



Request Date: September 7, 2011  
Response due date: September 16<sup>th</sup>, 2011

### **Vendor Request for Quote**

#### **Fiber to the Home pedestals**

DFO is requesting quotations on fiber pedestals and multiport service terminals as part of a fiber-to-the-home prototype project

- Pedestals should be a minimum of 10" diameter with fiber slack storage available for customer drop cables.
- Customer drop cables will be in micro-duct with a trace wire. Provision must be made to ground and locate up to 5 drop cables
- Pedestal must support a 4 position multiport service terminal
- Alternative customer termination options will be considered. Plug-and-play installation from the MST to the customer is required.
  
- Multiport Service Terminals shall have 4 weather proof ports similar to Corning OptiTap type.
- Multiport Service Terminals must have a fiber pigtail compatible with 10mm (ID) microduct. A known compatible cable is AFL part number MC04DA6-7.4.
- Pigtail lengths will vary from 300 to 1200 feet.

The total number of units required is 65.

- One additional 6-port Multiport Service Terminal will be required with a 1200' pigtail. This is in addition to the 65 previously listed.

DFO review all qualified proposals received and will select a vendor the week of 9/19/2011. All proposals should include expected lead times on both pedestals and Multiservice Terminals.



PO Box 664, DeKalb, IL 60115  
(815)991-2450 • Fax (815)895-2526  
[www.dekalbfiber optic.com](http://www.dekalbfiber optic.com)

All proposals must contain products meeting the American Recovery and Reinvestment Act Buy American requirements.

All proposals must include the cost of truck freight to the following location:

DeKalb Fiber Optic, LLC  
1830 State Street  
DeKalb, IL 60115

Loading dock and forklift are available for unloading. 24 hour notice required prior to delivery.

For questions or clarifications, contact Dan Halverson at 815-991-2401 or [danh@dekalbfiber optic.com](mailto:danh@dekalbfiber optic.com)

Selected supplier will be required to enter into a supplier contract with DFO. A draft supplier contract follows, and is available for download in word format at the DFO web site, [www.dekalbfiber optic.com](http://www.dekalbfiber optic.com)



## DeKalb Advancement of Technology Authority Broadband Project Supplier Agreement

This Supplier Agreement (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_ 2010 (the "Effective Date") by and between DEKALB FIBER OPTIC, LLC ("DFO"), an Illinois limited liability company, having its principal office at 1626 DeKalb Avenue, Sycamore, IL 60178, and \_\_\_\_\_ ("Supplier"), a \_\_\_\_\_ with an office at \_\_\_\_\_, pursuant to which DFO and Supplier agree as follows:

**1. DEFINITIONS.** The term "Laws" shall mean and include all federal, provincial, state and local laws, statutes, codes, rules, regulations, ordinances, administrative rules, and orders in effect now or in the future. The term "Affiliates" shall mean (i) any other person or entity controlling, controlled by or under common control with such particular person or entity, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a person or entity whether through the ownership of voting securities, by contract or otherwise, and (ii) if such person or entity is a partnership, any partner thereof.

**2. PRODUCTS.**

a. This Agreement shall apply to and govern all building materials and other products sold by Supplier or its Affiliates to DFO on or after the Effective Date indicated above ("Products" or a "Product"), including, but not limited to, the following Products:

\_\_\_\_\_  
\_\_\_\_\_. When ordered by DFO, Supplier agrees to sell Products to DFO, for DFO's use in the DeKalb Advancement of Technology Authority Broadband Project (the "Project"), upon the terms and conditions of this Agreement.

b. Supplier acknowledges and agrees that this Agreement and the manufacture and sale of the Products related to the Project shall comply with all the applicable statutes, regulations, executive orders, Federal Acquisition Regulations, Office of Management and Budget circulars, terms and conditions and approved applications as may apply to the Project or required by the Special Award Conditions applicable to the Project and that certain grant award NT10BIX5570030 (the "Grant") from the U.S. Department of Commerce National Telecommunications and Information Administration under The American Recovery and Reinvestment Act of 2009 in connection with the Project. **Such requirements, shall include, but not be limited to, Supplier's Product(s) using, if such materials are used in or a part of the Product(s), iron, steel and manufactured goods produced in the United States pursuant to Section 1605 of the American Recovery and Reinvestment Act of 2009 (the "ARRA").**

