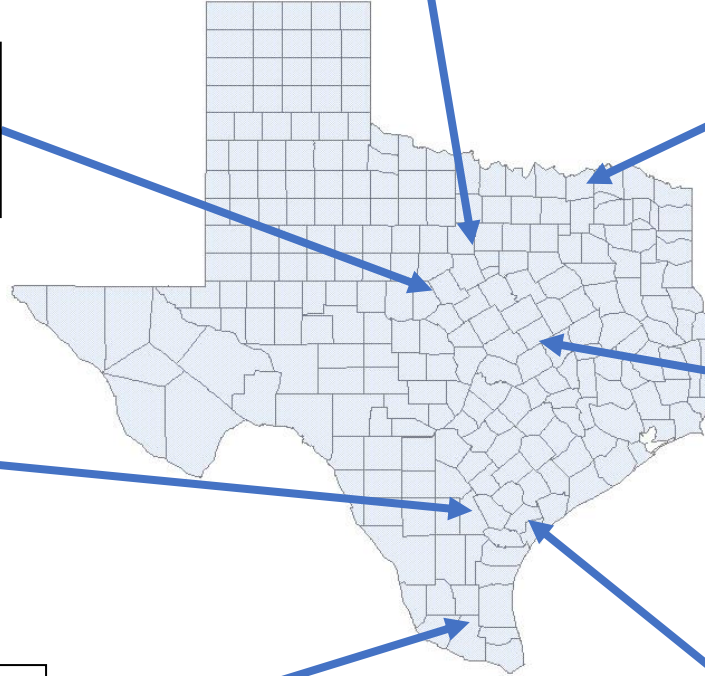




**Customer:** City of Granbury  
**Reference:** Michael Ross, CPM, Deputy City Manager  
**Services:** TLaaS<sup>®</sup> Services  
**Towers:** 250' and 270' FAA Style E1+1  
**Water Towers:** (4) Elevated towers w/ FAA Style A0



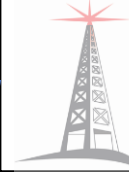
**Customer:** Bosque County  
**Reference:** Chris Andersen EMS  
**Services:** Purchase, Install, Services  
**Tower:** 320' FAA Style E1+1



**Customer:** Lamar Electric Coop  
**Reference:** Keith Flowers, IT Director  
**Services:** Purchase, Install, Services  
**Tower:** 238' FAA Style E1



**Customer:** Live Oak County  
**Reference:** Judge Huff  
**Services:** TLaaS<sup>®</sup> Services  
**Tower:** 479' FAA Style E2+1



**Customer:** Falls County  
**Reference:** Jeff Watkins, EMA Director  
**Services:** TLaaS<sup>®</sup> Services  
**Tower:** 319' FAA Style E1



**Customer:** Riveria Telephone Company  
**Reference:** Josh Skok, Engineer  
**Services:** Purchase, Install, Services  
**Towers:** 475' FAA Style E1+1



**Customer:** San Patricio County  
**Reference:** Sheriff Oscar Rivera  
**Services:** Purchase, Install, Services  
**Tower:** 378' FAA Style E2



# LumenServe<sup>SM</sup> Quote

**Customer:**  
**Webb County**  
 1110 Washington Street  
 Suite 101  
 Laredo, Texas 78045

**Check Selected Service Type:**

- Tower Lighting as a Service<sup>®</sup>

- Tower Lighting as a Service<sup>®</sup> \$1 Buyout - Capital Lease See (1) below

- Purchase & Installation LED Lighting System + Optional Services

- Purchase of Equipment

- Other

**Special Notes:**  
 See notes below. Quote is for Purchase and Installation pursuant to Webb County Bid No 2000722 North and South Tower LED Lighting System, as defined in subject RFQ.

**Quote Date:** 4/7/2021  
**Project:** Webb County Request No. 2000722

**Attention:**  
 Mr. Cesar A. Guerra Jr.  
 Assistant Purchasing Agent  
 ceguerra@webbcountytx.gov  
 (956) 523-4133

Site Name	ASR #	FAA Type	Tower Lighting as a Service <sup>®</sup>						FAA Req'd On-site Inspections		Data Plan		Total	
			LED System		Assurance Warranty		Compliance & Monitoring Services		NRC	/mo	NRC	/mo	NRC	/mo
			NRC	/mo	NRC	/mo	NRC	/mo	NRC	/mo	NRC	/mo	NRC	/mo
South Tower	TBD	E2	\$ 21,475.00	n/a	SERVICE NOT ORDERED	n/a	1st Year Free, See Note 1 Below	SERVICE NOT ORDERED	SERVICE NOT ORDERED	\$ 21,475.00	n/a			
North Tower	TBD	E2	\$ 21,475.00	n/a	SERVICE NOT ORDERED	n/a	1st Year Free, See Note 1 Below	SERVICE NOT ORDERED	SERVICE NOT ORDERED	\$ 21,475.00	n/a			

- Notes:**
- Lumenserve Compliance & Monitoring Service included free for first year. After the first year, Customer has option for annual renewal at \$59.00/month.
  - Quote includes Dialight INEM module, which provides SNMP monitoring capability.
  - Quote includes One (1) Year Workmanship Warranty.
  - Quote includes Dialights five (5) year manufacturer's warranty.
  - Quote includes Dialight LED Lighting System w/ Infrared (IR), fully FAA Certified.
  - Free monitoring assumes Webb County to provide on-site Internet, required for on-site system monitoring, otherwise; LumenServe will provide Internet Data Plan Services for \$10.00/month.

