

CONTRACT

THIS CONTRACT (the "Contract") is made this 18TH day of DECEMBER, 2014 by and between Lightower Fiber Networks II, LLC ("Lightower") and the customer **STATE OF MARYLAND**, acting through the **DEPARTMENT OF INFORMATION TECHNOLOGY** ("DoIT" or sometimes the "Agency").

IN CONSIDERATION of the premises and the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows: the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1. "Master Contract" means this Contract for Data Telecommunications Services, RFP F50B4400028
- 1.2. "Master Contractor" means Lightower Fiber Networks II, LLC ("Lightower") whose principal business address is 80 Central Street, Boxborough, MA 01719 and whose principal office in Maryland is n/a.
- 1.3. "Contract Manager" means the DoIT representative and first point of contact for contract procedures and any discrepancies. The Agency may change the Contract Manager at any time by written notice.
- 1.4. "Department" means the Department of Information Technology (DoIT).
- 1.5. "Financial Proposal" means the Master Contractor's Financial Proposal dated November 17, 2014.
- 1.6. "Notice to Proceed (NTP)" means a formal written notification from the Contract Manager that a specific Master Contractor selected to perform a PO should immediately, or as of a date contained in the notice, begin performance of the PO.
- 1.7. "Procurement Officer" means the person with the responsibilities and authorities of "procurement officer" under the Annotated Code of Maryland, and Title 21 of the Code of Maryland Regulations ("COMAR") or their designee. The Agency may change the Procurement Officer at any time by written notice.
- 1.8. "Purchase "Order (PO)" authorizes Master Contractor to proceed with delivery of products and/or any services requested by a Service Request.

1.9. "RFP" means the Request for Proposals for Data Telecommunications Services, Solicitation No. F50B4400028, dated 6/6/2014, and any amendments thereto issued in writing by the State.

1.10. "State" means the State of Maryland.

1.11. "Agreement" means a signed contract between DoIT and the Master Contractor selected via a PORFP or to perform a service.

1.12. "Proposal" means the technical and financial response by a Master Contractor to a PORFP.

1.13. "Purchase Order Request for Proposals" (PORFP) means a solicitation document containing a description by the State of the individual project for which proposals will be solicited.

1.14. "Technical Proposal" means the Master Contractor's Technical Proposal, dated July 31, 2014 and subsequent clarification responses, vendor discussion handouts and vendor discussion responses, etc. submitted in writing by the Master Contractor.

2. Statement of Work

2.1. The Master Contractor shall provide Data Telecommunications Services for the State as described in the RFP, the TO Agreement, and the PORFP, in one or more of the functional area-LATA combinations as follows:

- Functional Area I – Wide Band DDS
- Functional Area III – Last Mile Access Data Services

2.2. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and Exhibits A through G, the terms of this Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A – Request For Proposal No. F50B4400028

Exhibit B – Purchase Order (when executed)

Exhibit C – PORFP (when released)

Exhibit D – State Contract Affidavit, executed by the Master Contractor and dated 11-25-14

Exhibit E – Master Contractor's response to the PORFP (when submitted)

Exhibit F – Technical Proposal to the RFP

Exhibit G – Financial Proposal to the RFP

2.3. The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Master Contract, the PORFP or the PO. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Master Contractor to an equitable adjustment under this section. Except as otherwise provided in this Master Contract, if any change under this section causes an increase or decrease in the Master Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Master Contract price shall be made and the Master Contract modified in writing accordingly. The Master Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Master Contractor shall be allowed if asserted after final payment under this Master Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 11, Disputes. Nothing in this section shall excuse the Master Contractor from proceeding with the Master Contract as changed.

3. Time for Performance

The Master Contractor shall provide services, equipment and software in accordance with this Master Contract and any PO issued hereunder. The term of this Master Contract is for a period of about 12 years, beginning on January 1, 2015, and ending December 31, 2026, unless terminated earlier as provided in this Master Contract. All prices for rates and terms as offered in Attachment 1 are binding on the Master Contractor for the term of the Master Contract.

4. Consideration and Payment

4.1. In consideration of the satisfactory performance of the work set forth in this Master Contract and any PO, the State shall pay the Master Contractor in accordance with the rates established in the Master Contractor's PO Proposal which may not exceed the rates and terms of Master Contractor's Financial Proposal. POs that are on a time and materials basis shall include a NTE ceiling for payments. Any work performed by the Master Contractor in excess of the NTE ceiling amount of any PO without the prior written approval of the Contract Manager is at the Master Contractor's risk of non-payment. Payments under POs issued on a fixed price basis shall be limited to the price specified in the PO, regardless of the actual cost to the Master Contractor.