**3. PURCHASE ORDERS AND INVOICES.**

a. The quantity of Product(s) purchased by DFO shall be completely within DFO's discretion, and shall be limited to the quantity of Product(s) specifically stated in any



orders placed by DFO with Supplier in the form attached hereto as Exhibit A ("Purchase Order"). Each fully executed Purchase Order shall be incorporated herein and made a part hereof and such additional terms and obligations thereto shall become a part hereof. Supplier shall invoice DFO for all Products sold to DFO pursuant to this Agreement. All undisputed invoices shall be paid by DFO at the terms provided in the attached Exhibit A. Supplier will supply the Product to DFO for the duration of the Term (as hereinafter defined) of this Agreement at the price set forth on Schedule 1 attached hereto, as provided in the attached Exhibit A, and Supplier shall not increase the Product prices during the Term of this Agreement. Nothing herein shall create any obligation on DFO's behalf to purchase any Products from Supplier during the Term of this Agreement. DFO will purchase the Product(s) from Supplier on a non-exclusive basis. DFO may purchase the Product(s) from any other person or entity at any time for any reason or without reason during and after the Term of this Agreement.

b. Unless otherwise provided in a Purchase Order, invoices for products purchased under this Agreement shall be sent to DFO no earlier than the delivery of the Products covered by the invoice and payment of the invoice shall be due no sooner than on a net 60 day basis following receipt of such invoice, with DFO having the right to set-off against any invoice any claims DFO may have against Supplier.

c. Supplier acknowledges and agrees that DFO shall have the right to cancel any Purchase Order immediately upon notice in the event of the suspension, termination or material change to the Grant.

#### **4. WARRANTIES.**

a. Supplier warrants that each Product shall: (i) be free and clear of all liens and encumbrances; (ii) be merchantable; (iii) be new, free of defects in design, materials, workmanship, packaging, labeling and tagging, and include all necessary warnings and safety devices; (iv) meet Supplier's specifications and all applicable industry standards and code requirements for the Product, as in effect at the time of Product shipment; (v) meet any specifications for the Product communicated by DFO to Supplier; (vi) comply with the claims, representations and warranties made; and (vii) be equivalent in design, materials, quality, finish, workmanship and performance to any samples, designs or drawings submitted to and approved by DFO. In no event shall DFO be deemed to have warranted any Product in any respect.

b. Supplier shall be responsible for handling all Product claims, and for all costs associated with such claims, and shall defend, indemnify and hold DFO harmless, as provided in Section 8, against any liability or expense related thereto in accordance with Section 8. If Supplier fails to promptly reimburse DFO for sums paid and Products provided by DFO to resolve Product claims, then DFO may elect to make appropriate deductions, with the right of set-off against any invoice, for such items from payments made to Supplier. When requested by DFO, Supplier shall provide information about the warranty, claims and litigation history for any Product.



c. Nothing contained herein shall impose any duty or affirmative obligation of DFO to inspect, test, approve or ensure compliance with any specifications or quality standards or consistency with samples provided concerning the Products or any improvements, modifications or changes to any of the Products that Supplier may undertake from time to time.

d. Supplier shall cooperate and assist, if requested by DFO, DFO and the DeKalb County Government with the compliance with the award Terms and Conditions under the Grant and the requirements under that certain Indefeasible Right to Use Agreement dated November 29, 2010 by and between DeKalb County Government and DFO (the "IRU Agreement").

e. Supplier shall deliver the Product(s) purchased under a Purchase Order within \_\_\_ days of such order or as otherwise stated in the Purchase Order. Delivery of such Product(s) shall be made to DFO at its address provided in Section 14 or at such other address as DFO may designate in a Purchase Order.

f. Notwithstanding anything to the contrary in this Agreement and in addition to all other rights herein or at law, upon the request of DFO, Supplier shall immediately replace and repair any defective Product(s).

g. Supplier hereby warrants that it has not and will not pay any rebate, commission, salary or any remuneration or reward, indirectly or in any form whatsoever ("Rebates") to any officer, employee, agent, or representative employed by or on behalf of DFO for such person's personal use and/or benefit, rather any such Rebates shall be for the sole benefit of and shall directly benefit DFO. Any violation of such warranty shall be considered a material breach of this Agreement.

**5. COMPLIANCE WITH LAWS.** Supplier warrants that each Product shall be manufactured, packaged, tagged, labeled and shipped in accordance with all applicable Laws. Supplier shall identify in an MSDS or other written statement all hazardous or toxic substances (as those terms are defined in any applicable Laws) contained in any Product. With the exception of such hazardous or toxic substances so identified, Supplier warrants that each Product contains no hazardous or toxic substances. Supplier shall be solely responsible for any recall, replacement or repair of any Product ordered by any governmental agency or court, and shall defend, indemnify and hold DFO harmless against any liability or expense related thereto in accordance with Section 8. Supplier warrants that it shall comply with all applicable Federal, state, and local Laws and regulations regarding the manufacturing and sale of the Product(s) to DFO during the Term of this Agreement, including, but not limited to, the requirements set forth on Exhibit B attached hereto (the "Requirements"), to the extent applicable, as if Supplier is in place of DFO.