**7/8" Rule Options**  
 NOTE: Option A or B are available at Customer's option if a tower does not meet the FAA 7/8 inch rule.  
 Option A - +1 Beacon - An additional Dialight top beacon including installation at \$5,095 per tower.  
 Option B - Beacon Extension: Beacon extension, if applicable, can be used to raise the elevation of the top Dialight beacon, cost adder will be \$965 per tower. Note the maximum beacon extension is five (5) ft.

<b>TOTAL:</b>	\$ 42,950.00	n/a
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**Additional Terms (Check if Applicable):**

n/a	(1) TLaaS <sup>®</sup> \$1 Buyout - Capital Lease - Customer may purchase LED Lighting System for \$1 at the end of the Initial Term, thereupon, the Lighting System asset will become the property of the Customer and other ancillary Services may be renewed annually thereafter at Customer's option.
n/a	(2) Lighting System purchase and/or installation requires 50% payment upfront and the remaining balance upon shipment or installation completion as applicable.
n/a	(3) Shipping costs are not included above and will be invoiced to Customer.

**Our Guarantee:**  
*LumenServe<sup>SM</sup> guarantees you up to five (5) years of flat rate pricing, plus full upfront transparency on the rates you will pay, for as long as you are a Customer.*

Upon execution by Customer and LumenServe<sup>SM</sup>, this Quote, along with the Standard Terms and Conditions, serve as a Master Agreement ("Agreement") between the parties. Additional Services under this Agreement may be procured via supplemental Quotes executed by both parties. All defined terms are utilized pursuant to the Agreement. At the end of the Initial Term, or any subsequent Renewal Term, the Customer and LumenServe<sup>SM</sup> may mutually agree to extend the Agreement for a one-year Renewal Term at a rate equal to the previous year's rate plus 4%. **Quote does not include any applicable sales taxes, which will be included on the invoice and be the responsibility of the Customer.** Payments by credit card will incur an additional 4% fee.

Signature Below or Valid PO Indicates Acceptance of Quote and Terms and Conditions

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Office Use Only**

LumenServe<sup>SM</sup> Approval

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

**Our Value System**  
 Customer Service Obsession ♦ Honesty & Integrity ♦ We Get Things Done  
 Efficiency Focused ♦ Grateful For Our Successes  
 4818 East Ben White Boulevard, #107, Austin, Texas 78741 • P: 512.580.4600



## Service Descriptions

See Page 1 of Quote for Services  
Included with Your Order



### LED Lighting Systems

LumenServe<sup>SM</sup> utilizes Dialight LED lighting systems across all tower types, unless otherwise noted in the Quote. Current specifications and data sheets are available at the links below:

[LED Obstruction – Dual Red/White Medium Intensity – L-865/L-864 – Data Sheet](#)

[LED Obstruction – Red Medium / Low Intensity – L-864/L-810 – Data Sheet](#)

[LED Obstruction – High Intensity – L-856/L-864 – Data Sheet](#)

[LED Obstruction – Integrated Network, Embedded Monitoring \(INEM\) – Data Sheet](#)

[LED Obstruction – Accessories](#)

Installation is performed using LumenServe<sup>SM</sup> Installation Guidelines and Methodology and is all inclusive of labor, mobilization, materials, expenses, and Equipment. There are no hidden costs in our Installation Services which includes the following:

- Engineering / FAA Filings
  - On-site walk
  - Lighting circular validation
  - Build package & diagram
  - FAA Form 7460 completion in coordination with Customer
- Decommission of Old Lighting System
  - Old Lighting Fixtures
  - Old Lighting Cable for Medium Intensity Systems
  - Old Lighting Equipment
- LED System (per specifications above)
  - Equipment – Controller, Beacons, L-810 Side Lights
  - Lighting cable
  - Mounts and brackets
  - Installation hardware and materials
  - Note that High Intensity LED systems assume reuse of Customer existing power cabling and conduit unless otherwise specified.
- Installation – Comprehensive installation on-ground and above-ground by OEM certified installers pursuant to LumenServe<sup>SM</sup> Safety Manual.
- Close Out Package
  - As-Built diagram
  - Photo documentation top-to-bottom



## **Assurance Warranty, Maintenance and Repair**

## **Service Descriptions**

See Page 1 of Quote for Services  
Included with Your Order

The Assurance Warranty Service (“Assurance Warranty”) is provided to the Customer at LumenServe’s cost and includes ongoing maintenance and repair of the Lighting System and associated Equipment (“Maintenance and Repair”) and all associated costs including, but not limited to, Equipment, materials, parts, tower climbing and other labor. This Assurance Warranty is incorporated into the Agreement, and all defined terms utilized are pursuant to the Agreement. The Assurance Warranty covers all required Maintenance and Repair resulting from outages caused by Lighting System failure, Equipment failure, weather related failures, lightning, and other causes of failure. The Assurance Warranty is not applicable to outages directly caused by the Customer, its contractors, or its tenants on the tower site that results in damage to the lighting system. Compliance & Monitoring Services, as detailed below, must be ordered by Customer, and provided by LumenServe<sup>SM</sup>, in parallel with the Assurance Warranty.