4.2. Invoices must be provided in the format and on the schedule identified in the PORFP. Each invoice must reflect the Master Contractor's federal tax identification number, which is [REDACTED]. The Master Contractor's eMM identification number is [REDACTED]. Payments to the Master Contractor pursuant to this Master Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Master Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. A PO Agreement may specify periodic payments based on deliverables or stages of completion. A PO Agreement may specify that a portion of the payments due will be withheld until completion of the PO. The amount withheld from each payment

shall be paid to the Master Contractor within thirty (30) days of the State's acceptance of all deliverables required under the PO and receipt from the Master Contractor of a release in a form prescribed by the State for any claims arising out of or related to the PO Agreement. The final payment under this Master Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

- 4.3. In addition to any other available remedies if, in the opinion of the Procurement Officer, the Master Contractor fails to perform under this Master Contract in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Master Contractor to be reduced or withheld until such time as the Master Contractor meets performance standards as established by the Procurement Officer pursuant to this Master Contract.
- 4.4. The State will use electronic funds transfer to pay the Master Contractor for this Master Contract and any purchase orders issued thereunder and any other State payments due Master Contractor unless the State's Comptroller's Office grants the Master Contractor an exemption.

5. PORFPs

A PORFP may specify terms in addition to the terms specified herein. Such additional terms may include warranties, deliverables, and acceptance test requirements. A PO may not limit the State's rights as provided by law, in this Master Contract, or in the RFP and may not change the terms of this Master Contract or the RFP.

6. Patents, Copyrights, Intellectual Property

- 6.1. If the Master Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Master Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 6.2. The Master Contractor agrees that at all times during the term of this Master Contract and thereafter, works created as a deliverable under this Contract and services performed under this Master Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Master Contract are not works for hire for the State, the Master Contractor shall state why it believes that it should not thereby relinquish, transfer, and assign to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Master Contract.
- 6.3. The Master Contractor shall hold and save harmless the State of Maryland, including, but not limited to, the Department and its agents, officers, and employees, from liability of any nature or kind arising out of a claim or suit for or on account of the use of any copyrighted or uncopied composition, trademark, service mark, secure process,

patented or unpatented invention, article or appliance furnished or used in the performance of any Master Contract resulting from this RFP. The Master Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. If a third party claims that a product infringes that party's patent or copyright, the Master Contractor will defend the State against that claim at Master Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the State (i) notifies the Master Contractor in writing of the claim within a reasonable time after the State's receipt of such claim, with the understanding that the State's failure to give reasonably timely notice shall not relieve Master Contractor of any obligation hereunder except and to the extent that such failure prejudices Master Contractor's ability to defend against such claim; and (ii) allows Master Contractor to control, and cooperates with Master Contractor in, the defense and any related settlement negotiations.

- 6.4. If any products furnished by the Master Contractor become, or in the Master Contractor's opinion are likely to become, the subject of a claim of infringement, the Master Contractor shall, after consultation with the State and at the Master Contractor's own expense: (a) procure for the State the right to continue using the applicable item, (b) replace the product with a non-infringing product that, in the State's view, substantially complies with the item's specifications, or (c) modify the item so that it becomes non-infringing and, in the State's view, performs in a substantially similar manner to the original item.
- 6.5. In connection with services provided under a PORFP, the Master Contractor may create, acquire or otherwise have rights in, and may, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology"). To the extent that any Master Contractor Technology is contained in any of the Master Contract deliverables including any derivative works, the Master Contractor grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Contractor Technology in connection with the Master Contract deliverables for the State's purposes.
- 6.6. The Master Contractor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to the Master Contractor. In a PORFP, the State may, in its sole discretion, elect to grant the Master Contractor a worldwide, perpetual, non-exclusive license, for which the State may require compensation, perhaps in the form of a royalty, for the Master Contractor's internal use to non-confidential Contract deliverables first originated and prepared by the Master Contractor for delivery to the State.

7. Rights to Records

- 7.1. The Master Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Master Contractor for purposes of this Master Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Master Contractor other than that specifically provided by this Master Contract.
- 7.2. The Master Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Master Contractor with respect to all data delivered under this Master Contract.
- 7.3. The Master Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Master Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Master Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Master Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act, omission, or negligence of the Master Contractor or any of its subcontractors or agents, the Master Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Master Contract Manager. The Master Contractor shall ensure that all data is backed up and is recoverable by the Master Contractor.

10. Non-Hiring of Employees

No official or employee of the State as defined under State Government Article section 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Master Contract shall, during the pendency and term of

this Master Contract and while serving as an official or employee of the State, become or be an employee of the Master Contractor or any entity that is a subcontractor on this Master Contract.