**6. PATENTS AND OTHER PROPRIETARY RIGHTS.** Supplier warrants that it has the right to manufacture the Products and sell the Products to DFO for use in the Project. Supplier shall defend, indemnify and hold DFO harmless, as provided in Section 8,



against any and all liability, losses, costs and expenses related thereto in accordance with Section 8.

**7. DAMAGES.** In addition to any right afforded DFO elsewhere in this Agreement, Supplier shall be liable for any special, consequential, incidental, punitive or exemplary damages, attorneys fees and costs arising out of or in any way connected with the Product(s) for this Agreement, including, but not limited to, damages for injuries, lost profits, loss of use or for any damages or sums paid by DFO, its Affiliates or the DeKalb County Government to third parties. Supplier also acknowledges that in the event that delivery is delayed to DFO, DFO may be assessed liquidated damages which by agreement will be paid by Supplier in addition to all other damages stated above to the extent that such liquidated damages result in whole or part from the breach of this Agreement by Supplier. If Supplier is more than five (5) days late on any delivery at any time, DFO shall have the right to terminate this Agreement upon 48 hours notice to Supplier without further payment to Supplier and obtain substitute materials and recover all direct, incidental and consequential costs resulting from the failure of Supplier to timely comply with the delivery schedule without waiver of any other remedy available to DFO.

**8. INDEMNIFICATION.**

a. Supplier shall defend, indemnify and hold DFO, its Affiliates and the DeKalb County Government harmless from and against any and all losses, liabilities, suits, claims, damages, fees, and expenses (including, but not limited to, court costs and reasonable attorneys' and expert witness fees) of whatever kind or nature which may arise out of or be in any way connected with or is alleged to arise out of or be connected with: (i) the death of or injury to any person or damage to any property which resulted or is alleged to have resulted from any acts or omissions of Supplier, its employees and agents, contractors, subcontractors and/or any other persons for whose conduct it may be or is alleged to be legally responsible or from the Product or its use; (ii) in connection with the failure or alleged failure of Supplier or any Product to fully comply with any warranties, guarantees, or representations of Supplier hereunder, or otherwise; (iii) out of any environmental, property and/or toxic tort claim, lawsuit, judgment; loss, civil penalty or action; (iv) from the failure of Supplier to comply with any applicable Law; (v) the production, supply, storage, distribution or delivery by Supplier of any Products, article or other item from Supplier, (vi) the use of any Product or article or other item from Supplier, or (vii) the breach by Supplier of any of its obligations or representations under this Agreement, including without limitation any guarantee or warranty, whether implied or express by Supplier, except in any case to the extent such loss, damage or injury is the direct result of gross negligence or willful misconduct of DFO.

b. If any claim or demand is asserted against DFO, its Affiliates or the DeKalb County Government and their respective directors, officers, employees, representatives, agents, successors, insurers, assigns and beneficiaries (the "Indemnitees") by a third party with respect to the indemnities set forth in this Agreement (the "Third Party Claim"), the Indemnitees shall give prompt written notice thereof to Supplier, including copies of any pleadings in the Indemnitees' possession, the failure to so notify the



Supplier shall not relieve the Supplier of its obligations hereunder, except to the extent such failure shall have adversely prejudiced the Supplier. Within twenty (20) days of receipt of such notice, Supplier shall either (i) pay the Third Party Claim in full or upon compromise agreed to by Supplier and said third party, and obtain a complete and final written release of the Indemnitees from the Third Party Claim, or (ii) notify the Indemnitees that Supplier disputes the Third Party Claim and intends to defend against it, and thereafter so defend and pay any adverse final judgment, award or settlement amount in regard thereto. Such defense shall be controlled by Supplier, and the costs and expenses of such defense shall be borne by it, except that the Indemnitees shall have the sole right to approve counsel retained by Supplier to defend against the Third Party Claim, such consent not to be unreasonably withheld. The Indemnitees may actively participate in or monitor the defense of the Third Party Claim with its own counsel. If Supplier has complied fully with its obligations under this Section 8, the Indemnitees shall bear the cost of its own counsel. If Supplier fails to take action on a Third Party Claim within twenty (20) days as set forth above, then the Indemnitees shall have the right to pay, compromise or defend the Third Party Claim and to assert the amount of any payment on the Third Party Claim plus the costs and expenses of defense or settlement as an indemnity claim against Supplier. DFO shall reimburse Supplier for the reasonable expenses of defense and any damages paid by Supplier in connection with any Third Party Claim to the extent that the final judgment, decree or settlement is based upon DFO's negligence. The failure of any Indemnitee to conduct independent Product testing or to take other steps to verify the accuracy of Supplier's Product Literature or its representations or warranties made herein shall not be deemed to be negligence or evidence of negligence adversely affecting, restricting or compromising any Indemnitee's rights under this Section in any way.