Workmanship/Safety – LumenServe<sup>SM</sup> will ensure that that all Service provided under this Assurance Warranty will be performed in accordance with workmanship standards prevalent in the industry, and all Equipment and parts thereof, utilized to provide such services, will meet all required industry and regulatory specifications. All labor pursuant to the current LumenServe<sup>SM</sup> Safety Manual.

During the Term of the Agreement, LumenServe<sup>SM</sup>, at its cost and expense, will (a) provide Customer the parts, materials and labor for the maintenance as specified herein; (b) ensure that the hardware and software operate substantially in accordance with the Equipment manufacturer’s specifications and those required by governing Federal, state and local authority; (c) install all necessary field change orders to ensure proper Equipment operation; (d) provide the full range of Maintenance and Repairs including, but not limited to, the following:

- Repair/ Maintenance/Replacement of Lighting System
  - Beacon(s) and L-810 side markers
  - Controllers/Power supplies
  - Other lighting system equipment
  - Cable, brackets, hardware
  - Shipping costs
- System Software / Firmware Updates
- RMA Management
  - RMA tracking
  - Shipping costs
- Project Tracking and Electronic Logbook
  - Installation
  - Maintenance and Repair
  - Equipment replacement
- Customer Reporting Includes
  - Repair/Maintenance logbook
  - RMA logbook



## Compliance & Monitoring

### Service Descriptions

See Page 1 of Quote for Services  
Included with Your Order

LumenServe<sup>SM</sup> requires that its Compliance & Monitoring Services be provided as part of all TLaaS<sup>®</sup> Agreements as it is an integral part of the Assurance Warranty Service ensuring proper visibility, status notifications, alerts, and remote diagnostics of the Lighting System to LumenServe<sup>SM</sup>. Compliance & Monitoring Service includes the following:

- Monitoring of Lighting System
  - Proactive Monitoring of Lighting System
  - Polling Every 5 Minutes
  - 24/7/365 Monitoring
  - Remote Diagnostics
  - Daily Logs, 2+ Years Storage
- FAA Compliance & Reporting
  - FAA NOTAM Reporting
  - NOTAM Tracking
  - NOTAM Resolution
  - Lighting Circular Validation
- Customer Reporting
  - NOTAM reporting to Customer
  - Quarterly Daily Logs Report, provided quarterly
  - Notification of FAA rules changes
  - Compliance events
- Installation/Repair/Maintenance of Monitoring System
  - For Customers with TLaaS<sup>®</sup>, TLaaS<sup>®</sup> with \$1 Buyout, or Purchase & Installation of a Lighting System with Compliance & Monitoring Services, LumenServe will install the monitoring system Equipment. Repair and Maintenance of the Monitoring System is covered under the Assurance Warranty Service (detailed above) if included in the Services ordered by the Customer.



## FAA Required On-site Inspections

LumenServe<sup>SM</sup> provides the full suite of the FAA required on-site inspection services. Services will be tailored for your specific FAA tower style and applicable FAA Circular revision for the subject site. Services include:

- Quarterly Lighting Inspections (QLI)
  - Quarterly Inspection

## Service Descriptions

See Page 1 of Quote for Services  
Included with Your Order

- Standards checklist
- System Health Test per OEM specifications including cycling between day, twilight and night mode as applicable
- QLI Report sent to Customer on a quarterly basis
- On-site Lighting System verification
- 7/8" Rule testing from ground
- Annual Paint Inspections
  - Annual Paint Test (Top Portion of Tower)
  - Documented in Log
- Biennial Lens Inspections
  - Biennial Lens Inspection by climb or drone
  - Biennial Lens Report with photo documentation



### Data Plan

The LumenServe<sup>SM</sup> Data Plan is a Machine to Machine (M2M) platform with options to use the best available signal from the three major carrier networks – AT&T, Verizon, and T-Mobile. The Data Plan includes:

- M2M Data Bandwidth
- Transmission Equipment
- Transmission Equipment installation
- SIM Card
- SIM Provisioning Setup and Testing
- Ancillary Antenna (If necessary, to optimize)

## Standard Terms and Conditions

These Standard Terms and Conditions together with the Quote, and any subsequent or amended Quotes, taken together, constitute a MASTER AGREEMENT ("Agreement") made and entered into as of the date set forth on such Quote ("Effective Date") between the Customer, whose name and place of business is indicated on the Quote in the Customer section ("Customer"), and LumenServe, Inc., having a principal place of business at 4818 East Ben White Blvd. Suite 107, Austin, Texas 78741 ("Company").

