

DEPARTMENTAL INPUT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

☐ New ☐ OTR ☐ Sole Source ☐ Bid Waiver ☐ Emergency Previous Contract/Project No. N/A
Contract
☐ Re-Bid ☐ Other – Access of Other Entity Contract LIVING WAGE APPLIES: ☐ YES ☐ NO
Requisition No./Project No.: RFP 15/16-63MP TERM OF CONTRACT 5 YEAR(S) WITH 5 YEAR(S) OTR

Requisition /Project Title: Charlotte County Public Schools FPL FiberNet Service Agreement

Description: The contract will allow WASD to acquire services over Fibernet Direct's independently owned and operated fiber optic network. This provides network connections to ensure the highest level of network availability to the network components that support the SCADA network.

Issuing Department: WASD Contact Person: George Par Phone: 786-558-8950
Estimate Cost: \$1,728,000 GENERAL FEDERAL OTHER
Funding Source: proprietary

ANALYSIS

Commodity Codes:	<u>92037</u>			
Contract/Project History of previous purchases three (3) years Check here <input type="checkbox"/> if this is a new contract/purchase with no previous history.				
	<u>EXISTING</u>	<u>2ND YEAR</u>	<u>3RD YEAR</u>	
Contractor:				
Small Business Enterprise:				
Contract Value:				
Comments: <u></u>				
Continued on another page (s): <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				

RECOMMENDATIONS

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
SBE				
Basis of Recommendation: <u></u>				
Signed: <u>Natalya Vasileva</u>			Date sent to SBD: <u>05/30/2018</u>	
			Date returned to PM: <u></u>	

SERVICE AGREEMENT

This Service Agreement (together with any annexes, addenda and exhibits attached hereto (the "Service Exhibits"), collectively, the "Agreement") is entered into by and between FPL FiberNet, LLC ("FN") and the customer identified below ("Customer," and together with FN, "the Parties"). This Agreement shall govern services provided by FN in accordance with, and pursuant to, Request for Proposal RFP 15/16-63MP and Addenda #1, #2 and #3 (hereinafter collectively "RFP"), and one or more FN Service Orders ("SO" or "SOs") executed by the Parties ("Services"). For the avoidance of doubt, SOs submitted through Customer's registered account on FN's Internet portal and accepted by FN shall be considered as executed by the Parties.

Customer
dba name
(if any)
Address
Address
City

Charlotte County Public Schools
1445 Education Way
Port Charlotte State FL ZIP 33848

Billing Contact
Company Billing Name
Toll Free Billing Name
Billing Contact Phone

Kathy Scott
Charlotte County Public Schools
941-255-0808

BY SIGNING BELOW THE CUSTOMER ACKNOWLEDGES AND AGREES: (i) TO ABIDE BY THE TERMS OF THIS AGREEMENT; AND (ii) THAT THE PERSON SIGNING BELOW HAS THE AUTHORITY TO BIND THE ABOVE NAMED CUSTOMER TO THIS AGREEMENT.

AGREED AND ACCEPTED:

FN SIGNATURE AND DATE

Carmen M. Perez President
PRINT NAME AND TITLE

CUSTOMER SIGNATURE AND DATE

Barbara Rendell School Board Chair
PRINT CUSTOMER NAME AND TITLE

1. SERVICES

a. Customer acknowledges and agrees that the Services may be offered by FN or a third party and are subject to (i) compliance with all applicable laws and regulations; (ii) obtaining any domestic or foreign approvals and authorizations required or advisable; (iii) continued availability of any of the Services in any jurisdiction, country or to any location; and (iv) continued availability of access lines in any particular jurisdiction, country or location. Customer acknowledges and agrees that FN may elect not to offer the Services in or to any particular jurisdiction, location or country, or may block Services to or from any particular jurisdiction, location or country if FN determines, in its sole discretion, that the continuation of such Service is not permitted or advisable.

FN's provision of the Services to Customer and the availability of the pricing, as set forth in the applicable SO, are subject to availability of any required facilities. FN will provide the Services or cause the Services to be provided directly to Customer in accordance with this Agreement, any Service Exhibits attached hereto, and any SO entered into by the Parties. Customer agrees to direct all inquiries, issues and disputes regarding the Services solely to FN. This Agreement applies only to Services provided to Customer, and shall not apply to offerings by Customer of services to end users. The provision of Services by FN as set forth in this Agreement does not constitute a joint undertaking with Customer for the furnishing of any service or capacity to end users.

2. EQUIPMENT AND FACILITIES. In the event Customer's use of the Services requires FN to provide certain equipment, such equipment will be specified in each applicable Service Exhibit. FN will install certain facilities necessary for the Services, including but not limited to cable, wiring, conduit, racks, telecommunications equipment, electronic equipment, and any associated hardware (collectively, "FN Facilities") at the premises identified on each SO (the "Premises"). Customer hereby grants FN the right to enter the Premises from time to time for installation, repair and/or maintenance, as requested by FN. Customer will promptly notify FN of any known or threatened damage to FN Facilities. Customer will not relocate, repair, or disturb FN Facilities without FN's prior written consent.