11. Disputes

This Master Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Master Contractor shall proceed diligently with the performance of the Master Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Master Contract, the Master Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Master Contract, the Master Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

12. Maryland Law

This Master Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Master Contract or any software license acquired hereunder. Any and all references to the Annotated Code of Maryland contained in this Master Contract shall be construed to refer to such Code sections as from time to time amended.

13. Nondiscrimination in Employment

The Master Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

14. Contingent Fee Prohibition

The Master Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Master Contractor to solicit or secure this Master Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Master Contract.

15. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of a PO under this Master Contract succeeding the first fiscal period, the PO shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Master Contractor's rights under any termination clause in this Master Contract. The effect of termination of the PO hereunder will be to discharge both the Master Contractor and the State from future performance of the PO, but not from their rights and obligations existing at the time of termination. The Master Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the PO. The State shall notify the Master Contractor as soon as it has knowledge that funds may not be available for the continuation of the PO for each succeeding fiscal period beyond the first.

16. Termination for Cause

If the Master Contractor fails to fulfill its obligations under this Master Contract properly and on time, or otherwise violates any provision of the Master Contract, the State may terminate the Master Contract by written notice to the Master Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Master Contractor shall, at the State's option, become the State's property. The State shall pay the Master Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Master Contractor's breach. If the damages are more than the compensation payable to the Master Contractor, the Master Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

17. Termination for Convenience

The performance of work under this Master Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Master Contract that the Master Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Master Contract; provided, however, the Master Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A) (2).

18. Delays and Extensions of Time

The Master Contractor agrees to perform the work under this Master Contract continuously and diligently. No charges or claims for damages shall be made by the Master Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work

specified in this Master Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Master Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Master Contractor or the subcontractors or suppliers.

19. Suspension of Work

The State unilaterally may order the Master Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer or Contract Manager may determine to be appropriate for the convenience of the State.

20. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Master Contract are applicable to this Master Contract.

21. Financial Disclosure

The Master Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreement with the State or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

22. Political Contribution Disclosure

The Master Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

23. Retention of Records

The Master Contractor shall retain and maintain all records and documents in any way relating to this Master Contract for three years after final payment by the State under this Master Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including by way of example only, the Procurement Officer or the Procurement Officer's designee, and the Contract Manager or the Contract Manager's designee, at all reasonable times. All records related in any way to the Master Contract are to be retained for the entire time provided under this section. The Master Contractor shall, upon request by the State, surrender all and every copy of documents needed by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Master Contractor and its subcontractors under the Master Contract. The Master Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Master Contractor shall not be compensated for providing any such cooperation and assistance. This section shall survive expiration of this Master Contract.

24. Compliance with Laws

The Master Contractor hereby represents and warrants that:

- 24.1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 24.2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Master Contract;
- 24.3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Master Contract; and
- 24.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Master Contract.

25. Costs and Price Certification

By submitting cost or price information, the Master Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of the price proposal. The price under this Master Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Master Contractor furnished cost or price information which, as of the date of the financial proposal, was inaccurate, incomplete, or not current.

26. Subcontracting; Assignment

The Master Contractor may not subcontract any portion of the services provided under this Master Contract without obtaining the prior written approval of the Procurement Officer, nor may the Master Contractor assign this Master Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, any such approvals to be in the State's sole and absolute subjective discretion; provided however, a Master Contractor may assign monies receivable under a PO after due notice to the State. Any such subcontract or assignment shall include the terms of sections 6, 9 through 24, and 32 of this Master Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Master Contractor's obligations to the subcontractors.

27. Indemnification

- 27.1. The Master Contractor shall hold harmless and indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Master Contractor or its subcontractors under this Master Contract.
- 27.2. The State has no obligation to provide legal counsel or defense to the Master Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Master Contract against the Master Contractor or its subcontractors as a result of or relating to the Master Contractor's obligations under this Master Contract.
- 27.3. The State has no obligation for the payment of any judgments or the settlement of any claims against the Master Contractor or its subcontractors as a result of or relating to the Master Contractor's obligations under this Master Contract.
- 27.4. The Master Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Master Contractor or its subcontractors regarding any matter resulting from or relating to the Master Contractor's obligations under the Master Contract. In the event that a claim, suit or action is made or filed against the State as a result of or relating to the Master Contractor's performance under this Master Contract, the Master Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. This section shall survive expiration of this Master Contract.

28. Limitation of Liability

For breach of this Master Contract, negligence, misrepresentation or any other contract or tort claim, Master Contractor shall be liable as follows:

- A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 6 ("Patents, Copyrights, Intellectual Property") of this Master Contract;
- B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;
- C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Master Contract, regardless of the form, Master Contractor's liability per claim shall not exceed five (5) times the total amount of the PORFP out of which the claim arises; provided however, the State may, in its sole discretion, decrease the ceiling established hereunder in any PORFP issued pursuant to this RFP. Third party claims arising under Section 27 ("Indemnification") of this Master Contract are included in this limitation of liability only if the State is immune from liability. Master Contractor's liability for third party claims arising under Section 27 of this Master Contract shall be unlimited if the State is not immune from liability for claims arising under Section 27.

