

**ARLINGTON PUBLIC SCHOOLS**

**PURCHASING OFFICE**

1426 N. Quincy St., Arlington, VA 22207 • Phone: (703) 228-2411 • Fax: (703) 228-2754  
www.apsva.us

November 24, 2015

**LIGHTOWER FIBER NETWORKS II, LLC**

Attn: John Hogan  
80 Central St.  
Boxborough, MA 01719

Dear Mr. Hogan:

**SUBJECT: Request for Proposal #28FY16- E-RATE INTERNET ACCESS SERVICES**

**RE: RFP #28FY16 – Award of Contract**

Dear Mr. Hogan:

A contract is being offered for the RFP referenced above. Please have an officer of your firm review the proposed contract and if it is acceptable, acknowledge the acceptance by signing and dating the attached agreement. A signed copy of the contract award will be returned to you for your files.

All terms, conditions and responses to this solicitation are incorporated as part of the contract award.

Sincerely,

*Frances A. Jones*

Frances A. Jones  
Senior Buyer / Purchasing  
Arlington Public Schools

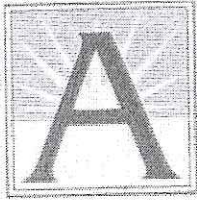


EXHIBIT A

CONTRACT #28FY16

AGREEMENT BETWEEN ARLINGTON PUBLIC SCHOOLS AND CONTRACTOR

Title: E-RATE INTERNET ACCESS SERVICES FOR ARLINGTON PUBLIC SCHOOLS

This contract entered into this 30<sup>th</sup> 25<sup>th</sup> day of November, 2015, by LIGHTOWER FIBER NETWORKS II, LLC, hereinafter called "Contractor" and Arlington Public School called "APS".

In addition to this Contract and APS solicitation #28FY16:  
the Contract consists of:

- Exhibit A - Agreement #28FY16 and all modifications properly incorporated into the Agreement
- Exhibit B - Scope of Services
- Exhibit C - Fees for Services
- Exhibit D - Non Disclosure and Data Security Agreements
- Exhibit E - Terms & Conditions
- Exhibit F - Insurance Forms (to be included once received)
- Supplemented by,
  - Dark Fiber Services Supplement (LFN2)
  - Internet Services Supplement (LFN2)
  - Colocation Services Supplement (LFN2)

The services shall be provided in accordance with the above-referenced contract documents. This Contract is the complete agreement between the parties and may not be altered except by written amendment signed by the parties.

APS agrees to make payment to the Contractor for goods and services provided within 30 days after receipt of an approved invoice.

The signatures of the parties or their authorized representatives are set out below in acknowledgment of this agreement.

November 30, 2015  
Date

ARLINGTON PUBLIC SCHOOLS  
By: Navin Webb (SEAL)  
Director/Purchasing Agent

LIGHTOWER FIBER NETWORKS II, LLC

Limited Liability Company  
Type of Business (Corporation, Partnership,  
Sole Proprietor)

New York  
State of Organization/Incorporation

11/25/2015  
Date

By: Lisa Gugliada (SEAL)  
Signature

Lisa Gugliada, Deputy General Counsel  
Typed or Printed Name, Title

## Scope of Services

### **Fiber Optic Connectivity**

Lightower's proposed network solution for Arlington Public Schools will interconnect multiple APS sites with the Equinix data center complex at Filigree Ct, Ashburn, VA. The Equinix data center complex on Filigree Ct. encompasses Equinix Data Centers #1, 2,4,5,6 & 11.

The two (2) APS sites to be connected will be:

- 1426 N Quincy St, Arlington VA 22207 (a.k.a. "The Ed Center")
- 2770 S Taylor St, Arlington VA 22206 (a.k.a. "The NOC")

The physical routes between each of these two APS sites to Equinix @Filigree have been designed to be mutually exclusive of each other (as depicted in logical Diagram) in order to increase the resiliency and reliability of the connection to Equinix.

Lightower solution will provide Dark Fiber connections which are capable of simultaneously supporting at least 26 ITU-T G.694.1 channels.

The termination of the provided fiber-optic connections will be within the two APS data centers (at one end) and within the provided co-location space within Equinix (at the other). Lightower will be the responsible for provisioning and maintaining all necessary Equinix interconnects required to extend the fiber-optic connections to the required termination points.

Lightower will work with APS on additional or alternate termination points at some point in the future if needed.

Lightower has provided monthly recurring cost for right of use, for each site connection:

- 1426 N Quincy St, Arlington VA 22207 --> Equinix @Filigree
- 2770 S Taylor St, Arlington VA 22206 --> Equinix @Filigree

Lightower has attached its Dark Fiber Supplement form which targets reliability metrics for end-to-end continuity and reliability, including:

- Service Availability
- Time to Repair
- Service downtime policies and service level agreement (SLA), including refund or service credit policies for failure to meet targeted reliability and performance metrics.

## **Co-Location Services**

Lightower's proposed solution includes co-location services within the Equinix data center complex on Filigree Ct, Ashburn VA. which will house the termination points of the provided fiber-optic connections, as well as active networking equipment (e.g. switches, routers), service equipment (e.g. servers), and peering interconnects with other Equinix tenants.

### **Minimum Specifications:**

- 30u of co-location rack space
- 2200VA persistent electrical power

## **Internet Services**

Lightower has provided cost for 10 GB/s Tier-1 Internet Access. APS can work with Lightower to upgrade bandwidth to 50GB over life of contract.

### **Minimum Specifications:**

- Bandwidth will be the effective data rate, not merely the line speed.
- The Internet Access will be provisioned via a 10 GB/s Ethernet based access port.
- Lightower will be responsible for provisioning and maintaining all necessary Equinix interconnects required to provide the service.
- Lightower will provide 254 routable IP address (/24 subnet), including DNS-PTR record delegation for the provided IP subnet, and advertise provided IP space over alternate ISP connections for the purposes of service reliability upon completion of standard IP justification form.
- Lightower understands that we may be required to advertise (via BGP) other IP subnet routes controlled by APS either via Lightower ASN or an ASN managed by APS.
- Lightower is prepared to provide complete BGP routing table exchange with APS equipment.
- Lightower will make adequate provisions to ensure that the provided Internet Access remains continually operational.
- Lightower will make adequate provisions to ensure that the provided bandwidth is fully utilizable, within network areas under the contractor's management and control.
- Lightower will provide APS with a customer portal for monitoring bandwidth and availability of the service (24x7x365).
- Lightower will NOT monitor the content of the network traffic passed by the service, beyond what is necessary to provide the service.
- Lightower will provide APS with open, unfiltered Internet access and will not administer any quality of service policies or otherwise interfere with data passed to and from APS in any form.

### **Lightower has provided:**

- Monthly recurring cost for 10Gb/s Internet Access
- Specifications of provided service
- Initialization costs.

Lighttower has included its Internet Service supplement which includes target reliability and performance metrics for Internet Service, including:

- Service Availability/Uptime
- Packet Forwarding Latency
- Packet Forwarding Reliability
- Provide service downtime policies and service level agreement (SLA), including refund or service credit policies for failure to meet targeted reliability and performance metrics.

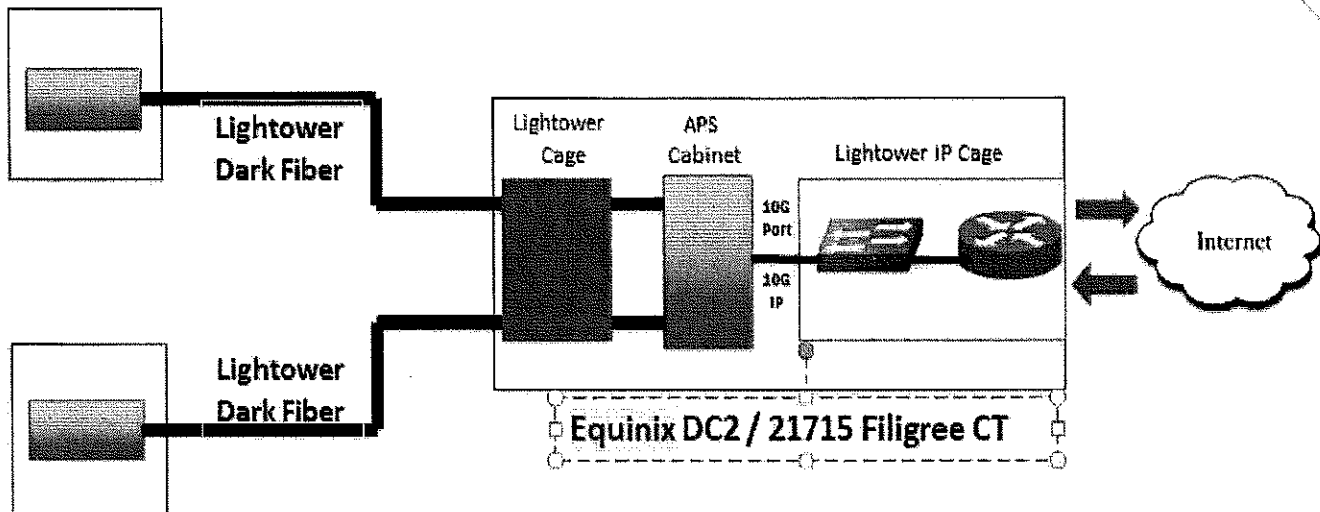
## Logical Diagram



## APS Data Center Internet

lighttower

1426 N Quincy



2770 South Taylor

- Lighttower dedicated dark fiber routes are geographically diverse from 1426 N Quincy and 2770 S Taylor to the APS provided presence within the Equinix Data Center.
- Lighttower is adding a 1 Gbps port for access to the Equinix Internet Exchange.
- Equinix Internet Exchange™ aggregates thousands of peering sessions onto a shared fabric, connecting peers at 19 Internet Exchange Point (IXP) locations in 17 global metro areas. The service lowers overall IP transit costs and delivers enhanced end-to-end network performance, speed, and reliability.

## **Project Management**

Once an order has been placed Project Managers (PMs) are responsible for managing the delivery of services to Lightower customers. The PM role is comprised of four stages - Order Validation, Order Kickoff, Service Provisioning and Order Completion. The PM is the single point of contact from contract to service turn-up.

Project Managers (PMs) will:

- Coordinate and lead customer meetings, including customer kick-off calls and regularly scheduled customer status update calls.
- Manage the activities of internal Lightower operational and engineering groups to ensure proper planning, communications, and implementation of solutions.
- Communicate customer requirements to other project stake holders to achieve required results.
- Perform critical path analysis for projects to identify, and manage all aspects of the service deployment and mitigate identified risks.
- Develop a relationship with the customer and serve as the primary point of contact for project status and deliverables.
- Resolve issues in a timely fashion as they present themselves during the project interval.
- Upon project completion insure project documents are complete, accurate, and archived appropriately. Deliver all required customer turn-up documentation to identified point of contact.

## **Account Management**

Lightower will provide Arlington Public Schools with a dedicated account team that will support the newly proposed solution from Point of Sale and through Implementation.

- Senior VP of Sales- Douglas Turtz
- Director of Sales – Matt Johns
- Senior Account Executive- John Hogan
- VP of Complex Solutions – Chris Williams
- Complex Solutions Engineer- Andre Rivera
- VP Sales Engineering- Massimo Cardarelli
- VP of Client Services- Michael Nicolosi
- Sales Engineer – Frank Nejako
- Director, E-Rate and Government – Anthony Rasco

## NOC Support

### NOC Main # - 888-LT-Fiber (888-583-4237)

#	Title	Name	Email	Office #	Cell #
1 <sup>st</sup>	NOC Technician	On Duty / On Call	Please Call	Main Number Above	N/A
2 <sup>nd</sup>	Shift Supervisor	On Duty / On Call	Please Call	Main Number Above	N/A
3 <sup>rd</sup>	Sr. Manager of NCC	Miles O'Shaughnessy	<a href="mailto:MOShaughnessy@lighttower.com">MOShaughnessy@lighttower.com</a>	631-300-3781	631-774-2412
4 <sup>th</sup>	Director of NCC	Stephen George	<a href="mailto:SGeorge@lighttower.com">SGeorge@lighttower.com</a>	978-264-9370	781-254-8795
5 <sup>th</sup>	Vice President of Network Assurance	Ravindra Harcharan	<a href="mailto:RHarcharan@lighttower.com">RHarcharan@lighttower.com</a>	212-337-4088	917-217-1136
6 <sup>th</sup>	Chief Operations Officer	Jason Campbell	<a href="mailto:JCampbell@lighttower.com">JCampbell@lighttower.com</a>	978-264-6033	

20220419

Lightower Fiber Networks has two Network Operations Centers that are geographically diverse and act as full service centers for all network services throughout the regions that Lightower serves. Lightower has attached its detailed NOC overview presentation to this response.