2. INSTALLATION.

a. FN will notify Customer upon completion of installation of the Services and will request Customer's participation in promptly testing the Services. Customer may elect to participate with FN in testing the Services. The Services will commence upon completion of FN's testing of the Services (with or without Customer's participation) or two (2) business days after FN's installation of the Services and five (5) business days after FN's installation of the Services in the case of dedicated Internet access services, and such date shall hereinafter be referred to as the "Service Commencement Date". Customer may, upon no less than thirty (30) days written notice to FN, request one (1) extension of no more than ninety (90) days of the date upon which the Services shall be installed. Customer shall execute a change order or other documentation as required by FN to effect

such extension, and shall be responsible for any associated fees related to such extension request. Subject to FN's acceptance of the extension of the Services installation date, the Service Commencement Date shall be the earlier of (i) the date FN completes testing of the Services (with or without Customer's participation) or two (2) business days after FN's installation of the Service and five (5) business days after FN's installation of the Services in the case of dedicated Internet access service, or (ii) the last day of the extension period requested by Customer. Notwithstanding anything to the contrary in this Agreement, any commercial use of the Services by Customer shall accelerate the Service Commencement Date to such date of usage.

b. Actions or the failure or refusal to act by Customer that unreasonably prevent or delay installation or testing shall not be construed to create a Default by FN or give rise to any SLA credits, but may, in FN's sole discretion, be deemed to be a termination of the SO by Customer. If Customer terminates any SO, or is deemed to have terminated any SO by its actions or inaction as set forth above, between the date of acceptance thereof by FN and the Service Commencement Date, Customer shall pay, as liquidated damages and not as a penalty, an amount equal to the greater of (i) twenty percent (20%) of the total contract value of the Services identified in the terminated SO, or (ii) all costs incurred by FN in its efforts to provide the Services up to and including the date of termination, plus an administrative fee of ten percent (10%). For the purposes of this section 3, "costs" shall include without limitation (w) any costs assessed by a third party provider contractually obligated to provide any portion of the Services; (x) costs of obtaining rights of entry necessary to provide the Services to Customer's premises; (y) actual costs of internal personnel actively involved in FN's attempt to provide the Services (including appropriate allocations of benefit and overhead charges in addition to base salary/wages); and (z) any other or additional costs paid to third parties which arose out of or in the course of FN's efforts to provide the Services identified in the terminated SO.

4. TERM. The term of this Agreement ("Service Term") shall commence on the date of the last signature set forth above and shall remain in effect until terminated by either Party upon thirty (30) days written notice or until terminated under Section 10. In the event that the Service Term is terminated or expires while Service is still being provided under any SO, the Service Term shall automatically be deemed extended for the duration of the provision of such Service, but during such extension Customer shall not be entitled to submit new SOs, or extend the term of any existing SOs without the prior written consent of FN. In the event that an SO expires during the Service Term and the Service Order term is not renewed by mutual consent of both parties, then the SO shall renew on a month-to-month basis, and the monthly recurring charges for any Service renewed on a month-to-month basis shall be subject to increase not to exceed ten percent (10%), until canceled by either party upon thirty (30) days written notice.

5. PAYMENT. Customer agrees to pay all usage based billing along with any monthly recurring charges ("MRCs") and Non-Recurring Charges ("NRCs") set forth in each SO (collectively, "Service Charges"). Except to the extent Customer may be exempt therefrom, Customer shall be responsible for and agrees to pay all applicable federal, state and local taxes, fees, assessments, surcharges or additional charges imposed by any regulatory or quasi-regulatory authority. Customer and Provider shall cooperate in taking all reasonable actions necessary to minimize, or to qualify for exemptions from, any such taxes, duties or liabilities, including the furnishing of a universal service waiver form. The MRCs will accrue beginning on the Service Commencement Date (or such earlier date as the Customer and FN may agree upon in writing), and will be billed monthly in advance. The NRCs will be billed in the first invoice as a nonrecurring fee. Payments shall be made by electronic transfer as mutually agreed, and are due no more than forty-five (45) days after the date of the invoice. Interest will accrue on past-due balances at one percent (1%) per month. If Services are discontinued as a result of nonpayment of fees and subsequently reconnected, Customer will be required to pay a reconnection fee in addition to applicable interest. Notwithstanding anything to the contrary in this Agreement, Customer agrees to reimburse the fees of any collection agency, which may be based on a percentage of the amount due and owing, and all costs and expenses, including reasonable attorneys' fees, incurred by FN in any collection efforts undertaken to recover past-due balances from Customer, or Customer's heirs, successors or assigns.

6. BILLING DISPUTES. All Bona Fide Disputes (as defined below) along with complete documentation must be submitted in writing together with payment of all undisputed amounts due or, alternatively, if Customer has already paid its invoice, Customer shall have sixty (60) calendar days from invoice date to give notice of a Bona Fide Dispute regarding such invoice, and documentation thereof, otherwise such invoice will be deemed correct. Notification and complete documentation of a Bona Fide Dispute must be sent to: FPL FiberNet, LLC, 9250 W. Flagler St.; Miami, FL 33174, Attn: ACCOUNTS RECEIVABLE. An amount will not be considered "in dispute" until Customer has provided FN with written notification and complete documentation of the Bona Fide Dispute, and the parties will promptly address and attempt to resolve the claim. FN may, in good faith and in its sole discretion, request additional supporting documentation or reject Customer's Bona Fide Dispute as inadequate. If FN rejects such Bona Fide Dispute, FN will so notify Customer and Customer shall pay the disputed amount within fifteen (15) days thereafter. If FN determines that the Customer is entitled to credits or adjustments for Service outages pursuant to provisions of applicable Service Exhibits then FN will credit Customer's invoice for such amount on the next appropriate billing cycle. As used herein, a "Bona Fide Dispute" means a good faith assertion of a right, claim, billing adjustment or credit which Customer reasonably believes it is entitled to under the Agreement.

