

## **BUILDING ACCESS AGREEMENT**

This Building Access Agreement (“Agreement”) is made and entered into as of the “**Effective Date**” (as defined below) by and between **COUNTY OF ALBEMARLE SCHOOL BOARD** (“Licensor”) and **BRIGHTSPEED OF VIRGINIA, LLC F/K/A CENTRAL TELEPHONE COMPANY OF VIRGINIA** and its affiliates (“Licensee”).

### BACKGROUND:

Licensor represents and warrants that it owns that certain real property having an address of **2765 Hydraulic Road, Charlottesville, VA 22902; PIN: 06000000078A0 (60-78A+)** (“Property”), and owns the building located on the Property (“Building”). Licensor is willing to grant a license to Licensee pursuant to the terms and conditions of this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Licensor and Licensee agree as follows:

**1. License.** Licensor grants Licensee a license (“License”) to provide communications services to its customers and tenants and occupants of the Building. This grant of License permits Licensee, its employees, agents, contractors, and affiliates a non-exclusive right to install, access, operate, repair, maintain, upgrade, and remove its fiber optic and/or coaxial cables and related equipment (collectively the “Equipment”) for the provisioning of communications services to the tenants and occupants located at the Building. This grant includes the right to install the Equipment under and across the real property from the edge of the property line of the Building to and throughout the Building in a manner approved by Licensor, which approval shall not be unreasonably withheld or conditioned. Licensor grants Licensee the right of reasonable ingress and egress over and across the Property to access such Equipment. This License also extends to Licensee’s non-exclusive right to use any conduit previously installed by Licensor, to the extent space is available therein and subject to Licensor’s approval. Licensee will have exclusive use of any conduit it installs on the Property. Licensee shall obtain separate permission from individual tenants to access any tenant-occupied areas in the Building.

**2. Construction.** Prior to the commencement of any work on the Property (including periodic installation of the Equipment), Licensee will, at its expense, prepare and deliver to Licensor plans describing all proposed work for Licensor’s approval, which approval shall not be unreasonably delayed, conditioned, or withheld. By entering this Agreement, Licensor grants such approval for any plans that may be attached hereto as of the Effective Date. Licensee will: (a) perform all work in a safe manner consistent with prudent construction standards; (b) perform all work in such a way as to minimize unreasonable interference with the operation of the Building; (c) repair any damage to the Building caused by Licensee’s installation or operation of the Equipment, ordinary wear and tear excluded; and (d) obtain prior to the commencement of any work all federal, state and municipal permits, licenses, and approvals required in connection with such construction and work. In the event any mechanics' or materialmen's liens or other encumbrances that are caused by or result from any work performed or materials furnished by or at the request of Licensee are placed upon the Building or Property during the Term of this Agreement, Licensee shall at its own expense, cause the same to be discharged of record or bonded around within thirty business days after Licensee receives written notice from Licensor of the filing thereof.

**3. Equipment.** All risk associated with the Equipment will be borne by Licensee. Licensor will not be liable for damage to, theft of, misappropriation of, or loss of, the Equipment regardless of the cause, except if the cause is due to the negligence, unlawful activity, or willful misconduct of Licensor, its employees, or agents. Licensor agrees that neither it nor anyone acting by or under the authority of Licensor shall tamper with, make alterations to, or remove Equipment without the prior written consent of Licensee.

All parts of the Equipment shall be and shall remain the personal property of Licensee.

**4. Relocation of Equipment.** If at any time during the term of this Agreement Licensor requires the relocation of the Equipment, it shall be at Licensor's sole cost and expense and the substitute space must be as suitable for Licensee's operations in the Building as is the space from which Licensee is to be relocated. Should such request be made by Licensor, Licensee reserves the right to terminate this Agreement upon written notice to Licensor within 10 business days of receipt of Licensor's request.

**5. Termination.** Subject to termination pursuant to section 9, below, this Agreement will remain in full force and effect until modified or amended by written agreement of the parties.

**6. Notice.** Whenever any notice or other communication (collectively, "Notice") is required or permitted under this Agreement, Notice must be in writing and sent by certified mail, return receipt requested, postage prepaid or by a nationally recognized overnight courier service to the following addresses:

If Notice to Licensor: County of Albemarle School Board  
401 McIntire Road  
Charlottesville, VA 22902

If Notice to Licensee: Brightspeed  
Attn.: Right-of-Way Department  
1120 South Tryon St.  
Charlotte, NC 28203

With a copy for default notices only: Brightspeed  
Attn.: Law Department  
1120 South Tryon St.  
Charlotte, NC 28203

Notice will be deemed effective upon actual receipt or refusal of delivery. Either party may change its above address by giving Notice of such address change in the manner for giving Notice prescribed in this Section.

**7. Indemnification and Waiver.** Licensee will indemnify, defend, and hold Licensor harmless from and against any and all third party loss, cost, liability, claim, damage, and expense of whatever kind, including reasonable attorneys' fees and court costs (collectively, "Damages") to the extent such Damages arise from Licensee's breach of this Agreement or Licensee's negligence or willful misconduct; provided, however, that Licensee shall not be obligated to indemnify, defend, or hold Licensor harmless to the extent any claim arises out of or in connection with any breach by or negligence of Licensor. Licensor will indemnify to the extent permitted by law, defend, and hold Licensee harmless from and against any and all Damages to the extent such Damages arise from Licensor's breach of this Agreement or Licensor's negligence or willful misconduct. Neither party shall be liable to the other party for any consequential, special, or punitive damages. The provisions of this Section will survive termination of this Agreement.