c. Notwithstanding the above, Supplier shall not enter into any settlement or compromise of the claim that would result in the admission of any liability by any Indemnitee, any financial liability on the part of any Indemnitee, or would subject any Indemnitee to injunctive relief without first obtaining such Indemnitee's prior written consent.

d. Supplier's agreement to defend, indemnify and hold the Indemnitees harmless under the terms of this Section 8 is independent of and in addition to Supplier's agreement to procure insurance as required in Section 9. Supplier's insurers position regarding insurance coverage for DFO as an additional insured, does not in any way modify or limit Supplier's agreement to defend and indemnify and hold the Indemnitees harmless as required in this Section 8.

**9. INSURANCE.** During the term of this Agreement, Supplier shall procure and maintain, at its sole expense, from insurance companies that are reasonably acceptable to DFO, Comprehensive or Commercial General Liability Insurance covering claims for bodily injury, death or property damage, including coverage for Premises and Operations; Products and Completed Operations; Independent Contractors; Personal Injury; Blanket Contractual Liability and Broadform Property Damage Liability, in the amount of \$3,000,000.00 Combined Single Limit per occurrence. Supplier's insurance policies shall provide for thirty (30) days' prior written notice to DFO of cancellation,



change or non-renewal, and shall be written on an “occurrence” policy form. Supplier's insurance shall be primary coverage in all instances regardless of similar coverage, if any, carried by DFO, and Supplier shall pay all deductibles from insured claims under its insurance policies. Supplier shall promptly provide DFO with Certificates of Insurance acceptable to DFO indicating insurance coverage complying with the requirements of this Agreement, including a Broadform Vendors Endorsement naming DFO and the DeKalb County Government as an insured party. The maintenance of this insurance shall not in any way operate to limit the liability of Supplier to DFO under this Agreement.

#### **10. DELIVERY.**

a. All Product shipped to DFO shall be in accordance to the freight terms provided in the attached Exhibit A. All Product shall be shipped to DFO in accordance with Section 4.e.

b. Time is of the essence of any order. Product must be shipped to arrive at the “Ship To” destination by the delivery date. Supplier will advise DFO immediately if any Product cannot be shipped in time to be received on the delivery date specified.

c. Supplier is responsible, at its cost, for insuring the Product to the F.B.O. at 1626 DeKalb Avenue, Sycamore, IL 60178 for full replacement value, including freight, and Supplier shall file all claims for loss or damage. All uncollectible portions of concealed damage claims will be charged back to Supplier.

d. All transportation costs or expenses incurred by DFO because of Supplier's noncompliance with the terms of this Agreement shall be charged to Supplier.

**11. RISK OF LOSS.** Risk of Loss shall not pass to DFO until legal title passes upon receipt of the Product by DFO at the designated final destination in good condition.

#### **12. TERM.**

a. This Agreement shall begin on the Effective Date indicated above, and shall continue in effect until terminated as follows:

- i. Upon the third anniversary of the Effective Date, unless otherwise terminated pursuant to this Section or renewed upon mutual agreement of the parties, this Agreement shall terminate;
- ii. DFO may terminate this Agreement by written notice to Supplier if Supplier fails to comply with any of the provisions of this Agreement that DFO reasonably determines to be material to it (including, but not limited to, any representation, warranty, covenant or obligation set forth in this Agreement) and such failure is not cured to DFO's reasonable satisfaction within fifteen (15) days following written notice of such failure to Supplier or if there are three (3) or more such failures within a twelve-month period regardless of whether or not cured within the cure period;
- iii. DFO may terminate this Agreement by written notice to Supplier in the event the Grant is cancelled or suspended for more than ninety (90) days or the Grant or IRU Agreement is materially altered in DFO's sole determination; or





- iv. Supplier may terminate this Agreement if DFO fails to pay Supplier's undisputed invoices when due, by giving DFO written notice of such breach and sixty (60) days to cure the breach. If DFO has not cured its breach at the end of said period, Supplier may terminate this Agreement, effective immediately upon written notice to DFO.

In connection with any termination pursuant to Sections 12.a.ii. and 12.a.iii., DFO shall have the right to cancel any open Purchase Orders and DFO shall have no obligation to Supplier or its Affiliates for any material or other costs incurred, other than for payment on non-canceled, fulfilled Purchase Orders.

b. The termination of this Agreement shall not affect the rights, obligations or liabilities of the parties under the provisions of this Agreement which by their nature extend beyond termination, including, but not limited to, Supplier's warranties and obligations under Sections 4, 5, 6, 7, and 8, all of which shall survive termination as independent obligations. If a party breaches this Agreement, the non-breaching party shall have all rights granted to it at law or in equity, including, but not limited to, the right to receive reasonable attorneys' fees and costs in accordance with Section 13.