29. Administrative

- 29.1. Procurement Officer. The work to be accomplished under this Master Contract shall be performed under the direction of the Procurement Officer and Contract Manager. All matters relating to the interpretation of this Master Contract shall be referred to the Procurement Officer for determination.
- 29.2. Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Mr. Michael Meinl
Maryland Department of Information Technology
45 Calvert Street, Room 436
Annapolis, MD 21401
Office Phone Number: 410-260-7179
Michael.Meinl@Maryland.Gov

If to the Master Contractor:



30. Risk of Loss; Transfer of Title.

Risk of loss for conforming supplies, equipment and materials specified as deliverables to the State hereunder shall remain with the Master Contractor until the supplies, equipment, materials and other deliverables are received by the State. Title of all such deliverables passes to the State

upon receipt by the State, subject to the State's acceptance and payment for the same in accordance with the terms of this Master Contract.

31. Nonvisual Accessibility Warranty

The Master Contractor warrants that the information technology offered under the proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Master Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of this Master Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

32. Commercial Nondiscrimination

- A. As a condition of entering into this Master Contract, Master Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Master Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Master Contractor retaliate against any person for reporting instances of such discrimination. Master Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Master Contractor understands that a material violation of this clause shall be considered a material breach of this Master Contract and may result in termination of this Master Contract, disqualification of Master Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- B. The Master Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by DBM, in all subcontracts.
- C. As a condition of entering into this Master Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Master Contractor under Title 19 of the State Finance and Procurement Article, Master Contractor agrees to

provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Master Contractor has used in the past 4 years on any of its contracts that were undertaken within the State, including the total dollar amount paid by Master Contractor on each subcontract or supply contract. Master Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Master Contractor understands that violation of this clause is a material breach of this Master Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

33. Prompt Pay Requirements

33.1. If a Master Contractor withholds payment of an undisputed amount to its subcontractor, the Agency, at its option and in its sole discretion, may take one or more of the following actions:

33.1.1. Not process further payments to the Master Contractor until payment to the subcontractor is verified

33.1.2. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

33.1.3. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;

33.1.4. Place a payment for an undisputed amount in an interest-bearing escrow account; or

33.1.5. Take other or further actions as appropriate to resolve the withheld payment.

33.2. An "undisputed amount" means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include (a) retainage which had been withheld and is, by the terms of the agreement between the contractor and subcontractor, due to be distributed to the subcontractor and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

33.3. An act, failure to act, or decision of a procurement officer or a representative of the Agency, concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:

33.3.1. Affect the rights of the contracting parties under any other provision of law;

33.3.2. Be used as evidence on the merits of a dispute between the Agency and the contractor in any other proceeding; or

33.3.3. Result in liability against or prejudice the rights of the Agency.

33.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

33.5. To ensure compliance with certified MBE subcontract participation goals, the Agency may, consistent with COMAR 21.11.03.13, take the following measures:

33.5.1. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.

33.5.2. This verification may include, as appropriate:

33.5.2.1. Inspecting any relevant records of the contractor;

33.5.2.2. Inspecting the jobsite; and

33.5.2.3. Interviewing subcontractors and workers.

33.5.2.4. Verification shall include a review of:

33.5.2.4.1. The contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and

33.5.2.4.2. The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

33.6. If the Agency determines that a contractor is in noncompliance with certified MBE participation goals, then the Agency will notify the contractor in writing of its findings, and will require the contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

33.6.1. If the Agency determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Agency requires, then the Agency may:

33.6.2. Terminate the contract;

33.6.3. Refer the matter to the Office of the Attorney General for appropriate action; or

33.6.4. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

33.6.5. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

34. Parent Company Guarantee (If Applicable)

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Master Contractor]" of all the terms, conditions and obligations contained in this Master Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Master Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Master Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

35. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

THE NEXT PAGE IS THE CONTRACT SIGNATURE PAGE

Contract Signature Page

IN WITNESS THEREOF, the parties have executed this Master Contract as of the date hereinabove set forth.

Lighttower Fiber Networks II, LLC

By: David L. Mayer
General Counsel and Executive Vice President

December 3, 2014

Date

Witness/Attest: _____

DEPARTMENT OF INFORMATION TECHNOLOGY

18 Dec 2014
Date

Witness: _____

Approved for form and legal sufficiency this 5th day of November, 2014.

Assistant Attorney General

APPROVED BY BPW: _____
(Date)

4-1T
(BPW Item #)

12/17/14