DARK FIBER LEASE AGREEMENT

THIS DARK FIBER LEASE AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY , A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY"), AND FPL FIBERNET, LLC, A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, HAVING ITS PRINCIPAL OFFICE AT 9250 WEST FLAGLER STREET, MIAMI, FLORIDA 33173 (HEREINAFTER REFERRED TO AS THE "PROVIDER").

RECITALS

In consideration of the promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Provider and County agree as follows:

ARTICLE 1. DEFINITIONS

Acceptance Date. The date upon which County has accepted, or has been deemed to have accepted, the County Fibers along a particular Route Segment, as provided below in Article 7.3.

Actual Cost. Actual direct cost paid to the Provider or Third Parties, including any Licensor.

Cable. Fiber optic cable as identified in Exhibit A with fiber optic filaments contained in any suitable jacketing or sheath that is the subject of this Agreement and that is comprised of fiber optic cable that is already in place, or is yet to be installed, and to which Provider will have access by ownership, right to use, or otherwise.

Cable Accessories. The attachment and suspension hardware, splice enclosures and other components necessary either for the placement or protection of the Cable either underground or overhead or for the continuity of the fiber filaments within the Structures.

Cable Parameters. The minimum light transmission performance standards for the Cable set forth in Exhibit B.

Claims. Any written request for money, services or damages arising out of any action or inaction of the Parties.

Cure Period. The period specified in Article 17 in which a Party must, after receipt of a notice of breach, perform its obligation under this Agreement before the failure to perform constitutes a Default.

County Fibers. The fiber optic filament(s) in the Cable that County is leasing and may use, pursuant to the terms and conditions herein. The number and location of County Fibers are set forth in Exhibit A.

County System. The fiber optic system owned or controlled by the County on the Premise Side of the Demarcation Points including, without limitation, all associated Equipment.

Days. Calendar days, unless specifically indicated otherwise.

Default. A failure to perform an obligation under this Agreement as specified in Article 17, which continues beyond the Cure Period.

Demarcation Point. A boundary point located at a splice point where a cable from the County System is joined to the County Fibers. On the side of the Demarcation Point where the County System is located, which shall be called the Premises Side, County shall have responsibility for liabilities, ensuring connections, and paying for and installing Equipment. The other side of the Demarcation Point shall be called the Network Side, on which Provider shall have responsibilities and rights as set forth herein.

Equipment The power equipment, electronic and optronic equipment including, without limitation, repeaters, junctions, patch panels, alarm monitoring equipment and other equipment necessary to provide a network of fiber optic transmission capacity and located on the Premise Side of the Demarcation Point. The word "equipment," when not capitalized, refers to equipment of any type.

Event of Abandonment. The act of withdrawing or ceasing to maintain or use the County Fibers for a period of 180 days or longer with the intent of never again claiming a right or interest therein.

Execution Date. The date of the parties' signature on this Agreement, whichever is later.

Fibers. The fiber optic filaments contained in the Cable.

Force Majeure Event. One of the events listed in Article 20.1 that would trigger the Force Majeure provisions of this Agreement.

Lease Charge. The per fiber per mile per month charge set forth in Article 5.1 for use of County Fibers along the entire Route.

Licensor. The grantor, licensor or issuer of any Required Right.

Network Side. The side of the Demarcation Point on which the Provider's Fibers are located.

Periodic Inspection. The inspections, whether at regular or irregular intervals, conducted by Provider's representative on all or portions of the Route as set forth in Article 11 of the Agreement.

Premise Side. The side of the Demarcation Point on which County's and/or a Third Party's Equipment and/or cable is located.

Pro Rata Share. A fraction, the numerator of which is the number of County Fibers in the subject Cable and the denominator of which is the total number of Fibers within said Cable.

Provider. FPL FiberNet , LLC and its permitted successors and assigns

Program Managers. Individuals designated by each Party to coordinate with his or her counterpart the approvals necessary under the Agreement as defined in Article 26.1.

Provider Fibers. All fibers in the Cable which is the subject of this Agreement, other than the County Fibers.

Required Right. Any agreement, conveyance, easement, license, franchise or permit obtained by Provider from a government entity or other Third Party governing the terms under which Provider may access and use public rights-of-way, private property, Structures, Cable, Cable Accessories, Fiber and other property in order for Provider to use, install, construct and maintain Cable, Cable Accessories and Structures. In the event that this Agreement becomes subject to such Required Rights, the County shall have the right to review such Required Rights prior to moving forward with any additional services.

Route. The path or paths on which the Cable will be located as set forth in Exhibit A.

Route Segment. A portion of the Route between any two splice points.

Structures. Towers, poles, conduit, manholes, hand holes, splice cases, and associated civil works on or in which the Cable is located.

Term. With respect to each County Fiber, the period of time specified below in Article 4.

Third Party. Any party, person or entity that is not a signatory to this Agreement or an affiliate of a signatory and any party, person, or entity that is not a successor or permitted assignee of the signatories hereto.

ARTICLE 2. RULES OF INTERPRETATION

2.1 References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

2.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

2.3 The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

2.4 The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 3. COUNTY'S RIGHT TO USE COUNTY FIBERS

3.1 Right of Use. Subject to the terms and conditions set forth in this Agreement, Provider hereby leases to County throughout the Term specified below, including any renewals or extensions thereof, for each such County Fiber, the right to use the fiber optic filaments within the Cable designated as County Fibers. The number and location of County Fibers are set forth in Exhibit A. County shall have the right to use only the fiber optic filaments within the Cable designated as County Fibers, and the remaining fiber optic filaments within the Cable shall be designated as Provider Fibers.

3.2 Limitations on Use.

A. The right to use County Fibers provided in Article 3.1 is solely for County's use in providing telecommunications services. County shall exercise such right solely in accordance with this Agreement and applicable state, local, and federal laws and regulations, consistent with its obligations in Article 13.

B. Although County's right to use County Fibers shall be exclusive, County's incidental use of other portions of the Cable, Structures or any related facilities of Provider, its affiliates, or any Licensor to the extent and on the terms and conditions permitted under this Agreement shall be nonexclusive and subject to the terms and conditions of this Agreement and the Required Rights.

3.3 Cable Measurement. The Cable along each Route Segment is measured on a linear footage basis. The actual "field-verified" linear footage measurement as outlined in Exhibit A shall be used for calculation of the Lease Charge payable by County under Article 5.1 below.

3.4 Connection to County Fiber.

a. Provider shall not restrict County's right to interconnect the County Fibers, at County's expense, to the County System or to the fibers or systems of any Third party at the Demarcation Points identified in Exhibit A.

b. Additionally, County may connect, at County's expense, the County Fibers to the County System or to the fibers or system of a Third Party at mutually acceptable points other than those identified in Exhibit A using a County or Third Party's right-of-way or public right-of-way. Any such mutually acceptable points shall be outlined in writing and attached to this Agreement. County shall obtain Provider's approval of the location and manner in which such connections will be made at Provider's manholes, handholes or overhead splice cases, and shall provide proof

sufficient to Provider that County has obtained an easement or other appropriate authorization to use such public right-of-way or private property to make such connections to the Cable. Such connections shall be made in a manner consistent with the then current standard specifications of Provider and any relevant Licensor and in a manner that causes the County Fibers to perform in compliance with the Cable Parameters set forth in Exhibit B.

3.5 Signal Regeneration. Provider has no responsibility to provide equipment to regenerate or amplify the communications signals transmitted by County on the County Fibers, or to provide land or building space or electric power or any other support facility that would enable County to accomplish such regeneration. County may connect to the County Fibers to establish its own regeneration facilities in the manner provided for in Article 3.4.

ARTICLE 4. TERM

4.1 The Agreement shall become effective on the date that is it is signed by the County or the Provider, whichever is later and shall continue through the last day of the sixtieth (60^{th}) month. The County, at its sole discretion, reserves the right to exercise the option to renew this Agreement for one (1) additional five (5) year period.

