

## CABLE AND WIRING MASTER CONTRACT, FAIL, 050B7800017

THIS CONTRACT (the "Contract") is made as of this 1<sup>st</sup> day of November, 2006 by and between FiberPlus, Inc. and the STATE OF MARYLAND, acting by and through the DEPARTMENT OF BUDGET AND MANAGEMENT, OFFICE OF INFORMATION TECHNOLOGY.

In consideration of the promises 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:

### 1. Definitions

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

- 1.1 "Contract Manager" means the manager designated by the Department. The Department may change the Contract Manager at any time by written notice.
- 1.2 "Contractor" means FiberPlus, Inc. whose principal business address is 8240-C Preston Court, Jessup, Maryland 20794 and whose principal office in Maryland is 8240-C Preston Court, Jessup, Maryland 20794.
- 1.3 "Department" means the Maryland Department of Budget and Management.
- 1.4 "Financial Proposal" means the Contractor's Best and Final Financial Proposal dated 8/28/06.
- 1.5 "Notice To Proceed (NTP)" means a formal combined notification from the Contract Manager that: (i) a specific Master Contractor has been selected to perform a TOA; and (ii) the Master Contractor should immediately, or as of a date contained in the notice, begin performance of the TOA.
- 1.6 "Procurement Officer" means the officer designated by the Department. The Department may change the Procurement Officer at any time by written notice.
- 1.7 "RFP" means the Request for Proposals for Cable and Wiring Services, Project 050R6800016, and any amendments thereto issued in writing by the State.
- 1.8 "Small Work Order (SWO)" means a request from a State agency that is priced at \$25,000 or less and all required materials for the work order are included on the RFP Attachment F price proposal form.
- 1.9 "State" means the State of Maryland.
- 1.10 "Task Order Agreement (TOA)" means the Agreement executed by the Contractor and the State for a specific project.
- 1.11 "Task Order Proposal (TOP)" means the technical and financial response by the Contractor to a TORFP.
- 1.12 "Task Order Request for Proposals (TORFP)" means a solicitation document containing a description by the State of the individual projects for which proposals will be solicited. A TORFP will not amend, conflict or supersede any provision of the RFP.

1.13 “Technical Proposal” means the Contractor’s Technical Proposal, dated 12/27/05, as revised by Oral presentation handout dated 2/1/06, Contractor Cure letter(s) dated 4/19/06, and the Contractor’s BAFO letter dated 8/28/06 as it relates to non-pricing issues.

## **2. Scope of Work**

2.1 The Contractor shall provide the cable and wiring services and equipment described in the SWO or the TORFP and the Contractor’s TOP submitted thereunder. 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 is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Technical Proposal

Exhibit C – The Financial Proposal

Exhibit D - State Contract Affidavit, executed by the Contractor and dated 9/20/06

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract, the TORFP, the TOA or the SWO. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the 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 Contract price shall be made and the Contract modified in writing accordingly. The 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 Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

## **3. Time for Performance**

Unless terminated earlier as provided in this Contract, the Contractor shall provide services and material in accordance with the Master Contract and TORFP or SWO. The term of this Contract is for a period of five (5) years, commencing on 11/01/2006 and terminating on 10/31/2011. The Contractor shall provide services upon receipt of a NTP from the Contract Manager. Any TOAs or SWOs that begin before the ending date of the Contract shall be governed by all of the terms of this Contract.

## **4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the requirements of this Contract, the State shall pay the Contractor in accordance with the not-to-exceed rates set forth in Attachment F. TOAs that are on a time and materials basis shall include a not-to-exceed ceiling for payments. Any work performed by the Contractor in excess of the ceiling amount of any TOA without the prior written approval of the Contract Manager is at the Contractor’s risk of non-payment. Payments under TOAs issued on a fixed price basis shall be limited to the price specified in the TOA, regardless of the actual cost to the Contractor. Payment for Small Work Orders shall be on a fixed price basis at Attachment F not-to-exceed rates.