If Supplier terminates this Agreement for any reason, DFO has the right to return to Supplier all Products in DFO' inventory. In the event DFO exercises this right, Supplier shall refund to DFO the amounts paid by DFO for such returned Products.

**13. ATTORNEYS' FEES.** If either party institutes any suit or action to enforce its rights hereunder, the prevailing party in such suit or action shall be entitled to recover from the other its reasonable attorneys' fees, fees of accountants and other experts, and court costs and other litigation expenses incurred in such suit or action and in any appeals therefrom. The prevailing party means a claimant that recovers more than seventy-five percent (75%) of its claim exclusive of fees and costs of the proceeding or a defendant that is only required to pay twenty-five percent (25%) or less of any claim exclusive of fees and costs of the proceeding.



**14. NOTICE.** Any notice required or permitted under this Agreement shall be given in writing and shall be deemed to have been received on the date sent. Notices shall be sent by certified mail (return receipt requested), express mail service, or confirmed facsimile transmission, with all applicable charges prepaid, addressed as set forth below. Either party may change its notice address by giving written notice pursuant to this Section.

**For DFO:**

DeKalb Fiber Option, LLC  
1626 DeKalb Avenue  
Sycamore, Illinois 60178  
Attn: Dan Halverson  
Fax: 815-895-2526

**For Supplier:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

**15. ASSIGNMENT.** Supplier shall not assign or transfer this Agreement or delegate any of its responsibilities under this Agreement to any person or entity, whether verbally, in writing, by operation of law, execution sale, in bankruptcy or otherwise, without the prior written consent of DFO, which may be withheld by DFO for any or no reason in DFO' sole discretion. Except as provided in this Section, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns. DFO may assign all of its rights and obligations hereunder to any person or entity.

**16. CONFIDENTIALITY.** All information, including but not limited to, oral statements, computer software, files, and databases, accounting information and financial records, business plans, new products, lists of key personnel, customers, clients, vendors, suppliers, distributors and consultants, price lists and pricing information, advertising and promotional materials, training manuals, handbooks, video and audio tapes or files, and other documents or media that contain DFO's confidential information and trade secrets and sensitive and proprietary information provided to Supplier by clients, customers, sellers and other stakeholders that is shared with Supplier in confidence and trade secrets in existence during this Agreement, and other material or data supplied by DFO to Supplier or obtained by Supplier in any manner related to this Agreement is confidential and privileged ("Confidential Information"), including, but not limited to, any purchaser orders made a part hereof. Confidential Information shall only be used by Supplier in its performance under this Agreement and shall not be disclosed by Supplier except to those employees and independent contractors who have a need to know and who have agreed in writing to maintain the confidentiality of the Confidential Information as required herein. Supplier shall (i) not reproduce or copy the Confidential Information in whole or in part, except as authorized in this Agreement or when requested by DFO; (ii) at DFO's written instruction, return or destroy the Confidential Information upon the termination of this Agreement or when requested to do so; or (iii) disclose the Confidential Information pursuant to a requirement of a duly empowered governmental agency or court of competent jurisdiction, after due notice and adequate opportunity to intervene is given to DFO unless legally prohibited.



**17. MISCELLANEOUS.** Failure by either party to require strict compliance with any provision of this Agreement shall not be construed as a waiver of that provision or any other provision. Each and every provision of this Agreement is completely severable, and the invalidity of any one or more of such provisions shall not in any way affect the validity of this Agreement or its other provisions. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one counterpart. The parties hereby stipulate that legible executed facsimile copies of this Agreement shall be admissible as evidence of the originals under any federal or state rules of evidence. This Agreement has been entered into for the sole benefit of DFO, Supplier and the persons and entities protected by the indemnification provisions set forth above, and it is not intended to benefit or create any rights whatsoever in favor of any other persons or entities. This Agreement shall be governed by and construed under the laws of the State of Illinois, except the laws of that state which would render such choice of laws ineffective. Each party to this Agreement hereby submits to and hereby irrevocably waives any objection it may now or hereafter have to the jurisdiction and venue of the United States District Court for the Northern District of Illinois, and the DeKalb County Circuit Court, State of Illinois, for the purposes of all legal proceedings arising out of or relating to this Agreement. When requested by DFO, Supplier shall provide banking and other credit references, financial statements and other information about its financial condition. By its signature below, Supplier hereby authorizes DFO to contact and investigate any banking or other credit references provided by Supplier; authorizes such references to release the information requested by DFO; and authorizes DFO to obtain credit reports on Supplier, all for the purpose of allowing DFO to assess and continue to assess Supplier's credit solely for business purposes.