**8. Insurance.** Without limiting the liabilities or indemnification obligations of Licensee, Licensee will, at all times during the Term, carry and maintain at its expense the following insurance from insurers with minimum Best's ratings of "A-VII" authorized to do business in the state where the Building is located: (a) Workers' Compensation insurance in accordance with the law of the state where any work under this Agreement is being performed including Employer's Liability insurance with limits not less than

\$1,000,000 each accident; (b) Commercial General Liability Insurance with an occurrence limit of not less than One Million Dollars (\$1,000,000) and an aggregate limit of not less than Two Million Dollars (\$2,000,000) covering personal injury, bodily injury, death, property damage, products/completed operations and contractual liability and continuing for at least two-years(2-years) after the work has been accepted by the Licensee;; (c) Commercial Automobile Liability with limits not less than \$1,000,000 combined single limit per occurrence covering bodily injury and property damage for all owned, non-owned and hired vehicles used in connection with the performance of this Agreement; and (d) “All Risk” property insurance covering its Equipment and other personal property in sufficient amounts to cover any loss of such Equipment and personal property. At all times during the Term, Licensor will carry and maintain at its expense “All Risk” property insurance covering the Building and its equipment in amounts not less than their full replacement cost and include as a peril direct and indirect damages arising from floods, earthquakes, weather related events, faulty materials, faulty workmanship, and other perils not excluded by the “All Risks” of direct physical loss insuring agreement, as well as Commercial General Liability insurance covering claims for bodily injury, death, personal injury and property damage with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate. Should Licensor have employees on site, Licensor will carry and maintain at its expense statutorily required Workers’ Compensation and Employer’s Liability insurance with a minimum of \$1,000,000 each accident. Licensor’s Workers’ Compensation insurance shall include a Waiver of Subrogation for General Liability, Automobile Liability, Umbrella Excess Liability, and Workers Compensation insurance in favor of Licensee.

Licensor, its affiliates, subsidiaries, and parent, as well as the officers, directors, employees, and agents of all such entities will be included as additional insureds on the policies described in subsections (b) and (c) above. Licensee, its affiliates, subsidiaries, and parent, as well as the officers, officials, directors, employees, and agents of all such entities will be included as additional insureds on Licensor’s Commercial General Liability coverage. The coverage described in subsection (b) will be primary and not contributory to insurance which may be maintained by Licensor, subject to the indemnification provisions of this Agreement and only for instances of Licensees sole negligence. Prior to Licensee commencing any work under this Agreement, Licensee will, upon written request, make available to Licensor evidence of the insurance required herein. Such evidence shall be provided only via Certificate of Insurance and applicable broad form Additional Insured endorsements. Licensee will provide a certificate of insurance upon request.

Licensee will also have the name of the Licensor included as Additional Insureds on the CGL and Umbrella Liability policies and their respective Certificates of insurance.

**9. Breach.** If either party breaches any term or condition of this Agreement, the non-breaching party shall provide written notice specifying the nature of the breach to the breaching party. If the breaching party has not cured the breach within 30 days after receipt of the notice, the non-breaching party shall have (in addition to any other rights and remedies it may have at law or in equity) the right to terminate this Agreement upon ten days written notice to the breaching party, unless the breach cannot reasonably be cured within such 30 day period, then the breaching party shall have such additional time to cure as is reasonable before the non-breaching party can pursue its rights and remedies, provided the breaching party has commenced the cure within said 30 day period and diligently prosecutes the cure to completion.

**10. Force Majeure.** Neither party shall be liable for any breach or failure to timely perform any of its obligations under this Agreement if such party is prohibited or precluded from performing due to fire, theft, casualty, flood, earthquake, storm, lightning, natural disaster, physical calamity, acts by a public enemy, injunction, riot, labor dispute, strike, insurrection, war, act of terrorism, court order, order from a government agency, Act of God, or any other reason, whether or not similar to the foregoing, beyond the party’s reasonable control, but excluding such party’s financial inability or fault or negligence.

**11. Miscellaneous.** (a) Either party may assign this Agreement without the consent of the other party, upon notice to the other party, and the Agreement shall be binding upon the parties’ respective successors

and assigns; (b) This Agreement represents the full understanding of the parties with respect to its subject matter and cannot be modified or amended except in a writing signed by all of the parties; (c) This Agreement shall be governed by and construed in accordance with the laws of the state in which the Building is located; (d) In the event of litigation, the prevailing party shall be entitled to recover its reasonable costs, including reasonable attorney fees, from the other party, and (e) Licensor will notify Licensee in writing of the sale or other transfer of the Building at least thirty (30) days prior to closing of the sale or other transfer.

**12. Counterparts, Facsimile and Electronic Mail Signatures.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement may be transmitted by facsimile or electronic mail, and signatures so transmitted will be deemed the equivalent of delivery of an original signature.

**13. Effective Date.** This Agreement is effective \_\_\_\_\_, 202\_\_.

**IN WITNESS WHEREOF**, the parties duly execute and agree to be bound by this Agreement as of the Effective Date by the signatures of their authorized representatives below.

**“Licensee”**

**BRIGHTSPEED OF VIRGINIA, LLC**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print name)

Title: \_\_\_\_\_  
(print title)

Date: \_\_\_\_\_

**“Licensor”**

**COUNTY OF ALBEMARLE SCHOOL BOARD**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print name)

Title: \_\_\_\_\_  
(print title)

Date: \_\_\_\_\_