7. SUPPORT AND MAINTENANCE. FN will provide support and maintenance to Customer in accordance with the Support and Maintenance Terms ("SLA(s)") set forth in the applicable Service Exhibit(s) related to each specific Service (which may be amended from time to time upon no less than ten (10) days' prior written notice to Customer). SLA credits due to Customer shall first be deducted from any past due amount owed FN. Application of credits by FN shall not waive Customer's obligation to pay any remaining balances or future amounts. For any instances in which the Service does not meet the SLAs and such failure was attributable to the damage to or loss of function of fiber optic cable owned by Customer and which was not directly caused by any action or inaction of FN, Customer shall be responsible for payment of all labor charges incurred in repairs or restoration required to such Customer-owned fiber optic cable to make the Services meet the SLAs set forth herein, in accordance with the following table of rates and charges: **CUSTOMER CAUSED DAMAGE**

- Splicing:
\$225.00 per hour for (1) 2-man splice crew with 1-machine
- Restoration Splicing:
\$285.00 per hour for (1) 2-man splice crew with 1-machine
- Buried Fiber Repair/Replacement:
\$165.00 per hour regular time for (1) 3-man underground crew with hand tools & truck.
- Aerial Fiber Repair/Replacement:
\$78.25 per hour of regular time for (1) 3-man aerial crew with bucket truck and minor aerial gear.
- Trenching:
\$5.65 per linear foot, not to exceed 36"
- Directional Drilling:
\$13.45 per linear foot
- Handhole Repair/Replacement--cost noted is for the removal & replacement of:
Standard HH is 30x48x36 \$810.00
Mid-size HH 24x36x30 \$665.00

(Hourly Rates are for scheduled fiber projects only; the costs of any required materials is not included. Based on requirements other Project Management fees may apply. Emergency Fiber Repair or Maintenance of non FN owned fiber is not included in above rates.)

8. WARRANTY AND LIMITATIONS. a. FN warrants that the Services will meet the specifications set forth in the SOs and any associated Service Exhibit(s). If the Services fail to meet such specifications, FN will provide support and maintenance to Customer in accordance with each SLA. Each SLA will be effective on the first day of the month following the Service Commencement Date. b. THE CREDIT CALCULATIONS SET FORTH IN THE SLA SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY BREACH BY FN OF A WARRANTY CONTAINED HEREIN OR ANY INTERRUPTION OR FAILURE OF THE SERVICES TO MEET THE SPECIFICATIONS. THE TOTAL AMOUNT OF CREDIT THAT WILL BE EXTENDED TO CUSTOMER AS A RESULT OF FN'S FAILURE TO MEET AN SLA SHALL BE LIMITED TO 100% OF ONE (1) MONTH'S MRCs FOR ANY SINGLE MONTHLY BILLING PERIOD. c. EXCEPT AS SET FORTH IN THIS SECTION 8, FN MAKES NO WARRANTIES REGARDING THE SERVICES, FACILITIES OR EQUIPMENT PROVIDED HEREUNDER, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES WITH RESPECT TO ANY SERVICES, FACILITIES OR EQUIPMENT PROVIDED PURSUANT TO THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED.

9. LIMITATION OF LIABILITY. THE LIABILITY OF FN (OR ANY OTHER SERVICE PROVIDER FURNISHING ANY PORTION OF THE SERVICES) FOR ANY INTERRUPTION OR FAILURE OF ANY SERVICES FURNISHED PURSUANT TO THIS AGREEMENT SHALL BE LIMITED TO CREDITS DESCRIBED IN SECTION 8(b) ABOVE, AND IN NO EVENT SHALL FN'S LIABILITY FOR ANY CLAIM, LOSS OR EXPENSE UNDER THIS AGREEMENT EXCEED THE SUMS ACTUALLY PAID TO FN FOR THE SERVICES GIVING RISE TO SUCH CLAIM, LOSS OR EXPENSE. FN SHALL NOT BE LIABLE FOR ANY INTERRUPTION CAUSED BY ANY ACT OR OMISSION OF ANY OTHER SERVICE PROVIDER FURNISHING ANY PORTION OF THE SERVICES, AND, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE RFP, FN SHALL NOT BE LIABLE FOR LIQUIDATED DAMAGES OR PENALTIES FOR ANY FAILURE TO ACHIEVE SUBSTANTIAL COMPLETION OF THE WORK WITHIN THE CONTRACT TIME OR AS OTHERWISE REQUIRED BY THE CONTRACT DOCUMENTS. FN SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES DUE TO THE FAULT OR NEGLIGENCE OF CUSTOMER, CUSTOMER'S FAILURE TO FULFILL ITS OBLIGATIONS, OR DUE TO THE FAILURE OR MALFUNCTION OF CUSTOMER-PROVIDED EQUIPMENT OR FACILITIES. FN SHALL NOT BE LIABLE FOR ANY DAMAGE TO CUSTOMER'S PREMISES UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF FN'S AGENTS OR EMPLOYEES. NEITHER FN NOR ANY OTHER SERVICE PROVIDER FURNISHING ANY PORTION OF THE SERVICES SHALL BE LIABLE OR RESPONSIBLE FOR ANY FRAUDULENT OR UNAUTHORIZED CALLS ORIGINATING FROM CUSTOMER'S PREMISES OR THE SERVICES, OR FOR ANY ERRORS OR OMISSIONS OF DIRECTORY LISTINGS. IN NO EVENT SHALL EITHER PARTY, OR ANY OF FN'S SUPPLIERS OR CONTRACTORS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ASSERTED (INCLUDING NEGLIGENCE OR TORT) ARISING OUT OF THIS AGREEMENT, OR ANY SERVICES, FACILITIES OR EQUIPMENT PROVIDED HEREUNDER, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT THE AMOUNTS PAYABLE HEREUNDER BY CUSTOMER ARE BASED IN PART UPON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY DESPITE ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CUSTOMER OBLIGATION TO PAY NRCS AND MRCs, OR EARLY TERMINATION CHARGES CONSTITUTES THE PAYMENT OF CONTRACT OBLIGATIONS OR DIRECT DAMAGES AND IS NOT AFFECTED BY THE LIMITATION IN THIS SECTION. FOR THE AVOIDANCE OF DOUBT, BOTH PARTIES ACKNOWLEDGE AND AGREE THAT ALL THIRD-PARTY DAMAGES FOR WHICH THE OTHER PARTY HAS AN INDEMNITY OBLIGATION UNDER THIS AGREEMENT ARE DIRECT DAMAGES OF THE INDEMNIFIED PARTY FOR PURPOSES OF THIS SECTION.