In addition to the two physical, active-active NOC locations, each of our NOC personnel is equipped for virtual support. This means that via a secure VPN connection to the Lightower Network they can access the necessary tools to monitor the network. As such, they can handle calls and track tickets to resolutions even when remote. Lightower's regional offices are also equipped to support additional staff in the event of an emergency with direct access to all systems and applications.

## Lightower Business Continuity

Today, there are many steps already being taken and actions defined within Lightower's standard operating policies and procedures that serve or act as business continuity guidelines.

- Diversity in Network Operations Centers from a systems and connectivity perspective, as well as geography.
- All NOC systems are supported by secondary power supplies, both UPS and generator.
- All NOC technicians are equipped with full remote secure logins and voice capability for remote access in all regions to perform their duties and responsibilities.
- Each region maintains maintenance spares depot for all core equipment technology hardware deployed within the network and region. Lessens our dependency on the manufacturer and decreases MTTR (mean time to repair).
- Operations team has a clear escalation and call-out policy and plan that is updated and reviewed weekly to determine coverage and back-up requirements.
- Emergency call-out agreements with retainer fees are established with prime vendors in all regions for support of the physical plant. This includes spare components and fiber cable to handle any network impact.
- All network equipment configurations are backed up and archived to facilitate immediate restoration in the event of network element failure.
- Establish a crisis conference bridge for all updates and information sharing during any event.

## Customer Portal

The Lightower Fiber Networks Customer Center is an online portal that provides access to information about your Accounts, Orders, Services, Support Tickets, and your Lightower points of contact.

The Lightower Customer Center has been upgraded with a number of new services and features to better serve our customers. Features in the current version of Lightower's Customer Center include:

Feature	Feature Details
Billing	View or download current and past invoices in PDF format
Services	Get a quick inventory of current services and service status
Orders	View the status of pending or past orders
Support	View open or past support tickets and create new tickets
Lightower Points of Contact	Contact your assigned Lightower Account Team <ul style="list-style-type: none"><li>• Account Executive</li><li>• Client Services Manager</li><li>• Project Manager delivering new services</li><li>• Network Management Center</li><li>• Billing Department</li></ul>



## **Response Highlights**

HIGHLIGHT	YES/NO	COMMENTS
100% Owned Fiber	YES	All fiber spans/routes included in the Lightower response are owned and maintained by Lightower. There will be no 3rd party fiber providers or subcontractors included in this network design.
Dedicated Project Team	YES	Lightower will provide a dedicated Project Management team that will assist Arlington Public Schools from start to completion if, providing timely updates throughout the deployment of the new Network.
Implemented Networks of Similar Scope	YES	Lightower has deployed and is currently managing several large enterprise customers of similar size and scope.

**FEES FOR CONTRACT #28FY16- E-RATE INTERNET ACCESS SERVICES**

Name: John Hogan

Address: 196 Van Buren Street Suite 250 Herndon, VA 20170

Phone: 703-434-8477

Facsimile: 703-434-8510

<b>SERVICE REQUESTED</b>	<b>Monthly recurring cost for right of use, for each site connection: From Date of APS Acceptance Through June 30, 2016 *</b>	<b>Initialization Cost</b>	<b>Initialization: Number of Business Days Following Receipt of Purchase Order</b>	<b>TOTAL COSTS:</b>
<b>1. FIBER OPTIC CONNECTIVITY*</b>				
1426 N Quincy St, Arlington, VA 22207 --> Equinix @Filigree	\$2,400.00	\$0.00	Estimated 75	\$2,400.00
2770 S Taylor St, Arlington, VA 22206 --> Equinix @Filigree	\$3,260.00	\$0.00	Estimated 75	\$3,260.00
				\$5,660.00
<b>SERVICE REQUESTED</b>	<b>Monthly recurring Cost From Date of APS Acceptance Through June 30, 2016 *</b>	<b>Initialization Cost</b>	<b>Initialization: Number of Business Days Following Receipt of Purchase Order</b>	<b>TOTAL COSTS:</b>
<b>2.CO-LOCATION SERVICES*</b>				
	\$1,806.00	\$0.00	Estimated 75	\$1,806.00

<b>SERVICE REQUESTED</b>	<b>Monthly recurring cost for 10GB/s Tier -1 From Date of APS Acceptance Through June 30, 2016 *</b>	<b>Initialization Cost</b>	<b>Initialization: Number of Business Days Following Receipt of Purchase Order</b>	<b>TOTAL COSTS:</b>
<b>3.INTERNET SERVICES*</b> Per Scope of Services	\$18,819.00	\$0.00	Estimated 75	\$18,819.00
<b>GRAND TOTAL PRICE</b>				\$26,285.00

- Lighttower is including the three (3) Equinix Cross-Connects required for our solution in our pricing quoted above (1 for each dark fiber connection and 1 for the Internet at Equinix Ashburn). APS will incur a \$332.00 monthly recurring charge for any future applications requiring Cross-Connects at Equinix Ashburn.
- Pricing above is based on APS awarding services 1, 2 & 3 to Lighttower.

**\*\*Monthly recurring cost is to include all applicable fees, taxes, charges, etc.**

IX. Appendix CNON-DISCLOSURE AND DATA SECURITY AGREEMENT (CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of LIGHTOWER FIBER NETWORKS II, LLC (Contractor) hereby agree that the Contractor will hold Arlington Public Schools (APS) provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the APS, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the APS shares with Contractor for testing, support, conversion or other services provided under APS (the "Project" or "APS Contract" as applicable) or which may be accessed through other APS owned or controlled databases (all of the above collectively referred to herein as "information" or "APS information").

In addition to the DATA SECURITY obligations set in the APS Contract, the Contractor agrees that it will maintain the privacy and security of the APS information, control and limit internal access and authorization for access to such information and not divulge or allow or facilitate access to APS information for any purpose or by anyone unless expressly authorized. This includes but is not limited to information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter "his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as "information" or "APS information").

Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. Contractor acknowledges that any unauthorized use, dissemination or disclosure of information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any information obtained directly, or indirectly, as a result of its work on the Project. Contractor shall coordinate closely with the APS Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such person/s also maintain the security and privacy of information and the integrity of APS networked resources.

Contractor agrees to take strict security measures to ensure that information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which information is stored, even temporarily, will have strict security and access control. Any information that is accessible will not leave the Contractor's work site or the APS' physical facility, if working onsite, without written authorization of the APS Project Officer. If remote access or other media storage is authorized, Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the APS, and connected to the APS network are secure and free of all computer viruses, or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No information may be downloaded except as agreed to by the parties and then only onto an APS approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the APS Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of information, security breach, hacking or other breach of this Agreement, the APS Contract, APS policy, Contractor's security policies, or any other breach of Project protocols.

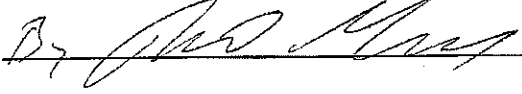
The Contractor will fully cooperate with the APS to regain possession of any information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

Contractor agrees that all duties and obligations enumerated in this agreement also extend to its employees, agents or subcontractors who are given access to APS information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Agreement and related data security provisions in the APS Contract.

It is the intent of this *Non-Disclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices are in place to ensure confidentiality, protection, privacy and security of APS information and APS networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirements. Therefore, to the extent that this *Non-Disclosure and Data Security Agreement* conflicts with the APS Contract or with any applicable local, state, or federal law, regulation or provision, the more stringent APS Contract requirement, law, regulation or provision shall control.

At the conclusion of the Project, Contractor agrees to return all APS information to the APS Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the APS Contract.

LIGHTHOUSE FIRE NETWORKS II, LLC

Authorized Signature: By 

Printed Name and Title: DAVID MAYER, General Counsel

Date: October 20, 2015

**CONTRACT TERMS AND CONDITIONS**

The Contract with the successful Offeror (“Contractor”) will contain the following contract terms and conditions, with incomplete information to be added based upon the final negotiations between APS and the successful Offeror. Offerors who propose to use additional or modified language must include such language with their proposal. Arlington Public Schools is referred to herein as “APS”. NON-NEGOTIABLE, MANDATORY PROVISIONS REQUIRED BY VIRGINIA LAW OR THE ARLINGTON PUBLIC SCHOOLS PURCHASING RESOLUTION ARE INDICATED BY AN ASTERISK (“\*”). The final agreement is subject to review by the APS Attorney prior to being submitted to the successful Offeror for signature.

1. **CONTRACT DOCUMENTS**

The Contract consists of the following documents:

- Exhibit A - Agreement #28FY16 and all modifications properly incorporated into the Agreement
- Exhibit B - Scope of Services
- Exhibit C – Fees for Services
- Exhibit D – Non Disclosure and Data Security Agreements
- Exhibit E – Terms & Conditions
- Exhibit F – Insurance Forms
- Supplemented by,
  - Dark Fiber Services Supplement (LFN2)
  - Internet Services Supplement ( LFN2)
  - Colocation Services Supplement (LFN2)

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents.

The Contract Documents set forth the entire Agreement between APS and the Contractor. APS and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to this Agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the “Contract” or “Agreement.”

2. **SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (hereinafter the "Work"). The primary purpose of the Work is to obtain the services of a qualified Contractor to assist APS. The Scope of Work is more fully described in Exhibit A. The Contract Documents set forth the minimum work estimated by APS and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work. The end result of the project will be provision of Internet Access Services for Arlington Public Schools.

3. **STANDARD OF CARE**

In the performance or furnishing of services hereunder, the Contractor and all its agents, shall exercise the highest degree of skill and care normally accepted as practices and procedures by members of the same profession for provision of Internet Access Services for Arlington Public Schools.

4. RESPONSIBILITY OF THE CONTRACTOR

The Contractor shall be responsible for the quality, technical accuracy, and the coordination all deliverables and other services furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct, or revise any errors or deficiencies that significantly affect the production environment, as determined by the Project Officer, which are discovered within a twelve-month period of final completion of Work.

Contractor's maintenance responsibilities will commence upon acceptance of the Service by APS. The maintenance includes scheduled and emergency maintenance (see provisions below). The maintenance is included in the monthly recurring charges for the Service and runs for the entire term of the Service.

Scheduled Maintenance. Contractor will conduct (or cause to be conducted) scheduled maintenance that is reasonably expected to interrupt Service between 12:00 midnight and 6:00 a.m. local time or, upon APS's reasonable request, at a time mutually agreed to by APS and Contractor. Contractor will use commercially reasonable efforts to notify APS of scheduled maintenance that is reasonably expected to interrupt Service via telephone or e-mail, no less than five (5) days prior to commencement of such maintenance activities.

Emergency Maintenance. Contractor may perform emergency maintenance in its reasonable discretion, with or without prior notice to APS, to preserve the overall integrity of the Contractor network. Contractor will notify APS as soon as reasonably practicable of any such emergency maintenance activity that materially and adversely impacts a Service.

Notice to Proceed. Notice to Proceed date for each Service shall be the earliest of (a) the date on which APS delivers written notice of acceptance, (b) the date on which APS begins to use the Service, other than for testing purposes, or (c) the second (2nd) business day following Contractor's delivery of notice of the installation of the Service (such notice, a "Connection Notice"), unless APS notifies Contractor in writing within said two-day period of a Defect in the Service, specifying in detail the nature of such Defect. A "Defect" exists if the Service fails to perform materially in accordance with its technical specifications (Specifications). Upon receipt of notice of a Defect, Contractor and APS shall work cooperatively to promptly remedy such Defect, and Contractor shall deliver another Connection Notice, whereupon the process described in the first sentence of this Section shall apply again

5. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

APS' review, approval, or acceptance of, or payment for, any services or deliverables required under this Contract shall not be construed to operate as a waiver by APS of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to APS for the accuracy and competency of deliverables, plans, specifications, or other documents.

6. CONTRACT TERM

Time is of the essence. Work under this Initial Agreement will commence on "the date of the issuance of a Notice to Proceed by the Project Officer" and shall commence through June 30, 2020. Five (5) optional one year extensions may be awarded upon the mutual agreement of both parties. Acceptance and remediation of any issues will occur in accordance with the Acceptance schedule defined by the Project Officer.

7. CONTRACT AMOUNT

APS will pay the Contractor in accordance with the terms of the Payment paragraph, and Exhibit C for the Contractor's completion of the Accepted work described and required in the Contract Documents. The Contractor agrees that it shall complete the Work for the total Contract Amount specified in this section unless such amount is modified as provided in this Agreement. The Contract Amount includes the entire Contractor's overhead, fees (profit) and reimbursable expenses.

