



## **Memorandum of Agreement**

**THIS AGREEMENT**, made in duplicate for the provision of Broadband Internet and Wide Area Network (WAN) Related Deliverables is effective as of the **31st day of January, 2018**

BETWEEN:

**The Upper Grand District School Board**  
(hereinafter referred to as "UGDSB" or the "Board")

- and -

~~THE CORPORATION OF THE~~ **Town of Orangeville**  
(**"the Contractor"**)

**WHEREAS** the Board requires a Contractor for Broadband Internet and Wide Area Network (WAN) Related Deliverables;

**AND WHEREAS** the Board issued a Request for Proposal #TF-0617 seeking Contractors for the Required Deliverables;

**AND WHEREAS** the Contractor has been selected by the Board to provide the Required Deliverables;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **Article 1 – Definitions**

1. "Agreement" or "Contract" means this written agreement including all schedules;
2. "BPS agency" means a Broader Public Sector agency which includes school boards, hospitals, universities and colleges;
3. "Commencement Date" means January 31<sup>st</sup>, 2018;
4. "Confidential Information" means all information or material of the Board that is of a proprietary or confidential nature, regardless whether it is identified as proprietary or confidential or not, including but not limited to information and material of every kind and description which is communicated to or comes into the possession or control of the Contractor at any time;
5. "Conflict of Interest" means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Contractor's other commitments, relationships or financial interests could or could be seen to (i) exercise an improper influence over the objective, unbiased, and impartial exercise of the Board's independent judgment; or (ii) compromise, impair, or be incompatible with the effective performance of the Contractor's obligations under the Agreement;
6. "Contractor" or "Bidder" or "Supplier" means an entity that has submitted a Proposal in response to and in accordance with the Request for Proposal or a potential Contractor;
7. "Deliverables" means the Goods, Services and Work to be provided or performed by the Proponent(s) under the Agreement, and includes everything necessary to be supplied, provided or delivered by the Proponents.
8. "Goods" means the goods for which the Board issued the RFP;
9. "Proponent" or "Bidder" or "Contractor" or "Supplier" means an entity that has submitted a Proposal in response to and in accordance with the Request for Proposal or a potential Proponent;

10. "Proposal" or "Response" or "Submission" means all the documentation submitted by the Contractor in response to the Request for Proposal;
11. "RFP" means the Request for Proposal #TF-0617 issued by the Board;
12. "Selected Proponent" or "Successful Proponent", "Successful Bidder" or "Successful Contractor" means the Proponent or Proponents recommended for potential contract award as a result of the RFP;
13. "Services" or "Required Services" means the services for which the Board issued the RFP;
14. "UGDSB" or "Board" means the Upper Grand District School Board whose office is at 500 Victoria Road North, Guelph Ontario N1E 6K2;
15. "Unfair Advantage" means any conduct, direct or indirect, by a Contractor that may result in gaining an unfair advantage over other Contractors, including but not limited to (i) possessing, or having access to, information in the preparation of its Proposal that is confidential to the Board and which is not available to other Contractors, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFP process, or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFP process and result in any unfairness;
16. "Work" means the total construction, goods and/or services for which the Board issued the RFP.

## **Article 2 - Schedules**

The Schedules to this Agreement, and which are incorporated within this Agreement, are as follows:

Schedule A: The RFP #TF-0617

Schedule B: Town of Orangeville Submission to RFP #TF-0617

Schedule C: "Agreement for the Confidentiality of Personal Information".

## **Article 3 –Term and Extension**

Maintenance of the dark fibre:

**Term:** This Agreement shall commence on January 31<sup>st</sup>, 2018 and shall continue until August 31<sup>st</sup>, 2020 subject to the Board's right of renewal and subject to either party's right of early termination.

**Extension:** This Agreement may be renewed, subject to satisfactory negotiation, for up to three (3) additional two-year terms or alternatively on a month to month basis at the Board's sole discretion.

The Fibre Optic Cable IRU agreement shall commence upon execution of the IRU agreement by both the Contractor and the Board and shall be in full force and effect for 25 years or the useful life of the fibre (whichever occurs first) following the effective date subject to the Board's right of renewal and subject to either party's right of early termination.

**Extension:** The IRU agreement may be renewed, subject to satisfactory negotiation, every five (5) years, or alternatively on a month to month basis at the Board's sole discretion.