10. TERMINATION.

a. If either party defaults in the performance of any material provision of this Agreement then the non-defaulting party may seek any and all remedies available at law and/or equity, except to the extent any such remedy is specifically limited or prohibited by this Agreement, and may give written notice to the defaulting party that if the default is not cured within thirty (30) days the Agreement will be terminated. If the non-defaulting party gives such notice and the default is not cured during the applicable cure period, then the Agreement shall automatically terminate at the end of that period. FN may suspend the Services between such time that

Customer receives a notice of monetary default and such time that Customer cures said default. If FN terminates this Agreement, at any time, as a result of any uncured default of the Customer or if Customer terminates Service following the Service Commencement date in a manner not permitted hereunder, Customer shall pay, as liquidated damages and not as a penalty, the sum of the following: (i) 100% of any remaining Service Charges for the remaining months of the Service Term plus (ii) all past due balances due under the Agreement and any charges of a third party provider providing any portion of the Services.

b. Notwithstanding anything to the contrary in this Agreement or any SO allowing for services to be provided by FN to Customer, Customer shall take all necessary steps and shall exercise its best efforts to obtain necessary appropriations from applicable federal or state sources in order to fund the purchase of the Services identified in this Service Order for the entire Service Order Term. Should Customer fail to obtain, and maintain, such funding for the Service Order Term after exercise of its best efforts, upon payment of all amounts then due and owing, Customer may terminate this Service Order upon ninety (90) days' prior written notice if funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the Services made the subject of this Agreement.

11. **RESTRICTIONS ON USE.** Customer agrees that it shall abide by FN's Acceptable Use Policy, as may be periodically revised by FN. Notwithstanding any contrary provision herein, FN reserves the right to suspend Service or terminate this Agreement without notice, written or otherwise (i) anytime FN has the right to terminate the Agreement; (ii) whenever required to protect FN's network or facilities; and/or (iii) whenever the Service is used for illegal purposes or otherwise in violation of FN's Acceptable Use Policy (AUP), which is posted on FN's website www.fplfiber.net. By executing this Agreement, Customer agrees to the terms of the AUP.

12. **INDEMNIFICATION.** Subject to the limitations contained in Section 768.28, FS, Customer agrees to indemnify and hold harmless FN, its parent, their affiliates and their officers, agents, employees, contractors, subcontractors, suppliers, invitees and representatives ("FN Entities"), from and against any and all third party claims of loss, damages, liability, cost and expenses (including reasonable attorneys' fees and expenses) to the extent any such claim is asserted against the FN Entities, directly or indirectly, by reason of or resulting from any Customer failure to perform an obligation under this Agreement or any action or inaction of Customer or its employees or agents that is illegal or constitutes negligence or intentional misconduct. In addition, and also subject to the limitations contained in Section 768.28, FS, Customer agrees to indemnify FN Entities from any and all third party claims of damages, liability, costs and expenses (including reasonable attorneys' fees and expenses) arising from use of Services by Customer or its end users and/or any violation of FN's Acceptable Use Policy, regardless of whether done with intent or knowledge.

13. **FORCE MAJEURE.** Neither Customer nor FN shall be liable for any delays or non-performance caused or contributed to by an event of force majeure. "An event of force majeure" shall be defined as an event or action, or multiple events or actions in combination, which are outside of such party's reasonable control, including, without limitation, acts of God, floods, fires, hurricanes, earthquakes, acts of war or terrorism, fiber cuts, labor actions, failure of third-party suppliers, criminal and unlawful acts of third parties, changes in applicable laws and regulations, restraint or hindrance by any governmental or regulatory authority including, without limitation, unfavorable actions or failures to act of or by such authorities or any similar actions or events, delays occasioned by FN's compliance with state or local conditional land use or permitting requirements and delay caused or contributed by FN's inability, following reasonable efforts, to obtain timely physical access to premises owned by Customer or a third party which access is reasonably required for FN to perform any of its obligations herein.

14. **NOTICES.** Notices required by this Agreement shall be made in writing and delivered by hand delivery or the USPS addressed to the addresses set forth on the SO, postage or delivery charges pre-paid. Notice shall be deemed given upon delivery, if delivered by hand; four (4) business days after being deposited in the U.S. Mail as first-class; or one (1) business day after depositing with a nationally recognized overnight delivery service.

15. **ASSIGNMENT.** This Agreement shall be binding upon the parties and their respective successors and assigns. Neither Party shall assign or otherwise transfer its rights hereunder, or any interest herein, without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, nothing in this paragraph shall preclude FN from conducting a credit review of any assignee proposed by the other Party, using non-discriminatory creditworthiness criteria.

16. **THIRD PARTY BENEFICIARIES.** Except as set forth in Sections 1 and 10 herein, or as otherwise specifically set forth in the RFP, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or

standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement.

17. **GOVERNING LAW/WAIVER OF JURY TRIAL.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without giving effect to its conflict of law principles. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Florida. Proceedings shall take place in the Circuit Court for Dade County or Palm Beach County, Florida, the United States District Court for the Southern District of Florida, or such other Florida location or forum upon agreement of the parties. 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.

18. **ATTORNEYS' FEES.** In the event of any legal action filed in relation to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and reasonable court or arbitration costs, and in the event the legal action was instituted by FN to collect any past-due balance incurred by Customer, such attorney's fees shall be in addition to, and not in lieu of, reasonable collection costs as more specifically set forth in Section 5 above to the extent such attorney's fees are not duplicative of any other amounts awarded.