The Contractor warrants that the unit prices stated herein shall remain firm from the date of award through June 30, 2017. Prices may be negotiated only during the 30 day period prior to the expiration date of each contract period. Price increases or decreases must be submitted by June 1 of the expiration year to take effect July 1, if approved. Owner shall give the Contractor written notice of contract renewal 60 days prior to the expiration date of the contract.

The Contractor shall submit a written request for increases / notification of decreases in unit prices to the Project Manager. The request shall include as a minimum, (1) the cause of the adjustment; (2) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate commodity market information, change in manufacturer's price, etc.). Such price adjustment shall be by the same or less percentage as documented and the contract shall be modified by amendment accordingly, provided that:

The increased / decreased contract unit price shall not apply to orders received by the Contractor prior to the effective date of the increased / decreased unit price.

Such requested contract unit price increase / decrease shall become effective only upon approval of the Purchasing Director, and only after a written amendment to the original contract is signed by both the Contractor and the Purchasing Director.

8. PAYMENT

Payment for recurring costs is on a monthly basis. Initialization costs will be paid upon the completion of the initialization. Contractor will be paid upon Acceptance of the submission of a complete invoice satisfactory to the Project Officer which meets the requirements of this section and other applicable provisions of the Contract. APS will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the APS Project Officer. The number of the issued Purchase Order shall appear on all invoices.

9. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the APS Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington APS department requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work under the Contract Documents.

10. ADJUSTMENTS FOR CHANGE IN SCOPE

APS may order changes in the Work within the general scope of the work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the project or of the Contractor's services has been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by APS and the Contractor. If the Contractor believes that any particular work is not within the scope of the Project or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefore and supportive documentation for the amount. The Contractor will not be compensated for performing any work unless a proposal complying with this



paragraph has been submitted in the time specified above and a written amendment has been signed by APS and the Contractor and an APS purchase order is issued covering the cost of the services to be provided under the amendment.

11. ADDITIONAL SERVICES

The Contractor shall not be compensated for any goods or services provided except those included in the Contract Documents and included in the Contract Amount unless those goods or services are covered by a written amendment to this Agreement signed by APS and the Contractor and an APS purchase order is issued covering the expected cost of such services.

APS may determine the need for additional work by the Contractor. Upon a request from APS, the Contractor shall prepare a cost proposal for any such work. No Additional Services shall be performed unless a written amendment to this Agreement has been executed by both parties.

12. REIMBURSABLE EXPENSES

All expenses shall be included in the Firm Fixed Price for provision of Internet Access Services for Arlington Public Schools. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

13. REIMBURSABLE TRAVEL-RELATED EXPENSES

All travel-related expenses shall be included in the Firm Fixed Price for provision of Internet Access Services for Arlington Public Schools. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement and should not be included in Firm Fixed Price:

1. Alcoholic beverages
2. Personal phone calls
3. Self-entertainment activities (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (i.e. laundry, valet, haircuts)
5. Personal travel insurance (i.e. life, medical, or property insurance) for air fare or rental cars.
6. Auto repairs, maintenance and insurance costs for personal vehicles
7. Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.
8. If APS adopts different rates for its employees, the adopted rates shall prevail.

14. PAYMENT OF SUBCONTRACTORS\*

The Contractor is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by APS for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from APS attributable to the work performed by the subcontractor under this Contract; or
- b. Notify APS and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from APS for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of APS. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

15. NON-APPROPRIATION\*

All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by APS School Board. In the event of non-appropriation of funds by APS School Board for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, APS will terminate the Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) calendar days prior written notice, but failure to give such notice shall be of no effect and APS shall not be obligated under this Contract beyond the date of termination specified in APS's written notice.

16. APS PURCHASE ORDER REQUIREMENT\*

APS purchases are authorized only if an APS Purchase Order is issued in advance of the transaction, indicating that the ordering school or department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the order agency. APS will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by APS Purchasing Agent. Contractors providing goods or services without a signed APS Purchase Order do so at their own risk and expense.

17. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL AND SUBCONTRACTORS

The key personnel and sub-contractors submitted by the Contractor in its Proposal and thereafter accepted by APS are considered essential to the Contractor's qualifications. The Contractor may not replace, substitute or augment any key personnel or sub-contractor without prior written approval of APS. A request to replace or substitute any key personnel or subcontractor for any reason, shall be provided to the APS Project Officer at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by APS.

Additionally, the Contractor shall not remove or replace the approved Project Manager without written approval of APS. In cases of the approved Project Manager's prolonged illness or other extended leave of absence, Contractor shall provide an interim Project Manager whose continued work on the project shall be subject to approval by APS.

In the event of the Project Manager's resignation or termination from the Contractor's employment, the Contractor shall replace the Project Manager with an individual with similar qualifications and experience and only with APS' prior written approval.

18. PROJECT STAFF

APS has the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If APS reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to APS in a timely manner and at no additional cost to APS. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

19. SUPERVISION BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall only employ on the work persons reasonably proficient in the work assigned.

20. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED\*

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontract or vendor.

21. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED\*

In accordance with §2.2-4311.1 of the Virginia Code, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

22. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR\*

During the performance of the work pursuant to this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for

employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor by APS in accordance with the APS Purchasing Resolution, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

23. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until APS determines that all of the following requirements and conditions have been satisfactorily met: APS has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, APS shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by APS in its discretion.

If APS determines that the Contractor has failed to perform satisfactorily, then APS will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by APS prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to APS Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. APS may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If APS terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from APS to the Contractor (unless APS in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to APS for all costs incurred by APS after the effective date of termination, including costs required to be expended by APS to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to APS upon demand by APS. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to APS, and APS shall be entitled to recover, all damages to which APS is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by APS to the Contractor under the Contract and all attorney fees and costs incurred by APS to enforce any provision of this Contract.

Except as otherwise directed by APS in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts

for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

24. TERMINATION FOR THE CONVENIENCE OF APS

The performance of work under this Contract may be terminated by the Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in APS' best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) calendar days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by APS prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to APS; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

25. INDEMNIFICATION\* (NOTE: Virginia does not permit the indemnification of others; cross indemnity provisions are not acceptable)The Contractor covenants for itself, its employees, and subcontractor to save, defend, hold harmless, and indemnify APS, and all of their elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "APS" for purposes of this section) from and against any and all claims made by third parties or by APS for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions or errors in performance or nonperformance of its work called for by the Contract Documents, whether such act or omission or error is attributable to Contractor, subcontractor, any material supplier, or anyone directly or indirectly employed by them, called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract.

If any action or proceeding relating to the indemnification required by this Section is brought against APS, then upon written notice from APS to the Contractor, Contractor shall at Contractor's expense, resist or defend such action or proceeding by counsel approved by APS in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend same.

If, after Notice by APS, the Contractor fails or refuses to save, defend, hold harmless and/or indemnify APS, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to APS pursuant to this section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

26. INTELLECTUAL PROPERTY INDEMNIFICATION\*

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify APS, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by APS. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by APS, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

27. COPYRIGHT

It is not anticipated that any copyrightable works will be created by the Contractor pursuant to this Contract. In the unlikely event that a copyrightable work is created by the Contractor then this section will apply.

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to APS all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Agreement. The Contractor further agrees to execute such documents as APS may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to APS by this paragraph are irrevocable. Notwithstanding anything else in this Agreement, the Contractor's remedy in the event of termination of or dispute over the terms of this Agreement shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Agreement shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Agreement is prohibited unless APS approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Agreement.

28. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose APS' data or inputs. The first sentence of Section 28 is unchanged by the following additional terms: It is not anticipated that any Records will be created by Contractor pursuant to this Contract. In the unlikely event that a Record is created by Contractor then this section will apply, except that ownership of any confidential information of Contractor designated as such by Contractor in compliance with the requirements of Va. Code Ann. Section 2.2-4342F. contained in a Record will remain with Contractor.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of APS' request for services under this Contract, are the exclusive property of APS ("Record" or "Records"), and all such Records shall be provided to and/or returned to APS upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of APS. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At APS' request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at APS's request, shall destroy all computer records created as a result of APS' request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

29. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, proprietary systems, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

30. DATA SECURITY

It is not anticipated that Contractor will have access to any APS data. In the unlikely event that the Contractor does have access to any APS data, then the terms and conditions of this section will apply. The Contractor agrees that it shall hold all APS data obtained or accessed as a result of its work under this Contract confidential in accordance with the Nondisclosure and Data Security Agreement attached hereto. If individual employees or subcontractors of the Contractor are performing work under this Contract on APS-owned property, then such individual employees or subcontractors shall be required to sign a separate Nondisclosure and Data Security Agreement, which shall be incorporated by reference into this Contract, prior to performing any work or being allowed access to APS data.

The Contractor shall hold APS Information in the strictest confidence and comply with all applicable APS security and network resources policies as well as all local, state and federal laws or regulatory

requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted APS Information received from, created or maintained on behalf of APS and strictly control access to APS Information. For purposes of this provision, and as more fully described in this Contract and APS's Non-Disclosure and Data Security Agreement (NDA), "APS Information" (also referred to as "APS Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, APS networked resources, and APS databases, software and security measures which is created, maintained, transmitted or accessed to perform the work under this Contract.

- (a) APS' Non-Disclosure and Data Security Agreement (NDA). The Contractor shall require that an authorized Contractor designee, and all key employees, agents or subcontractors working on-site at APS facilities or otherwise performing non-incidental work under this Contract, sign the NDA (attached as an Exhibit hereto) prior to performing any work or permitting access to APS networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to APS Project Officer upon request.
- (b) Use of Data. The Contractor shall ensure that the use, distribution, disclosure or access ("use") to APS Information and APS networked resources shall not occur in an unauthorized manner. Use of APS Information for other than as specifically outlined in this Contract is strictly prohibited, unless such other use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of APS Information and any non-compliance with this DATA SECURITY AND PROTECTION provision or any NDA.
- (c) Data Protection. The Contractor agrees that it will protect APS Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. The Contractor shall provide to APS a copy of its data security policy and procedures for securing APS Information and a copy of its disaster recovery plan/s. The Contractor shall provide, if requested by APS, on an annual basis, results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) Data Sharing. Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclosure, sell or grant access to APS Information to any third party without the express written authorization of the APS Chief Information Security Officer or designee.
- (e) Security Requirements. The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact or store APS Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store APS Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by the APS Chief Information Security Officer or designee, the downloading



of APS information onto laptops or other portable storage medium is prohibited without the express written authorization of the APS Chief Information Security Officer or designee.

- (f) Data Protection Upon Conclusion of Contract. Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all APS Information to APS unless APS requests that such data be destroyed. This provision shall also apply to all APS Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) calendar days after the conclusion of this Agreement and shall certify completion of this task, in writing, to APS Project Officer.
- (g) Notification of Security Incidents. The Contractor agrees to notify the APS Chief Information Officer and APS Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of APS Information.
- (h) Subcontractors. To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing APS Information and a copy of their disaster recovery plan/s.

31. ETHICS IN PUBLIC CONTRACTING\*

This Contract incorporates by reference Article 9 of the APS Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq., and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

32. APS EMPLOYEES\*

No employee of Arlington Public Schools, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise there from which is not available to the general public.

33. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, any moratorium, law, order, regulation/ action or inaction of any governmental entity other than APS or civil or military authority, power or utility failures, fiber or cable cuts caused by third parties, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties and pole hits, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

APS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract.

34. AUTHORITY TO TRANSACT BUSINESS\*

The Contractor shall pursuant to Code of Virginia §2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of APS.

35. RELATION TO APS\*

The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered employees, servants or agents of APS. APS will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. APS will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, APS will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by APS for its employees.

36. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to APS all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by APS under this Contract.

37. REPORT STANDARDS

Reports or written material prepared by the Contractor in response to the requirements of this Contract or request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to APS, The Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on **at least thirty percent (30%) recycled-content** and/or tree-free paper;
- All submittals must be in the required tabular format in a binder.
- Report covers / binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper should be avoided.

38. AUDIT

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. APS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which APS does not have ready access) within five (5) years after final payment, the Contractor shall notify APS at least thirty (30) days prior to such disposal, and if APS objects, shall not dispose of the records.

39. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of APS.

40. AMENDMENTS

This Contract shall not be modified except by written amendment executed by persons duly authorized to bind the Contractor and APS

41. ARLINGTON PUBLIC SCHOOLS PURCHASING RESOLUTION AND APS POLICIES\*

Notwithstanding any provision to the contrary herein, no provision of the Arlington Public Schools Purchasing Resolution or any applicable APS policy is waived in whole or in part.

42. DISPUTE RESOLUTION\*

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to APS Superintendent or designee in writing no later than sixty (60) days after final payment in accordance with the Arlington Public Schools Purchasing Resolution.

