

**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN  
THE BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS  
AND  
FIBERPLUS, INC.**

THIS PROFESSIONAL SERVICE AGREEMENT ("Agreement") is made as of this 13<sup>th</sup> day of Jan, 2015, by and between the Baltimore City Board of School Commissioners ("the Board"), and FiberPlus, Inc. (the "Consultant").

WHEREAS, the Baltimore City Public School System ("City Schools") needs the technical assistance of Consultant with regard to providing data cabling and related services, and;

WHEREAS, Consultant employs individuals who possess the necessary experience, skills, and talent to assist the Board in providing such services.

NOW, THEREFORE, the parties agree as follows:

1. Term. This Agreement shall be for a period of performance beginning January 14, 2015 and, unless sooner terminated as provided in this Agreement or extended with the approval of the Board, will end on the earlier of January 13, 2018 or when the monetary amount of the Agreement is fully expended, or when the services are no longer needed. No services shall be performed before the Board approves the contract or after it ends.
2. Services. During the term of this Agreement Consultant shall provide the services which are set forth in the attached document which is entitled Scope of Services, which is a part of this Agreement (Attachment I to this Agreement). Such services are to be provided in coordination with the Manager of Information Technology Network Operations.

3. Contract Documents. This Agreement, together with the Invitation For Bid BCS-15003 and the Response to BCS-15003 constitute the Contract Documents. In the event of a conflict between the terms and conditions of any of the Contract Documents, the controlling terms and conditions shall be, in this order, those of:
  - A. This Agreement; then
  - B. BCS-15003, including any attachments, exhibits, and addenda; then
  - C. The Response.
  
4. Payment. The Board agrees to pay Consultant and Consultant agrees to accept, as full compensation for Consultant's services under this Agreement, an annual aggregate amount not to exceed \$25,000.00, in accordance with the attached Budget which is a part of this Agreement (Attachment II to this Agreement). Consultant shall submit an invoice on a monthly basis detailing the services provided and the actual costs incurred. Payment shall be made within 30 days after the date of submission of an invoice to the Board's Accounts Payable Office. The Board shall have no obligation to pay for services performed before the Board approves the Agreement or after it ends. The Board shall have no obligation to pay for services in excess of the monetary amount of the Agreement. The Board shall have no obligation to pay for services before a purchase order is obtained from the Office of Materials Management formerly the Procurement Office.
  
5. Accounts and Records.
  - A. Consultant shall retain, and upon request, make available to the Board, all accounts and records relating to this Agreement for at least three years after final payment is made and all other pending matters are concluded. The Board reserves the right to audit and inspect all accounts and records maintained by Consultant in connection with this Agreement.
  
  - B. Public and private nonprofit contractors are required to comply with the requirements of the Office of Management and Budget (OMB) Circular A-133. The nonprofit contractor is responsible for having an audit performed in accordance with and when required by OMB A-133 and for sending a copy of the report issued as a result of the audit to the Board within 30 days of the audit report's issuance. Furthermore, the Board must

approve any independent auditor engaged to assure that the auditor is qualified and meets Government Accounting Office standards as well as to evaluate the scope of the audit engagement to assure it complies with OMB requirements. **(Not Applicable)**

6. Independent Contractor. The Board and Consultant recognize and agree that Consultant is an independent contractor, and that neither Consultant nor any of Consultant's employees or agents is an employee of the Board or of the Mayor and City Council of Baltimore (the "City").
7. Subcontract or Assignment. Consultant shall give full personal attention to the faithful execution of this Agreement. Consultant shall not subcontract or assign any part of this Agreement without the prior written consent of the Board.
8. Employment. Within one (1) year following separation from the Board or City Schools, a former employee, official or Board member may not assist or represent Consultant other than the Board or City Schools for compensation in any case, controversy, dispute, contract or other specific matter involving the Board or City Schools if that case, controversy, dispute, contract or other specific matter is one in which the former employee, official or Board member significantly participated as an employee, official or Board member of the Board or City Schools. Failure to adhere to or comply with this requirement constitutes a material breach in which the Board reserves the right to impose sanctions, up to and including suspension of this Agreement, withholding of payment, rescission or termination of this Agreement.
9. Indemnification. The Consultant shall defend, indemnify, and hold harmless the City, the Board and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers from any and all claims, demands, suits, and actions, including attorney's fees, litigation expenses and court costs, connected therewith, brought against the City, the Board and their respective elected/appointed officials, employees, departments, agencies, agents, and

volunteers, arising as a result of any direct or indirect, willful, or negligent act or omission of the Consultant or its employees, agents, or volunteers.