4.2 Extension. The County also reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals. The County will notify the Provider in writing of the extension. This Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Provider, upon approval by the Board of County Commissioners.

ARTICLE 5. PAYMENTS

5.1 Lease Charge. County shall pay to Provider a charge (the "Lease Charge") that shall equal Fifty Seven Dollars $(57.00) per fiber per mile per month for the County Fibers described at Exhibit A, calculated for the entire length of each County Fiber. The Lease Charge for a partial fiber mile shall be pro-rated.

5.2 Travel. With respect to travel costs and travel related expenses, the Provider agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

5.3 Fixed Pricing. The pricing outlined in Article 5.1 above shall remain fixed and firm for the term of the Agreement, including any renewals or extensions thereof; however, the Provider may offer incentive discounts to the County at any time during the Agreement term, including renewals of extension periods.

5.4 Invoices. All invoices issued by the Provider, shall be supported by receipt bills or other documents reasonably required by the County. Invoices shall show the County's Agreement number, and shall have a unique invoice number assigned by the Provider. It is the policy of Miami-Dade County that payment for all purchases by County agencies shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month (or such lower rate that is then the maximum rate allowed by law), on the unpaid balance calculated on a daily basis from the first day when said amount became due and owing until paid. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County. Invoices and associated back-up documentation shall be submitted in duplicate by the Provider to

the County as follows:

Arlin Montero
Finance Shared Services Chief
Miami-Dade County, Finance Department
111 N.W. 1st Street, Suite 2620, Miami, Florida, 33128

Voice: (305) 375-5080 EXT.# - 96533
Fax: (305) 375-4639
Email: amonter@miamidade.gov

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 6. REQUIRED RIGHTS

6.1 In the event that future Route Segments are added that would include Required Rights, provider shall obtain the Required Rights needed for installation of the Cable along the Route. This Agreement is subject to the terms of the Required Rights, and subject to the terms under which the right of way is owned or held by the Licensors granting the Required Rights, whether or not of record, and to the rights of tenants and licensees in possession. The lease of the County Fibers is further subject and subordinate to the Licensors' right to use the right of way for its business activities, including public road and railroad operations, telecommunications uses, pipeline operations or any other utility purposes.

6.2 On County's written request, Provider shall make available for inspection by County, at Provider's offices, copies of all information that is material to the lease of the County Fibers, to the extent that disclosure is permitted. Grantor may redact confidential or proprietary business terms.

6.3 During the Term of this Agreement and any extensions or renewals thereof, Provider shall comply with the terms and conditions of the Required Rights and to keep the Required Rights in full force and effect. Upon the expiration or other termination of a Required Right that is necessary in order to grant, continue or maintain the lease of the County Fibers, Provider shall use commercially reasonable efforts to obtain an extension or replacement of the Required Right or an alternate right of way. County shall not take any action, or fail to take a required action, that would constitute a breach of a Required Right.

6.4 In the event that Provider is unable to obtain an extension or replacement of a Required Right and is forced to remove a portion of the Cable containing County Fibers, affected portions of the Agreement shall be terminated with respect to the affected Route Segments as of such removal. If the termination of this Agreement with respect to said Route Segments renders County's use of other Route Segments commercially impractical, County may elect by notice to Provider to terminate this Agreement with respect to the other impacted Route Segments.

ARTICLE 7. INSTALLATION AND ACCEPTANCE

7.1 Commitment by Provider to Complete Route. Subject to its rights and obligations under the Required Rights, Provider shall, at its expense, perform or cause to be performed such work, if any, as may be required for installation of the Route, and to the Demarcation Points, as set forth in Exhibit A and Article 8 below. Provider shall purchase, or cause to be purchased, the fiber optic cable, hardware and any other personal property necessary to constitute the Cable and Cable Accessories.

7.2 Public Rights of Way, Agency Fees, Taxes. Provider shall ensure that all permits or consents required to perform the installation of the Cable on the Route are acquired, and Provider shall pay, or cause to have paid, all fees and taxes required for the purchase and installation of the Cable. County shall perform County's obligations with respect to fees and taxes as specified below in Articles 12 and 13.

7.3 Testing and Acceptance. When Provider believes that the County Fibers on a Route Segment are ready for use by County, Provider shall cause those County Fibers to be tested using an Optical Time-Domain Reflectometer (OTDR) or other appropriate equipment to demonstrate compliance with the Cable Parameters outlined in Exhibit B. Provider shall deliver the test results to County, and if County determines that the test results demonstrate that the County Fibers meet the Cable Parameters, County shall give written notice to Provider and the date of such notice shall be the Acceptance Date for those County Fibers. County shall have ten (10) days from the date of its receipt of the test results to provide written notice specifying any non-conformance of the County Fibers with the Cable Parameters as demonstrated by the test results. Provider shall thereafter promptly undertake appropriate corrective action and the testing and approval shall be repeated. If County fails to deliver written notice of non-conformance within ten (10) days after its receipt of the test results, County shall be deemed to have accepted the subject County Fibers and said tenth (10) day shall be the Acceptance Date for the County Fibers on the tested Route Segment.

7.4 Additional Construction. At the request of County and consent of Provider, Provider will perform the work necessary, at County's sole expense, to build a fiber system to County's distribution panel(s), or other mutually agreed upon location, inside one or more mutually acceptable facilities that would go beyond the initial Demarcation Point to which Provider has agreed to terminate the County Fibers. The cost to be paid by County for such work shall be Provider's Actual Cost. Any such Additional Construction and associated cost must be mutually agreed upon in writing and included as an attachment to this Agreement prior to the commencement of any Work. As more fully set forth in Article 8 of this Agreement, County shall be responsible, at its sole expense, for obtaining any necessary approvals, authorizations, permits, or access rights.

ARTICLE 8. POINT OF DEMARCATION; BUILDING ACCESS

8.1 Marking. The Demarcation Point(s), Premise Side and Network Side shall be identified at each splice point where a County System cable connects to a County Fiber.

8.2 County Responsibility. County shall at County's expense obtain, install, construct, and maintain rights of way and easements for, and otherwise be responsible for, all Equipment on the Premise Side (including without limitation any costs or liabilities associated with such Equipment). County shall ensure that the Equipment on the Premise Side shall be designed and deployed in a manner that will not cause transmissions on the Provider Fibers to fall below the standards of the Cable Parameters and will not conflict physically or otherwise interfere with electric utility operations, joint users of the Cable, Cable Accessories, or Structures, or with any other property needed in the installation, construction, maintenance or use of the Cable. With respect to any Equipment on the Premise Side, County shall obtain approval from the owners of any property as to any use thereof by County for the physical location of, installation, maintenance and operation of Equipment and County shall provide to Provider evidence of such owners' approval. County shall also obtain any government approvals necessary for the installation, maintenance, use and ownership of Equipment installed and/or used on the Premises Side of the Demarcation point, consistent with the terms of Article 13.

8.3 Additional County Responsibility. In the event that any future Demarcation Point is on private property for which Provider does not have the requisite right of way, easement, or license, County shall at County's sole expense obtain and maintain applicable rights of way, licenses, and easements in favor of Provider for all fiber, cable, conduit, handholes, manholes, innerduct, and Equipment installed by Provider on such private property on the Network Side of the Demarcation Point, and shall obtain and maintain same, at County's sole expense, sufficient for Provider to perform its obligations under this Agreement. Unless otherwise indicated by written agreement between the Parties, Provider shall own any conduit, innerduct, or cable installed by Provider pursuant to Article 7.4 and which is on public or private property and on the Network Side of the Demarcation Point; however, upon completion of such work, the County Fibers shall be deemed to extend through said cable to the new Demarcation Points for all purposes under this Agreement.

8.4 Provider shall not be responsible and shall have no liability for any delays caused by County's failure to timely obtain the requisite authorizations, approvals, permits, or access rights identified in this Article 8.