4.2 Payments to the Contractor shall be made in accordance with the TOA or SWO and no later than thirty (30) days after the State's receipt of a proper invoice for performance by the Contractor, acceptance by the State of such performance, and pursuant to the terms of the RFP. TOAs may specify periodic payments based on deliverables or stages of completion. A TOA may specify that a portion of the payments due will be withheld until completion of the TOA. The amount withheld from each payment shall be paid to the Contractor within thirty (30) days of the State's acceptance of all deliverables required under the TOA and receipt from the Contractor of a release in a form prescribed by the State for any claims arising out of or related to the TORFP.

4.3 Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is [REDACTED]. 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. The final payment under a TOA or SWO will not be made until the Comptroller of the State receives certification that Contractor has paid all taxes.

4.4 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform 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 Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.5 The State will use electronic funds transfer to pay the Contractor for services pursuant to any TOA or SWO pursuant to this Contract and any other State payments due Contractor unless the State's Comptroller's Office grants the Contractor an exemption.

4.6 Contractor's eMarylandMarketplace vendor identification number is [REDACTED].

## **5. Task Order Agreement and Small Work Orders**

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

## **6. Rights to Records**

6.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor for purposes of this 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 Contractor other than that specifically provided by this Contract.

6.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this contract, and services performed under this 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 Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

6.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

6.4 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **7. Patents, Copyrights, Intellectual Property**

7.1 If the 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 Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below .

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item, (b) replace the product with a non-infringing product substantially complying with the item's specifications, or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **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 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 Contract, provided that 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 Contract; (c) was already lawfully 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 Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

## **10. Non-Hiring of Employees**

No official or employee of the State, as defined under State Government Article, 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **11. Disputes**

This 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 and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or Contract the 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 Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **12. Maryland Law**

12.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

12.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any software license acquired hereunder.

12.3 Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

## **13. Nondiscrimination in Employment**

The 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 underlying 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 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 Contractor, to solicit or secure this agreement, 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 any other consideration contingent on the making of this 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 TOA or SWO under this Contract succeeding the first fiscal period, the TOA or SWO 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 Contractor's rights under any termination clause in this Contract. The effect of termination of the TOA or SWO will be to discharge both the Contractor and the State from future performance of the TOA or SWO, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the TOA or SWO. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of TOA or SWO for each succeeding fiscal period beyond the first.

#### **16. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the 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 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 Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the 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 21.07.01.12A(2).

#### **18. Delays and Extensions of Time**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this 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 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 Contractor or the subcontractors or suppliers.

#### **19. Suspension of Work**

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer 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 Contract are applicable to this Contract.

## **21. Financial Disclosure**

The 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 agreements 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 Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, 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 in 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 Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after close out of this Contract and final payment by the State under this 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, the Contract Manager or the Contract Manager's designee, at all reasonable times. The Contractor shall, upon request by the Department, 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 Contractor and its subcontractors under the Contract. The 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. Contractor shall not be compensated for providing any such cooperation and assistance.

## **24. Warranties**

The Contractor hereby represents and warrants that:

A. 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;

B. It is not in arrears with respect to the payment of any monies due and owing the State, 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 Contract;

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **25. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of the Financial Proposal.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current.

## **26. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this 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 Contractor may assign monies receivable under a TOA or SWO after due notice to the State. Any such subcontract or assignment shall include the terms of Sections 9 and 11 through 25 of this 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 Contractor's obligations to the subcontractors.

## **27. Indemnification**

27.1 The Contractor shall hold harmless and indemnify the State from and against liability for any and all losses, damages, costs, suits, actions, claims, liabilities and expenses (including reasonable attorneys' fees and disbursements) incurred by the State in connection with, arising from, or relating to the performance of the Contractor or its subcontractors under this Contract and any TOA or SWO arising therefrom.

27.2 The State has no obligation to provide legal counsel or defense to the 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 Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract and any TOA or SWO arising therefrom.

27.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract and any TOA or SWO arising therefrom.



2.7.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract and any TOA or SWO arising therefrom.