## **Article 4 – Representatives for Agreement**

The Contractor's representative for purposes of this Agreement shall be:

Jason Hall: Phone: (519) 941-0440 ext.8005, Email: [jhall@orangeville.ca](mailto:jhall@orangeville.ca)

Board representative for purposes of this Agreement shall be:

Terry Foerster: Phone: (519) 822-4420 ext. 805, Email: [terry.foerster@ugdsb.on.ca](mailto:terry.foerster@ugdsb.on.ca)

## **Article 5 – Deliverables**

The Contractor agrees to provide the required Deliverables in the manner set out in the Board's Request for Proposal #TF-0617 herein after referred to as the "RFP" subject to the terms and conditions in this Agreement. The Services to be performed by the Contractor under this Agreement shall be performed by the Contractor in a professional manner.

Deliverables will include the following as outlined in detail within the RFP document: the Town of Orangeville will provide UGDSB with 12 strands of fibre (six strands, terminated in a rack mounted fibre patch panel in the server room at each site) to the designated fibre backbone splice point. For each site, two of the terminated fibre strands will be spliced to two backbone fibre strands terminating at the UGDSB Orangeville Board Office at 43 Amelia Street, Orangeville. The Town of Orangeville will build fibre backbone and last mile fibre infrastructure to service Mono-Amaranth public school. The Town of Orangeville will provide fibre connectivity to the Bell and Orangeville Hydro PoP's from UGDSB's Orangeville Board office. The Town of Orangeville will maintain the fibre optic cabling infrastructure with the UGDSB having IRU of the dark fibre.

The Board may request changes, which may include altering, adding to, or deleting any of the required Deliverables or suspending Services at a given site due to construction or other circumstances. The Contractor shall comply with all reasonable Board change requests and the performance of such request shall be in accordance with the terms and conditions of the Agreement. Any changes requested must be authorized in writing by the Board and accepted by the Contractor.

## **Article 6 - Rates and Payment**

The price to be paid by the Board for the Deliverables provided hereunder will be as set out below. Prices submitted for Services are to be firm for the initial term of the Agreement (3 years). In potential future extension years any price changes must be offered to the Board for review sixty (60) days prior to the end of the extension period.

SITE 1				SITE 2				Monthly Maintenance Cost
School / Site	Address			School / Site	Address			
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Credit Meadows ES	220 Blind Line	Orangeville	L9W 4V2	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Montgomery Village ES	70 Montgomery Blvd	Orangeville	L9W 5H6	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Parkinson Centennial PS	120 Lawrence Ave	Orangeville	L9W 1S8	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Spencer Ave ES	15 Spencer Ave	Orangeville	L9W 5E6	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	WESTSIDE SS	300 Alder St	Orangeville	L9W 5A2	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Orangeville Hydro	400 C Line	Orangeville	L9W 3Z8	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	ORANGEVILLE DSS	22 Faulkner St	Orangeville	L9W 2G7	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Princess Elizabeth PS	51 Elizabeth St	Orangeville	L9W 1C5	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Princess Margaret PS	51 Wellington St	Orangeville	L9W 2L6	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Island Lake PS	50 Oak Ridge Dr	Orangeville	L9W 5J6	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Mono-Amaranth PS	246303 Hockley Rd	Mono	L9W 6K4	\$ 437.00
UGDSB Orangeville ADMIN Office	40 Amelia St	Orangeville	L9W 3T8	Bell CO	21 First Ave	Orangeville	L9W 1K1	N/C

All invoices are to be emailed to the Upper Grand District School Board's Accounts Payable Department at: [accounts.payable@ugdsb.on.ca](mailto:accounts.payable@ugdsb.on.ca) and must reflect the Board's Purchase Order number.

## **Article 7- Notices**

All notices given under this Agreement shall be in writing and will be deemed to have been duly delivered, effective upon receipt if couriered, hand delivered or emailed with return receipt requested, or effective 3 business days after being deposited, postage prepaid, return receipt requested, in the mail and sent to the following addresses:

The Contractor:

Town of Orangeville

87 Broadway, Orangeville ON, L9W 1K1

Email: [jhall@orangeville.ca](mailto:jhall@orangeville.ca)

The Board:  
Upper Grand District School Board – Superintendent of Finance  
500 Victoria Road North, Guelph, Ontario N1E 6K2  
Email: glen.regier@ugdsb.on.ca

## **Article 8- General**

**Contract Binding:** The Contract shall enure to the benefit of and be binding upon the parties and their successors and permitted assigns.

**Force Majeure:** It is agreed between the parties that neither party shall be held responsible for damages, losses or costs caused by delay or failure to perform its undertakings under the terms of this Contract when the delay or failure is due to natural disasters, fires, strikes, acts of terrorism, acts of vandalism, acts of war, acts of civil unrest, lawful acts of public authorities and any other cause which cannot be reasonably foreseen or provided against (the “Causes”), where said Causes make performance of said contractual undertakings impossible or unreasonable.