ARTICLE 9. MAINTENANCE AND REPAIR

9.1 Provider shall give County reasonable notice of any scheduled maintenance operations affecting the County Fibers, including at least ten (10) days' notice of any scheduled maintenance that is likely to interrupt service to County. Provider shall attempt to coordinate scheduled maintenance at times that will minimize interference with County's business.

In the event that any failure, interruption or impairment adversely affects both a utility's electrical service capacity and the County Fibers, Provider's restoration of the County Fibers shall at all times be subordinate to any provisions of the Required Rights that mandate a priority for restoration of the utility's electrical service capacity.

Provider shall respond to any failure, interruption or impairment in the operation of the County Fibers within four (4) hours after receiving a report of any such failure, interruption or impairment.

Should failure, interruption, or impairment of the County Fibers occur, County may call the following number to report such circumstances: 866-553-4237. Such number will be staffed on a 24-hour basis 7 days a week, including holidays, by an employee with authority (or the ability to contact a supervisor with authority) to make decisions and implement services related to emergency restoration. The supervisor on duty will initiate restoration service and coordinate restoration activity. At four-hour intervals, Provider will provide County with a report of progress or lack thereof in restoring operation of the County Fibers.

9.2 County's Obligations. County shall at County's expense be solely responsible for all aspects of the operation of the County System and the operation and maintenance of the County System and Equipment on the Premise Side of the Demarcation Point.

9.3 Access by Provider. County acknowledges that Provider's access to the Cable and the splice points at which County interconnects to the County Fibers is subject to the terms and conditions of the Required Rights.

9.4 Access by County.

A. In no event shall County access property of Licensor, Provider or their affiliates without prior notice to Provider and agreement to a mutually acceptable time, and in no event shall County be permitted access to the electric space in or on the Structures. Any consent to County access by Provider shall be subject to Provider's rights and obligations under the Required Rights. County shall be responsible for the costs incurred to obtain the presence of safety inspectors or other technical personnel as required by Licensor or Provider.

B. Both parties shall at all times perform work in accordance with the applicable provisions of local, state and federal occupational safety and health laws. Provider shall have the authority to suspend County work or operations in and around the Route if, hazardous conditions arise or any unsafe practices are being followed by County employees, agents, or contractors and County fails to immediately correct such conditions upon notice by Provider. The presence of Provider's or Licensor's authorized employee or agent(s) shall not relieve County of its responsibility to conduct all of its work operations in and around the Route in a safe, good and workmanlike manner, and in accordance with the terms and conditions of this Agreement.

C. Before any of County's representatives (including without limitation employees, contractors, or subcontractors) may enter the property of Provider, Licensor or their affiliates pursuant to this Article 9.4, County shall certify in writing upon Provider's

reasonable request and to Provider's satisfaction that each such representative is qualified to perform all work in accordance with applicable requirements of local, state and federal occupational safety and health laws and such standards as Provider deems appropriate in its sole discretion. If County fails to provide such certification upon request, Provider shall have the right to bar without liability the entry of County's representatives onto the property of Provider, Licensor or their affiliates.

D. The County may request that all work related to connection of the County Fibers to the rest of the County System, or otherwise to be performed by County on Licensor property, Structures or rights-of-way, be performed by Licensor or Provider personnel or contractors hired by Licensor or Provider, and County shall within thirty (30) days after receipt of reasonably itemized invoice reimburse Provider for Provider's Actual Cost of performing such work.

ARTICLE 10. RELOCATIONS

10.1 Required Relocation. During this Agreement, if Provider is required by the Required Rights, public authorities, or lawful order or decree of a regulatory agency or court to relocate or modify any or all Structures or Cable on the Route upon which the County Fibers or any part thereof is located, the cost of any such work shall be borne by Provider. Provider shall not be responsible for the costs of, nor shall it be liable for, the removal, relocation or replacement of any Equipment or other County Property on the Premise Side of the Demarcation Point. Neither Provider nor Licensor nor any of their affiliates or agents shall incur liability for service interruptions in connection with any required relocation. Provider and County shall cooperate in performing such relocation so as to minimize any interference with the use of the County Fibers, the Cable, and Structures, to the extent reasonably possible, and avoid interfering in any manner with electric utility operations, joint users of the Cable, Cable Accessories, Structures, or with any other property needed in the installation, construction, maintenance or use of the Cable.

10.2 Relocation for Provider's Purposes. In the event that Provider voluntarily elects for its own business purposes to relocate, replace in the event that equipment is damaged Provider, or rebuild any portion of the Cable in which County Fibers are located, Provider shall bear the costs of all such work, including the removal, relocation or replacement (in the event that equipment is damaged by the Provider) of any Equipment or other County Property on the Premise Side of the Demarcation Point. Provider shall give County no less than ninety (90) days' notice prior to commencing any such work. Provider and County shall cooperate in performing such relocation or modifications so as to minimize any interference with the use of the County Fibers, the Cable, and Structures, to the extent reasonably possible, and avoid interfering with joint users of the Cable, Cable Accessories, Structures or any other property needed in the installation, construction, maintenance or use of the Cable.

10.3 Emergency Relocations. In the event of an emergency affecting Structures, any other property of Provider, Licensor or their affiliates, or public safety, Provider shall replace, remove and relocate the Cable or any portion thereof, without prior notice to County except where reasonably practicable to provide such prior notice. The costs of such work shall be borne by Provider, unless it is determined that County was the sole cause the emergency necessitating relocation, in which case County shall be responsible for all Actual Costs incurred by County, Provider, Licensor, and/or their affiliates in responding to the emergency and undertaking the relocation.

Return of Removed Material. In the event of an emergency caused by the County that requires the Provider to remove any Equipment or other property of County, Provider will deliver to County the Equipment or property so removed upon payment by County of the Actual Cost of removal, storage and delivery, and all other amounts due Provider. Provider shall use reasonable care when removing, storing and delivering such Equipment, but in any event shall be liable only for damage resulting from Provider's gross negligence or intentional misconduct.

ARTICLE 11. PERIODIC INSPECTIONS

11.1 By Provider. Subject to Provider's rights and obligations under the Required Rights, Provider shall have the right to make reasonable Periodic Inspections of any part of County's operations occupying Provider's or Licensor's or their affiliates' property. Provider will give County reasonable advance written or verbal notice of any periodic inspections, A representative of County may accompany Provider's representative on all Periodic Inspections.

11.2 Obligations. The making of Periodic Inspections or the failure to do so shall not impose upon either Party, its representatives or affiliates any liability of any kind whatsoever, nor shall same relieve either Party of any responsibility, obligations or liability assumed under this Agreement.

11.3 Cost. Such inspections shall be at Provider's expense.

ARTICLE 12. OWNERSHIP AND TAXES

12.1 Title. During the Term of this Agreement, including any renewals or extensions thereof, legal title to the Structures, Cable, Cable Accessories, Fibers, and any property installed or constructed on Structures on the Network Side, shall be held by Provider, Licensor or other Third Party pursuant to the terms of the Required Rights. County's rights hereunder shall be deemed a leasehold interest subject to the terms of this Agreement and the Required Rights. Neither the leasing, rental or other provision of County Fibers, Cable, or any other facilities or services by Provider to County, nor the payment by County of the Lease Charge or other charges therefor to Provider shall constitute, create or vest any easement or any other ownership or property rights in the Structures, County Fibers, Cable, Cable Accessories or other facilities.

12.2 Sales Taxes.

A. County and Provider agree that Provider will be responsible for paying any and all existing or future sales, use, excise or other transfer or transactional taxes imposed or levied by any federal, state or local taxing authority on purchases of materials and/or equipment for use in construction of the Cable. County agrees to cooperate in any proper claim of exemption or exclusion from such taxes which Provider may assert for such purchases; such cooperation would include (though would not be limited to) providing any required certificates and/or other documentation of such purchases to which it may be a party. County agrees to provide Provider with all documentation of any such purchases to which it may be a party and agrees that Provider has no obligation to reimburse County for any such taxes without such documentation.