## **28. Limitation of Liability**

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

A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 7 ("Patents, Copyrights, Intellectual Property") of this 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 Contract, regardless of the form, Contractor's liability per claim shall not exceed five (5) times the total amount of the TORFP or Small Work Order, as applicable, out of which the claim arises; provided however, the State may, in its sole discretion, decrease the ceiling established hereunder in any TORFP or Small Work Order as applicable issued pursuant to this RFP. Third party claims arising under Section 27 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability.

Contractor's liability for third party claims arising under Section 27 of this Contract shall be unlimited if the State is not immune from liability for claims arising under this Section.

## **29. Administrative**

29.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination. The Procurement Officer is Mike Yeager of the Department.

29.2 Contract Manager. The Contract Manager is Dana Walker of the Department.

29.3 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:

Attn: Dana Walker  
Office of Information Technology  
Maryland Department of Budget & Management  
45 Calvert Street  
Annapolis, MD 21401

If to the Contractor:

Tom Caswell  
Fiber Plus, Inc  
8240-C Preston Ct, Jessup MD 20794

**30. Guarantee of Performance by \_\_\_\_\_ . (If Applicable)**

[corporate name of parent corporation] hereby guarantees absolutely the full, prompt and complete performance by " [subsidiary/the Contractor]" of all the terms, conditions and obligations contained in this 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 Contract, including any and all financial commitments, obligations and liabilities. " [corporate name of parent]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State. " [corporate name of parent]" further agrees that if the State brings any claim, action, suit or proceeding against "[subsidiary]", "[corporate name of parent]" may be named as a party, in its capacity as Absolute Guarantor.

**31. Orderly Termination**

31.1 Contractor agrees that at the commencement of this Contract and any TOA or SWO issued hereunder, it shall have ready and available sufficient levels of inventory and qualified personnel to be able to promptly, diligently, efficiently and completely prosecute the specified services to completion. If the specified work involves the transitioning of work from another entity to Contractor, Contractor shall be required to assume full responsibility for the work and complete any required transitioning within no more than 15 days from a NTP from the State.

31.2 Upon the expiration or earlier termination of this Contract or any TOA or SWO issued hereunder, Contractor shall:

- a) promptly, diligently, efficiently and in good faith work with any successor contractor and the Department to transition services over to the successor contractor;
- b) during the transition period, continue to be subject to all of the terms and conditions of the Contract, including, by way of example only, those that govern the rates, fees and other charges that Contractor may be permitted to charge the Department under the Contract, and under no circumstances shall the Contractor be entitled to raise any such rates, fees and/or other charges during the transition period; and,
- c) at the end of the transition period, provide the Department with a summary report of the transition that, among other things, contains a certification signed by an officer of the Contractor who is authorized to legally bind Contractor, that states that all actions necessary to successfully transition the services to the successor contractor have been completed, or if they have not been completed, why they have not been completed. The Department shall be entitled to withhold any final payment(s) otherwise due Contractor until it receives the summary report and certification specified in this subsection.

**32. 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 Contractor until the supplies, equipment, materials and other deliverables are accepted by the State, as evidenced by a written statement of acceptance from the State to the Contractor that expressly specifies the supplies, equipment, materials and other deliverables that are subject to such acceptance. Title of all such deliverables passes to the State upon acceptance by the State, subject to the State's payment for the same in accordance with the terms of this Contract.

**33. Nonvisual Accessibility Warranty**

The 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 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 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.

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

FIBERPLUS, INC.

STATE OF MARYLAND  
By: DEPARTMENT OF BUDGET  
AND MANAGEMENT

By: Signed (SEAL)

By: Signed

Carl Strobel / President  
Print Name and Title

Ellis Kitchen  
State Chief Information Officer  
Name and Title

September 18, 2006  
Date

December 14, 2006  
Date

Signed  
Witness

Signed  
Witness

Approved for form and legal sufficiency this 14<sup>th</sup> day of November, 2006.

Signed  
Assistant Attorney General