10. Insurance.

**(If the total amount of this agreement is under \$25,000.00, these insurance requirements do not apply).**

- A. The Consultant shall procure and keep in force the following required insurance coverage:
1. Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000) aggregate. Such insurance shall include contractual liability insurance.
  2. Business Automobile Liability at limits of not less than One Million Dollars (\$1,000,000) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of this Agreement.
  3. Workers' Compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.
  4. Professional Liability, Errors and Omissions Insurance at a limit of not less than One Million Dollars (\$1,000,000.00) in the event the service delivered pursuant to this Agreement, either directly or indirectly, involves or requires professional services. "Professional Services" for the purpose of this Agreement shall mean any services provided by a licensed, certified or otherwise documented professional.
- B. The City, the Board, and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers shall be covered, by endorsement, as additional insureds as respect to liability arising out of activities performed or to be performed by or on behalf of the Consultant in connection with this Agreement.
- C. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit brought.
- D. The Consultant's insurance coverage shall be primary. Any insurance and/or self-insured program maintained by the City or the Board and their respective elected/appointed, officials, employees, departments, agencies,

agents and volunteers, shall not contribute with the Consultant's insurance or benefit the Consultant in any way.

- E. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the City and the Board. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.
  - F. Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or, if not rated with Best's with minimum surpluses the equivalent of Bests' surplus size VII and must be licensed/approved to do business in the State of Maryland.
  - G. The Consultant shall furnish the City and the Board's Director of Materials, a "Certificate of Insurance" with a copy of the additional insured endorsement as verification that coverage is in force. The City and the Board reserve the right to require complete copies of Insurance policies at any time.
  - H. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required may render this Agreement null and void; provided, however, that no act or omission of the City or the Board shall in any way limit modify or affect the obligations of Consultant under any provision of this Agreement.
11. Responsibility for payment of taxes. Consultant shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for these services. The Board assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of Consultant, its employees and/or others by reason of this Agreement. Consultant shall defend, indemnify and save harmless the Board, the City and the State of Maryland, (when any funds for this Agreement are provided by the State of Maryland or the Federal Government), their officials, officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from:
- A. Consultant's failure to pay any such compensation, wages, benefits, or taxes; and/or
  - B. The supplying to Consultant of work, services, materials, or supplies in connection with or in support of the performance of this Agreement.

12. Criminal Background Check. It is the responsibility of the Consultant to make certain that its employees, agents, volunteers, and contractors who have contact with students be fingerprinted and have a background check in compliance with Title 5, Subtitle 5, Part VI, of the Family Law Article of the Maryland Code.

A. Employees Having Direct Contact with Students:

Any and all current and future employees of Consultant who have direct contact with students must have a criminal background check and fingerprinting conducted by the Human Resources Department of the City Schools before beginning work in a City School. Previous background checks will not be accepted. The fee for the background check shall be paid by the Consultant by check or money order at the time the fingerprinting is performed. No employee can begin work in a City School until results have been received. Violation of this provision may result in Termination for Cause.

B. Employees Do Not Have Direct Contact With Students:

Employees of Consultant who will be placed in a City School but will not have direct contact with students must have on record a Criminal Justice Information Service (CJIS) and NCIC background checks. Copies of the background checks must be forwarded to the Contract Monitor before services can commence. Every two years the Consultant shall submit copies of background checks to the Contract Monitor. Should any employee be flagged during the term of this agreement, the Consultant shall contact the Contract Monitor within 24 hours of notification. Violation of this provision may result in Termination for Cause.

C. Employment of Sex Offenders:

The Consultant shall at all times be compliant with the Criminal Procedure Article of Annotated Code of Maryland Section 11-722 that states that a person who enters a contract with a County Board of Education or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registered sex offender. If a registered sex offender is employed by the Consultant, the Consultant is prohibited from assigning that employee to perform management, delivery, installation, repair, construction or any other type of services on any City Schools property. Violation of this provision may result in Termination for Cause.