### Article 1

#### PRODUCTS AND SERVICES

- 1.1 **Products.** Tangible property, equipment, cabling, material, and software comprising one or more Lighting Systems installed by the Company and sold or leased to the Customer ("Products").
- 1.2 **Services.** Installation, assurance warranty, compliance, monitoring, and other services performed or provided by the Company for the Customer as described in Quote hereto ("Services").
- 1.3 **Lighting Systems and Sites.** The Quote provides a list of the installation sites and a description of the Lighting Systems ("Lighting Systems") and related Products and Services provided by the Company and the associated pricing and terms for each site.
- 1.4 **Ownership of Equipment.** Except for Products purchased by Customer as set forth in the Quote, (i) all Lighting Systems and associated Equipment (as defined in Section 4.2.1 below) will remain the sole property of the Company following installation, and the Customer will have no ownership interest in the Lighting Systems, (ii) the Company will be entitled to grant a security interest in the Lighting Systems and associated Equipment to any lender providing financing to the Company, and Customer will cooperate with the Company in perfecting any such security interest, and (iii) upon termination or expiration of this Agreement for any reason, the Company has the right to remove the Lighting Systems and associated Equipment from the tower sites.
- 1.5 **Power.** Unless otherwise provided in the Quote, the Customer is solely responsible for the provision of electric power to the tower site, and the Company is not responsible for any service outages resulting from an interruption in power supply.
- 1.6 **Damage and Repair.** The Company will repair any damage to any Lighting System leased to the Customer regardless of cause. The Customer will be responsible for any damage to the Lighting System caused by its actions or inactions and will promptly pay or reimburse the Company for any repairs necessitated by such damage. In the event of damage to the Lighting System by third parties, the Customer will cooperate with the Company in exercising any requests for reimbursement or legal remedies against such third parties if required.

### Article 2

#### SERVICES TERM AND TERMINATION

- 2.1 **Services Term.** This Agreement will commence on the Effective Date and will remain in full force for the period identified in the Quote from the date of installation (the "Initial Term") or until terminated as provided herein. In the event that a Quote covers more than one site, the Initial Term will be measured from the date of the last site installation. The Initial Term and any Renewal Term(s) may be referred to herein collectively as the "Term".
- 2.2 **Services Renewal.**
  - 2.2.1 **Automatic Extension.** The Term of this Agreement will be automatically extended for successive one-year periods (each a "Renewal Term") unless either party provides written notice of termination to the other party at least forty-five (45) days prior to the scheduled expiration of this Agreement.
  - 2.2.2 **Agreement Extension.** The Term of this Agreement may be extended for a period of more than one year upon mutual agreement of the parties.
- 2.3 **Early Termination of this Agreement.**
  - 2.3.1 **By the Company.** The Company may terminate this Agreement during its Term for cause if Customer fails to substantially comply with the terms of this Agreement after thirty (30) days prior written notice to Customer that describes the reason for termination and that is not cured to the Company's reasonable satisfaction within such 30-day period. Notwithstanding the foregoing, the Company reserves the right to terminate this Agreement for Customer non-payment by the stated

invoice due date, if payment from for all outstanding balances is not received within ten (10) days of written notice of termination for non-payment.

- 2.3.2 **By the Customer.** The Customer may terminate this Agreement during its Term for cause if the Company fails to substantially provide the Services as warranted and such failure is not cured to the reasonable satisfaction of the Customer within 60 days after written notice to the Company that describes such failure in reasonable detail. Customer may terminate this Agreement as to all or a portion of the Lighting Systems without cause upon not less than 60 days prior written notice, subject to payment of early termination charges as described in Section 2.4 below
- 2.4 **Early Termination Penalty.** In the event that, prior to the end of Term, the Company terminates this Agreement pursuant to Section 2.3.1 above, or the Customer terminates this Agreement without cause pursuant to Section 2.3.2 above, then Customer shall pay all reasonable expenses incurred by the Company in effecting termination of Services (including costs of removal of the affected Lighting Systems owned by the Company and any third-party termination charges) and shall also pay to the Company an early termination charge equal to the number of months remaining in the Term multiplied by the monthly Recurring Charges.
- 2.5 **Effects of Termination.** Upon any termination, the Company is expressly authorized to enter the premises of the Customer where any Lighting System or related Equipment owned by the Company is located and take possession of and remove such Lighting System and related Equipment. The Customer agrees to pay the Company the replacement value of such Lighting System or Equipment if Company is not permitted by Customer to recovered Equipment in accordance with this Section 2.5.
- 2.6 **Survival.** In the event of any termination or expiration of this Agreement, Articles 7, 8, 9, 10, and 11 hereof shall survive and continue in effect.

### Article 3

#### FEES AND PAYMENT TERMS

- 3.1 **Payments.** All payments are in U.S. Dollars. The charges for the Products and/or Services under the Agreement are categorized as "Product Charges", "Recurring Charges" or "Non-Recurring Charges". The Company will invoice Customer monthly for Recurring Charges. The Company will invoice Customer for Non-Recurring Charges as they are incurred. Customer's first and last invoices may include prorated charges. For Services, the Company will invoice the Customer monthly in advance for Services being provided. Promotional pricing and terms or other pricing commitments contained in the Quote will expire in accordance with the terms applicable to each promotion or commitment, without further notice to Customer. Upon the expiration of any such promotion or commitment, prices may be revised in accordance with the Company's then-current standard pricing. For Products purchased by Customer, Customer agrees to pay an up-front Product Charge, if any, as stated in Quote and any remaining amounts as invoiced by the Company. Customer agrees to pay each invoice in full within 30 days of the invoice date.
- 3.2 **Late Payment Fees.** Any overdue payments will bear a "Late Payment Fee" of one and a half percent (1.5%) per month or the maximum rate allowed by law, whichever is lower, from the original payment due date until paid in full. Customer is also responsible for all other costs and legal fees incurred in collecting unpaid amounts, unless otherwise ordered by a court in any action to collect those unpaid amounts. The Company reserves the right to assess a fee for any check returned for insufficient funds, which fee shall be the lesser of \$30 or the maximum rate allowed by law.
- 3.3 **Invoice Dispute.** To dispute the amount or accuracy of any invoice, Customer must notify the Company in writing no later than the due date of the invoice detailing the disputed charges. The Company will not issue a credit for any charges not disputed in writing prior to the invoice due date. Notwithstanding any provision to the contrary herein contained, no payment due under the Agreement, whether disputed or undisputed, is subject to withholding, reduction, set-off or adjustment by any nature by the Customer.
- 3.4 **Taxes and Fees.** The pricing terms set forth in Quote may not include all applicable federal, state and local taxes or regulatory fees, assessments and surcharges ("Taxes and Fees"), all of which are the responsibility of the Customer. Taxes and Fees are subject to change without notice during the Term of the Agreement. If Customer fails to pay any such Taxes and Fees