B. County and Provider agree that the County, to the extent it is not exempt from payment of same, will be responsible for paying any and all existing or future sales, use, excise or other transfer or transactional taxes imposed or levied by any federal, state or local taxing authority on the Lease Charges and/or other payments made by County to Provider for the use by County of County Fibers.

12.3 Franchise, Property and Other Taxes or Fees. County and Provider agree that County, to the extent it is not exempt from payment under any federal, state or local tax law, will be responsible for reimbursing Provider for any increase in or addition to any existing or future federal, state or local excise, franchise, ad valorem, property or similar taxes or any similar fees such as franchise fees, license fees or user fees imposed on Provider or its affiliates, which increase or addition is attributable to the presence of County Fibers on Structures, Cable Accessories, Building and Equipment as specified under the Required Rights. County shall be solely responsible for obtaining all franchises, permits and certifications required for County's use of the County Fibers, and shall pay any and all associated fees and charges, including but not limited to any fees levied on the revenues received by County or on the privilege of using County Fibers located within public rights-of-way. Provider shall pay any municipal or county right-of-way or franchise fees levied on a per-foot basis upon the entire Cable of which the County Fibers are a part; County shall pay any such fees levied specifically on the County Fibers or County's right to use the

County Fibers. Any amounts paid under this Article may not exceed the value of the Agreement beyond the authorized amount of this Agreement without prior authorization from the County.

12.4 Reversion. Consistent with Article 18.4, County's leasehold right to use the County Fibers shall revert to Provider upon termination of this Agreement or, upon the termination of this Agreement for all or any portion of the County Fibers along a particular Route Segment, County's leasehold rights for the relevant County Fibers shall revert to Provider. For a mutually agreed upon cost, County shall assign to Provider any easements, permits or other rights County has obtained (to the extent transferable) with respect to the use of County Fibers and/or use and placement of the Cable within the terminated portion of the Route sufficient to permit Provider to utilize the same.

ARTICLE 13. GOVERNMENT APPROVALS, PERMITS, AND CONSENTS

13.1 County Obligations.

A. Except as provided in Article 13.2, County at its sole cost and expense, shall obtain, maintain and comply with, and shall ensure that its customers (if any) obtain, maintain and comply with, any and all necessary permits, licenses, easements, franchises and approvals that may be required by federal, state or local law, statute, regulation or ordinance as may now or in the future be applicable to (i) operation or use of the County Fibers, (ii) County's or its customers' connection, installation, maintenance and operation of Equipment on the Premise Side of the Demarcation Point, and (iii) County's or its customers' other rights and obligations under this Agreement.

B. If County, its customers or any permitted assignee shall at any time fail to maintain such approvals or comply with all applicable legal requirements described in paragraph 13.1(A) above, Provider may terminate this Agreement under Article 18.

13.2 Provider's Obligations. Provider shall obtain and maintain the Required Rights as provided above in Article 6.

13.3 This Article 13 shall survive any termination or expiration of this Agreement.

ARTICLE 14. LIENS

14.1 County acknowledges that it has no title to the Cable, Cable Accessories, the Structures, or any other property that is the subject of this Agreement on the Network Side of the Demarcation Point that is not owned by County (including, without limitation, rights-of-way and Provider Fibers).

14.2 If any property of Provider or its affiliates becomes illegally or improperly encumbered by any unauthorized liens, claims, or other encumbrance as a result of any act or omission of the County, County shall remove such encumbrances from Provider's and its affiliates' property.

ARTICLE 15. DISCLAIMERS

15.1 EXCEPT TO EXTENT OUTLINED IN THIS ARTICLE 15, PROVIDER MAKES NO WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION 15.1 SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

15.2 Condition of Cable. In the event that any of the County Fibers do not operate within the Cable Parameters set forth in Exhibit B, Provider will use commercially reasonable efforts to cause such performance to be restored within the Cable Parameters within ten (10) days. Provider makes no representations with respect to the Cable installed under this Agreement (including, without limitation, any County Fibers contained in such Cable). Except as provided in this Article 15, Provider shall have no liability whatsoever for, or in connection with, any Cable failure (including, without limitation, failure of the County Fibers contained in the Cable), nor shall Provider have any

responsibility for County's Equipment or any Equipment on the Premise Side of the Demarcation Point. County shall take no action that would interfere with Provider's or its affiliates' pursuit of claims under warranties or guarantees against the Cable manufacturer and/or installation contractor.

15.3 Outage Credit. In the event that any of the County Fibers do not operate within the Cable Parameters set forth in Exhibit B for a period of more than twenty-four (24) hours, then County shall receive a credit against Lease Charges equal to the amount of the Lease Charges payable (prorated on a daily basis with a period of more than twelve hours counting as a day) with respect to the affected fiber strand(s) or segments for the period of nonconforming operation.

15.4 Fiber Substitution; Termination. In the event that any of those County Fibers do not operate within the Cable Parameters set forth in Exhibit B, and Provider has determined in its reasonable business judgment that it is technically or economically infeasible to restore one or more of the affected County Fibers to proper operation, Provider shall provide substitute equivalent fibers along the same Route for County's use. Provider and County shall cooperate to effect such transition, and Provider shall be responsible for the Actual Costs of connecting the substitute fibers to County's System. In the event that any of the County Fibers do not operate within the Cable Parameters set forth in Exhibit B, and Provider is unable to restore one or more of the affected County Fibers to proper operation, and Provider is unable to substitute equivalent fibers, then Provider shall so notify County and the County may terminate this Agreement.

ARTICLE 16. CASUALTY AND INSURANCE REQUIREMENTS

16.1 If any portion of the Cable is damaged or destroyed by casualty at any time during the Term of this Agreement, Provider will at Provider's cost perform (or cause to have performed) the repairs in accordance with Article 8 and 9, subject to Provider's rights and obligations under the Required Rights and except to the extent such damage warrants full or partial termination of this Agreement pursuant to Article 15 or 18. If the damage or casualty is caused by the actions of County or its agents, employees or contractors, County shall reimburse Provider for Provider's Actual Cost of performing such repair, including any related federal, state or local tax incurred.

16.2 The County is self-insured in accordance with Florida Statute 440 and Florida Statute 768.28. Prior to the commencement of any services under this Agreement, the County shall provide a formal notice of self-insurance.

16.3 Provider shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Provider or its employees, agents, servants, partners principals or subcontractors. Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provider expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Vendor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Provider shall furnish to the Vendor Assistance Section, Internal Services Department, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.

B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury

and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Compliance with the foregoing requirements shall not relieve the Provider of liability and obligation under this section or under any other section of this agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Provider shall have an additional five (5) business days to submit a corrected certificate to the County. If the Provider fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Provider shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Provider shall be responsible for ensuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Provider shall be responsible for submitting new or renewed insurance certificates to the County in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 17. DEFAULT

17.1 Definition. If County or Provider shall fail to perform (whether any such failure shall arise as the result of the voluntary or involuntary action or inaction of such Party), in any material respect, any of its obligations set forth in this Agreement, including without limitation any violation of law which adversely affects either Party's obligations under the Agreement, and such failure is not excused by any provision of this Agreement and continues un-remedied for a period of 30 days following written notice from the non-breaching Party (the "Cure Period"), then such failure shall, upon and from the expiration of the Cure Period, constitute a "Default."

17.2 Provider Default.

A. Without limiting the generality of the foregoing, and in addition to those

instances referred to hereinabove as a Default, Default shall also include the following:

i. the Provider has not delivered Deliverables on a timely basis;

ii. the Provider has refused or failed to supply enough properly skilled staff personnel;

iii. the Provider has failed to make prompt payment to sub-contractors or suppliers for any services;

iv. the Provider has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Provider's creditors, or the Provider has taken advantage of any insolvency statute or debtor/creditor law or if the Provider's affairs have been put in the hands of a receiver;

v the Provider has failed to obtain the approval of the County where required by this Agreement;

vi. the Provider has failed to provide "adequate assurances" as required under subsection b below;

vii. the Provider has failed in the representation of any warranties stated herein.