The time limit for final written decision by APS Superintendent or designee in the event of a contractual dispute, as that term is defined in the Arlington Public Schools Purchasing Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Arlington Public Schools Purchasing Resolution, incorporated herein by reference. A copy of the Arlington Public Schools Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, APS Superintendent or designee, School Board, or a court of competent jurisdiction.

43. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION\*

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

44. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

45. NONEXCLUSIVITY OF REMEDIES

All remedies available to APS under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to APS at law or in equity unless otherwise provided for in this

Agreement.

46. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

47. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

48. NO WAIVER OF SOVEREIGN IMMUNITY\*

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by APS pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of APS. The parties intend for this provision to be read as broadly as possible.

49. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO APS; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; CONFIDENTIAL INFORMATION, AND DATA SECURITY AND PROTECTION.

50. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this contract or a limitation on the scope of the particular section to which the heading refers.

51. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

52. NOTICES

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

TO APS:

APS Project Officer (refer to section headed Project Officer under the Contract Terms and Conditions section (Contractor shall request address from Project Officer) ;

AND

David J. Webb, C.P.M.  
Purchasing Agent  
Arlington Public Schools  
1426 N. Quincy Street,  
Arlington, Virginia 22207

53. NON-DISCRIMINATION NOTICE\*

APS does not discriminate against faith-based organizations.

54. INSURANCE REQUIREMENTS

The Contractor shall provide to the APS Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverage's must be acquired from insurers authorized to do business in the Commonwealth of Virginia, rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of A.M. Best Co., and acceptable to APS. The minimum insurance coverage shall be:

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. APS will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Professional and/or/Miscellaneous Errors and Omissions - The Contractor shall carry Professional/and/or/Miscellaneous Errors and Omissions insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the contract, in the amount shown in the Insurance Checklist.
- c. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- d. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- e. Arlington Public Schools, its officers, elected and appointed officials, employees and agents, are to be named as additional insureds under all coverages except Workers' Compensation, Errors and Omissions, and Automobile Liability, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects APS, its officers, elected and appointed officials, agents and employees. The following definition of the term "APS" applies to all policies issued under the Contract:  
"APS School Board and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the School Board of Arlington Public Schools, Virginia, or one in which controlling interest is vested in Arlington Public Schools"

- f. Cancellation - All insurance policies required by this Contract shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation or non-renewal until thirty (30) days prior written notice has been given to the Purchasing Agent, Arlington Public Schools, Virginia." If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and APS notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification - The insurance certificate shall state this Contract's number and title.
- i. Intellectual Property Infringement Insurance.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. APS reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, APS may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for APS.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to APS immediately upon request by APS.

No acceptance or approval of any insurance by APS shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to APS for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverage's are submitted to and acceptable to APS.

The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

55. ACCESSIBILITY OF WEB SITE\*

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any APS websites, or APS' presence on other party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: <http://www.ada.gov/websites2.htm>.

56. ARLINGTON COUNTY BUSINESS LICENSE

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

57. FAILURE TO DELIVER

In case of failure to deliver goods or services in accordance with the contract terms and conditions, APS, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which APS may have; provided that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by APS.

58. SUBCONTRACTS

The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the State in which the work under this contract is to be performed.

The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

Nothing contained in this contract shall create any contractual relationship between any subcontractor and APS.

59. CONTRACTOR CERTIFICATION REGARDING CRIMINAL CONVICTIONS

As a condition of awarding a contract for the provision of Work that requires the Contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Arlington School Board shall require the Contractor to provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during

school-related or school sponsored activities who has been convicted of a sexually violent offense. The Contractor certification covers its employees, its Subcontractors and the employees thereof. (Submit Appendix A provided below).

The Contractor shall also certify for its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The Contractor upon demand from APS shall provide all information which allowed for the certification.

The Contractor shall submit to the Owner a completed Contractor Certification Regarding Criminal Convictions on the form provided by the Owner (See RFP Appendix A).

60. NON-ENDORSEMENT CLAUSE FOR CONTRACTS & AGREEMENTS

ARLINGTON PUBLIC SCHOOLS may be identified as a "Participant" in LIGHTOWER FIBER NETWORK II, LLC with the following statement added. "This shall not constitute an endorsement of any products or services". For further information please contact the Arlington Public Schools School and Community Relations office.

61. PRICE REDUCTION

If at any time after the date of the Contract award the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc. which was used as the basis for awarding the contract. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general reduction" under this provision. The Contractor shall submit their invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor, in addition, will within ten (10) days of any general price reduction, notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY LEAD TO TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction all ordering offices will be duly notified by the Purchasing Agent. The Contractor, if requested, shall furnish, within ten (10) days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the contract award or (2) if any such general price reductions are made, that as provided above, they were reported to the Purchasing Agent within ten (10) days, and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

62. SERVICES SUPPLEMENTS

In addition to the Services Supplements added to this Contract, the following provisions are also added:

- A. APS Equipment: APS shall, at its own expense, procure any equipment necessary to implement or receive service. Contractor will have no obligation to install, maintain, or repair APS Equipment.
- B. Space and Power: APS shall procure and make available to Contractor, at APS's locations where



the Service is provided, at APS's sole cost and expense, adequate space, AC power and HVAC for Contractor equipment.

- C. In the event of any inconsistency between the Internet Services Supplement, the Colocation Service Supplement or the Dark Fiber Service Supplement and any of the originally designated Contract Documents, the originally designated Contract Documents shall prevail.

**INSURANCE CHECKLIST**

Certificate of Insurance must show all coverage and endorsements indicated by "X"

COVERAGES REQUIRED			LIMITS (FIGURES DENOTE MINIMUMS)
X	1	Workers' Compensation	Statutory limits of Virginia
X	2	Employer's Liability	\$100,000 accident, \$100,000 disease, \$500,000 disease policy limit
X	3	Commercial General Liability(CGL)	\$1,000,000 CSL BI/PD each occurrence, \$2 Million annual aggregate
X	4	Premises/Operations	\$500,000 CSL BI/PD each occurrence Million annual aggregate
X	5	Automobile Liability	\$1 Million BI/PD each accident, Uninsured Motorist
X	6	Owned/Hired/Non-Owned Vehicles	\$1 Million BI/PD each accident, Uninsured Motorist
X	7	Independent Contractors	\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
	8	Products Liability	\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
X	9	Completed Operations	\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
X	10	Contractual Liability (Must be shown on Certificate)	\$500,000 CSL BI/PD each occurrence
	11	Personal and Advertising Injury Liability	\$1 Million ea. offense, \$1 Million annual aggregate
	12	Umbrella Liability	\$1 Million Bodily Injury, Property Damage and Personal Injury
	13	Per Project Aggregate	\$1 Million per occurrence/claim
X	14	Professional Liability	
X	15	Miscellaneous E&O	\$1 Million per occurrence/claim
	16	Motor Carrier Act End. (MCS-90)	\$1 Million BI/PD each accident, Uninsured Motorist
	17	Motor Cargo Insurance	
	18	Garage Liability	\$1 Million Bodily Injury, Property Damage per occurrence
	19	Garage keepers Liability	\$500,000 Comprehensive, \$500,000 Collision
	20	Inland Marine-Baillie's Insurance	\$
	21	Moving and Rigging Floater	Endorsement to CGL
	22	Dishonesty Bond	\$
	23	Builder's Risk	Provide Coverage in the full amount of Contract
	24	XCU Coverage	Endorsement to CGL
	25	USL&H	Federal Statutory Limits
X	26	Carrier Rating shall be Best's Rating of A-VII or better or its equivalent	
X	27	Notice of Cancellation, nonrenewal or material change in coverage shall be provided to APS at least 30 days prior to action	
X	28	APS shall be an Additional Insured on all policies except Workers Compensation, Professional Liability, and Automobile Liability	
X	29	Certificate of Insurance shall show Solicitation Number and Title	
X	30	Intellectual Property Infringement Insurance	

## INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the Offeror named below and have advised the Offeror of required coverages not provided through this agency.

AGENCY NAME: MARSHAUTH. SIGNATURE: 

## OFFEROR'S STATEMENT:

If awarded the Contract, I will comply with contract insurance requirements.

OFFEROR NAME: \_\_\_\_\_

AUTH. SIGNATURE: \_\_\_\_\_



**DARK FIBER SERVICES SUPPLEMENT  
TO THE CONTRACT**

**CUSTOMER: ARLINGTON PUBLIC SCHOOLS**

This Dark Fiber Services Supplement ("Supplement") is effective as of the last date of execution below ("Supplement Effective Date") by and between LIGHTTOWER FIBER NETWORKS II, LLC ("Provider") and Customer, and is hereby incorporated into and made a part of the Contract between the Parties (the "Contract"). Unless otherwise defined herein, capitalized terms in this Supplement shall have the meanings given in the Contract.

**1. SCOPE OF SUPPLEMENT**

This Supplement applies to dark fiber Services. This Supplement shall not apply to the transport (e.g. Ethernet, SONET, wavelength and other so-called "lit" transport services), Internet, or colocation Services.

**2. ADDITIONAL TERMS**

The following additional terms and conditions shall apply to the provision of such dark fiber Services.

**"Cable"**: Fiber optic cable with fiber optic filaments contained in any suitable jacketing or sheath that is already in place, or is yet to be installed, and to which Provider will have access by ownership, lease, right to use, or otherwise.

**"Cable Accessories"**: The attachment and suspension hardware, splice closures and other components necessary for the placement of the Cable either underground or overhead or for the continuity of the fiber filaments.

**"Customer Fibers"** or **"Service"**: The Fibers that are licensed to Customer under a Service Order.

**"Customer System"**: The fiber optic system owned or controlled by the Customer on the Premise Side of the Point of Demarcation including, without limitation, all associated Customer Equipment.

**"Fibers"**: The fiber optic filaments contained in the Cable.

**"Lateral"**: Fiber connecting a Route to a building entrance through conduit or overhead drops to a point within the building agreed upon by Provider and Customer, provided that such building is directly off a Route.

**"Network Side"**: The side of the Point of Demarcation on which the Cable is located prior to termination, for which Provider is responsible, as contemplated in the Agreement and any corresponding Service Order.

**"Premise Side"**: The side of the Point of Demarcation on which the Customer Equipment and/or a third party's equipment is located after the termination of the Cable, for which Customer is responsible, as contemplated in the Agreement and any corresponding Service Order.

**"Provider Fibers"**: All fibers in the Cable in which Provider retains ownership and/or the right to use, other than those specifically licensed for use by Customer hereunder.

**"Route"**: The geographic path along which the Cable and Customer Fibers are located.

**"Route Segment"**: A portion of the Route between any two points, including, without limitation, a portion of the Route comprising a Lateral.

**3. FIBER SPECIFICATIONS; LATERALS**

**3.1 Cable Design and Construction.**

**Laterals.** In the event a Service Order provides for Lateral(s), Provider shall construct (if necessary) and install such Lateral(s), and Customer shall only have the right to use the Fibers in such Lateral(s) designated as Customer Fibers, and the remaining fiber optic filaments within the Lateral Cable shall be designated as Provider Fibers. For each Lateral, Customer shall pay a charge (in addition to the Customer Fibers) any number and type of fibers on, along, or in each such Lateral for any purpose, including, without limitation, leasing or licensing such fibers to any third party or parties. Provider's installation of such Lateral(s) shall be subject to the receipt of any required regulatory approvals and Underlying Rights.

**3.2 Specifications.** The Specifications applicable to the Services are set forth in the attached Exhibit A, incorporated herein by reference.

**4. USE OF SERVICE**

**4.1 License.** Subject to the terms and conditions set forth in the Agreement and an applicable Service Order for dark fiber, Provider will grant to Customer a license to use such fiber optic filaments within the Cable designated as Customer Fibers; the number, identity, type, and location of Customer Fibers shall be as set forth in a Service Order(s). Customer shall only have the right to use the Fibers designated as Customer Fibers, and the remaining fiber optic filaments within the Cable shall be designated as Provider Fibers. Customer acknowledges and agrees that Provider may not be the owner of the Fibers but may instead lease, license, or acquire a right to use such Fibers from a third party together with the right to sub-lease Fibers to Provider's customers.

**4.2 Limitations on Rights and Obligations.** In addition to, and not in limitation of, any limitations set forth in the Agreement, the Parties agree that:

**4.2.1 Use by Customer.** Customer shall exercise its rights hereunder in accordance with the terms set forth herein and applicable international, state, local and federal laws and regulations.

**4.2.2 Use by Provider.** Nothing herein shall be construed as limiting or restricting Provider or its Affiliates in any manner from using its or their own cables, fibers, or any other facilities, easements and/or rights of way for the installation of additional fiber optic cables, for use as telecommunications facilities, or for any other purpose.

