, losses, damages costs or expenses arising out of the wilful acts or negligence of the Indemnified Persons.

These indemnities shall survive termination of this Agreement for the length of the applicable limitation period.

### **3. TERM AND TERMINATION**

- a. This Agreement shall extend for one (1) year from the Effective Date and shall renew automatically each year for subsequent one (1) year terms, unless terminated in accordance with section 3(b).
- b. This Agreement may be terminated:
  - i. at any time during the term of this Agreement, by the Member on sixty (60) days’ written notice;
  - ii. by either party, upon notice in writing if the other party commits a material breach of this Agreement and the breach is not cured within fifteen (15) days of receipt of written notice from the injured party; or
  - iii. by the Member without notice if:
    - (1) CW-E is insolvent or is unable to pay its debts, makes an assignment for the benefit of its creditors or other similar proceeding is commenced against CW-E or has been dissolved;
    - (2) CW-E is in breach of any material agreement with any third party which is necessary to the provision of Services by CW-E;
    - (3) CW-E purports to assign this Agreement or any right or interest herein except as permitted by this Agreement;

- (4) CW-E abandons or attempts to abandon the Services or sells or disposes of a substantial part of its trade fixtures, goods and chattels;
- (5) CW-E is unable to provide Services for a period of 24 hours or more, where such service interruption is caused by the wilful misconduct or gross negligence of CW-E; or,
- (6) CW-E is unable to provide Services for a period of 7 days or more.

c. Where the Agreement is terminated by the Member under subsection 3(b)(i) above, the Member shall remain responsible for the ongoing fixed charge component of any and all long term contracts entered into by CW-E for the benefit of the members of CW-E prior to the termination of the Member's participation in this Agreement for the period of time equivalent to the unexpired term of such agreements (excepting renewals of such agreements that are at the option of CW-E).

d. If the agreement is terminated by the Member under subsection 3(b)(i) above, the fee of the Member shall not change during the 60 day notice period regardless of any change in fees in accordance with subsection 2(e) of this Agreement.

#### **4. LIMITATION ON LIABILITY**

In no event shall CW-E be liable for special, indirect, consequential or punitive damages, losses, costs, charges, claims, demands, fees or expenses arising in any way from the use of the Services or any other programs or services of CW-E by the Member.

#### **5. GENERAL PROVISIONS**

##### **a. Notices.**

Any notice required under this Agreement shall be given or made in writing and shall be served personally, or mailed by prepaid registered post and shall be addressed to the Member or CW-E at the addresses first above written or to such other address as either of them may from time to time advise the other by notice given in the manner provided by this section. Any such notice shall conclusively be deemed to have been received on the day of such personal service or on the five (5) days following the date of posting in the case of mailing as aforesaid

##### **b. Assignment**

This Agreement may not be transferred or assigned without the express written consent of the other party, which consent shall not be unreasonably withheld.

##### **c. Force Majeure**

If the activities of CW-E are interfered with, in whole or in part, by circumstances beyond the reasonable control of CW-E, its officers, directors managers, employees, agents or contractors, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, acts of public enemies, law, order, regulation, ordinance of requirement of any government or its representative or legal body having jurisdiction, or labour unrest such as strikes, slowdowns, picketing or boycotts, CW-E and such persons shall be excused from any performance on a day-to-day basis to the extent that such obligations relate to the performance so interfered with; provided that the party affected shall use reasonable efforts to expeditiously remove such causes of non-performance.

d. Applicable Law

The rights and obligations of CW-E and the Member and all interpretations of this Agreement shall be governed and construed in all respects by the law of Canada and the Province of Ontario and, subject to the provisions hereof with respect to the referral of issues to arbitration, the courts of the said province shall have the sole and exclusive jurisdiction to entertain any action arising in connection therewith.

e. Not a Partnership

Neither this Agreement, the conduct of CW-E and the Member, or anything done by them pursuant to this Agreement shall make them partners or constitute them agents for the other or impose any fiduciary duty, liability or obligation upon any of them except as herein expressly set forth.

f. Remedies on Default

The remedies provided by the provisions of this Agreement upon the default of CW-E or the Member are in addition to any other remedies which the injured party may have against such party in default.

g. Waiver

A waiver by a party of any of its rights or the performance by another party of any of its obligations under this Agreement shall be without prejudice to such party's other rights under this Agreement and shall not constitute a waiver of any of such other rights or of the performance by the other party of any other of its obligations under this Agreement.

h. Captions and Section Numbers

The section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of the context of this Agreement.



i. Interpretation

Unless the context of this Agreement requires otherwise, words importing the singular number shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, partnerships, associations, trusts, corporations, unincorporated organizations, governmental bodies and other legal or business entities.