**17. ENTIRE AGREEMENT.** Subject to Section 3 of this Agreement, this Agreement is the entire agreement between the parties with respect to the matters set forth herein, and all prior written or verbal proposals, agreements, communications or understandings between the parties with respect to such matters are merged into this Agreement. This Agreement can only be amended or modified by a written document executed by DFO and Supplier. The terms of this Agreement shall control over any additional, conflicting or inconsistent provision set forth or referred to in any purchase order, bill of lading, freight receipt, warehouse receipt, invoice or similar document exchanged or executed by the parties in connection with the performance of this Agreement.

*[Signature page(s) follows]*



PO Box 664, DeKalb, IL 60115  
(815)991-2450 • Fax (815)895-2526  
www.dekalbfiberoptic.com

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective on the Effective Date indicated above.

**DeKalb Fiber Optic, LLC**  
**("DFO")**

\_\_\_\_\_  
**("Supplier")**

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

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

Typed  
Title: \_\_\_\_\_

Typed  
Title: \_\_\_\_\_

**Exhibit A**

FORM OF PURCHASE ORDER

Attached hereto.

Purchase Order No: \_\_\_\_\_

**THE DEKALB ADVANCEMENT OF TECHNOLOGY AUTHORITY BROADBAND PROJECT  
SUPPLIER AGREEMENT APPLIES TO ALL PURCHASES ORDERS ISSUED.**

Seller: \_\_\_\_\_  
Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

DEKALB FIBER OPTIC, LLC, an Illinois limited liability company (“DFO”), 1626 DeKalb Avenue, Sycamore, Illinois 60178

Authorized Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

DATE: \_\_\_\_\_, 201\_\_

PRODUCT	QUANTITY

SPECIFIED DELIVERY DATE: \_\_\_\_\_, 2010\_\_

SPECIAL DELIVERY INSTRUCTIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATEMENT OF INTENT.**

DFO is contracting with you for certain materials or services to be used in connection with the Project. Capitalized terms, unless otherwise defined herein, have the meanings assigned to such terms in that certain DeKalb Advancement of Technology Authority Broadband Project Supplier Agreement dated as of \_\_\_\_\_, 201\_ by and between Suppler and DFO (the “Supplier Agreement”). The U.S. Department of Commerce National Telecommunications and Information Administration and other government agencies (collectively, the “Government”) strictly regulates use of the award money under the Grant associated with the Project and has strict requirements regarding the policies and procedures DFO and its suppliers use in the purchasing process. Accordingly, this document combined with the Supplier Agreement contains both (i) DFO’s terms and conditions regarding its order with you, and (ii) the requirements imposed upon DFO (and therefore you) as a result of DFO’s obligations to the Government.

**APPLICABLE CONTRACT PROVISIONS.**

a. DFO has previously communicated to you an offer to purchase a quantity of goods and/or services (the "Products") at a defined price (this "Order"). This Order, which may be a written or electronic document, may also include particular specifications, shipping instructions and/or other requirements by DFO for the goods or services. These terms and conditions, together with the aforementioned Order, constitute an offer by DFO to purchase from you ("Seller") the described Products pursuant to the terms and conditions described herein and further pursuant to the terms and conditions included in the Supplier Agreement. This offer is not an acceptance or a confirmation of any previous offer or proposal from Seller, and this offer shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Seller with regard to the Products. Acceptance of any shipment of the Products shall not be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Seller.

b. DFO's offer shall become an "Agreement" upon acceptance by Seller. Seller shall be deemed to have accepted this offer by Seller's commencement of delivery of the Products to DFO at the address stated above, by Seller's written acceptance or confirmation of this Order (not to be more than three (3) days from receipt of this Order), or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein. DFO hereby expressly objects to and rejects any such additional or different provisions, and none of such provisions shall be deemed to be a part of the Supplier Agreement or this Order between the parties unless specifically agreed to in writing by DFO.

c. The "Agreement" shall consist of this Order, the Supplier Agreement, and any specifications, drawings, instructions and/or requirements conveyed by DFO to Seller with regard to this Order and the Products. Notwithstanding anything stated herein to the contrary, all the aforementioned documents and communications shall be incorporated herein as material terms of the Agreement between DFO and Seller. In the event of a conflict among any the documents comprising the Agreement, the following order of precedence shall apply: first, the Supplier Agreement, then the Order (including any enforceable change orders thereto), then the specifications, drawings and technical requirements for the Products.

**SHIPPING INSTRUCTIONS.** Routing and shipping instructions on the face of this Order must be followed. Notice of shipment shall be sent to DFO at the time of shipment, which shall state the number of the Order, the kind and amount of Products and the route by which the shipment is being made. Seller shall ship the Products from the specified point of shipment no later than the specified shipment date and shall deliver the Products to DFO at the specified destination no later than the specified delivery date. All Products shall be shipped FOB destination and shall be suitably packed, marked and shipped in accordance with shipping instructions specified by DFO and the requirements of common carriers.