**4.2.3 Subordination.** Customer understands and agrees that Provider's ability to grant Customer the license to use the Customer Fibers pursuant to this Agreement, and to attach, install, construct, operate, and maintain the Provider Network and Customer Fibers, is at all times subject and subordinate to, and limited by, the Underlying Rights, applicable laws, rules, ordinances, codes, and regulations. By virtue of the Agreement, Customer shall only have the license to use the Customer Fibers or related facilities, expressly granted herein, and, in no event, shall such license be construed to be greater than the Underlying Rights to use such Customer Fibers. Provider shall not be liable for any acts or omissions by Provider, its employees or affiliates that interfere with or otherwise affect Customer's use of the Customer Fibers to the extent such acts or omissions are required by the Underlying Rights, including, without limitation acts or omissions that deny the use of, alter or remove the Cable and Cable Accessories.

**4.2.4 Sublicensing.** Customer shall not assign, transfer, lease, sublease, license, sub-license, or otherwise grant a right to use, the Customer Fibers to any third party without the prior written consent of Provider.

**4.3. Relocation of Fibers.**

**4.3.1 Relocation Requested By Customer.** Customer may request relocation, replacement, or rebuild of the Customer Fibers, subject to Provider's approval, the execution of a Service Order and Customer's payment to Provider of all costs and expenses associated with any such relocation, replacement or rebuild, including overhead costs and markups. No relocation or replacement of the Cable, Cable Accessories or related facilities shall be performed without the prior written agreement of Provider, which shall be in Provider's sole discretion.

**4.3.2 Required Relocation.** In the event that Provider is required by any underlying service provider, public authorities, or lawful order or decree of a regulatory agency or court or any other reason beyond Provider's reasonable control, to relocate or modify any or all Cable on the Route upon which the Customer Fibers are located, Provider's costs for any such work shall be shared on a pro rata basis with Customer. Provider shall not be responsible for the costs of, nor shall it be liable for, the removal, relocation or replacement of any Customer Equipment or other Customer property on the Premise Side of the Point of Demarcation. If the relocation or replacement of the Cable is requested or caused by a third party, Provider shall attempt to obtain reimbursement of Provider's costs from said third party. Notice to Customer will be provided as soon as reasonably practicable. Neither Provider nor any of its affiliates or agents shall incur liability for any outage, disruption, degradation, interference, or interruption of any Service in connection with any such removal or relocation. Provider and Customer shall cooperate in performing such relocation or modifications so as to minimize any interference with the use of the Customer Fibers and the Cable and to avoid conflicting physically or otherwise interfering with joint users of the Cable, Cable Accessories or any other property impacted by the installation, construction, maintenance or use of the Cable, to the extent reasonably possible. Any such relocation shall be accomplished consistently with the Technical Specifications.

**4.3.3 Return of Removed Equipment.** In the event Provider must remove any Customer Equipment or other property of Customer, Provider will deliver to Customer the Customer Equipment or property so removed upon payment by Customer of the costs for removal, storage and delivery, and all other amounts due Provider. Provider shall use reasonable care when removing, storing and delivering such Customer Equipment, but shall not be liable for any damage so long as such reasonable care is used.

**5. TERMINATION AND CONDEMNATION**

**5.1 Reversion of Rights.** Customer's right to use the Customer Fibers shall revert to Provider upon termination of the Agreement or the applicable Service Order, or with the termination of any Route Segment with respect to any Fibers within that Route Segment.

**5.2 DELETED**

**5.3 Condemnation Proceedings/Termination Rights.** Upon its receipt of a formal notice of condemnation or taking, Provider shall notify Customer of any condemnation proceeding filed against the Customer Fibers. If at any time during the Service Term, all or any significant portion of the Cable is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain and, after exercise of the Parties' commercially prudent efforts, the Cable cannot be relocated pursuant to Section 4.3 herein, either Party may elect to terminate the impacted Service upon giving the other thirty (30) days prior written notice. If the applicable Service is terminated in accordance with this section, the applicable Service shall be deemed canceled and neither Party shall have any further obligations to the other, except that both Parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interest in the Cable.

**6. DELETED**

**7. SERVICE LEVEL AGREEMENT**

**7.1 MTTR Objectives.**

**7.1.1 Mean Time to Respond.** "Mean Time to Respond" is the average time required for Provider to begin troubleshooting a reported failure. The Mean Time to Respond objective is two (2) hours from Provider's receipt of notice of such failure.

**7.1.2 Mean Time to Repair.** "Mean Time to Repair" is the average time required to restore Service to an operational condition as defined herein. The Mean Time to Repair objective is four (4) hours from Provider's receipt of notice of such failure.

**7.2 Service Outage.** Subject to this Section 7, in the event of a Service Outage to any dark fiber Service and Provider fails to repair such Service Outage within twenty-four hours of notice from Customer of such Service Outage ("Repair Window"), Customer may be entitled to a credit ("Service Credit") of 1/30<sup>th</sup> of the MRC applicable to the affected Service for each consecutive 24-hour period of the Service Outage after said Repair Window. A "Service Outage" is a complete disruption of a dark fiber Service under this Supplement, or a material degradation of such Service below the applicable Specifications, such that Customer is unable to utilize the Service for its intended purpose as contemplated hereunder. A Service Outage shall be deemed to begin upon the earlier of Provider's actual knowledge of the Service Outage or Provider's receipt of notice from Customer of the Service Outage, and end when the Service is operational and in material conformance with the applicable Specifications, as documented by Provider's records. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Service Order, in no event shall a Service Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

**7.3 Service Credits.** The number of minutes of separate and discrete Service Outages will not be accumulated to determine the percentage of Service Credit. Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order, and may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Customer by Provider. Service Credits issued to Customer hereunder shall be Customer's sole and exclusive remedy at law or in equity on account of any Service Outage and/or failure to meet any objectives or parameters set forth in this Supplement. Notwithstanding anything to the contrary herein, the above-stated Service Credits shall not apply to Off-Net Services, and in the event of a Service Outage or other failure of any Off-Net Service provided by Provider to Customer, Provider agrees to pass through a credit equal to the credit received by Provider from its underlying provider(s) for such Service Outage, in lieu of the above-stated Service Credits. In no event shall Provider's total liability for any and all interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Service Outage or failure to meet any objectives or parameters set forth in this Supplement) exceed one hundred percent (100%) of the MRC for the affected Service.

**7.4 Service Credit Request.** Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer's right to request the Service Credit. Failure to request an allowance within such period shall constitute a waiver of any claim for a Service Credit.

**7.5 Multiple Applicable Service Standards.** If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident.

**7.6 Events Excepted From Service Credit.** Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Service Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Customer's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Customer Equipment, End User equipment or Customer's vendor's equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider's inability to obtain access required to remedy a defect in Service; despite diligent effort to achieve such success.
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;

- h. Force Majeure Event;
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement; and/or
- j. Provider's inability to repair due to utility safety restrictions.

The Parties have executed this Supplement as of the last date of execution below.

**CUSTOMER:**

By: David Webb  
Print Name: DAVID WEBB  
Title: Purchasing Director  
Date: November 30, 2015

**PROVIDER:**

**LIGHTOWER FIBER NETWORKS II, LLC**

By: Lisa Gagliardi  
Print Name: Lisa Gagliardi  
Title: Deputy General Counsel  
Date: 11-30-2015

**Exhibit A**  
**Fiber Specifications**

1. **Type and Constitution.** Single-mode Fibers are made of high grade doped silica core surrounded by a silica cladding; and coated with a dual layer, UV-cured acrylic-based coating.

Properties	Units	Single Mode	Single Mode Enhanced	MetroCor	NZDSF
<b>Glass Geometry</b>					
Mode Field Diameter at 1310 nm	( $\mu\text{m}$ )	9.2 $\pm$ 0.4	9.2 $\pm$ 0.4	N/A	N/A
Mode Field Diameter at 1550 nm	( $\mu\text{m}$ )	10.4 $\pm$ 0.8	10.4 $\pm$ 0.8	8.1 $\pm$ 0.5	9.2 $\pm$ 0.8
<b>Fiber Attenuation (Loose Tube/Ribbon)</b>					
Maximum value at 1310 nm	(dB/km)	0.35/0.40	0.35/0.40	0.5	N/A
Maximum value at 1550 nm	(dB/km)	0.25/0.30	0.25/0.30	0.25/0.30	0.25/0.30
<b>Polarization Mode Dispersion (PMD)</b>					
Max. Ind. Fiber PMD @ 1550 nm	(ps/ $\sqrt{\text{km}}$ )	$\leq$ 0.2	$\leq$ 0.2	$\leq$ 0.2	$\leq$ 0.2
PMD Link Value	(ps/ $\sqrt{\text{km}}$ )	$\leq$ 0.1	$\leq$ 0.1	$\leq$ 0.1	$\leq$ 0.1

2. **Splicing Requirements**

- (a) Bi-directional splice value ("Splice Value")  $\leq$  0.20 dB at 1550 nm. In exceptional cases, a Splice Value may be accepted if its value is higher than 0.20 dB at 1550 nm. An exception case is, for instance, when three (3) re-trials of a splice cannot improve the Splice Value. The Splice Value will be given by the equation:

$$\frac{(\text{Splice attenuation from A to B}) + (\text{Splice attenuation from B to A})}{2}$$

- (b) Splice attenuation average ("Splice Attenuation Average")  $\leq$  0.15 dB at 1550 nm. The Splice Attenuation Average is given by:

$$\frac{\sum \text{Splice Values}}{\text{Number of splices in the Route Segment}}$$

- (c) It is recognized by the Parties that due to the use of ribbon fiber optic cable on some of the segments, the Splice Value of individual splices may exceed 0.20 dB. However, the Splice Attenuation Average for any Route Segment as designated in (b) above shall supersede all other splicing requirements in cases where Splice Values that 0.20 dB exist.

3. **Connectors**

- (a) Maximum Unitary ODF/S Connector (1 connector + 1 adapter + 1 connector)  
 (b) Maximum Connector/pigtail loss. The attenuation contribution of each pigtail with associated connector is considered to be 1.0 dB, comprised of 0.8 dB connector loss and 0.20 dB splice loss (pigtail to cable splice).  
 (c) Minimum connector return loss: 40dB at 1550 nm.



## INTERNET SERVICES SUPPLEMENT TO THE CONTRACT

CUSTOMER: ARLINGTON PUBLIC SCHOOLS

This Internet Services Supplement ("Supplement") is effective as of the last date of execution below ("Supplement Effective Date") by and between LIGHTTOWER FIBER NETWORKS II, LLC ("Provider") and Customer, and is hereby incorporated into and made a part of the Contract between the Parties (the "Contract"). Unless otherwise defined herein, capitalized terms in this Supplement shall have the meanings given in the Contract.

### 1. SCOPE OF SUPPLEMENT

This Supplement applies to Internet Services. This Supplement shall not apply to the transport (e.g. Ethernet, SONET, wavelength and other so-called "lit" transport services), dark fiber, or colocation Services.

### 2. ADDITIONAL TERMS

The following additional terms and conditions shall apply to the provision of such Internet Services.

"Access Port": The port on Provider's handoff utilizing IP Core Network equipment which is the point of attachment and entry into the IP Core Network service.

"Bandwidth" or "BW" means the amount of data (quantified as "Mbps" or "Gbps") made available to Customer.

"Internet Services" or "Service": The Internet connectivity and Bandwidth provisioned by Provider to Customer pursuant to a Service Order.

"IP Core Network": Any Layer-3 equipment owned and operated by Provider that is managed in strict accordance with defined Provider Network Operations' parameters.

"Latency": The round-trip time it takes for a packet to travel between the IP Core Network and Access Port.

"Network Availability": A period of time during which Customer port(s) are able to transmit and receive IP Packets to/from the On-Net IP Core Network.

"Network Unavailability": A period of time during which (i) the Access Port(s) cannot exchange packets with the IP Core Network, and (ii) periods referred to in Sections 5.2.4 and 5.4.4 below.

"On-Net": For purposes of this Supplement and any Internet Service, On-Net is defined as residing within Provider's IP Core Network only.

"Packet Delivery": The successful bi-directional delivery of packets between the IP Core Network and Access Port.

"Throughput": The maximum transmission rate at which packets, inclusive of calculated protocol overhead, can be successfully delivered between the IP Core Network and the Access Port.

### 3. SPECIFICATIONS

Provider's target Network Availability and performance objectives for the duration of each calendar month in a year shall be as follows:

Metric	Goal (Monthly Average)	Description
IP Core Network Network Availability	99.99%	Less than 4.5 minutes total Network Unavailability per calendar month
IP Core Network Latency	< 30ms	Less than 30 milliseconds round-trip latency
IP Core Network Packet Delivery	≥ 99.9%	Less than 0.1% packet loss
IP Core Network Throughput	≥ 95%	Greater than or equal to 95% of Bandwidth as defined in the Service Order

### 4. USE OF SERVICE

4.1 The Internet Service provides IP transit service via Provider's ASN (autonomous systems number) 46887 and 21687 Network to the public Internet. The Provider's ASN 46877 and 21687 Network is comprised of equipment and wiring located in the Provider's IP Core Network.