B. When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Provider's ability to perform the Services or any portion thereof, the County may request that the Provider, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Provider's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Provider for portions of the Services which the Provider has not performed. In the event that the Provider fails to provide to the County the requested assurances within the prescribed timeframe, the County may:

i. treat such failure as a repudiation of this Agreement; and

ii. resort to any remedy for breach provided herein or at law.

17.3 Consequences. In the event of a Default, the non-breaching Party may, in its sole discretion, terminate this Agreement in accordance with Article 18.1. The non-breaching Party shall also have the right to pursue any and all rights it may have against the Defaulting Party now or hereafter under the law, subject to the express limitations contained in this Agreement, including, without limitation, the right to seek injunctive relief to prevent the Defaulting Party from continuing to Default in its obligations under this Agreement.

17.4 Limitation of Provider's Liability. EXCEPT FOR INTELLECTUAL PROPERTY INFRINGEMENT, PROVIDER'S TOTAL LIABILITY UNDER, OR IN CONNECTION WITH, THIS AGREEMENT DURING ANY TWELVE MONTH PERIOD SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL CONTRACT VALUE. IN NO EVENT SHALL PROVIDER BE LIABLE TO COUNTY OR TO ITS COUNTYS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STRICT LIABILITY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER COUNTY WAS ADVISED OF THE POSSIBILITY SUCH DAMAGES WERE OR MIGHT BE RECOVERABLE.

17.5 Failure To Enforce. Failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but such term or condition shall be and remain at all times in full force and effect.

ARTICLE 18. TERMINATION

18.1 Early Termination of Agreement. This Agreement may be terminated prior to the Agreement expiration upon any one of the following events:

A. by either Party following a Default of this Agreement by the other Party as defined above in Article 17;

B. by Provider upon 30 days prior written notice upon an Event of Abandonment by County;

C. by either Party if the other Party has made any representation or warranty in this Agreement that is incorrect, and such inaccuracy has or may have a material and adverse effect on the other Party (as reasonably determined by such non-breaching Party), and such incorrect representation or warranty shall continue unremedied for a period of sixty (60) days after written notice of such incorrect representation or warranty, provided that, with respect to an inaccuracy that is susceptible of cure within a reasonable time period, so long as the responsible Party has commenced the cure promptly after notice and continues diligently to attempt to effect the cure, the termination right of the other party shall be suspended for a period not to exceed one hundred twenty (120) days from the notice of breach.

18.2 Termination of Route Segment. Any Route Segment may be terminated:

A. by Provider, at any time upon reasonable notice, to the extent Provider is no longer authorized under the Required Rights to install, construct, maintain, operate, or convey the right to use the Cable, Cable Accessories or Structures within the Route Segment.

B. by Provider, at any time, if it cannot obtain any regulatory approvals needed to perform Provider's obligations under this Agreement with respect to such Route Segment or can obtain them but on terms that are unduly burdensome to Provider, provided that if Provider determines that the terms offered are unduly burdensome, County shall have the opportunity to negotiate with Provider to equitably share in such burden.

C. by Provider or County, effective as of the date of the taking, if the Cable or the County Fibers are taken by a third party exercising the power of eminent domain.

18.3 Alternate Route Segments. If a Route Segment is terminated pursuant to Article 18.2, Provider shall make reasonable efforts to find alternate capacity or facilities owned or controlled by Provider to meet County's needs, but under no circumstances shall Provider be obligated to contract for or to construct new facilities to replace the Cable, Structures or County Fibers on the Route Segments terminated under Article18.2.

18.4 Effect of Termination.

A. A decision to terminate this Agreement under Article 18.1 or 18.2 shall not preclude the terminating Party or the other Party from pursuing any other legal, equitable or administrative rights and remedies; provided, however, that such rights and remedies shall at all times be subject to the limitations contained in Article 15 and Section 17.4.

B. Upon termination of this Agreement or particular Route Segment under this Article 18, the rights of use to the County Fibers within the terminated portion of the Route shall revert to

Provider, and if the Parties can mutually agree upon a cost (ii) County shall transfer to Provider an interest in all easements, permits and other rights County has acquired (to the extent such rights are transferable) with respect to the use and placement of the Cable within the terminated portion of the Route sufficient to permit Provider to utilize the same.

ARTICLE 19. COUNTY TERMINATION AND SUSPENSION OF WORK

19.1 The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

19.2 The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

19.3 The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Provider may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

19.4 In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Provider.

19.5 In the event that the County exercises its right to terminate this Agreement, the Provider shall, upon receipt of such notice, unless otherwise directed by the County:

a. stop work on the date specified in the notice ("the Effective Termination Date");

b. take such action as may be necessary for the protection and preservation of the County's materials and property;

c. cancel orders;

d. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;

e. take no action which will increase the amounts payable by the County under this Agreement; and

19.6 In the event that the County exercises its right to terminate this Agreement, the Provider will be compensated as stated in the payment Articles herein for the:

a. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

b. non-cancelable deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the services.

19.7 In the event that the County terminates this Agreement for cause, any amounts owed to Provider will be offset by and damages or payments owed by the Provider to the County.

19.8 All compensation pursuant to this Article is subject to audit.

ARTICLE 20. FORCE MAJEURE

20.1 Force Majeure Events. Neither County nor Provider shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to the following Force Majeure Events:

A. Fire, flood, strike, natural disasters, equipment failure, acts of God or public enemy, restraint or hindrance by any governmental or regulatory authority including, without limitation, unfavorable actions or failures to act of or by such authorities (except when the result of noncompliance with Article 13), war, insurrection, riot, or

B. any other causes beyond the Parties' reasonable control, or causes beyond the reasonable control of their suppliers that prevents a Party from performing.

20.2 Abatement of Force Majeure. To the extent practicable, both Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. County shall promptly notify Provider of any delay and its effect on the performance by County. Provider shall promptly notify County of any delay in Provider's performance.

20.3 Suspension Pending Force Majeure. If a Force Majeure Event should occur, then, the Parties' performance of this Agreement shall be suspended for so long as such Force Majeure Event continues. At the conclusion of a Force Majeure Event, the period of time so suspended shall be added to the dates, schedules and other performance-related matters under this Agreement.

20.4 Labor Disputes.

A. If an actual or potential labor dispute delays or threatens to delay a Party's performance, that Party shall immediately notify the other Party in writing, stating all relevant information concerning the dispute and its background. The Parties shall include this paragraph in any subcontract for the services if a labor dispute thereunder might delay the timely performance of the services, and each such subcontract shall provide that if any actual or potential labor dispute occurs, the lower-tier subcontractor shall immediately notify the Parties of all relevant information concerning such dispute.

ARTICLE 21. CONFIDENTIALITY AND PROPRIETARY INFORMATION

21.1 Acknowledgement. As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law.

21.2 All materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Provider or its sub-contractors in the course of the performance of such services, or the results of such services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Provider or its employees, agents, sub-contractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Provider nor its employees, agents, sub-contractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Provider expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

21.3 The Provider shall advise each of its employees, agents, sub-contractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or sub-contractors or supplier's employees, present or former. In addition, the Provider agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

21.4 It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. If requested by the County upon the completion of the services performed hereunder, the Provider shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Provider or its employees, agents, sub-contractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Provider shall accompany such materials.

21.5 Proprietary Information. As a political subdivision of the State of Florida, County is subject to the stipulations of Florida's Public Records Law. The Provider acknowledges that all deliverables in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

The Provider will report to the County any information discovered or which is disclosed to the Provider which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Provider's authority to prevent improper use, disclosure or removal.