13. Student's Education / Medical / Psychological Records / Consents. Consultant and its employees, agents, volunteers and contractors shall maintain the confidentiality of all medical, psychological, and student records in compliance with federal and state laws. Additionally, Consultant shall procure from the parent or guardian of each student receiving services hereunder a written consent

in favor of Consultant and the Board for the mutual disclosure of such records by and among the Board, Consultant and Consultant's employees, agents, volunteers and contractors.

14. Compliance with Laws. Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations applicable to the services to be rendered under this Agreement. Consultant's violation of any of these laws, statutes, ordinances, rules, or regulations constitutes a breach of this Agreement and entitles the Board to terminate this Agreement immediately upon delivery of written notice of termination to Consultant.
  
15. MBE/WBE Compliance. Consultant shall comply with the requirements of Article 5, Subtitle 28 et seq. of the Baltimore City Code, as amended from time to time, pertaining to Minority and Women's Business Enterprises. (MBE/WBE Requirements). The enforcement and interpretation of the MBE/WBE Requirements is vested in the Board. The Board may grant such exceptions and waivers of the MBE/WBE Requirements as it deems is in the best interest of the Baltimore City Public School System. Consultant's failure to comply fully with these requirements constitutes a breach of this Agreement, and entitles the Board, at its option, to terminate this Agreement immediately upon delivery of written notice of termination to Consultant.

A consultant who fails to comply with any provisions pertaining to the above MBE/WBE requirements, including but not limited to the failure to provide required paperwork to demonstrate compliance with MBE/WBE requirements, is subject to any and all of the following penalties: (1) suspension of contract; (2) withholding of funds; (3) rescission of contract based on material breach; (4) refusal to accept a bid; (5) disqualification (debarment) of a bidder, contractor, or other business from eligibility for providing goods or services to the board for a period not to exceed 2 years; and (6) payment of liquidated damages.

The final payment from the board to the consultant is contingent upon compliance with and submission of the required paperwork pertaining to the above MBE/WBE requirements. **(Applicable)**

16. Termination for Convenience. The Board or its designee shall have the right in its absolute discretion to terminate this Agreement for its convenience, in whole or in part, at any time and for any reason or for no reason, without incurring any liability, upon no less than ten (10) days prior written notice to Consultant. If the Board terminates this Agreement for its convenience, then Consultant shall have no other right to compensation or payment except for actual services rendered and actual expenses paid prior to the date of termination that has been approved by the Board's Contract Monitor. Upon receipt of the notice and unless otherwise directed by the Board's Contract Monitor, Consultant immediately shall stop performing services under this Agreement on the date and to the extent specified in the notice but shall complete performance of any services not terminated by the notice and shall take any other action directed in the notice or by the Board's Contract Monitor.
  
17. Professionals. In the event the services to be provided by Consultant must by law be provided by individuals who are licensed and/or certified, Consultant shall only assign individuals to provide services under this Agreement who are licensed and/or certified in accordance with the law. Additionally, Consultant shall only assign individuals who have been credentialed by the Consultant to provide the specific professional services required by this Agreement. All such individuals assigned by Consultant to provide services shall maintain their license and/or certification in good standing (not under review or subject to suspension, credentials current) during the entire term of this Agreement. Consultant shall, prior to providing services, submit documentation that the individuals assigned to provide services are properly credentialed and are licensed and/or certified to the Director of Materials, 200 E. North Avenue, Baltimore, Maryland 21202.



18. Performance Evaluation. The Board or its authorized agents or representatives may conduct an evaluation of the Consultant's performance under this Agreement. Consultant shall fully cooperate with the Board or its authorized agents or representatives and shall provide such information and documents as may be requested to conduct the performance evaluation.
19. Governing Law. This Agreement shall be construed by and governed under the laws of the State of Maryland and subject to the jurisdiction of its courts. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be filed in a court of competent jurisdiction in Baltimore City.
20. Entire Agreement. This Agreement supersedes all prior oral and written proposals and communications between Consultant and the Board related to Consultant's services to be performed and validly executed Amendments are herein incorporated by reference to this Agreement. This Agreement may not be modified orally, and no modification or any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom enforcement of such modification or waiver is sought.
21. Waiver. No waiver of any breach of any provision of this Agreement shall operate as a waiver of such provision of this Agreement or as a waiver of subsequent or other breaches of the same or any other provision of this Agreement, nor shall any action or non-action by either party be construed as a waiver of any provisions of this Agreement or of any breach thereof unless the same has been expressly declared or recognized as a waiver by such party in writing.
22. Termination for Default. If the Consultant fails to fulfill its obligation under this Agreement properly and on time, or otherwise violates any provision of the Agreement, the Board or its designee may terminate the Agreement by written notice to the Consultant. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the