when due, the Company reserves the right to make such payments or like charges, together with all penalties and interest which may have been added because of Customer's delinquency or default, and Customer will promptly reimburse the Company for any amounts so paid.

- 3.5 **Additional Customer Responsibilities.** In addition to Customer's other responsibilities under the Agreement, Customer agrees that Customer and anyone using the Services will: (i) not resell the Services to any third party; (ii) comply with all federal, state, and local laws, rules, regulations, tariffs, and orders of courts of competent jurisdiction that apply to the Products, Services or this Agreement ("Applicable Laws"); (iii) be solely responsible for establishing and maintaining security measures (including, without limitation, codes, passwords or other features) necessary to restrict access to the computers, services or other equipment related to the Services; (iv) be solely responsible for all fraudulent, unauthorized, illegal or improper use of the Services by persons accessing those Services through Customer's facilities, equipment or Service Address; and (v) authorize and identify to the Company in writing at least one individual who is authorized to represent Customer on any aspect of the Services and Customer's account (including, all requests for moves, additions, deletions or changes to the Services).
- 3.6 **Lawful Payments.** It is understood and agreed that the payments to be made under this Agreement are payable only out of current designated and lawfully appropriated funds of the Customer.

#### Article 4

##### SERVICES TO BE PERFORMED BY THE COMPANY

- 4.1 **Service Period.** The Company will provide to Customer the Services identified in Quote during the Term or until such earlier date on which this Agreement is terminated in accordance with the termination provisions contained herein.
- 4.2 **Equipment.**
- 4.2.1 **Equipment.** "Equipment" means all the Lighting Systems, equipment, structures, enclosures, cabling, hardware and software owned by the Company to enable the provision of Services to the Customer.
- 4.2.2 **Technology.** To provide the Services, the Company reserves the right to select in its sole discretion the Equipment required to deliver the Services unless otherwise specified in the Quote. The Company also may change the manner in which the Services are provisioned at any time without notice, provided such change does not adversely affect the quality and/or functionality of the Services. The Company will replace at no charge to Customer any Equipment that does not perform to the specifications herein, unless the Company determines, in its sole discretion that the Equipment failure was a direct or indirect result from the Customer's acts or omissions.
- 4.2.3 **Use and Care.** Customer agrees to comply with all instructions and requirements regarding the use and/or care of the Equipment, and take reasonable measures to protect the Equipment at all times. Customer further agrees to pay the Company the replacement value of any Equipment that is lost, stolen or damaged as a result of the Customer's act or omission.
- 4.3 **License Grant.** Customer grants to the Company an exclusive, non-revocable license ("License") to use those parcels of real property at the Customer locations that the Company deems necessary to install, operate and maintain the Equipment in order to provide the Services. Equipment is limited to the equipment necessary to provide the Services to the Customer as specified in this Agreement and any Customer issued Purchase Orders. Notwithstanding any other provision of this Agreement, it is expressly understood that all rights granted to the Company under this License are continuous, ongoing and irrevocable for so long as Customer owns or leases such real property, but only to the extent permitted by law. The Company is authorized to use the Equipment and real property for any activity in connection with the provision of Services.
- 4.4 **Equipment Installation.** The Company may be required to install Equipment at the Customer's premises, which Equipment will remain the Company's sole property at all times and will not be considered Customer equipment except to the extent set forth in Quote or as otherwise agreed in writing between the parties. In the event any Equipment (or any portion thereof) is or becomes physically affixed or attached in any manner to real estate at the Customer premises, in no event will the Equipment be deemed to constitute a "fixture" of such real estate but rather will remain personal property at all times. At the request of the Company, the Customer will furnish a appropriate waiver with respect to the Equipment from any person claiming an interest in any personal or real property where the Equipment is located.
- 4.5 **Service Installation Date.** The "Service Installation Date" is the date that the Company first provides the Services to the Customer.
- 4.6 **Customer Acceptance.** The Customer acceptance date will be the Service Installation Date of the Services.

- 4.7 **Method of Performing Services.** The Company and its personnel will determine the method, details, and means of performing the work to be carried out for the Customer. The Customer shall have no right to, control the manner or determine the method of accomplishing such work. Customer may, however, require Company personnel to observe the security and safety policies of Customer.
- 4.8 **Change Orders.** To initiate a change order, a revised Quote shall be signed by the Customer in order to modify, reduce, or increase the Products and/or Services to be provided. The Customer will be responsible for the cost of moving any Equipment necessitated by any change order. All necessary and reasonable expenses related to the change order will be the responsibility of the Customer.
- 4.9 **Scheduling.** The Company will try to accommodate scheduling requests of the Customer to the extent possible.