21.6 Proprietary Rights. The Provider hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Provider hereunder or furnished by the Provider to the County and/or created by the Provider for delivery to the County, even if unfinished or in process, as a result of the Services the Provider performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Provider as well as its employees, agents, sub-contractors and suppliers may use only in connection with the performance of Services under this Agreement. The Provider shall not, without the prior written consent of the County, use such documentation on any other project in which the Provider or its employees, agents, sub-contractors or suppliers are or may become engaged. Submission or distribution by the Provider to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

ARTICLE 22. PUBLICITY AND ADVERTISING

22.1 Limitations. In connection with this Agreement, neither Party shall publish or use any advertising, sales promotions, or other publicity materials that use the other Party's (or its Affiliate's) logo, trademarks, or service marks or name without the prior written approval of the other Party, whose approval shall not be unreasonably withheld or delayed. Except as provided in Article 22.2 below, each Party shall have the right to review and approve, which approval shall not be unreasonably withheld or delayed, any publicity materials, press releases or other public statements by the other Party in connection with this Agreement or the transactions contemplated herein.

22.2 Exceptions. This Article 22 shall not apply to reasonably necessary disclosures in or in connection with court or regulatory filings or proceedings, financial disclosures which in the good faith judgment of the disclosing Party are required by law or regulatory authority, or disclosures that may be reasonably necessary in connection with the performance of this Agreement or general disclosures of the Rates to customers or prospective customers of County or Provider, or disclosures that may be required by law.

ARTICLE 23. NO JOINT VENTURE; INDEPENDENT CONTRACTOR RELATIONSHIP; EMPLOYEES OF PROVIDER

23.1 In all matters pertaining to this Agreement, the relationship of Provider and County shall be that of lessor and lessee, and neither Provider nor County shall make any representations or warranties that their relationship is other than that of lessor and lessee. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between County and Provider, and no Party shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise.

23.2 All employees of the Provider shall be considered to be, at all times, employees of the Provider under its sole direction and not employees or agents of the County. The Provider shall supply competent employees. Miami-Dade County may require the Provider to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

23.3 The Provider is, and shall be, in the performance of all work services and activities under this Agreement, an independent Provider, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Provider's sole direction, supervision and control. The Provider shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Provider's relationship and the relationship of its employees to the County shall be that of an independent Provider and not as employees and agents of the County.

The Provider does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 24. INDEMNIFICATION

24.1 General Obligation to Indemnify. Except as limited by the provisions of §768.28, F.S., as amended, and except to the extent of Provider's gross negligence or intentional misconduct, each party (each, an "Indemnifying Party") shall indemnify and hold harmless the other party (each, an Indemnified Party") its employees, contractors, subcontractors, agents, directors, officers, affiliates, and subsidiaries and their respective employees, subcontractors, agents, directors and officers from and against any and all Claims (including, the Actual Cost of defense thereof and attorney's fees) based on (a) a breach of this Agreement, or (b) use of the Structures, Cable, or County Fibers, including, without limitation:

(i) any claims for personal injury (including death), whether to County's, its contractors' or subcontractors' employees, or to Provider's employees, or those of any Third Party (County hereby avoiding any defense that might otherwise be applicable under workers' compensation laws); or

(ii) any claims for property damage (including liability under the Comprehensive Environmental Response, Compensation and Liability Act and similar state laws), relating to or arising in connection with that portion of the Cable, County Fibers and Equipment used by County, County's connections to the County System or the conduct or management of County's business with regard to the County System or the connections thereto.

24.2 Patent and Copyright Indemnification

A. The Provider shall not infringe on any copyrights, trademarks, service marks, trade

secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work or Services.

B. The Provider warrants that all Services furnished hereunder, including but not limited to: Cable, Cable Fibers, equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

C. The Provider shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the services. Accordingly, the Provider at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability for any such infringement.

D. In the event any service provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Provider shall have the obligation to, at the County's option to (i) modify, or require that the applicable sub-contractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Provider's expense, the rights provided under this Agreement to use the item(s).

E. The Provider shall be solely responsible for informing the County whether a prospective supplier or sub-contractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any service hereunder. The Provider shall enter into agreements with all suppliers and sub-contractor at the Provider's own risk. The County may reject any service that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would be unlawful.

24.3 Indemnification Procedures. The Parties shall give prompt notice of any Claim for which indemnification is or will be sought under this Article 24 and shall cooperate and assist in the defense of the Claim. County shall bear the costs of and have the right to control the defense, and shall have the right to select counsel following consultation with Provider.

24.4 This Article 24 shall survive any termination or expiration of this Agreement.

ARTICLE 25. ASSIGNMENT

25.1 Neither Party shall assign, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary herein, upon thirty (30) days' prior written notice, either Party may assign this Agreement and its other rights hereunder to any person or business entity that is an "affiliate" of such assigning Party without the prior consent of the other Party. For purposes of this Section 25, "affiliate" shall mean any entity that is controlled by, controlling or under common control with the assigning Party, or which purchases all or substantially all of the assets of the assigning Party. In the case of assignment as outlined above, any such affiliate myst comply with the terms of Article 38 prior to assignment of the Agreement. Any attempt to make any other assignment, transfer or disposition without the requisite prior written consent shall be null and void.

25.2 No Subleasing. County shall not lease or sublease County Fibers to any Third Party, without the prior written consent of Provider, which consent may be withheld in Provider's sole and absolute discretion.

25.3 Agreement Binding; Assignees. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

ARTICLE 26. NOTICES

26.1 Program Managers. Each Party shall designate a Program Manager. Whenever either Party is entitled to approve a matter, the Program Manager for the Party responsible for the matter shall notify the Program Manager of the other Party of the nature of such matter. The Program Managers shall discuss such matter, and each Program Manager is to confer on such a matter on behalf of his/her company. The foregoing notwithstanding, in no event shall Program Managers be authorized to amend the provisions of this Agreement.

26.2 Form and Address. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third business day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one business day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier company, addressed to the other Party as follows:

As to County:

Information Technology Department
5680 S.W. 85 Street
Miami, Florida 33173

Attention: Julian R. Manduley
Fax: (305) 275-7696

With a Copy to:

Miami-Dade County
Internal Services Department
Procurement Management Services Division
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Beth Goldsmith
Phone: (305) 375-4417
Fax: (305) 375-5688

As to Provider:

FPL FiberNet, LLC
9250 West Flagler Street
Miami, Florida 33174
Attn: Contract Manager
Fax: (305) 552-2411

With a copy to:

FPL FiberNet, LLC
700 Universe Blvd
Juno Beach, FL 33408
Attn: Law Department
Fax: (561) 691-7135

Each Party may change its addresses by giving the other Party notice thereof in conformity with this Article 26.2. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

26.3 Damage Notification. In the event that the Cable is damaged for any reason, the Party discovering such damage shall notify the other Party of said damage by telephone at:

A. As to Provider: 866 553 4237
B. As to County: 305 596 8211

These are 24 hour, 7 day per week emergency notification numbers. Calls shall be directed to the Supervisor on Duty, and the caller should be able to provide the following information:

(i) Name of company making report;
(ii) Location reporting problem;
(iii) Name of contact person reporting problem;
(iv) Telephone number to call back with progress report;
(v) Description of the problem in as much detail as possible;
(vi) Time and date the problem occurred or began; and
(vii) If appropriate, a statement that an emergency exists and that a problem presents a threat to the property of Provider, County or a Third Party.

ARTICLE 27. NO WAIVERS

No failure or delay on the part of either Party in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

ARTICLE 28. INCORPORATION OF EXHIBITS

The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency exists between the provisions of this Agreement and any Exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such Exhibits.

ARTICLE 29. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument.

ARTICLE 30. GOVERNING LAW AND VENUE

This Contract, including any attachments hereto, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to any choice of law provisions that would fix jurisdiction in a different State. Venue shall be Miami-Dade County, **IN ANY LITIGATION ARISING FROM OR RELATED TO THIS AGREEMENT, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.**

ARTICLE 31. NATURE OF THE AGREEMENT

31.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the

subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

31.2 The Provider shall provide the services set forth in the Agreement, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

31.3 The Provider acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all services under this Agreement. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Provider shall perform the same as though they were specifically mentioned, described and delineated.