19. **REGULATORY CHANGES.** In the event of any change in applicable laws, regulations, decisions, rules or orders issued by the Federal Communications Commission, a state Public Utility or Service Commission, a court of competent jurisdiction or other governmental or quasi-governmental entity (a "Regulatory Requirement") that materially increases the costs of Services provided by FN, FN reserves the right to pass any such increased costs through to Customer as a rate increase. FN shall provide written notice of any such rate change no less than thirty (30) days prior to such rate change. If any Regulatory Requirement has the effect of canceling, changing or superseding any material term with respect to the delivery of Services (other than changes which are the subject of a rate increase as described in the foregoing sentence), then this Agreement will be deemed modified in such a way as the parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with the Regulatory Requirement. If the parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then either party may terminate this Agreement and/or any SO impacted by the Regulatory Requirement effective as of the date of such party's written notice to the other party.

20. NON-DISCLOSURE; CPNI.

a. The provisions of this Agreement (including, but not limited to, pricing) are considered proprietary and confidential by the parties hereto, and as such are not to be released to third parties except as may be required pursuant to Chapter 119, F.S. or other law, or as may be necessary to permit FN to perform its obligations hereunder. No Party, without the other Party's specific prior written consent, shall disclose to any third party any information supplied to it by the other which has been designated as CONFIDENTIAL or PROPRIETARY or PRIVATE ("Proprietary Information") to the extent such information is not required to be disclosed pursuant to any applicable Public Records Laws of the State of Florida and (i) is not otherwise generally available to the public, (ii) has not been independently developed by the receiving Party, or (iii) has not previously been known by or disclosed to the receiving Party by a third party not bound by confidentiality restrictions. Proprietary Information shall only be disclosed to those of its employees, affiliates, and representatives (collectively, "Representatives") who have a need for it in connection with the use or provision of Services required to fulfill this Agreement. Prior to disclosing Proprietary Information to its Representatives, the disclosing Party shall notify such Representative(s) of their obligation to comply with this Agreement. If a receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such receiving Party shall provide the disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure to enable the disclosing Party the opportunity to seek appropriate protective relief.

b. In the course of providing Service to Customer, FN will obtain and possess certain usage-related information about the quantity and type of the telecommunications services Customer uses ("CPNI"). Under federal law, Customer has the right, and FN has the duty, to protect the confidentiality of Customer's CPNI. FN agrees to protect the confidentiality of Customer's CPNI during the term hereof, or for such longer period as may be required under applicable law. FN may use, disclose, and share CPNI for the purpose of provisioning the Services purchased under this Agreement and as permitted by law. FN reserves the right to intercept and disclose any transmissions over FN's Facilities to protect its rights or property or pursuant to court order or subpoena.

21. **PUBLIC RECORDS REQUIREMENTS.** FN shall comply with the public records laws as follows:

(A) Keep and maintain public records that ordinarily and necessarily would be required by the Customer in order to perform the service.

(B) Provide the public with access to public records on the same terms and conditions that the Customer would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

(C) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

22. **INSURANCE.** FN shall provide an insurance certificate(s) satisfactory to the District seven (7) days after award. No work shall commence under this Contract until the FN has obtained all insurance required under this section and such insurance has been approved by the District.

Workers' Compensation - FN shall take out and maintain during the life of this contract Workers' Compensation coverage for all employees meeting all statutory and federal requirements. Coverage shall include Employers Liability in the amount of \$1,000,000. Said coverage shall be written by FN which is acceptable to Customer.

Comprehensive General Liability - FN shall take out and maintain during the life of this contract Comprehensive General Liability Insurance in a minimum amount of \$1,000,000 per occurrence, Combined Single Limit for bodily injury liability and property damage liability. General aggregate limit applies per a project or location basis (not a "policy" basis). Said coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Completed Operations, Broad Form Property Damage and XCU coverage, and a Contractual Liability Endorsement.

Business Auto Policy - FN shall also take out and maintain during the life of this contract Business Automobile Liability insurance against bodily injury, accidental death and property damage, in limits of not less than \$500,000 per claimant, \$1,000,000 per limits of not less than \$500,000 per claimant, \$1,000,000 per occurrence. Coverage shall be for all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned or hired.

Special Requirements - "School Board of Charlotte County Florida" shall be listed as an "Additional Insured" on both the Comprehensive General Liability and Business Auto Liability Policies and an "Additional Insured" endorsement from the insurance carrier shall be provided. Current, valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the named project. Renewal certificates shall be sent to the School Board prior to any expiration date. There shall also be a 30 day notification to the School Board in the event of cancellation or non-renewal of any stipulated insurance coverage. It shall be the responsibility of FN to insure that all sub-contractors comply with the same insurance requirements that FN is required to meet. Certificates of Insurance and "Additional Insured" endorsements meeting the required provisions shall be forwarded to the School Board Purchasing Department.

23. **MISCELLANEOUS.** This Agreement, along with all SOs, Exhibits, and any amendments signed by both parties, as well as any applicable Tariff(s), shall constitute the parties' entire understanding related to the subject matter hereof and shall supersede all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein, and references herein to this "Agreement" include all such terms forming the Parties' understanding. In case of conflict between or among documents attached to or forming a part of this Agreement, the following order of precedence shall apply: the terms set forth in the RFP and FN's response (including exceptions) thereto, shall control over any contradictory terms or conditions contained in this Agreement or Exhibit, and any specific information in a SO agreed-upon and executed by and between the parties shall prevail over the RFP, this Agreement or any Exhibit as to that Service with respect to price, SO Term, Service locations and other Service-specific terms contained in the SO. Any provision that is prohibited in any jurisdiction shall, as to each jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereto or affecting the validity of such provisions in any other jurisdiction. The failure of either party to enforce any right available to it with respect to any breach or failure by either party shall not be construed to be a waiver of such right with respect to any other breach or failure. Customer warrants that it has the right and authority to enter into and perform its obligations under this Agreement.

(D) Meet all requirements for retaining public records and transfer, at no cost, to the Customer all public records in possession of FN upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Customer in a format that is compatible with the information technology systems of the Customer.

