Purchase Order Requisition

Purchasing Department use: **P.O. Number** 1513 **Date** June 5, 2019

Name and Address of Vendor/Contractor:
TierPoint, LLC
12444 Powerscourt Dr., STE450
St. Louis, MO 63131

Mail Invoice to:
Procurement Manager
215 Market Street, Suite 300
Jacksonville, FL 32202

Description of Supplies and/or Services Purchased: Information Technology
Monthly charge for the Data Center Colocation (COLO) Provider, to include 4 full cabinets, 4 20A/208V Primary and Secondary, 100 Internet (Blended), 256 Dedicated IP Subnet, 2 Interfacility CAT 5 Cross Connect, 4 Private Offices, and 1 card reader, from July 1, 2019-June 30, 2020.

Quantity	*Product Description (Be specific, Catalog number, etc.)*	*Unit Price*	*Total Cost*
12 Months	Monthly charge for Data Center Colocation (COLO) Provider for Information Technology WAN and WAN supporting cost.	$7,253.60	$87,043.20
12 Month	Monthly charge for Data Center Colocation (COLO) Provider Call Center	$750.00	$ 9,000.00

THIS SECTION MUST BE FILLED IN!

- ☐ STATE CONTRACT #_____
- ☒ QUOTES (Attached) (ITN 16-17 #1, attached)
- ☐ SOLE SOURCE (*Attach justification for sole source)*
- ☒ BLANKET PURCHASE ORDER
  July 1, 2019-June 30, 2020
- ☐ MICRO PURCHASE and the cost is considered reasonable.

Subtotal $96,043.20
Shipping _____
Other _____
Total Cost $96,043.20

Purchasing Department Use: Element	Project	Transaction Code	Amount	Element	Project	Transaction Code	Amount

VENDOR JUSTIFICATION: ITN 16-17 #1 was awarded to TierPoint, LLC for the Data Center Colocation (COLO) Provider for period of November 1, 2016 through June 30, 2017 with an annual option to renew for three years. TierPoint, LLC was chosen as they most closely meet the needs of the organization.

Requestor: Michael Lashbrook Date 6/12/2019
Procurer: Katherine Sineath Katherine N Sineath Date June 12, 2019
President Bruce Ferguson, Jr. B Ferguson Jr Date 6/13/19

Katherine Sineath

From: Michael Lashbrook
Sent: Tuesday, June 12, 2018 9:11 PM
To: Katherine Sineath
Subject: Re: Purchase Order Requisition-Tierpoint, LLC-COLO-Yearly
Attachments: Purchase Order Requisition-Tierpoint, LLC-COLO-Yearly-2018.pdf

Here is the monthly breakdown of the $7,253.60:

Secure Cage Area – $1,600.00
Power Primary (A) - $1,668.00
Power Secondary (B) - $834.00
Internet Dual Ethernet - $700.00
Dedicated IP Subnet - $89.60
Intrafacility Connect - $112.00
IT Facility DR Space - $2,250.00

From: Katherine Sineath <KSineath@careersourcenefl.com>
Date: Thursday, May 24, 2018 at 3:24 PM
To: Michael Lashbrook <MLashbrook@careersourcenefl.com>
Subject: Purchase Order Requisition-Tierpoint, LLC-COLO-Yearly

Mike,

Attached is the proposed PO for TierPoint for the 2018-2019 year.

Please advise how we came up with the monthly charge of $7,253.60.

Review, sign and scan back to me.

Thank you,

Katherine Sineath
CareerSource Northeast Florida
Procurement Manager
215 N. Market Street, Suite 300
Jacksonville, FL 32202
(904) 798-0060, extension 2188
Fax (904) 359-6756
www.careersourcenortheastflorida.com
Follow our blog: @work

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SALES ORDER

Sales Order TierPoint Document #:	
MSA TierPoint Document #:	
Customer:	First Coast Workforce Development, Inc.
Customer Billing Address:	1845 Town Center Blvd. Suite 250 Fleming Island,FL 32003
Contact Billing Contact Name:	Mike Lashbrook
Customer Phone:	(904) 545-8276
Customer Billing Email Address:	mlashbrook@careersourcenefl.com
TierPoint Account Representative:	Scott Wagner
TierPoint Services Location (Premises):	Jacksonville, FL
Term:	New Initial Term: __19__ Months

This Sales Order, together with the Master Service Agreement ("MSA") and the Schedule(s) between TierPoint and Customer dated _____, 20__, as selected below, form the entire agreement between the Customer and TierPoint with respect to the Services listed below. The MSA including the Schedule(s) selected below are hereby incorporated by reference into and made part of this Sales Order.