#### Article 5

##### SERVICES CUSTOMER OBLIGATIONS

- 5.1 **Access to the Services.** Customer agrees to monitor the use of the Services to prevent inappropriate use, and to maintain and prevent unauthorized access to confidential information, including the confidentiality of any passwords and account information required for access to Services. Customer will promptly notify the Company of any unauthorized or inappropriate use of the Services or Equipment including breach of security, or other damage, loss or theft.
- 5.2 **Information Access.** Customer agrees to provide all information, access and support reasonably required for timely installation and proper use of the Services. Customer further agrees to assist the Company in securing all necessary licenses, permits, and consents for installation of Equipment as necessary to provide the Services. Customer is responsible for locating pre-existing facilities of other providers, such as utilities and underground facilities, including the cost for such location, in addition to those listed in the Quote.
- 5.3 **Lawful Use.** Customer agrees: (1) that Services may be used solely by those entities listed in the Quote as being eligible to participate with Customer in obtaining the Services; (2) not to provide the Services to non-eligible third parties whether by lease, rental, transfer, assignment, sale, sublicense, or any other means, including commercial time-sharing, rental, or service bureau use; (3) not to use the Services for any purpose that is unlawful or that is not contemplated or prohibited by this Agreement; and (4) to abide by all applicable local, state, laws and regulations, tariffs and orders of courts of competent jurisdiction that apply to the services.
- 5.4 **Alterations, Additions or Improvements.** Customer will not make any alterations, additions or improvements to the Equipment or remove Equipment from a service location without the Company's prior written consent. Customer shall not engage in any activity or construct any new structure which may interfere mechanically, electrically or operationally with the Equipment.

#### Article 6

##### PRODUCT SALES

- 6.1 **Product Delivery.** For Products sold to the Customer, the Company will deliver to Customer the Products and quantities as listed in the Quote. Upon delivery of the described Products to the Customer's location(s), Customer will bear solely the risk of loss regardless of any breach by the Company of any provisions hereof.
- 6.2 **Product Installation.** As provided in the Quote, the Company may provide for the installation of Products as required and will determine the method, details and means of performing the work to be carried out for Customer. Customer shall have no right to control the manner or determine the method of accomplishing such work. Customer may, however, require the Company's personnel to observe the security and safety policies of Customer. The Company will coordinate with the Customer to establish a reasonable installation plan. Installations done outside normal company hours may result in additional costs for the Customer.
- 6.3 **Use of Subcontractors.** Customer acknowledges that the Company may install the Products using subcontractors, and that the Company reserves the right to substitute such subcontractors with others, in its sole discretion.
- 6.4 **Product Installation Customer Obligations.** For indoor installations, the Customer agrees to provide, at no cost to the Company, a clean, dry, and temperature-controlled place for installing the Products, all-electrical outlets and power hookups, and any related facilities as specified by the Company. The Customer also agrees to pay for all extra or additional work performed and additional materials furnished in accordance with a change order.
- 6.5 **Return of Products Sold.** Return of Products sold to Customer is only allowable in accordance with the Product manufacturer's warranty provisions.



- 6.6 **Removal of Products.** If the Customer has failed to pay the agreed purchase for any Product and such payment is past due for 30 days or more after written notice to the Customer, the Customer will grant full access to the Company to remove such Products and take possession of all or part of such Products, and Customer will hold the Company harmless for taking such actions. Customer will be liable for the all cost associated with removal of the Products. Removal of the Products does not relieve Customer of its obligations under this Agreement.

#### Article 7 WARRANTIES

- 7.1 **Product Warranties.** The Company represents and warrants Products sold to Customer solely in accordance with the Product manufacturer's warranty.
- 7.2 **Services Warranties.** The Company represents and warrants that its Lighting Systems are engineered and installed, and the Company's operations procedures are designed and implemented, to provide the Services in accordance with prevailing industry standards for similar services, and that the Company will make commercially reasonable efforts to provide the Services in conformance with such standards. This warranty will apply solely to access to the Services, and will not apply to any outage, loss or damage (1) caused by factors outside of the Company's reasonable control; (2) resulting from any action or omission of the Customer or any third party; (3) resulting from scheduled maintenance or required repairs; or (4) resulting from equipment or any other item not provided by the Company. Any liability on the part of the Company for a breach of this warranty is strictly limited by Article 10.
- 7.3 **Warranties Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 7.1 AND 7.2, THE COMPANY PROVIDES PRODUCTS AND/OR SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND CUSTOMER'S USE OF THE PRODUCTS AND SERVICES IS AT ITS OWN RISK. THE COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE COMPANY DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCT AND/OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE, OR THAT DEFECTS IN THE OPERATION OF THE PRODUCT AND/OR SERVICES WILL BE CORRECTED. THE PARTIES AGREE THAT ALL LIABILITY FOR A BREACH OF WARRANTY BY THE COMPANY IS STRICTLY LIMITED TO THOSE DESCRIBED IN THE PRODUCT MANUFACTURERS WARRANTY AND SECTION 10 BELOW. THE COMPANY DOES NOT REPRESENT THAT PRODUCTS AND/OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO CUSTOMER'S COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES THESE CONTAIN.
- 7.4 **Customer Warranties.** Customer represents, covenants and warrants that (1) Customer is a fully constituted entity, agency, political subdivision, or public corporation of the state in which it is located; (2) this Agreement has been executed on behalf of Customer by persons who are duly authorized officers thereof; (3) this Agreement constitutes the legal, valid, and binding obligation of Customer enforceable in accordance with its terms; (4) Customer has complied with all public bidding, notice and hearing requirements where applicable, and by due notification presented this Agreement for approval and adoption as a valid obligation on its part; (5) Customer reasonably believes that funds can be obtained sufficient to make all payments during the Term; (6) the officer of Customer responsible for budget preparation will do all things lawfully within his/her power to obtain, maintain and properly request and pursue funds from which the payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using his/her bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved.