31.4 The Provider shall furnish all labor, materials, tools, supplies, and other items required to perform the services that are necessary for the completion of this Agreement. All services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

ARTICLE 32. SEVERABILITY

Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail; provided, however, that in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

ARTICLE 33. MUTUAL OBLIGATIONS

33.1 This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

33.2 Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

33.3 In those situations where this Agreement imposes an indemnity obligation on the Provider, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Provider fails to diligently defend such claims, and thereafter seek indemnity for costs from the Provider.

ARTICLE 34. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Provider shall maintain, and shall require that its sub-contractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in this Agreement. The Provider and its sub-contractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 35. AUDITS

The County, or its duly authorized representatives or governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Provider's books, documents, papers and records and of its sub-contractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Provider will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Provider agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 36. SUBCONTRACTUAL RELATIONS

36.1 If the Provider will cause any part of this Agreement to be performed by a sub-contractor, the provisions of this Agreement will apply to such sub-contractor and its officers, agents and employees in all respects as if it and they were employees of the Provider; and the Provider will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the sub-contractor, its officers, agents, and employees, as if they were employees of the Provider. The services performed by the sub-contractor will be subject to the provisions hereof as if performed directly by the Provider.

36.2 The Provider, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed sub-contractor, the portion of the services which the sub-contractor is to do, the place of business of such sub-contractor, and such other information as the County may require. The County will have the right to require the Provider not to award any subcontract to a person, firm or corporation disapproved by the County.

36.3 Before entering into any subcontract hereunder, the Provider will inform the sub-contractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such services performed by such sub-contractor will strictly comply with the requirements of this Agreement.

36.4 In order to qualify as a sub-contractor satisfactory to the County, in addition to the other requirements herein provided, the sub-contractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the services in a satisfactory manner. To be considered skilled and experienced, the sub-contractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

67.5 The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Provider's obligations under this Agreement. All sub-contractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Provider shall furnish to the County copies of all subcontracts between Provider and sub-contractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Provider in breach of this Contract, permitting the County to request completion by the Sub-contractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the sub-contractor directly for the performance by such sub-contractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any sub-contractor hereunder as more fully described herein.

ARTICLE 37. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Provider understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Provider for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Provider. The Provider accepts all risk associated with using this information.

ARTICLE 38. VENDOR REGISTRATION/CONFLICT OF INTEREST

A. Vendor Registration
The Provider shall be a registered vendor with the County – Internal Services Department, Procurement Management Division, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Provider confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
(Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit*** *(Section 2.8-1(d)(2) of the County Code)*

3. ***Miami-Dade Employment Drug-free Workplace Certification***
(Section 2-8.1.2(b) of the County Code)

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
(Section 2-8.1.5 of the County Code*)*

5. ***Miami-Dade County Debarment Disclosure Affidavit***
(Section 10.38 of the County Code)

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
(*Section 2-8.1 of the County Code)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
(*Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

8. ***Miami-Dade County Family Leave Affidavit***
(Article V of Chapter 11 of the County Code)

9. ***Miami-Dade County Living Wage Affidavit***
(Section 2-8.9 of the County Code)

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
(Article 8, Section 11A-60 11A-67 of the County Code)

11. ***Subcontracting Practices***
(Ordinance 97-35)

12. ***SubProvider /Supplier Listing***
(Section 2-8.8 of the County Code)

13. ***Environmentally Acceptable Packaging***
(Resolution R-738-92)

14. ***W-9 and 8109 Forms***
(as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
In order to establish a file, the Provider's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Provider's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

    - Identification of individual account records
    - To make payments to individual/Provider for goods and services provided to Miami-Dade County
    - Tax reporting purposes
    - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
(Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***

By acceptance of any contract, the Provider agrees to comply with all antitrust laws of the United States and the State of Florida.

B. Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 39. INSPECTOR GENERAL REVIEWS

39.1 Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Provider shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Provider's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Provider, its officers, agents, employees, sub-contractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Provider in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Provider or any third party.

39.2 Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Provider. The audit cost shall also be included in all change orders and all contract renewals and extensions. Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

39.3 Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed

change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Provider, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

39.4 Upon written notice to the Provider from the Inspector General or IPSIG retained by the Inspector General, the Provider shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Provider's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subProviders and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 40. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

40.1 Provider agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

a. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Agreement.

b. Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Agreement.

c. Environmental Protection Agency (EPA), as applicable to this Agreement.

d. Miami-Dade County Code, Chapter 11A, Article 3. All Providers and sub-contractors performing work in connection with this Agreement shall provide equal opportunity for employment without regard to race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e. "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f. Miami-Dade County Code Section 10-38 "Debarment".

g. Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h. Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

40.2 The Provider shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Provider for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Provider. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Provider prior to authorizing work and as needed.

40.3 Notwithstanding any other provision of this Agreement, Provider shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Provider, constitute a violation of any law or regulation to which Provider is subject, including but not limited to laws and regulations requiring that Provider conduct its operations in a safe and sound manner.

ARTICLE 41. NONDISCRIMINATION

41.1 During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran status, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

41.2 By entering into this Agreement, the Provider attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Provider or any owner, subsidiary or other firm affiliated with or related to the Provider is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Agreement void. This Agreement shall be void if the Provider submits a false affidavit pursuant to this Resolution or the Provider violates the Act or the Resolution during the term of this Agreement, even if the Provider was not in violation at the time it submitted its affidavit.

ARTICLE 42. CONFLICT OF INTEREST

42.1 The Provider represents that:

a. No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.

b. There are no undisclosed persons or entities interested with the Provider in this Agreement. This Agreement is entered into by the Provider without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

c. is interested on behalf of or through the Provider directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

d. is an employee, agent, advisor, or consultant to the Provider or to the best of the Provider's knowledge any sub-contractor or supplier to the Provider.

42.2 Neither the Provider nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Provider shall have an interest which is in conflict with the Provider's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Provider provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

42.3 The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

42.4 In the event Provider has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Provider shall promptly bring such information to the attention of the County's Project Manager. Provider shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Provider receives from the Project Manager in regard to remedying the situation.

ARTICLE 43. BANKRUPTCY

The County reserves the right to terminate this Agreement, if, during the term of any Agreement the Provider has with the County, the Provider becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Provider under federal bankruptcy law or any state insolvency law.

ARTICLE 44. COUNTY USER ACCESS PROGRAM (UAP)

44.1 User Access Fee. Pursuant to Section 2-8.10 of the Miami-Dade County Code, this Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Agreement, or any Agreement resulting from the solicitation referenced on the first page of this Agreement, and the utilization of the County Agreement price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Agreement usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

44.2 The Provider providing goods or services under this Agreement shall invoice the Agreement price and shall accept as payment thereof the Agreement price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Provider participation in this invoice reduction portion of the UAP is mandatory.

44.3 Provider Compliance. If a Provider fails to comply with this Article, that Provider may be considered in default by the County in accordance with Article 19 of this Agreement.

ARTICLE 45. ANNUAL APPROPRIATION

The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, except as to the portions of payments agreed upon and for which funds have been appropriated and budgeted. Service/Maintenance can be cancelled at any time that the Provider is notified in writing, at least thirty (30) days prior to cancellation. There will be no early termination charges from the Provider for canceling service/maintenance during the year.