4.2 The Service is configured at designated speeds on a port(s) on the Provider's handoff utilizing IP Core Network equipment. This Access Port(s) shall be the point of demarcation for purposes of the applicable Service and for purposes of measurements in connection with said

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Service. The selected speed of service, physical handoff type on the Customer Premise Equipment ("CPE") to the Customer, pricing and length of the initial Service Term shall be set out in the individual Service Order.

- 4.3 Customer shall utilize the Service(s) in compliance with all applicable international, federal, state and local laws and regulations, as well as abide by Provider's Acceptable Use Policy, which is posted on Provider's website at [www.lighttower.com](http://www.lighttower.com) and incorporated herein by reference.
- 4.4 To the extent applicable, Customer acknowledges that Provider has no ability to determine whether the communications traffic carried via the Service is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Service Order, Customer acknowledges and agrees that the communications traffic to be carried via the Provider Network shall be jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule" (47 CFR 36.154, 4 FCC Red. 1352).
- 4.5 Upon expiration or termination of a Service for any reason, Customer agrees to return to Provider any IP addresses or address blocks assigned to Customer by Provider.

**5. SERVICE LEVEL AGREEMENT**

**5.1 Network Unavailability.** Subject to this Section 5, in the event of Network Unavailability to any Internet Service, Customer may be entitled to a credit (a "Service Credit") in accordance with the applicable Service Level Objective set forth below in this Section 5.1. Network Unavailability shall be deemed to begin upon the earlier of Provider's actual knowledge of the Network Unavailability or Provider's receipt of notice from Customer of the Network Unavailability, and end when the Service is operational such that the Service is again able to transmit and receive packets to/from the IP Core Network and Access Port or Ports, as documented by Provider's records. Where Customer provides its own local access circuits, any periods of Network Unavailability caused by failure of such local access circuits shall be excluded from any calculation of Network Unavailability. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Service Order, in no event shall any Network Unavailability or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

Duration of Network Unavailability	Service Credit
Up to 45 Minutes	No credit
> 45 Minutes to Four Hours	10% of applicable MRC
> Four Hours to Eight Hours	20% of applicable MRC
> Eight Hours to Twelve Hours	40% of applicable MRC
> Twelve Hours to Twenty-Four Hours	50% of applicable MRC
> Twenty-Four Hours	100% of applicable MRC

**5.2 Latency**

**5.2.1 Parameter.** Provider shall use commercially reasonable efforts to maintain a monthly average Latency less than 30 milliseconds measured within the IP Core Network to the Access Port. Traffic traversing the public Internet is not subject or applicable to this Section 5 or this Supplement.

**5.2.2 Measurement.** Latency is measured between the IP Core Network and Access Port and does not apply to local access circuits. Latency is measured using Provider's network management systems or testing hardware. Provider's network management systems or testing hardware shall be the sole and conclusive source of measurements for the purposes of measuring Latency. Performance measurements will be accomplished using Y.1731, its logical equivalent, and/or through the use of industry standard dedicated test sets, as elected by the Provider at its sole discretion. Specifically, the Provider places severe limitations on response packets sent using the ICMP Echo protocol, such as ping and traceroute; times returned by those two programs while traversing core network equipment are known to be misleading and will not be used for performance measurements. Upon request, Provider will provide copies of measurements and tests performed for the purposes of determining credits to Customer hereunder.

**5.2.3 Service Credit.** If monthly average Latency exceeds the parameters set forth in Section 5.2.1, Customer shall be entitled to a Service Credit of ten percent (10%) of the applicable MRC.

**5.2.4 Excessive Service Degradation.** If, at any time, the Service experiences Latency greater than 35 milliseconds for a sustained period of two hours or more, the time for which that Latency is experienced shall be considered a period of Network Unavailability, entitling Customer to the applicable Service Credit under Section 5.1, in lieu of a Service Credit under Section 5.2.3.

**5.3 Packet Delivery**

**5.3.1 Parameter.** Provider shall use commercially reasonable efforts to maintain a monthly average Packet Delivery of no less than ninety-nine point nine percent (99.9%).

**5.3.2 Rate Shaping:** Services delivered over fixed rate interfaces as defined in the applicable specifications and in the situation where the contracted Service level is lower than the physical interface speed, rate enforcement will be done by the application of 'rate shaping' which involves random packet discard. Packets discarded in this fashion are not subject to this Section 5 or this Supplement.

**5.3.3 Service Credit.** If monthly average Packet Delivery fails to meet the parameters set forth in Section 5.3.1, Customer shall be entitled to a Service Credit of ten percent (10%) of the applicable MRC.

#### 5.4 Throughput

**5.4.1 Parameter.** Provider shall use commercially reasonable efforts to maintain a monthly average Throughput at no less than ninety-five percent (95%) of Bandwidth set forth in the Service Order.

**5.4.2 Measurement.** Throughput is measured at Provider's demarcation device at the Customer's premises using industry standard tests and Provider network based throughput beacons. Only measurements by dedicated test sets are used for measuring the parameters set forth in this Section 5.4 and this Supplement.

**5.4.3 Service Credit.** If, at any time, the Service experiences Throughput below the ninety-five percent (95%) monthly average set forth in Section 5.4.1, Customer shall be entitled to a Service Credit of ten percent (10%) of the applicable MRC.

**5.4.4 Excessive Service Degradation:** If, at any time, the Service experiences Throughput below ninety-five percent (95%) for a sustained period of two hours or more, the period for which such reduced Throughput is experienced shall be considered a period of Network Unavailability, entitling Customer to the applicable Service Credit under Section 5.1, in lieu of a Service Credit under Section 5.4.3.

**5.5 Service Credits.** Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order, and may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Customer by Provider. Service Credits hereunder may be paid only once per any given billing cycle. Service Credits issued to Customer hereunder shall be Customer's sole and exclusive remedy at law or in equity on account of any Network Unavailability and/or failure to meet any objectives or parameters set forth in this Supplement. Notwithstanding anything to the contrary herein, the above-stated Service Credits shall not apply to Off-Net Services, and in the event of any Network Unavailability or failure to meet any objectives or parameters of any Off-Net Service provided by Provider to Customer, Provider agrees to pass through a credit equal to the credit received by Provider from its underlying provider(s) for such Network Unavailability, in lieu of the above-stated Service Credits. In no event shall Provider's total liability for any and all interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Network Unavailability or failure to meet any objectives or parameters set forth in this Supplement) exceed one hundred percent (100%) of the MRC for the affected Service.

**5.6 Service Credit Request.** Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer's right to request the Service Credit. Failure to request an allowance within such period shall constitute a waiver of any claim for a Service Credit.

**5.7 Multiple Applicable Service Standards.** If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident.

**5.8 Events Excepted From Service Credit.** Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Network Unavailability, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Customer's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Customer Equipment, End User equipment or Customer's vendor's equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider's inability to obtain access required to remedy a defect in Service; despite the diligent effort to achieve such access
- f. Scheduled maintenance and emergency maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement; and/or
- j. Provider's inability to repair due to utility safety restrictions.

**5.9 Disclaimer of Third Party Actions.** At times, actions or inactions caused by third parties (e.g. denial of service attacks) can produce situations in which Customer connections to the Internet (or portions thereof) may be impaired or disrupted. Provider cannot guarantee that such situations will not occur, and accordingly Provider disclaims any and all liability resulting from or related to such events. In the event that Customer's use of the Service or such third parties is causing harm to the Network or its operations, Provider shall have the right to suspend the Service. Provider shall restore the Service at such time as it reasonably deems that there is no further harm or threat to the Provider network or its operations. This Section 5 shall apply only to Service that is provisioned on the IP Core Network.

The Parties have executed this Supplement as of the last date of execution below.

**CUSTOMER:**

By: *Davis Webb*  
Print Name: *DAVID WEBB*  
Title: *Purchasing Director*  
Date: *November 30, 2015*

**PROVIDER:**

**LIGHTOWER FIBER NETWORKS II, LLC**

By: *Lisa English*  
Print Name: *Lisa English*  
Title: *Deputy General Counsel*  
Date: *11-30-2015*



**COLOCATION SERVICES SUPPLEMENT  
TO THE  
CONTRACT**

**CUSTOMER: ARLINGTON PUBLIC SCHOOLS**

This Colocation Services Supplement ("Supplement") is effective as of the last date of execution below ("Supplement Effective Date") by and between LIGHTTOWER FIBER NETWORKS II, LLC ("Provider") and Customer, and is hereby incorporated into and made a part of the Contract between the Parties (the "Contract"). Unless otherwise defined herein, capitalized terms in this Supplement shall have the meanings given in the Contract.

**1. SCOPE OF SUPPLEMENT**

This Supplement applies to colocation Services. This Supplement shall not apply to the transport (e.g. Ethernet, SONET, wavelength and other so-called "lit" transport services), Internet, or dark fiber Services.

**2. ADDITIONAL TERMS**

The following additional terms and conditions shall apply to the provision of such colocation Services.

"Colocation Services" or "Services": The provision of Site Space and any other services (e.g. power or cross-connections) provided by Provider to Customer in the Site Space.

"Colocation Service Outage": The period when UPS power licensed by Customer from Provider under a Service Order in the applicable Site Space is unavailable to Customer (provided that the primary and redundant feeds are both unavailable at the time in question), as measured at the point where Provider delivers the UPS power to Customer.

"Site": The specified premises listed in the applicable Service Order at which Provider provides floor space or rack arrangements dedicated to Customer Equipment.

"Site Landlord": The landlord or lessor of a particular Site.

"Site Lease": The applicable underlying lease agreement for a particular Site.

"Site Space": The floor, cabinet, cage or rack space dedicated to Customer Equipment at a specific Site.

**3. USE OF SERVICE**

**3.1 License.** Subject to the terms and conditions set forth in the Agreement, pursuant to a Service Order for colocation Services Provider will grant to Customer a license to occupy and use the Site Space, and any power, cabling and connectivity (if any) identified in the applicable Service Order. Customer acknowledges that the licensing of a given Site Space under the Agreement does not grant any real property interest in such Site Space or in the building in which such Site Space is located. Customer's occupancy of the Site Space located within a Site shall be subject and subordinate to the terms and conditions of the Site Lease applicable to such Site, including provisions regarding condemnation, damage to premises, and termination of such Site Lease.

**3.2 Use of Site Space.** Except as otherwise provided in this Supplement, each Site Space is delivered in its current condition ("as is" and "where is"), and Customer acknowledges that it has inspected the same and found each to be satisfactory. Provider makes no warranty with respect to title, condition, safety or fitness of the Site Space, and Customer shall use the Site Space at its sole risk. Customer shall use the Site Space only for the purpose of placing, operating and maintaining Customer Equipment. Customer shall exercise its rights hereunder in accordance with the terms set forth herein and applicable international, federal, state and local laws and regulations. Nothing herein shall be construed as limiting or restricting Provider in any manner from using the Site, Provider's cages, cabinets, racks, cables, power and/or other facilities and equipment for any purpose. Customer agrees that it will not permit any Site Space to be used by anyone other than Customer or its authorized agents without the prior written consent of Provider. Provider agrees that it will not permit the applicable Site Space to be used by anyone other than Customer or its authorized agents without the prior written consent of Customer; provided, however, Provider shall not be restricted in sub-leasing or licensing other portions of the applicable Site to other third parties without the prior written consent of Customer. Customer shall not make any alterations to the Site Space except for the installation, operation and maintenance of Customer Equipment. Customer shall properly maintain the Site Space and keep the Site free of any debris, waste or other obstructions.

**3.3 Access to Site Space.** Customer shall be permitted access to the Site Space at all times subject to (i) Provider's rules and policies concerning authorized access to the Site and the presentation of appropriate identification, (ii) the Site Landlord's rules and regulations, (iii) such other restrictions on access as may be set forth in the applicable Service Order. Provider shall have no liability for Customer's inability to gain access to the Site Space.

**3.4 Installation.** Customer is responsible for all aspects of installation and removal of Customer Equipment, unless otherwise agreed in writing by the Parties. Customer will install Customer's Equipment in the Site Space only after obtaining authorization from Provider. Customer shall give Provider at least ten (10) days' notice prior to commencing installation, and installation and testing shall at all times be under the direct supervision of an authorized employee or agent of Provider ("Escort"). If Customer uses an agent or other third party to deliver, install, or remove Customer's Equipment, then Customer will be solely responsible for the acts of such agent/third party. Customer shall engineer, furnish, install, and test, at its sole cost and expense, all of Customer Equipment in accordance with the plans and specifications approved in advance by Provider. All Customer Equipment shall be clearly labeled as such, and Customer shall be responsible for removal of all installation material, for daily clean-up of the Site Space during installation, and for a final clean up after completion of installation.