j. Entire Agreement

This Agreement and any indemnities given by the Member contain the entire agreement between CW-E and the Member and supersede any prior understandings and/or written or oral agreements between them respecting the within subject matter. There are no representations, agreements, arrangements or undertakings, oral or written, between and among the Member and CW-E relating to the subject matter of this Agreement which are not expressed herein.

k. Partial Invalidity

In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

l. Contra Proferentem Doctrine Not Applicable

The terms of this Agreement in its present form have been drafted by the solicitors for CW-E merely as a matter of convenience and to accommodate the parties. The parties agree that the doctrine of contra proferentem shall not apply to this Agreement and should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed by the parties that the court, mediator or arbitrator interpreting or constructing the same shall not construe such provision as against any party by reason of the fact the document was drafted by the solicitors for CW-E.

m. Successors

This Agreement shall be binding upon the parties hereto and their respective administrators and assigns and the parties hereto agree for themselves and their respective administrators and successors to execute any instruments which may be necessary or proper to carry out the purposes and intent of this Agreement.

n. Authorized Signatures

The Member represents that the individual or individuals signing below is/are duly authorized to sign this Member Services Agreement on its behalf.

Member Name:

Corporation of the County of Essex

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

Name: Tom Bain

Title: Warden

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

Name: Mary Birch

Title: Director of Council Services / Clerk

Connecting Windsor Essex

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

Name:

Title:

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

Name:

Title:

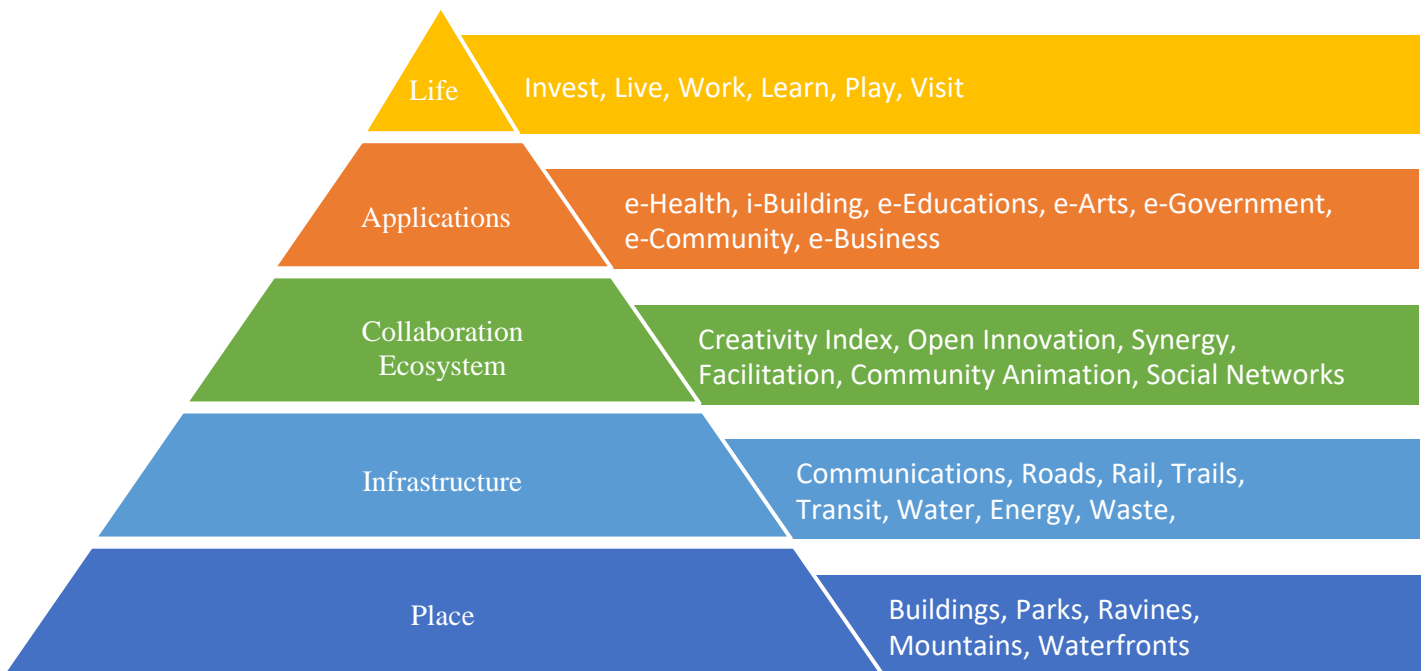
## SCHEDULE A

### Services

CW-E manages a Regional Area Network (RAN) connecting sites across the Windsor-Essex region. We began in 1994 as an information technology project. We have evolved into a collaborative workspace organization meeting frequently with our Board of Directors, our Technical Leadership Committee and our Technical Advisory Group. These groups share discussions and solutions that bring improved technology to each other, our region, and our Consortium members.