#### Article 8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 **Confidentiality.** Each party shall maintain in strict confidence and shall use and disclose only as authorized by each party, all information of a competitively sensitive or proprietary nature that it receives in connection with the Agreement. Each party shall require its personnel to agree to do likewise. Each party shall take reasonable steps to identify any information of a competitively sensitive or proprietary nature, including by using

confidentiality notices in written material where appropriate. These restrictions shall not be construed to apply to (1) information generally available to the public not due to the fault of the receiving party; (2) information released generally without restriction; (3) information independently developed or acquired; or (4) information approved for the use and disclosure without restriction. Notwithstanding the foregoing restrictions, Each party and its personnel may use and disclose any information (1) to the extent required by an order of any court or other governmental authority or (2) as necessary for it or them to protect their interest in this Agreement, but in each case only after the other party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

- 8.2 **The Company Prior Developed Materials.** The Customer acknowledges that the Products, Services and operations procedures may, in whole or in part, be created using the Company's prior acquired knowledge and expertise. This may include, but not be limited to, prior developed intellectual property including copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by the Company of which the Company will continue to own and have unrestricted right to continue to use.
- 8.3 **Ownership of Work Product.** All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the Company or its personnel during the course of delivering Products and/or performing Services (collectively, the "Work Product") shall belong exclusively to the Company.
- 8.4 **Residual Rights of Personnel.** Notwithstanding anything to the contrary herein, The Company and its personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any confidential or proprietary information of the Customer and without any unauthorized use or disclosure of Work Product.

#### Article 9 HIRING OF THE COMPANY'S PERSONNEL

- 9.1 **Hiring Company's Personnel.** The Customer acknowledges that the Company provides a valuable service by identifying and assigning personnel for the Customer's work. Customer further acknowledges that the Customer would receive substantial additional value, and the Company would be deprived of the benefits of its work force, if Customer were to hire, directly or through an agent, any of the Company's personnel. Without the prior written consent of the Company, the Customer shall not recruit or hire any personnel of the Company who are or have been assigned to perform work on behalf of the Customer.

#### Article 10 LIMITATIONS

- 10.1 **Limitations.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE UNDER ANY THEORY, INCLUDING CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) FOR ANY INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO COSTS OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, DAMAGES FOR LOSS OF DATA, LOSS OF USE OF COMPUTER HARDWARE, DOWNTIME, LOSS OF GOODWILL, LOSS OF BUSINESS, OR COMPUTER HARDWARE MALFUNCTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE COMPANY'S LIABILITY TO THE CUSTOMER UNDER ANY PROVISION OF THIS AGREEMENT EXCEED AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO THE CUSTOMER FOR THE AFFECTED SERVICES OR EQUIPMENT FOR THE PERIOD DURING WHICH THE ERROR, OMISSION, INTERRUPTION OR DEFECT OCCURED. THE PARTIES ACKNOWLEDGE THAT THE OTHER PARTS OF THIS AGREEMENT RELY UPON INCLUSION OF THIS SECTION. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages. Accordingly, the limitations listed in this Section fully apply only to the extent permitted by law. Except as expressly provided herein, in no event will the Company be liable for any consequential, punitive or other damages under the Agreement, it being agreed that the Company's liability will be limited to the amounts actually received by it under the Agreement.