**3.5 Rules and Regulations.** Colocation Services shall be in accordance with the terms specified in an applicable Service Order and shall be governed by Provider's Colocation Rules and Regulations, which is attached hereto as Exhibit A and is incorporated herein by reference, and which may be amended by Provider. Moreover, Customer agrees to be subject to, and comply with, all building rules, regulations, and similar requirements imposed by the Site Landlord, and not to take any action to cause a breach of the terms of such Site Lease.

**3.6 Power.** Unless specified otherwise in the applicable Service Order, Provider shall not have any obligation to provide the applicable Site Space with, and it shall be Customer's responsibility to provide or install, to the extent that it determines necessary, surge protection devices, power performance monitoring devices or other electrical safety devices to protect Customer Equipment.

**3.7 Customer Equipment.** Customer shall, at its own cost and expense, maintain all Customer Equipment at such Site Space in good repair, condition and working order, and shall provide or arrange for all parts, mechanisms, devices and servicing required therefor. Customer shall be responsible for any repairs to or servicing of such Customer Equipment, and for any maintenance/service agreement that may cover such Customer Equipment. Except in the case of an emergency, Provider shall not relocate, move, alter, or disturb any Customer Equipment at any Site Space without the prior written consent of Customer, such consent not to be unreasonably withheld, denied, conditioned, or delayed. Any Customer Equipment not removed from the Site Space within two business (2) days of the expiration or termination of the applicable Service Order shall be assumed abandoned and Provider, or, if applicable, such Site Landlord, may dispose of such Customer Equipment as Provider or Site Landlord deems appropriate, in its sole discretion, and Customer shall be responsible for any expenses associated with such disposal.

**3.8 Relocation.** Provider may require Customer to move any Customer Equipment located in a Site Space. In such event, Provider shall, to the extent reasonably possible (with consideration, if applicable, to what notice Provider may have received from the applicable Site Landlord), provide Customer with sufficient prior written notice to permit Customer to take any actions necessary to plan for any potential service interruptions and will provide the location of the new floor space/rack arrangement to be dedicated to Customer Equipment. Customer shall reimburse Provider for any and all reasonable costs and expenses incurred as a result of Customer Equipment relocation.

**3.9 Interference.** Customer agrees that its use of any applicable Site Space shall not interfere with Provider's use of the Site. Provider may suspend the provision of Service to Customer in the event that Customer or Customer Equipment interferes with Provider's operation or maintenance of the Site or with one or more of Provider's other customers' use thereof, and within a reasonable time, not to exceed one (1) hour after being notified by e-mail or phone, Customer fails to cease such interference. In the event that Provider suspends Service hereunder, Provider will resume the discontinued Service as soon as reasonably practicable after it is reasonably satisfied that Customer has cured the interference. Further, Provider may terminate the applicable Service Order if Customer's Service is suspended more than twice during the applicable Service Term. Except as otherwise provided, Provider agrees to use commercially reasonable efforts to ensure that Customer's use of such Site Space is not unreasonably interfered with by Provider, its employees, agents or other customers, and/or the Site Landlord of any Site.

**3.10 Cross Connections.** Customer may not run cables or wires of any kind from the Site Space to any other location in the Site without the prior written approval of Provider pursuant to a Service Order describing the cross-connect and the charges applicable thereto. Customer may not allow any carriers or other person to gain access to the Site or the Site Space. Provider shall have sole control of access to the Site by carriers, contractors, service providers or others. Customer shall not engage in or provide at the Site any meet-me-room services, or any services either directly or indirectly related to the trading of bandwidth.

**3.11 Inspections.** Provider may make periodic inspections of any part of the Customer Equipment, and Customer shall have the right to be represented during such inspections; provided however, that if in the sole judgment of Provider safety considerations require an inspection without providing such notice, Provider may make such inspection immediately, but shall thereafter promptly provide notice to Customer of such inspection. The making of periodic inspections or the failure to do so shall not operate to impose upon Provider any liability and shall not relieve Customer of any responsibility, obligations or liability under this Supplement or the Agreement.

#### **4. RISK OF LOSS; INDEMNIFICATION; AND INSURANCE**

**4.1 Risk of Loss.** The risk of any loss of or damage to Customer Equipment at any Site Space shall be borne solely by Customer. Provider shall not be liable to Customer for, and Customer shall not be relieved of its obligations hereunder due to, any interruption or termination of any Service or utilities due to any repair, installation or improvement, or any cause beyond Provider's reasonable control, except that if Customer is unable to operate its business as a result of such interruption caused by the gross negligence or willful misconduct of Provider, there shall be an abatement of the applicable MRC during the period of such interruption.

#### 4.2 DELETED

4.3 **Insurance.** Customer shall procure, and thereafter shall maintain through the Service Term, the following insurance from carriers having a Best Rating Service rating of A- or better:

- Commercial General Insurance with a limit of not less than \$2,000,000 each occurrence, written on ISO occurrence form CG 00 01 12 07 (or a substitute form providing equivalent coverage) and covering liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. Such insurance amount may be satisfied through a combination of primary and umbrella insurance.
- Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident, covering liability arising out of any auto (including owned, hired and non-owned autos). Such insurance amount may be satisfied through a combination of primary and umbrella insurance.
- Workers Compensation and Employers Liability Insurance as required by the laws and regulations applicable to the employees who are engaged in the performance hereunder.
- Commercial Property Insurance covering Customer's property and equipment at Provider's location, in an amount equal the full replacement cost of Customer's property and equipment.

Customer shall deliver to Provider standard form insurance certificates evidencing the coverage required herein and stating that the insurer will provide at least thirty (30) days' written notice to Provider if such coverage is to be cancelled, non-renewed or materially and adversely modified. Provider shall be included as an insured on the associated policies and this insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded Provider (there shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured). Customer waives all rights against Provider and its agents, officers, managers, directors and employees for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this Agreement.

If any insurance coverage is not secured and maintained or is canceled, Provider reserves the right to procure such insurance and to add the cost thereof to any sum due Provider from Customer under the applicable Service Order(s). Nothing contained in these insurance requirements is to be construed as limiting Customer's responsibility or liability for damages resulting from Customer's use of the Site Space or Customer's indemnification obligations.

#### 5. EMINENT DOMAIN AND CASUALTY

Should a substantial portion of the Site Space, or of the Site, be damaged by fire or other casualty, or be taken by eminent domain, Provider may elect to terminate the license for any Site Space hereunder. When such fire, casualty, or taking renders the Site Space substantially unsuitable for its intended use, a just and proportionate abatement of the applicable monthly recurring charge shall be made, and Customer may elect to terminate the license for the affected Site Space hereunder if: (a) Provider fails to give written notice within forty-five (45) days after such fire, other casualty or taking, of Provider's intention to restore the Site Space, or (b) Provider fails to restore the Site Space to a condition substantially suitable for its intended use within one hundred and eighty (180) days after said fire, casualty or taking. Provider reserves, and Customer grants to Provider, all rights which Customer may have for damages or injury to the Site Space for any taking by eminent domain, except for damage to the Customer Equipment.

#### 6. LIENS

Customer may not cause or permit any liens to be placed on the Site or any Site Space for labor, services or materials performed or delivered by or on behalf of Customer (including, without limitation, any party that may make any claim or seek any lien by or through Customer), and shall cause any such liens to be removed within ten (10) days of Customer's knowledge thereof.

#### 7. DELETED

#### 8. SERVICE LEVEL AGREEMENT

8.1 **Service Outage.** Subject to this Section 8, in the event of a Colocation Service Outage, Customer may be entitled to a credit ("Service Credit") of 1/720 of the MRC applicable to the affected Service, for each hour in duration of any such Colocation Service Outage beyond three (3) hours. A Colocation Service Outage shall be deemed to begin upon the earlier of Provider's actual knowledge of the Colocation Service Outage or Provider's receipt of notice from Customer of the Colocation Service Outage, and end when power is available, as documented by Provider's records. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Service Order, in no event shall a Colocation Service Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Provider of this Supplement, the Agreement or any Service Order.

8.2 **Service Credits.** The number of minutes of separate and discrete Colocation Service Outages will not be accumulated to determine the percentage of Service Credit. Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order, and may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Customer by Provider. Service Credits issued to Customer hereunder shall be Customer's sole and exclusive remedy at law or in equity on account of any Colocation Service Outage or any other defect in Service provided to Customer. In no event shall Provider's total liability for any and all

interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Colocation Service Outage or failure to meet any objectives or parameters set forth in this Supplement) exceed one hundred percent (100%) of the MRC for the affected Service.

**8.3 Service Credit Request.** Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer's right to request the Service Credit. Failure to request an allowance within such period shall constitute a waiver of any claim for a Service Credit.

**8.4 Multiple Applicable Service Standards.** If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident.

**8.5 Events Excluded From Service Credit.** Notwithstanding the foregoing, Customer shall not receive any Service Credit for any Colocation Service Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by the following events:

- a. Customer's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Customer Equipment, End User equipment or Customer's vendor's equipment;
- c. Failure of electrical power not provided by Provider;
- d. Election by Customer, after requested by Provider, not to release the Service for testing and repair;
- e. Provider's inability to obtain access required to remedy a defect in Service; despite the diligent effort to achieve such access.
- f. Scheduled maintenance and emergency maintenance periods;
- g. Scheduled upgrade of Service at the request of Customer;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Service by Provider pursuant to a right provided under this Agreement; and/or
- j. Provider's inability to repair due to utility safety restrictions.

The Parties have executed this Supplement as of the last date of execution below.

**CUSTOMER:**

By: Maria Webb  
Print Name: MARIA WEBB  
Title: Purchasing Director  
Date: November 30, 2015

**PROVIDER:**

**LIGHTOWER FIBER NETWORKS II, LLC**

By: Lisa Gephart  
Print Name: Lisa Gephart  
Title: Deputy General Counsel  
Date: 11-30-2015

## COLLOCATION RULES AND REGULATIONS

The following constitute rules and regulations ("Rules and Regulations") governing the use and operation of collocation facilities ("Facility" or "Facilities" or "Building" or "Buildings") owned or operated by Provider and licensed or leased for use by Provider's telecommunications and ISP customers and carriers ("Customer" or "Customers"). The individual cabinet, rack or cage space licensed to Customer within the Facility shall be referred to as the "Space." By entering into this Agreement, Customer agrees to abide by the Rules and Regulations, as they may be amended from time to time. In the event of any conflict between the Rules and Regulations and the Agreement, the terms and provisions of the Agreement shall control. Whenever, under the Rules and Regulations, or an Agreement, Provider's approval is required, such approval will be given or withheld in Provider's sole discretion.

### INTRODUCTION

Standard operating procedures and protocols have been established to further safe and reliable operation of Customer owned and operated equipment within the Facilities. Specific Facilities may be subject to special considerations based, among other things, on local jurisdiction and a Facility's design and configuration. Customers are encouraged to contact Provider's Facilities Manager with any questions or concerns regarding a particular work operation or installation procedure.

### STANDARDS OF OPERATION

The following standards of operation are required to be observed by all customers. Provider may change or augment these standards from time to time to better serve the customer base.

### OCCUPANCY AND SPACE UTILIZATION

Customer may use the Space only for the purposes of installing, maintaining and operating telecommunications equipment.

### NETWORK INTERCONNECTIONS AND INTERFACE TO THIRD PARTIES

Customer interconnections with telecommunications services provided by third parties will only be permitted with the prior written approval of Provider, subject to the applicable Agreement. It is imperative that customers understand that only Provider personnel, or its subcontractors, are allowed to perform work on the common ladder rack and in common wireways.

Provider will also install all fiber optic connections connecting customers to outside plant fiber optic cables entering the Provider Facility. Provider will provide Customer with fiber jumpers or fiber cable from the Building interface bay to the "demarcation" point, if Customer is licensing fiber from Provider. The Customer demarcation point is always in the Customer Space.

Customers with multiple racks, cage space, or "raw" space that have made provision for customer cable racks are required to use the best, most effective and economic resources to provision their own cross-connections relevant to interconnecting their own equipment within their Space or cabinet line-ups. The higher of Provider, Telcordia GR-1275-CORE, or Customer standards shall be strictly maintained, provided that Customer shall not perform any work on the common ladder rack or in common wireways.

### CUSTOMER RESPONSIBILITIES

Customer technicians must be certified by industry and Provider standards and approved by Provider in order to perform any work in Provider Facilities that directly affects common systems elements. Customer contractors must be familiar with and adhere to the Provider methods and procedures for operating and conducting business within Provider Facilities. Customer shall be responsible for any failure of Customer's contractors to do so.