Our technological needs are changing. Recent announcements by SWIFT, the CRTC, the Ministry of Education, and Innovation, Science and Economic Development Canada are clear indicators of the importance and value of broadband connectivity. We will continue to support the challenges of our municipalities, schools and health care providers by leveraging technology and fostering collaboration to further innovation.

Our role has evolved from that of a builder/manager of network infrastructure and applications to that of a facilitator of change where people, ideas, actions and technologies connect. Our vision is to support the development and sharing of innovative solutions that make our region a brilliant place in which to invest, live, work, learn, play and visit.



## **List of Network Services Provided by CWE**

**Services, including but not limited to the following noted below, will be provided to Members as part of this Agreement:**

### **1. Field Service and Support**

- Consultation and troubleshooting with ISP's using knowledge of WEDnet's infrastructure and routing / equipment details
- Knowledge of Stakeholder relationships and its pertinence to ensure proper maintenance
- Field part replacement for ORION and CANARIE on their equipment when issues occur (e.g. SFP replacement, fibre tracing, etc.)
- Coordinate access to approved technical staff and maintain security of PoP site

### **2. Consultation**

- Advice and guidance regarding RAN infrastructure, Active Directory, DNS, Network Security, BGP, IPv6, IP Telephony, routers, firewalls and specific configurations, as well as other relevant topics
- Assist RDC administration with Active Directory implementation, routing and firewall installation and backup
- Oversight of network provisions for CWE, administration of SmartNet for Cisco products currently in use in the RAN and CWE equipment
- 

### **3. Domain Name / Google Cache Administration for CWE**

- Administration of required server(s) separate from the designated DNS
- Maintain zone, reverse lookup files for Telus "C" Class IP addressing and domains for Stakeholders and CWE
- Administration of Google Cache for all Stakeholders including setup, server replacement, IP address allotment, and monitoring

### **4. Monitoring / Oversight of RAN**

- Evaluation of network status and corresponding explanation to Stakeholders of implications, trends and capacity planning through review of information provided by ACS, and via Zabbix graphing as maintained by CWE
- Input on equipment, installation and maintenance
- Remaining current on technical aspects and trends for future consideration

### **5. Collaboration with ISP's**

- Maintain WEDnet technical information with ISP's, future upgrades, bandwidth delivery
- Administration of the 2 Telus "C" Class addresses for City and Essex County municipality use
- Work with Telus on Acceptable Use Policy and IP Abuse teams when addresses used by Stakeholders are flagged for suspicious activity that may affect outside entities
- Working with ISP's after outages occur, assisted by knowledge of network and linkages, obtaining ETA's for repair and providing on-site where necessary for troubleshooting

### **6. ORION / HK PoP Maintenance**

- Ensure proper generator testing, security, scheduling / maintenance / upgrade work for carriers, ISP's, backup for Air Conditioning issues and other related concerns

### **7. CWE Updates and Trends**

- Maintain internet for Stakeholders, including but not limited to oversight, capacity planning and work with Network Solutions Provider for maintenance and upgrade of Core equipment
- Participation with Stakeholders, Consortium members for Core network concerns, phone plans, IXP, pricing deals on various aspects of network as they come up (e.g. Anti-virus, security, training)
- Inventory and maintenance of CWE concerns including equipment, software, agreements and MOU's as they pertain to CWE

- Work directly with participants for technical issues and consultation for network administration, products, security, firewalls and other relevant best practices
- Provide network / computer / security assistance for ARG1 / VON as required, including statistics for VON (CPMARP) from CWE survey server
- General administration of CWE network as it exists on University, City of Windsor sites

## SCHEDULE B

### CW-E Stakeholder Fees 2017/18

	<u>Admin</u>	<u>Service Costs</u>	<u>Total</u>
ARGI	28,549	0	28,549
City Of Windsor	167,516	54,981	222,497
CscProvidence	66,106	77,821	143,927
County of Essex	111,221	131,565	242,786
Essex County Library	45,743	134,855	180,598
GECSB	114,016	150,117	264,133
St Clair College	64,908	166,099	231,007
University of Windsor	100,442	198,336	298,778
VON	30,470	0	30,470
WECSB	84,072	114,636	198,708
	<u>\$813,043</u>	<u>\$1,028,410</u>	<u>\$1,841,453</u>