If FN does not comply with a public records request, the Customer shall enforce the Contract provisions in accordance with this Agreement.

Service Exhibit

Service Exhibit A

Technical Specifications

Description of Services

Telecommunications transmission transport links are provided between two or more points that meet at a designated demarcation points between Provider and Customer. Availability is measurement of the total time the Service is operative when measured over a time period of 30 consecutive days.

Performance Objectives for SONET/SDH Services - DS1

A. Description of Services: Transmission transport links are provided between two or more points which meet at a designated demarcation point between the Provider and Customer. Where the Provider is the provider of local interconnect, local loop availability numbers are provided. The following standards apply for DS1.

Availability: Availability is the measurement of the total time the service is operative when measured over a time period of 30 consecutive days. Circuits are considered to be inoperative when there has been a loss of signal, when loopback tests confirm the observation of severely errored seconds, or when the network monitoring system detects a continuous bit-error rate (BER) greater than specified.

Performance Objectives

- a) Meet or exceed 99.9% percent circuit availability on a monthly basis.
This objective applies except where a Customer's equipment is disconnected and/or inoperative or force majeure (i.e. cable cuts) is in effect or planned maintenance actions initiated by the Customer.
- b) Bit Error Ratio (BER) meet or exceed 10^{-4}
- c) Meet or exceed 99.5% percent Error Free Seconds (EFS) on a monthly basis.
- d) Does not exceed 0.09% percent Severely Errored Seconds (SES) on a monthly basis.
- e) Service Continuity - in the event of primary facility failure, service is guaranteed to switch to an alternate facility in 60ms or less

Performance Objectives for SONET/SDH Services - DS3, OC-N/STM-N, Ethernet, and Waves

A. The performance objectives for DS3 Service are as follows:

- i) Meet or exceed 99.95% circuit availability on a monthly basis.
This objective applies except where a Customer's equipment is disconnected and/or inoperative or Force Majeure Event is in effect or planned maintenance actions are being performed.
- ii) The circuit is considered to be inoperative when there has been a loss of signal, when loop back tests confirm the observation of severely errored seconds, or when the network monitoring system detects a continuous bit-error rate (BER) of greater than 1×10^{-5}
- iii) Meet or exceed 99.95% Error Free Seconds on a monthly basis.
- iv) Does not exceed 0.009% severely errored seconds on a monthly basis.
- v) Service Continuity - in the event of primary facility failure, service will switch to an alternate facility in 60ms or less.

B. The performance objectives for OCN/STM-N services are as follows:

- i). Meet or exceed 99.95% circuit availability on a monthly basis.
This objective applies except where a Customer's equipment is disconnected and/or inoperative, a Force Majeure Event is in effect or planned maintenance actions are being performed.
- ii) Bit Error Ratio (BER) meet or exceed 1×10^{-6}
- iii) Meet or exceed 99.95% Error Free Seconds on a monthly basis.
- iv) Does not exceed 0.009% Severely Errored Seconds on a monthly basis.
- v) Service Continuity - in the event of primary facility failure, service is guaranteed to switch to an alternate facility in 60 ms or less. Failure to meet this guarantee will result in a credit as described in Article V.C. The performance objectives for Wavelength services (2.5G or 10G waves) are as follows:

C. The performance objectives for Wavelength services (2.5G or 10G waves) are as follows:

- i) Availability: "POP to POP" Service - 99.00%
- ii) Definition and Measurement: Wave availability is a measure of the relative amount of time during which a wave is available for Customer use during a thirty (30) day calendar month. "Service Unavailability" is defined as the periods for which a wave experiences a complete loss of service, or for which the BER for the wave falls below 1×10^{-6} .

Technical Transmission Specification Standards

Provider and its facilities pertaining to DS3, SONET (OC-N), STM-N (SDH), and Ethernet performance adhere to the following Technical References and Standards:

High Capacity Telcordia GR-54, GR-253-CORE, and GR-342

Self-healing Rings GR-498

Ethernet G742 (LCAS), G7041 (GFP), G707, IEEE 802.1P, IEEE 802.1Q, 802.1W, IEEE 802.1D, IEEE 802.1w (Rapid Spanning Tree (RSTP), IEEE 802.1w)1s (Multiple Spanning Tree), IEEE 802.3x (Flow control), SNMP v2/3, IEEE 802.17, MPLS FRR, MPLS-PWE-3, VPLS, and H-VPLS, MPLS-VLL, RFC 3619 (EAPS), RFC 2236, RFC 3376,

SDH Services ITU-T G.526 or ITU-T G.828, ITU G.783, ITU G.957, ITU G.707, as applicable

SONET Specifications and Timing Issues

OCN Transmission parameter limits, interface combinations, and technical specifications applicable to Interstate Carriers for Customer interconnection at Provider POPs are contained in ANSI T1.403-1989 and T1.404-1989.

DS3s carried over Synchronous Optical Network (SONET) transport systems can incur phase transients as a result of pointer adjustments. In some instances timing problems could surface in Customer's equipment with Stratum 3 or better clocks. This may result in the Customer's clock disqualifying its synchronization reference, generating an alarm and/or selecting an alternate reference or entering holdover. To insure proper operation, channelized DS3 circuits must comply with Bellcore Technical Advisory, GR-436, Digital Synchronization Network Plan, and ANSI T1.101-1994. When timing is taken from a Provider transported DS3, the Customer's equipment must be capable of accommodating SONET pointer adjustments.

SDH Timing Issues

E1 service signal frame structure will comply with ITU-T G.704.

STM service signal frame structure will comply with ITU-T G.707.

Electrical signal interfaces will comply with ITU-T G.703.

Optical signal interfaces will comply with ITU-T G.957.