- Consultant shall, at the Board's option, become the Board's property. The Board shall pay the Consultant fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Consultant's breach. If the damages are more than the compensation payable to the Consultant, the Consultant will remain liable after termination and the Board can affirmatively collect damages.
23. Withholding Payment. In addition to any other available remedies, if, in the opinion of the Board, the Consultant fails to perform in accordance with the terms of the Agreement, the Procurement Officer or a department designee responsible for paying invoices may refuse or limit approval of any invoices for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Board determines that the Consultant has met the performance terms as established by the Agreement.
24. Late Submission of Invoices. The parties acknowledge and agree that the Consultant's invoices are to be submitted to the Board in a timely manner, per the terms of the purchase order, after the services have been provided or the goods and materials have been provided to the Board. If invoices are submitted after one calendar year after the last date the Consultant's services have been rendered or the last date when goods and materials were accepted by the Board, then the Board shall have no obligation to pay for the stale invoices.
25. Recitals. The Recitals are incorporated herein by reference.
26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.
27. Interpretation. The Agreement shall not be construed or interpreted for or against any party hereto because the party drafted or caused that party's legal representative to draft any of its provisions.

28. Contract Monitor. Communications for the purposes of billing, payment and submission of documentation required by this Agreement shall be between the Board's Contract Monitor who is as follows:

**For the Board:**

Michelle Pettaway  
Name

200 East North Avenue  
Address

Baltimore, MD 21202  
City, State, Zip Code

443-984-1227  
Phone Number

410-625-9210  
Fax Number

**For the Consultant:**

Tom Caswell  
Name

8240 Preston Court, Suite C  
Address

Jessup, MD 20794  
City, State, Zip Code

301-317-3300  
Phone Number

301-317-8585  
Fax Number

52-1762520  
Tax Identification Number

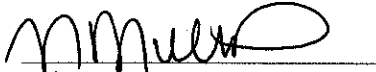
With a copy to:  
Director of Materials Management  
200 E. North Avenue, 4th Floor  
Baltimore, Maryland 21202  
(410) 396-8757

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement as of the day first written above.

BALTIMORE CITY BOARD  
OF SCHOOL COMMISSIONERS



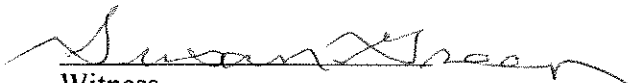
Gregory E. Thornton, Ed.D.  
Chief Executive Officer  
Secretary, Board of School Commissioners

  
Witness

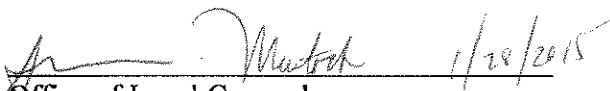
CONSULTANT



By:  
Tom Caswell  
V. P.  
FIBERPLUS Inc

  
Witness

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY THIS 1<sup>st</sup> OF 2015

  
Office of Legal Counsel  
Shawn A. Matlock 1/20/2015

APPROVAL DIRECTOR OF  
MATERIALS MANAGEMENT

  
Jeffrey D. Parker

ATTACHMENT I  
SCOPE OF SERVICES

The vendor shall perform services in accordance with BCS-15003 and the Vendor's Response.

## ATTACHMENT II

### BUDGET

Payment to Consultant is subject to compliance with the following requirements:

Consultant is only entitled to reimbursement for reasonable and actual expenses which are incurred, in accordance with this Contract. Consultant will only be paid for services actually provided in accordance with this contract. In no event shall the total amount to be paid to Consultant exceed an annual aggregate total of \$25,000.00 as stated in Section 4 of this agreement.

Consultant must submit documentation, along with its invoice for payment, justifying all expenses and costs for which it is seeking reimbursement. Such documentation must include a description of the service that was completed, the number of actual hours worked by each job classification and the hourly rate billed for that job classification. The invoice shall also include an itemized list of all materials used, and their cost. Payment to consultant is conditioned upon submission of such documentation and the submission of any other documentation as may be requested by the Board or its representatives.