ARTICLE 46. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all Agreements for goods and services, the Provider, prior to hiring to fill each vacancy arising under a County Agreement shall (1) first

notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County Agreement through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Provider is free to fill its vacancies from other sources. Provider will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of Agreement until Provider performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of $1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the Program are available at https://iapps.southfloridaworkforce.com/firstsource/ or by contacting the SFWIB at (305) 594-7615, Extension 407.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

By: _____

Name: CARMEN PEREZ

Title: PRESIDENT

Date: 8/5/13

Attest: _____
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal

Notary Public State of Florida
Patricia T Morata
My Commission DD941552
Expires 11/18/2013

Miami-Dade County

By: _____

Name: Carlos A. Gimenez

Title: Mayor

Date: 9/23/13

Attest: _____
Clerk of the Board

Approved as to form and legal sufficiency

_____

Exhibit A

COUNTY FIBERS AND THE ROUTE(S)

The Route(s) (and any end Demarcation Points of any non-ring Route Segments) for the Cable containing the County Fibers are as follows:

Route 1 (North Ring) Cost/Fiber Mile: $ 57					
NUMBER OF CUSTOMER FIBERS	RING OR END DEMARCATION POINTS OF LINEAR ROUTE SEGMENTS	ROUTE MILES	FIBER MILES	MRC (Fiber Miles)	ANNUAL (Fiber Miles)
2	#1 - 1st Segment: NAP - 50 NE 9 Street, Miami 33132 NMDGC - 15555 Biscayne Blvd, North Miami Beach 33160	18.88	37.76	$ 2,152.32	$ 25,827.84
2	#2 - 2nd Segment: NMDGC - 15555 Biscayne Blvd, North Miami Beach 33160 JMHN - 160 NW 170 Street, North Miami beach 33169	6.97	13.94	$ 794.58	$ 9,534.96
2	#3 - 3rd Segment: JMHN - 160 NW 170 Street, North Miami beach 33169 ARCOLA - 799 NW 81 Street, Miami 33150	9.66	19.32	$ 1,101.24	$ 13,214.88
2	#4 - 4th Segment: ARCOLA - 799 NW 81 Street, Miami 33150 NAP - 50 NE 9 Street, Miami 33132	16.52	33.04	$ 1,883.28	$ 22,599.36
Route 1 (North Ring) Total Route/Fiber Miles		**52.03**	**104.06**	**$ 5,931.42**	**$ 71,177.04**

Route 2 (South Ring)					
4	#1 - 1ST Segment: MDPIC - 11865 SW 26 Street, Miami 33175 ITD - 5680 SW 87 Ave, Miami 33173	10.64	42.56	$ 2,425.92	$ 29,111.04
4	#2 - 2nd Segment: ITD - 5680 SW 87 Ave, Miami 33173 JMHS - 9333 SW 152 Street, Miami 33057	9.21	36.84	$ 2,099.88	$ 25,198.56
4	#3 - 3rd Segment: JMHS - 9333 SW 152 Street, Miami 33057 SMDGC - 10710 SW 211 Street, Cutler Bay 33189	6.62	26.48	$ 1,509.36	$ 18,112.32
Route 2 (South Ring) Total Route/Fiber Miles		**26.47**	**105.88**	**$ 6,035.16**	**$ 72,421.92**

Total Fiber/Route Miles	**78.5**	**209.94**	**$ 11,966.58**	**$143,598.96**
TOTAL 5 YEAR COST:				**$717,994.80**

Route Map

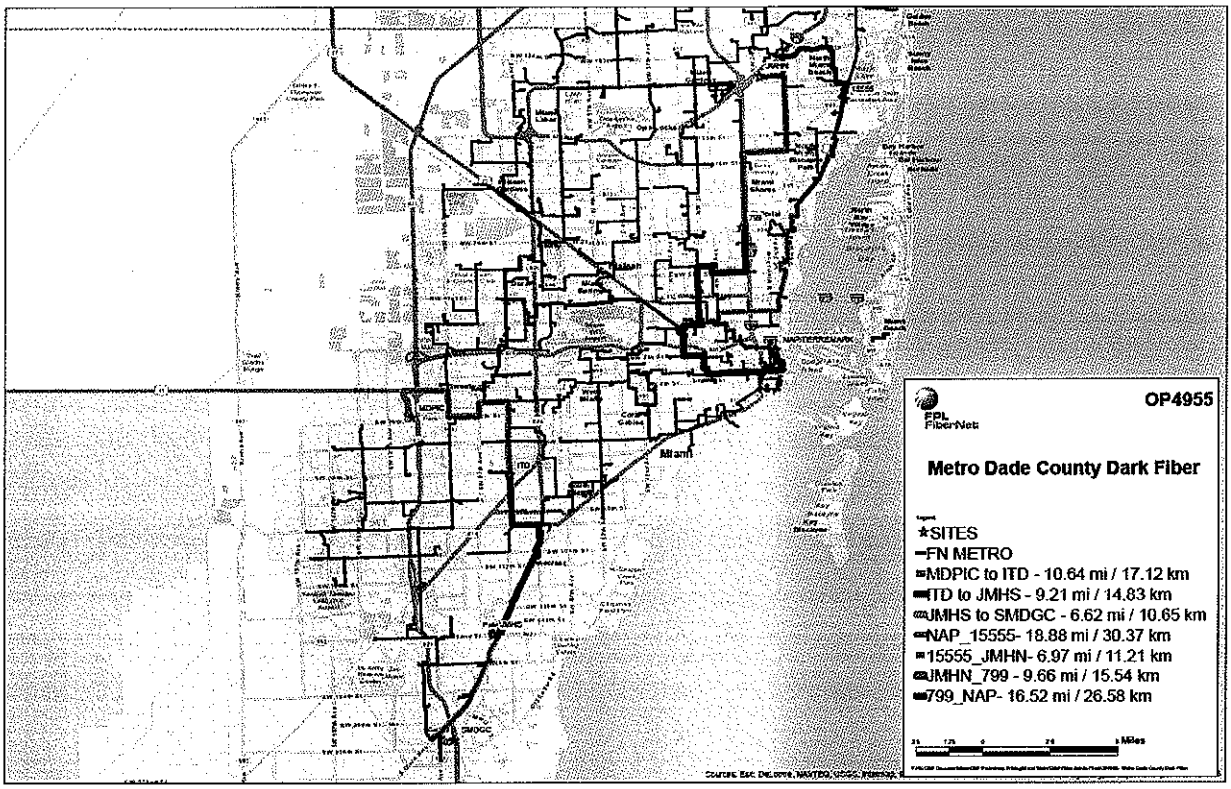
OP4955
FPL FiberNet
Metro Dade County Dark Fiber
SITES
FN METRO
MDPIC to ITD - 10.64 mi / 17.12 km
ITD to JMHS - 9.21 mi / 14.83 km
JMHS to SMDGC - 6.62 mi / 10.65 km
NAP_15555- 18.88 mi / 30.37 km
15555_JMHN- 6.97 mi / 11.21 km
JMHN_799 - 9.66 mi / 15.54 km
799_NAP- 16.52 mi / 26.58 km
Miles
Miami

Exhibit B

SUMMARY OF CABLE PARAMETERS

Optical Fibers:

Provider's fiber network is made up of single-mode, non-dispersion shifted fibers manufactured by various suppliers such as Corning, Lucent or Fujikura. These fibers shall comply with International Trade Union ("ITU") and Telcordia standards as specified in the manufacture performance specifications.

Span Specifications:

Discontinuities (known as steps, splices, or attenuation non-uniformities) shall be measured with an optical time domain reflectometer (OTDR) to determine the loss of the localized attenuation.

No fiber shall show a point discontinuity greater than1.0dB. However, Fiber spans that include a discontinuity in excess of specifications shall still be considered acceptable provided said Fiber still meets the overall attenuation and dispersion specifications set forth in the table below.

Fiber Facilities Loss Table

Fiber Attenuation Table

Wave Length NM	Max Fiber Loss/km	Max Splice Loss	Max Bi-directional Loss	Max Connector Loss	Index of refraction
1310	0.35 dB/km	0.29 dB	0.2 dB	0.5 dB	1.467
1550	0.25 dB/km	0.29 dB	0.2 dB	0.5 dB	1.467
1625	0.30 dB/km	0.29 dB	0.2 dB	0.5 dB	1.467

General Construction:

Optical and span test data including OTDR traces will be submitted by Provider to County in accordance with a mutually acceptable schedule.