**INVOICING.** Seller shall render an invoice with delivery of each shipment or as soon as practicable following delivery. Original bills of lading or other shipping documents must accompany Seller invoice. No charges for packing or cartage will be accepted or paid unless otherwise specified on this Order.

**QUANTITY DELIVERED.** The quantity of Products delivered shall not be greater than the amount specified unless an additional amount is first ordered by DFO in writing on its "Revised Purchase Order." DFO may return excess quantities to Seller at Seller's expense.

**TIMELY DELIVERY.** Timely deliveries are of the essence for this Order. DFO may refuse to accept, or at DFO's option, may return at Seller's expense, all Products made after the date or dates specified on this Order. If Products are not timely shipped and/or delivered to DFO, then DFO shall not be liable for payment of Products and shipping costs if DFO elects to refuse or return the Products and Seller shall be liable to DFO for damages, as provided in the Supplier Agreement.

**INSPECTION.** All Products specified in this Order are subject to DFO's inspection within a reasonable time after arrival at the ultimate destination. If, upon inspection, any Products are found to be non-conforming, defective, of inferior quality or workmanship, or fails to meet the specifications of any other requirements of this Order (hereinafter "Non-Conforming Goods"), then DFO may reject and return the Non-Conforming Goods to Seller at Seller's expense and may seek any and all remedies specified in the Supplier Agreement. Payment for Non-Conforming Goods shall not be an acceptance of such Products.

Seller shall promptly correct any Products that do not comply with the warranties set forth in this Order. If DFO requests Seller to make any such correction and Seller thereafter fails or indicates its inability or unwillingness to do so, then DFO may correct (or cause to be corrected) the noncompliance or otherwise achieve compliance by the most expeditious means available to it and charge to or otherwise recover from Seller the cost thereof in accordance with the Supplier Agreement. If DFO rejects any Products that do not comply with the foregoing warranty, Seller shall have the time indicated in the Supplier Agreement to correct the noncompliance; if Seller fails to correct the noncompliance within such time, DFO may cancel this Order as to the non-complying Products without any liability or obligation of, or cost to, DFO with respect to such Products and without prejudice to any other rights or remedies of DFO with respect to such noncompliance (e.g., as to damages or cover).

**CANCELLATION.** DFO may at its option cancel any unshipped Products in accordance with the Supplier Agreement. Subject to the Supplier Agreement, DFO's only obligation shall be to pay for and accept Products shipped prior to the date of cancellation. Upon payment, title to all Products or partially complete Products shall pass to DFO.



**TAX.** Any applicable County and State Sales Tax and/or use tax shall be paid by DFO directly to Seller and Seller shall be responsible for paying said tax to the appropriate municipal taxing authorities. Excise tax, where applicable, shall be billed as a separate item on same invoice as the merchandise to which it is released is billed.

**DELAYED DELIVERY.** In the event a location where certain Products are to be provided is not ready to receive delivery, then Seller, upon receiving at least three (3) days notice, will hold said Products for a reasonable period at no cost to DFO.

**NO ASSIGNMENT.** This Order and/or money due hereunder may not be assigned without written authorization by any officer of the DFO and any attempted assignment without such written consent shall be void. Subject to the foregoing restriction on assignment and delegation by Seller, this Order shall be fully binding upon, inure to the benefit of and be enforceable by Seller, DFO, and their respective successors, assigns, and legal representatives.

**RESPONSIBILITY PRIOR TO ACCEPTANCE.** Responsibility for damage or injury to Products to be furnished under this Order from any cause whatsoever shall rest with Seller until final receipt and acceptance thereof by DFO, and in case of materials to be installed, until completion of installation and acceptance thereof by DFO.

**ENTIRE AGREEMENT.** This Order when signed by DFO and bearing an order number is the only purchase order that shall be recognized by DFO as authority for charging Products to its account. Other than the Supplier Agreement, this Order supersedes all previous communication and negotiation and constitutes the sole and entire agreement between the parties with regard to the Order unless there is also a formal written agreement related to this Order signed by the parties. In that case, the formal written agreement shall constitute the sole and entire agreement of the parties. If there is a conflict between the terms of this Order, a written agreement other than the Supplier Agreement, and the Seller's invoice, the items of this Order will control absent a written agreement between the parties that provides otherwise.

**NO WAIVER; NO OTHER TERMS.** No waiver or modification of the terms and conditions contained in this Order shall be binding on DFO unless in writing signed by DFO. No waiver of a breach of any provision of this Order shall constitute a waiver of any other breach of this Order. This offer is expressly limited to the terms contained herein and the Supplier Agreement.