- 10.2 Indemnification.** The Customer shall indemnify, defend, and hold harmless the Company, its parent, subsidiaries and affiliates, and the foregoing entities' respective officers, directors, employees, heirs, successors and assigns (collectively, the "Company Indemnified Parties") from and against all claims, actions, liabilities, losses, damages, costs, and expenses to the extent caused by or arising out of (1) the Customer's violation or infringement of the intellectual rights (including, but not limited to, patents, copyrights, trademarks, and trade secrets) of any third party; (2) the Customer's breach or violation of any Applicable Laws in connection with the performance or non-performance of its obligations under the Agreement; and/or (3) the negligence, gross negligence, or willful or intentional misconduct of the Customer (including, but not limited to, its employees, subcontractors, agents, and representatives) in the performance or non-performance of its obligations under the Agreement.
- 10.3 Binding Arbitration.** All controversies, disputes, or claims between the parties or any of their respective officers, directors, agents, employees and attorneys, arising from or relating to this Agreement shall on demand of either party be submitted for arbitration to the American Arbitration Association ("AAA"). The arbitration shall be governed exclusively by the United States Arbitration Act (9 U.S.C. § 1, et seq.), without reference to any state arbitration statutes. The parties agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim, which is not submitted or filed in such proceeding, shall be barred. The arbitration proceedings shall be conducted in Austin, Texas and conducted in accordance with the commercial arbitration rules of the AAA in effect on the date of this Agreement, except as modified by this Agreement. Three arbitrators shall be used. Each party shall have the right to select one arbitrator from a panel provided by the AAA and those two arbitrators will then select a third arbitrator, also from the AAA panel. The parties shall be entitled to limited discovery at the discretion of the arbitrators who may, but are not required to, allow depositions. The parties acknowledge that the arbitrators' subpoena power is not subject to geographic limitations. The arbitration proceedings shall be conducted on an individual basis and not on a multi-plaintiff, consolidated, or class-wide basis. The arbitrators shall have the right to award the relief, as they deem proper, consistent with this Agreement, including compensatory damages (with interest on unpaid amounts from date due), specific performance, injunctive relief, legal fees and costs. The award and decision of the arbitrators shall be conclusive and binding on all parties, and judgment upon the award may be entered in any court of competent jurisdiction. Any right to contest the validity or enforceability of the award shall be governed exclusively by the United States Arbitration Act. The provisions of this Section 10.3 shall continue in full force and effect subsequent to and notwithstanding expiration or termination of this Agreement.

**Article 11**  
**GENERAL PROVISIONS**

- 11.1 Notices.** Any notices or other communications required or permitted under this Agreement shall be in writing and deemed to have been duly given and delivered when delivered in person, by electronic communication as long as this communication provides the required documentation with written signature, three (3) days after being mailed postage prepaid by certified or registered mail with return receipt requested, or when delivered by overnight delivery service or by facsimile to the recipient at the following address or facsimile number, or to such other address or facsimile number as to which the other party subsequently shall have been notified in writing by such recipient:
- If to the Company:  
LumenServe, Inc.  
4818 East Ben White Blvd., Suite 107  
Austin, Texas 78741
- If to the Customer:  
Customer Name and Address in Quote
- 11.2 No Discrimination.** The Company agrees that in the performance of this Agreement it will not discriminate or permit discrimination against any person or group of persons on the grounds of sex, race, color, religion, or natural origin in any manner prohibited by the laws of the United States.
- 11.3 Insurance.** To the extent that Company personnel install Equipment at the Customer's premises, Customer shall maintain "all risk" property insurance to include Fire, Theft, Vandalism, Windstorm, Hurricane and Hail, as well as

comprehensive general liability insurance, including broad form property damage. Property limits should be equivalent to the value of the Equipment or as otherwise requested. Any loss or damage of the tower site not caused by the Company will not affect the Customer's obligations under the Agreement.

- 11.4 Entire Agreement of the Parties.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of the Services and contains all the covenants and agreements between the parties with respect to the rendering of such Services. Each party to this agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any party that are not embodied herein, and that no other agreement, statement or promise not contained in this agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.
- 11.5 Severable Provisions.** The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially enforceable provision to the extent enforceable in any jurisdiction, shall nevertheless be binding and enforceable.
- 11.6 Binding Agreement.** The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties.
- 11.7 Waiver.** Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to future violations thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.
- 11.8 Assignment.** Except as expressly provided herein, the rights, obligations and duties of the parties hereunder may not be assigned or delegated without the other party's prior written consent, except that the Company may assign this Agreement to an affiliate or to a successor to its business.
- 11.9 Conflicting Terms.** If there is a conflict among the terms in these Standard Terms and Conditions and Quote or any subsequent amended Quote, the terms of Quote or such subsequent amended Quote shall control.
- 11.10 Force Majeure.** The Company shall not be liable to Customer for any failure or delay caused by events beyond the Company's control, including, without limitation, the Customer's failure to furnish necessary information, acts of God, sabotage, failures or delays in transportation or communication, failures or substitutions of Products, labor disputes, accidents, shortages of labor, fuel, raw materials or Products, or technical failures.
- 11.11 Assumptions and Contingencies.** The Company is relieved of its obligation to provide the Products and/or Services if certain preconditions to installation which are outside the control of the Company do not occur. Examples of such preconditions include the issuance of all applicable permits and other regulatory approvals under terms and conditions acceptable to the Company, and the execution of any necessary contracts with third parties under terms and conditions acceptable to the Company. If such preconditions do not occur, the Company will either renegotiate in good faith with the Customer or offer to terminate this Agreement with no termination penalties for either party.
- 11.12** The Company's obligation to perform under this Agreement are based and contingent on the following pre-conditions list including, but not limited to:
- Obtaining the necessary permits and licenses.
  - Acquiring the necessary ground rights and land contracts.
  - Obtaining required third party contracts.
  - Signing of all required consents of all governmental entities
  - Receipt of satisfactory credit check(s) regarding the Customer
- 11.13 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas.
- 11.14 Use of Customers Name.** Upon receipt of Customer's prior approval (not to be unreasonably withheld), the Company may use Customer's name as a customer, including a general description of the services provided, in its proposals, quotes, client lists, case studies, and in other promotional information, including but not limited to press releases, white papers, brochures, reports, letters, and any electronic media including, but not limited to, e-mail or Web pages.
- 11.15 Captions and Section Headings.** The various captions and section headings contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of any of the provisions of this Agreement.