**Personal Information Protection and Electronic Documents Act:** The Contractor agrees to sign the attached Schedule C “Agreement for the Confidentiality of Personal Information” per Article 12 of the Terms & Conditions.

**Document Retention and Audit:** The Contractor shall maintain billing statements for seven (7) years from the respective dates of billing statements issued pursuant to this Agreement, so as to enable the Board to verify that the Deliverables have been provided in accordance with this Agreement and to ascertain the accuracy of any billing statements in respect thereof. The Contractor shall permit and assist the Board in conducting audits of the operations of the Contractor to verify that the Deliverables are being or have been provided in accordance with the Agreement, and the billing statements therefore are in accordance with this Agreement. It is understood and agreed that the Board shall provide the Contractor with prior notice of five (5) business days of its requirement for such audit.

**Entire Agreement:** This Agreement together with the RFP and the schedules attached hereto, embodies the entire agreement between the parties with regard to the provision of the required Deliverables and supersedes any prior understanding or agreement collateral, oral or otherwise, existing between the parties at the date of execution of the Agreement.

**Conflict in Documents:** This Agreement shall be deemed to include the, IRU, the RFP and the Submission, provided that in the event of a conflict or inconsistency with any provision in:

- This Agreement, the IRU, the RFP and its related Submission, this Agreement shall govern;
- The IRU, the RFP and its related Submission, the IRU shall govern.
- The RFP and its related Submission, the RFP shall govern.

### **Conflict with other Agreements**

The Board acknowledges that it may be required to sign standard contracts with the Contractor relating to the Deliverables including the “Fibre Optic Cable IRU Agreement”. With respect to operational considerations and future fibre grant clauses the “Fibre Optic Cable IRU Agreement” shall govern. For all other matters, the parties agree that in the event of any inconsistency between such contracts and this Agreement, this Agreement shall govern.

**Severability:** In the event that any provision or part of this Agreement shall be deemed void or invalid by a court of competent jurisdiction, the remaining provisions or parts shall be and remain in full force and effect.

**Modification of Agreement:** Any modifications to this Agreement must be in writing and signed by the parties or it shall have no effect and shall be void.

**Headings:** The headings used in this Agreement are for convenience only and are not to be construed in any way as additions to or limitations of the covenants and agreements contained in it.

**Governing Law:** This Agreement shall be construed in accordance with the laws of the Province of Ontario.

**Time is of the Essence:** Time shall be of the essence of this Agreement and every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

**Article 9 – Terms and Conditions**

By signing this Agreement the Contractor agrees to all Terms and Conditions in the Agreement and in the RFP #TF-0617 document.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first above written.

**Upper Grand District School Board**

Per: Martha Rogers

Name: Martha Rogers

Title: Director of Education

Date: 2018 0131

THE CORPORATION  
OF THE  
Town of Orangeville

Per: Jeremy D Williams

Name: Jeremy D Williams

Title: Mayor

Date: May 10, 2018

I/We have the authority to bind the Corporation

**Town of Orangeville**

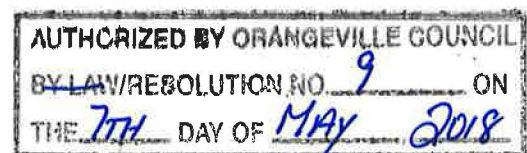
Per: Susan Erection

Name: Susan Erection

Title: Clerk

Date: May 10, 2018

I/We have the authority to bind the Corporation





## SCHEDULE C



Board Office: 500 Victoria Road N. Guelph, ON N1E 6K2

Tel: 519-822-4420 or Toll Free: 1-800-321-4025

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### AGREEMENT FOR THE CONFIDENTIALITY OF PERSONAL AND BUSINESS INFORMATION

Between

**UPPER GRAND DISTRICT SCHOOL BOARD**

and

**TOWN OF ORANGEVILLE**

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This Agreement for the Confidentiality of Personal and Business Information ("Agreement") is made and entered into this 11<sup>th</sup> day of September, 2017 ("Effective Date") by and between Upper Grand District School Board (the "Board") and Town of Orangeville ("the Company"). The Board and the Company may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

WHEREAS the Board wishes the Company to provide, and the Company wishes to provide the Board, certain products and services as more fully set out in all purchase orders issued by the Board to the Company.