WASD
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GUARANTEES

D. The performance objectives for Standard Ethernet VPN are as follows (Protected Service and Unprotected Service are as defined below):

- i) Latency (RTD) $\leq 5\text{ms}$ intra-metro
 $\leq 20\text{ms}$ inter-metro
 $\leq 40\text{ms}$ interstate (covers MIA-ATL)
 $\leq 50\text{ms}$ interstate (covers MIA-DAL or MIA-NY)
- ii) Availability $\geq 99.99\%$ (Unprotected Service) / $\geq 99.995\%$ (Protected Service)
- iii) Jitter $\leq 5\text{ms}$
- iv) Packet Delivery $\geq 99.95\%$ (Unprotected Service) / $\geq 99.99\%$ (Protected Service)

Service provides customers with 10, 100, 1000, or 10G transport service of 10-Mbps or fractional rates of 100-Mbps or 1000-Mbps, Ethernet VPN Point to Point (E-Line) or Ethernet VPN Multipoint (E-LAN), and electrical or optical port interfaces (optical interfaces could be either SMF or MMF).

The service provides customers with physical interfaces at the 10/100/1000 Mbps or 10 Gbps level via various available networks and technologies depending on implementation and depending on the geographical coverage needed, multiple technologies may be implemented.

Performance Objectives:

- a) Guaranteed bandwidth as specified (10/100/1000 or fraction thereof). Note that guarantee is only for committed information rate (CIR). CIR guarantee applies only when VPN service does not by design limit the deliverable CIR (for example, customer orders point to multi-point VPN with the CIR of hub site being less than summation of the CIR's of all of the remote sites).
- b) Service Continuity – If service is fully protected including but not limited to fiber, route, and equipment protection ("Protected Service"); then, in the event of protected facility failure, service will switch to an alternate facility in 50 ms or less. Services which are not Protected Service are "Unprotected Services".

E. The performance objectives for Standard Dedicated Internet Access (DIA) Premium Services are as follows (Protected Service and Unprotected Service are as defined below):

Service provides customers with 10, 100, 1000, or 10G transport service of 10-Mbps or fractional rates of 100-Mbps or 1000-Mbps, of Dedicated Internet Access, and electrical or optical port interfaces (optical interfaces could be either SMF or MMF).

- i) Availability $\geq 99.99\%$ (Unprotected Service) / $\geq 99.995\%$ (Protected Service)

The service provides customers with physical interfaces at the 10/100/1000 Mbps or 10 Gbps level via various available networks and technologies depending on implementation and depending on the geographical coverage needed, multiple technologies may be implemented.

Performance Objectives:

- a) Guaranteed bandwidths specified (10/100/1000/10G or fraction thereof). Note that guarantee is only for committed information rate (CIR) and only applies to FN's network.
- b) Service Continuity – If service is fully protected including but not limited to fiber, route, and equipment protection ("Protected Service"); then, in the event of protected facility failure, service will switch to an alternate facility in 50 ms or less. Services which are not Protected Service are "Unprotected Services".

F. The performance objectives for Standard Dedicated Internet Access (DIA) Essential Services are as follows (Protected Service and Unprotected Service are as defined below):

- i) Availability $\geq 99.5\%$ (Unprotected Service)

Service provides customers with 10, 100 transport service of 10-Mbps or fractional rates of 10-Mbps up to 100 Mbps, of Dedicated Internet Access, and electrical or optical port interfaces (optical interfaces could be either SMF or MMF).

The service provides customers with physical interfaces at the 10/100/1000 Mbps via various available networks and technologies depending on implementation and depending on the geographical coverage needed, multiple technologies may be implemented.

Performance Objectives:

- a) Bandwidth as specified (10/100 or fraction thereof) is considered best-effort.

Selected Optional Features (additional fees may apply)

- Protection; fiber and route diversity for local fiber infrastructure (Ethernet/ IP VPN & DIA Premium)
- Jumbo Frame; MTU set to 9000 bytes (available only with 1000Mbps ports for Ethernet VPN)
- VLAN Service; additional service through same physical port (for Ethernet VPN)
- Additional 100 or 1000Mbps Lag Port (requires protection value added feature for Ethernet/ IP VPN & DIA Premium))
- Quality of Service; ability to prioritize traffic (for Ethernet/ IP VPN)

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- Bursting; allows for traffic in excess of CIR up to physical port speed (best efforts for Ethernet/ IP VPN & DIA Premium)
- Multicasting; allow for multicasting up to CIR (for Ethernet/ IP VPN)
- Inter Metro; allow for VPN service across multiple Provider Ethernet Metros (for Ethernet/ IP VPN)

G. The performance objectives for Standard Ethernet VPN over Copper and Standard Dedicated Internet Access (DIA) Services over Copper are as follows (Unprotected Service):

- Latency (Ethernet VPN only) (RTD) $\leq 10\text{ms}$ per Copper tail added to latency specification SLA for Standard Ethernet VPN and Standard Dedicated Internet Access
- Availability $\geq 99.9\%$ (Unprotected Service)
- Packet Delivery (Ethernet VPN only) $\geq 99.9\%$ (Unprotected Service)

Service provides customers with 3, 5, and 10Mbps transport services, Ethernet Point to Point, Multipoint (VPN only), Dedicated Internet Access with electrical port interfaces

As Customer's sole remedy for any Service Outage identified above for the portion of the Service provided on FN's network (On-Net Service), Customer will receive credit as follows for each On-Net Service Outage (i.e., a complete disruption of a Service or a degradation of Service below the Technical Specifications) equal to 1/1440 of the MRCs applicable to that portion of the Service which is subject to the On-Net Service Outage for each one-half (1/2) hour or major fraction thereof that an On-Net Service Outage continues beyond thirty (30) minutes. If FN receives an outage credit from a third party carrier for a portion of the Service which is not provided on FN's network (Off-Net Service) FN shall credit Customer's account with an equitably allocated portion of that credit.