Customer or its representative shall coordinate major equipment deliveries with the Facilities Manager. Major deliveries shall be scheduled and executed so as not to interfere with the operations of Provider or other Provider customers within the Facility. Doors shall not be propped open or left unattended.

Local telephone company connections shall be ordered directly by Customer, and Customer will become the customer of record. The Facility is configured to accommodate services from the local exchange carrier demarcation to Customer's Space. The telephone or terminal block shall be located within the Customer Space. Interface wiring on common ladder racking shall be performed by Provider and billed to Customer as provided in the applicable Agreement.

Connections to other carriers and or customers within Provider facilities shall be subject to the applicable Agreement and payment by Customer of the applicable cross-connect charges.

Provider, on a regular basis or at its sole discretion, shall perform inspections of Customer connections and/or general space conditions. If such Customer connections and/or general Space conditions are deemed to be non-compliant, Customer shall be notified of the specific nature of the non-compliance which shall be rectified immediately. Provider reserves the right, in all cases, to remedy the non-compliance at Customer's expense.

Specifications for the provisioning of other services such as, but not limited to, power, overhead racking, mounting and overall Space allocation, conditioning and operations will be provided to the customer by the Facilities Manager.

In all cases Customer shall provide and keep current a single point of contact for interface with the Facilities Manager for all Space matters including emergency call-out or service restoration issues.

Customer shall pay for any damage to Provider facilities or equipment, or to its customers' facilities and equipment caused by Customer's equipment failure, or other acts or omissions of Customer, or its representatives. This shall include the cost of all labor and materials



associated with the restoration or repair of building common systems equipment or services, plus the applicable administrative and overhead costs associated therewith.

PROVIDER INTENDS TO ALLOW OTHER CUSTOMERS TO INSTALL EQUIPMENT AROUND AND ABOUT THE FACILITIES, SO LONG AS NOT DIRECTLY INCONSISTENT WITH THE RIGHTS EXPRESSLY GRANTED TO CUSTOMER. BY USING THE SPACE, CUSTOMER EXPRESSLY AGREES THAT PROVIDER WILL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS OR LOSSES INCURRED BY CUSTOMER OR ANY THIRD PARTIES CAUSED BY THE EQUIPMENT, ACTS OR FAILURE TO ACT OF SUCH OTHER CUSTOMERS OR THEIR RESPECTIVE AFFILIATES, EMPLOYEES, CONTRACTORS OR AGENTS.

#### **IMPROVEMENTS TO SPACE**

Customer shall not alter the structural integrity of the Facility, affect any power, HVAC or other systems within the Facility, physically alter the Facility or the Customer space in any way, or affect the normal functioning of the Facility or another customer in any way.

All work performed within the Facility will comply with all state, federal, municipal, and regional codes, laws, ordinances, rules, regulations or directives.

#### **EMERGENCY CONTACT NUMBERS**

Customer shall post contact telephone numbers conspicuously at the entrance to its Space. Customer shall provide Provider with means of access to the Space in case of emergency. Provider reserves the right to enter the Space at any time in cases of emergency to assess possible ramifications to the Facility. Provider shall provide Customer with 72 hours advance notice of planned inspections of the Customer's Space, in non-emergency situations.

#### **COLLOCATION RAW SPACE AND CAGE SPACE WORK REQUIREMENTS**

All work within Customer's raw Space and/or cage Space shall be performed by Customer in a manner to ensure no interference with the normal functioning of the facility and other customers and be approved by the Lightower Facilities Manager as previously set forth herein above. The following applies to all work performed by or on behalf of Customer:

Initial Customer design requirements must be reviewed and approved by the Facilities Manager prior to commencement of any work. Provider reserves the right to audit all work and shall inspect equipment and/or systems prior to connection to common systems power or fiber. All work shall be confined to the area within the Space. If staging area is required it must be pre-approved by the Facilities Manager.

#### **BUILDING COMMON AREA**

The building common areas are established primarily for access and egress to Customer equipment. Customer and/or Customer's vendors must keep all driveways, entrances and passageways serving the Facility clear and available for use by Provider and other customers or vendors.

Customer shall provide and maintain all necessary guards, rails, fences, and protective coverings to preserve building integrity and appearance during any work operation. Any and all work operations that adversely impact normal access or egress from the Facility shall be performed outside of normal business hours. Customer will take special care to protect adjoining property and equipment from damage or injury.

Customer's materials and equipment shall be confined to the area in which the work is actively being performed. Customer shall provide adequate lockers or locked sheds for the storage of equipment or materials. All tools and equipment shall be stored neatly in approved storage lockers and the space shall be cleaned before the end of each work day. Trash and debris shall be removed from the facility before the end of each workday.

Customer or Customer's vendor(s) are required to protect all finished surfaces from dirt and damage, including walls, ceilings, jambs, and soffits of openings used as passageways through which materials are handled. Based on the type of work operation, temporary partitions or curtains between the work area and other spaces may be required by Provider. Partitions shall be constructed, maintained, and sealed in a complete and tight condition at all times. Polyethylene shall not be used for dust partitions or curtains. Fire resistant Servico vinyl shall be used. Prior to removal of any dust partition the customer or its vendor shall vacuum clean the area using and approved HEPA vacuum.

#### **PROTECTION OF PROVIDER SERVICES**

No work shall be started, walls or partitions removed or built, heat, water or plumbing or electric services temporarily disconnected, nor shall construction work be carried on near the telephone wires or equipment, without first discussing the procedures and protection to be provided with Provider and receiving Provider's prior approval. The contractor must notify Provider at the first indication of an electrical interruption or switchover to the temporary generator which occurs during any work activity whether caused directly by a work activity, or incidental to any work activity during construction.

Any work activity which may cause or require a temporary power shut down of AC or DC power or reliance on the standby power system shall be pre-approved and scheduled by Provider. The request shall be accompanied by a detailed method of procedure for the work activity. Notice of the work activity shall require a minimum of 30 days' lead time for notification to other customers that may also be affected. This class of work shall require supervision by Provider or its representative. Scheduling of Customer required power shutdowns shall be coordinated by the Facilities Manager, at Customer's expense.

## **PROVIDER POWER WORK - AC & DC**

Provider operates and maintains both the AC and the DC power systems for 24x7 operations. Provider reserves the right to maintain and augment these systems at its sole discretion. Routine maintenance and testing may be conducted during normal work hours under a method of procedure specific to the work operation.

Provider will provide Customer with telephone or e-mail notice of all non-emergency planned Facility maintenance prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting Customer's collocation facilities.

1. Provider will undertake repair efforts on all environment equipment or interconnecting fiber or copper circuits when Provider first becomes aware of it, or when notified by Customer and Customer has released all or part of the service for testing.
2. Contact Information:

Provider Network Operations Center - 1-888-LT-FIBER

## **PROTECTION OF FLOORS**

Non-flammable tight wood sheathing shall be placed under materials that are stored on finished surfaces. Non-flammable tight wood sheathing installed over reinforced Kraft building paper must be placed over finished floor surfaces before moving materials over finished floors, especially in the building common entrance and foyer areas.

## **PRESERVATION OF ENVIRONMENTAL CONDITIONS FOR TELECOMMUNICATIONS EQUIPMENT**

At no time shall the interior of the building be directly exposed to the outside environment without the prior written approval of Provider. Existing exterior walls, doors, or windows shall not be removed until construction of any associated addition or interlock facility has been completed.

## **AC POWER SERVICES AND REQUIREMENTS**

Provider provides dedicated AC power circuits for customer operating equipment. Determination of the proper AC power requirement to be provisioned for operation of Customer provided equipment is the responsibility of Customer and shall be identified with the Service Order request. AC circuits shall be provided and fused according to the applicable Service Order. All AC service to customer is protected by a standby engine generator. Momentary interruption of power will occur during a power failure due to the transition interval to the standby power system. All Customer provided AC powered equipment shall be UL listed. Conditions that cause AC power interruption such as faults, shorts or overload of Customer circuits due to Customer equipment shall be cleared and tested prior to restoration of the AC service by Provider.

## **DC POWER SERVICES**

Provider provides dedicated DC power circuits for Customer operating equipment. Determination of the proper power requirement (total load amps draw) of DC power for operation of Customer provided Equipment is the responsibility of the Customer and shall be identified with the Service Order request. DC circuits shall be provided and fused according to Customer provided load data and in accordance with the applicable Service Order. All DC service to Customer equipment is protected by battery backup to provide uninterrupted service. All Customer provided DC powered equipment shall be NEBS compliant and approved by type for use by Provider prior to installation. Conditions that cause DC power interruption such as faults, shorts or overload of customer circuits due to Customer equipment shall be cleared, tested and verified "safe for operation" by (a) the Customer representative and b) the Facilities Manager prior to restoration of the DC service by Provider.

## **SAFETY**

Provider requires all customers and their vendors to practice good workplace safety. All electrical equipment and tools must be properly grounded before becoming operational.

Customer shall ensure that its equipment and surrounding areas do not pose safety hazards to any person. OSHA and local laws, rules, regulations, ordinances and codes shall be complied with at all times.

## **FIRE SAFETY**

Fire safety is critical. If there is a fire alarm in a customer Space, Provider Building control center will dispatch the fire department. Customer shall monitor its own alarms in fully compartmentalized and separately alarmed spaces and shall dispatch a company representative upon a fire alarm indication, at Customer's expense. All fire alarms shall require investigation as to the cause and resolution. Fire alarm systems shall not be reset to normal without a full and thorough survey of the facility.

Any and all work in Customer fire alarm panels shall be pre-scheduled with Provider prior to the performance of the work.

## **PROVIDER PROVIDED STANDBY ENGINE GENERATORS**

Provider provides standby engine generator power systems for its buildings. These systems are tested under load conditions monthly. A schedule of test dates is available from the Facilities Manager. All scheduled load transfers are conducted under the supervision of on-site technical personnel. During a load test, power will be briefly interrupted for all non-UPS loads including, in many cases, cabinet fans.

## SECURITY AND PERSONNEL IDENTIFICATION

Customer shall complete and submit to Provider Provider's application form for all employees, agents and vendors seeking access to the Facility on Customer's behalf. No one, other than employees, agents and vendors of Customer who have been approved by Provider, may access the Facility. Provider will provide to Customer up to 10 building access cards at no charge. Additional cards may be purchased for \$50.00 each (minimum of two per request). Individual card access administration is the responsibility of Customer for card assignments to individual employees, agents and vendors, provided that only those employees, agents and vendors approved by Provider may be given an access card. Access cards may only be used by the individual to whom the access card is assigned. Failure to adhere to the Provider security protocol may result in card deactivation. Reissuance of a card for breach of security shall be made only after a \$50.00 charge. All employees, agents and vendors entering Provider Facilities shall wear, prominently displayed, a picture identification card which provides the person's name and company name. Building keys shall not be issued to customers; customer access shall be card key only.

## MISCELLANEOUS

Customer's employees, agents and vendors shall take all necessary precautions for the safety of Customer's employees, agents and vendors when accessing the Facility and using the Space and shall comply with all applicable provisions of federal, state and municipal laws, codes, regulations and ordinances and any successor laws, codes, regulations and ordinances thereto, in order to prevent accidents or injury to persons and property on, about or adjacent to the Space or the Facility, including, without limitation, the National Electric Safety Code and the OSHA requirements for working clearances from energized lines.

Customer shall otherwise comply with all applicable federal, state or municipal laws, regulations, codes and ordinances affecting the Space and its occupancy, operation and the use thereof pursuant to the terms hereof and Customer shall not use the Space in any unlawful, improper, noisy or offensive manner.

Customer shall provide all equipment needed to conduct its business at the Space which is capable of confinement within the Space without adversely affecting its function. Customer shall be solely responsible for the installation, modification and maintenance of Customer's equipment. Customer shall also insure that neither vehicles nor equipment are parked or stored at the Facilities, except as approved by Provider.

Customer shall not place a load upon any floor in the Space that exceeds the load bearing capacity of such floor, as determined by Provider, in its sole discretion. Provider reserves the right to determine the location and weight of any of Customer's equipment.

No signage shall be permitted by Customer on the interior or exterior of the Space or the Building, except for identification tags or nameplates on the outside of the cabinets which have been approved by Provider in its sole discretion.

## HAZARDOUS MATERIALS

Neither Customer nor any person claiming under customer, nor the employees, agents, or vendors of Customer or any such person shall bring onto, store, generate, or permit to be stored or generated on the Facility, including but not limited to the space, any oil, Hazardous Material, as defined in any applicable federal, state or municipal law, regulation, code, or ordinances including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E, as amended, and the Massachusetts Hazardous Waste Management Act, as amended, M.G.L. c. 21C.