WHEREAS such products and services will require the Company to have access to and/or possession of and/or use of personal and/or confidential business information under the control of the Board, they shall be subject to the terms and conditions hereinafter set out;

NOW THEREFORE in consideration of the mutual covenants, agreements and undertakings herein contained, the Company, on behalf of itself and its successors and assigns, and the Board, on behalf of itself and its successors and assigns, mutually covenant and agree as follows:

1. **TERM.** The term of this Agreement shall be the period during which the Company is providing products and/or services to the Board, that require the Company to have access to and/or possession of and/or use of personal and/or secret business information under the control of the Board.
2. **PERSONAL INFORMATION.** The Parties recognize the application of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O., 1990, c.M-56 ("MFIPPA") and Regulations thereunder, as amended from time to time, to the collection, use and disclosure of personal information under the control of the Board.
  - a. For the purpose of the application of the MFIPPA, the definition of personal information shall be as defined pursuant to the MFIPPA.
3. **COLLECTION BY COMPANY.** The Parties recognize the application of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 ("PIPEDA") and Regulations and Schedules thereunder, as amended from time to time, to the collection, use and disclosure of personal information by the Company for its own use and/or benefit.

- a. For the purpose of the application of the PIPEDA, the definition of personal information shall be as defined pursuant to the PIPEDA.
  - b. The Parties agree that at no time will the Company for its own use and/or benefit collect, use and/or disclose personal information about and/or belonging to students or staff of the Board. For greater certainty, it is understood and agreed that the company assumes full responsibility for any actions taken by its employees to whom it has provided access to confidential student information identifying a student or staff or corporate information of the Board and the company's and all of its employees' compliance with the covenants and obligations set forth herein.
4. **WARRANTIES AND COVENANTS.** Without limitation to any other provision of this Agreement, the Company represents and warrants to and covenants with the Board as follows, at all times during which the Company is providing products and services that may require the Company to have access to and/or possession of and/or use of personal and/or secret business information under the control of the Board:
- a. the Company shall comply with all provisions of MFIPPA and all Board policies (all Board policies are available on the Board website [www.ugdsb.on.ca](http://www.ugdsb.on.ca)) and procedures regarding the collection, use and disclosure of personal information under the control of the Board;
  - b. the Company shall not disclose personal information under the control of the Board; without the prior consent of the Board.
  - c. the Company shall employ appropriate security measures, in a manner to be approved by the Board, to protect the confidentiality of the personal information in its possession but under the control of the Board if in the Company's possession as a result of the services being provided for the Board;
  - d. only those employees or agents employed by the Company who require access to personal information under the control of the Board for the purpose of performing their duties with respect to the services being provided to the Board shall be provided with access to such personal information;
  - e. the Company shall either return or destroy in a manner to be approved by the Board, any and all personal information under the control of the Board if in the Company's possession as a result of the services provided by the Company to the Board;
  - f. the Company, except as may be required by law, agrees to not use, directly or indirectly, for its own account or for the account of any person, firm, board or other entity or disclose to any person, firm, board or other entity, the Board's confidential business information disclosed or entrusted to it or developed or generated by it in the performance of his duties hereunder, including but not limited to information relating to the Board's organizational structure, operations, business plans, technical projects, business costs, research data results, inventions, trade secrets, or other work produced, developed by or for the Board, whether on the premises of the Board or elsewhere. The foregoing provisions shall not apply to any proprietary or confidential business information which is, at the commencement of the Term or at some later date, publicly known under circumstances involving no breach of this Agreement or as lawfully and in good faith made available to the Company without restrictions as to disclosure to a third party; and
  - g. the Company shall at all times indemnify and save harmless the Board, its directors, trustees, members, officers, employees, agents, successors and assigns from and against any and all claims, demands, liabilities, losses, costs, damages, actions and causes of action by whomsoever made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to anything done or omitted to be done by the Company, its directors, officers, employees, agents, authorized assigns or sub-contractors of the Company including negligent acts or negligent omissions in connection with duties set out above and performed, purportedly performed or required to be performed by the Company under this Agreement and including any breach of its obligations contained herein.

5. SURVIVAL. All representations, covenants, warranties, indemnities and limitations of liability set out in this agreement shall survive the termination or expiry of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized officers as of the date first below written.

Feb. 2, 2018  
Date

**On Behalf of the Upper Grand District School Board**

Title : ~~Purchasing Manager~~ Superintendent of Finance

Individual: ~~Lidia Halyk~~ Glen Regier

Glen Regier  
signature

May 10, 2018  
Date

THE CORPORATION OF THE

**On Behalf of Town of Orangeville**

Title Mayor

Individual [print] Jeremy D Williams

[Signature]  
Signature

May 10, 2018  
Date

**On Behalf of Town of Orangeville**

Title Clerk

Individual [print] Susan Greatrix

[Signature]  
signature