Managed Security Services

Severity Level Response Time and Resource Commitment. Provider agrees to use commercially reasonable efforts to respond to Customer requests based on the Severity of the Issue as follows:

Severity 1:

- an error with a direct security impact on the product;
- an error isolated to managed security software or hardware; renders the product inoperative or causes the product to fail catastrophically; e.g., critical system impact, or system down;
- a reported defect in the managed security software or hardware which cannot be reasonably circumvented, or an emergency condition exists that significantly restricts the use thereof to perform necessary business functions; or
- inability to use the managed security software or hardware or a critical impact on operation requiring an immediate solution.

Severity 2:

- an error isolated to managed security software or hardware that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, temporary system hanging;
- a reported defect in the managed security software or hardware, which restricts the use of one or more features to perform necessary business functions but does not completely restrict use thereof; or
- ability to use the managed security software or hardware, but an important function is not available, and operations are severely impacted.

Severity 3:

- an error isolated to the managed security software or hardware that causes only a moderate impact on the use of the product; e.g., moderate system impact, performance/operational impact;
- a reported defect in the managed security software or hardware that restricts the use of one or more features to perform necessary business functions; while the defect can be easily circumvented; or
- an error that can cause some functional restrictions but does not have a critical or severe impact on operations.

Severity Level	Response	Commitment
Severity 1	1 Hour	Provider and Customer will commit the necessary resources around the clock for problem resolution.
Severity 2	2 Hours	Provider and Customer will commit full-time resources during normal business hours and alternative resources outside of normal business hours to (1) reduce the error severity, and then (2) effect resolution of the problem.
Severity 3	4 Hours	Provider and Customer will commit full-time resources during normal business hours only to (1) reduce the error severity and then (2) effect resolution of the problem.

Note: Provider does not guarantee the complete resolution of a problem within the times specified.

The response times set forth in this SLA for Managed Security Products constitutes targeted goals of the technical support to be provided by or on behalf of Provider to Customer, and it is understood that Provider shall use commercially reasonable efforts to respond to Customer requests within the target times set for the relevant Severity level. The parties acknowledge the potentially idiosyncratic nature of any issue, and agree that any sporadic failure to meet targeted times shall not constitute a breach of Provider's support obligations under this Agreement.

DDoS Mitigation Services

1. Goals. The following service level goals apply to DDoS Mitigation Services. Customer will be eligible to receive a credit from Provider subject to the terms, conditions, exclusions and restrictions described below.

2. Description of Service.

- Notification--when the DDoS Mitigation Service detects an anomaly that is symptomatic of a DDoS attack due to triggered thresholds or indicators of protocol misuse, it generates an alert to Provider's NOC. Provider will investigate such anomaly and, when a DDoS attack is indicated, Provider will contact Customer to validate whether a DDoS attack is occurring or Customer's usage is causing the anomaly.

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- b) Mitigation--if Customer confirms that a DDoS attack is occurring, Provider will route Customer's inbound traffic to its DDoS Scrubbing platform and begin applying countermeasures in an effort to minimize the effects of the DDoS attack. The DDoS Mitigation Service and associated countermeasures are configured to reduce disruption of Customer's legitimate traffic.
- c) Provider will review the mitigation countermeasures 24 hours after initial implementation and will remove if Provider determines the DDoS attack has ended. At such time, Provider will redirect Customer's inbound traffic to its normal path and notify Customer that all implemented countermeasures have been removed.
- d) If a DDoS attack is impacting, or may impact, Provider's network, Provider may take any action, including but not limited to blackhole filtering Customer's traffic, which filtering would result in all traffic destined to Customer being dropped.

3. Remedies.

- a) Time to Notify--The Time to Notify goal is measured from the time a DDoS attack is detected at Provider's NOC to when Provider first attempts to contact Customer to notify of the potential existence of a DDoS attack.
- b) Time to Mitigate--If Customer has provided all necessary information to allow Provider to initiate mitigation countermeasures, the Time to Mitigate goal is measured from the time Customer approval is received by Provider to the time actual mitigation countermeasures are commenced. "Customer approval" shall mean the time Provider receives verbal permission from Customer to initiate mitigation countermeasures.
- c) To be eligible for service credits, Customer must be in good standing with Provider and current in its obligations. To receive service credits, Customer must request a credit and submit the relevant trouble ticket information within five (5) calendar days following the date the Service Outage ended. Credits shall be issued by Provider based on the following schedule:

Description	Goal	Credit (applied as percentage of MRC for DDoS Mitigation Service)	
Time to Notify	30 minutes from initial detection of DDoS attack at Provider NOC	31-60 minutes = 5%	More than 60 minutes = 10%
Time to Mitigate	30 minutes from Customer's verbal permission	31-60 minutes = 5%	More than 60 minutes = 10%

4. Application of Service Credits. Service credits will only apply to the monthly recurring fees Customer is responsible for paying for DDoS Mitigation Services, and shall not apply to any other services provided to Customer by Provider. A credit will be applied only to the month in which the event giving rise to the credit occurred. The maximum service credits issued in any one calendar month shall not exceed 100% of the MRC for the DDoS Mitigation Service. If Customer fails to notify Provider in the manner set forth herein with respect to the applicable service credits, Customer shall be deemed to have waived its right to any such credits for that month.

4. Limitations. This SLA will not apply, and Customer will not be entitled to receive a credit under this SLA, for any event that adversely impacts the DDoS Mitigation Service that is caused by:

- a) the acts or omissions of Customer, its employees, contractors, agents or its end users;
- b) the failure or malfunction of equipment, applications, or systems not owned or controlled by Provider;
- c) Force Majeure Events;
- d) scheduled service maintenance, alteration, or implementation;
- e) the unavailability of required Customer personnel, including as a result of Customer's failure to provide Provider with accurate, current contact information ;
- f) Provider's lack of access to the Customer premises where reasonably required to restore the Service; or
- g) Improper or inaccurate network specifications provided by Customer.