**PUBLICITY.** Seller shall not disclose, use, or refer to this Order, or the trade names, trademarks, or service marks of DFO, in any advertising, publicity releases, promotional materials, or other materials without the prior written consent of DFO.

**GOVERNING LAW AND GOVERNMENTAL REGULATIONS.** The law of the State of Illinois shall govern the respective rights and obligations of the parties, without regard to its rules relating to conflicts of law. The terms set forth above shall not be construed to limit any rights that DFO may have pursuant to the Uniform Commercial Code or other similar laws governing the relationship between the DFO and the Seller.

## Exhibit B

### Requirements

**Signs:** DFO is responsible for constructing, erecting and maintaining in good condition throughout the construction period a sign(s) satisfactory to the NTIA that identifies the project and indicates that the project is Federally funded. The NTIA also may require that DFO maintain a permanent plaque or sign at the project site with the same or similar information. Furthermore, all signage shall display signage that features the Primary Emblem throughout the construction phase. The signage will be displayed in a prominent location on site, and the Primary Emblem will not be displayed at a size less than 6 inches in diameter.

**2 CFR 1326 and Executive Order 12549:** This Contract is subject to 2 CFR Part 1326 Subpart C Governmentwide Debarment and Suspension (Nonprocurement) and to Executive Order 12549, which provides that no award will be made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal Assistance programs. The County has verified that DFO is not debarred or suspended, and DFO will verify that no subcontractor has been debarred or suspended.

**Lobbying Activities:** This Contract is subject to 31 U.S.C. § 1352 as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." DFO and its subcontractors shall submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

**Kick-back Activities:** The parties agree to comply with the Copeland "Anti-Kickback" Act.

**Subcontract To Federal Agency:** DFO and/or any subcontractor shall not subcontract any part of the approved project to any employee or agency of DOC and/or other Federal department, agency or instrumentality, without prior written approval of the Grants Officer.

**Reporting and Registration under the ARRA:** The parties agree to cooperate and to report on the use of ARRA funds as required. Reports are due no later than 10 days after each calendar quarter in which ARRA funds are received. DFO and Grantee will maintain current registrations in the Central Contractor Registration at all times during which they have active federal awards funded with ARRA funds. DFO will cooperate and assist the County in the submission of a "Financial Status Report" on a quarterly basis as required under the Department of Commerce requirements. The

parties agree to cooperate and timely submit all performance or technical reports as required. The parties agree to the retention of all required records for three years after final payments have been made. The parties agree that Grantee and any appropriate Federal authority, shall have access to any books, documents, papers, and records of DFO which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

**Use of American Iron, Steel and Manufactured Goods under Section 1605 of the ARRA:** The parties agree, subject to exceptions provided, that any construction, alteration, maintenance or repair of a public building or public work will use iron, steel and manufactured goods produced in the United States.

**Wage Rate Requirements under Section 1606 of the ARRA:** The parties agree to comply with Section 1606 of the ARRA, which requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through ARRA funds shall be paid wages at rates not less than those prevailing on projects of a character similar in locality of DeKalb County. The parties agree to comply with the pertinent Davis-Bacon Act requirements associated herewith.

**Contract Work Hours and Safety Standards:** The parties agree to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.

**Construction-related requirements:**

**Maintenance:** The parties agree to properly and efficiently administer, operate and maintain the Project for the useful life of the Project.

**Compliance:** The County, DFO and each other contractor or subcontractor, will comply with all applicable Federal, state and local laws and regulations.

**Energy Efficiency:** The parties shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution, and energy costs and optimizing lifecycle costs associates with the construction. The parties agree to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservations plan issues in compliance with the Energy Policy and Conservation Act.

**Non-Discrimination and Equal Opportunity Requirements:** The parties agree to comply with the Equal Employment Opportunity Executive Order 11246 of September 24, 1965, as amended.

**Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Firms:** The parties agree to take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus firms are used when possible. Affirmative steps shall include:

Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;

Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**Debts:** The parties agree to pay promptly and debts determined to be owed to the Federal Government.

**Individual Background Screening:** The parties agree to provide for individual background screening on key individuals as may be required under the Grant award and submit a Form CD-346 as required.

**Drug-Free Workplace:** The parties shall comply with the provisions of the Drug-Free Workplace Act of 1988.

**Codes of Conduct:** The County will maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of the Award. DFO will comply with such standards in accordance with Illinois law.

**Environmental Requirements:** The parties agree to comply with all environmental standards in the Award and to comply with the Clean Air Act, Clean Water Act and Executive Order 11738, and Environmental Protection Agency regulations.



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SCHEDULE 1

Pricing

Product	Price