Applicable Schedule(s) selected below:

_X___ Schedule A – Colocation Services
_X___ Schedule B – Internet Bandwidth and Data Communication Cross Connections
_____ Schedule C – Cloud Services
_____ Schedule D – Disaster Recovery and Replication Services
_____ Schedule E – Managed Services
_X___ Schedule F – Workspace Continuity Services
_____ Schedule G – Third Party Software Services
_____ Schedule H – Clean IP Services

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
4	JAC-COLO-FCAB-SC	Dedicated Colocation Full Cabinet- Secure Cage	$400.00	$1,600.00
	Dedicated Colocation Full Cabinet- Secure Cage			
4	JAC-COLO-20A-208V-A	208V 20 AMP Primary (A) Power circuit	$417.00	$1,668.00
4	JAC-COLO-20A-208V-B	208V 20 AMP Secondary (B) Power circuit	$208.50	$834.00
100	JAC-PORT-DIA-MBPS	Internet Access Bandwidth (Mbps) - Dual Ethernet Connection Bundle	$7.00	$700.00
1000	JAC-PORT-Burst-1.0M	Burstable Internet Access Bandwidth billed at 95th percentile in 1 Mbps increments	$0.00	$0.00
	Burst rate is 1.5x contracted rate per Mbps			
256	JAC-IP ADDRESSES	Dedicated IP Subnet	$0.35	$89.60
2	JAC-Cat5-XCON	Intrafacility Cat 5 Copper Cross Connect	$56.00	$112.00
4	JAC-COLO-OFFICE	Private Office	$750.00	$3,000.00

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1	JAC-COLO-ERDR	Card Reader (Electronic Access)	$0.00	$0.00	
1	JAC-SETUP	One Time Setup Fees	$0.00	$0.00	$9,921.00

MRC Total: $8,003.60 MD.

NRC Total: $9,921.00

Notes: In addition to employee vehicles, TierPoint will provide secure parking spaces for 6 CareerSource vans.

MRC - Monthly Recurring Charges

**NRC - Non-recurring Charges*

IF CUSTOMER INTENDS NOT TO RENEW OR TO TERMINATE THIS SALES ORDER, AS PERMITTED BY THE MSA, CUSTOMER MUST PROVIDE NOTICE FROM AN AUTHORIZED REPRESENTATIVE OF CUSTOMER OF SUCH NONRENEWAL OR TERMINATION VIA AN EMAIL TO TIERPOINT ADDRESSED TO *ContractAdmin@tierpoint.com*. CUSTOMER SHALL NOT BE DEEMED TO HAVE PROVIDED AN EFFECTIVE NOTICE OF NONRENEWAL OR TERMINATION IF TIERPOINT DOES NOT RECEIVE SUCH NOTICE AT THIS EMAIL ADDRESS AND IN ACCORDANCE WITH THE TERMS OF THE MSA.

The undersigned parties have caused this Sales Order to be executed by their duly authorized representatives.

TierPoint, LLC

Signature: [signature]

Name: Robert Lupo

Title: GM, VP

Date: 10-28-16

First Coast Workforce Development, Inc.

Signature: Bruce Ferguson

Name: Bruce Ferguson

Title: President

Date: 10/28/2016

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TierPoint Document #:_____

MASTER SERVICES AGREEMENT

This Master Services Agreement ("MSA") is made and entered into as of the latest of the Signature Dates below ("MSA Effective Date"), by and between TierPoint, LLC, on behalf of its subsidiaries, ("TierPoint"), and First Coast Workforce Development, Inc. ("Customer") (each a "Party" and collectively the "Parties").

This MSA is comprised of this cover page ("Cover Page") and the Terms and Conditions for the Provision of Services ("Terms"). The terms and conditions contained in this MSA apply to each Sales Order (each an "Order") and the applicable Schedule(s) as specified in such Order and executed by the Parties (each a "Schedule") on and after the MSA Effective Date. Each Schedule entered into by the Parties provides further terms and conditions under which the services specified in an Order are to be performed. Each Schedule entered into by the Parties is hereby incorporated into this MSA, and this MSA is hereby incorporated into each executed Order provided that the terms of a Schedule will only apply to those Orders that expressly indicate that such Schedule is applicable to that Order.

This MSA does not grant any rights to Customer with respect to any TierPoint facility or service separate and apart from a fully executed Order and the applicable, fully executed Schedule(s). This MSA does not obligate either Party to enter into an Order or a Schedule with respect to any TierPoint facility or service.

The Parties, intending to be legally bound hereunder, have caused this MSA to be executed by their duly authorized and empowered officers or representatives as of the Signature Date set forth below.

Customer: First Coast Workforce Development, Inc.	TierPoint, LLC
Signature: DocuSigned by: Bruce Ferguson F8C2DAA2D70B47C...	Signature:
Name: Bruce Ferguson	Name: Robert Lyle
Title: President	Title: GM, VP
Signature Date: 10/28/2016	Signature Date: 10-28-16
Address for Notice Purposes: 1845 Town Center Blvd., Suite 250 Fleming Island, FL 32003 Email: mlashbrook@careersourcenefl.com	Address for Notice Purposes: TierPoint, LLC 8324 Baymeadows Way Jacksonville, FL 32256 Email: Rachel.marshall@tierpoint.com **Legal Notices:** **Legal Notices:** **TierPoint, LLC** **12444 Powerscourt Drive** **Suite 450** **St. Louis, MO 63131** **Attn: Legal Department** **Email: cameron.walbert@tierpoint.com**

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TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

These Terms are incorporated into and form an integral part of the MSA by and between TierPoint and First Coast Workforce Development, Inc. Capitalized terms used but not defined in these Terms shall have the meanings set forth on the Cover Page.

1. TIERPOINT SERVICES. TierPoint will provide Customer the services described in the applicable Schedule(s) and specified in each Order ("Services"). Each Order will specify the TierPoint Services Location ("Premises"), which is the location at which the Services will be provided to Customer. Customer shall comply with all applicable laws, rules and regulations relating to Customer's receipt or use of the Services. Unless otherwise set forth in these Terms or in an Order, Customer is solely responsible for all costs and expenses to provide all equipment, hardware, cabling and software required to access or receive the Services.

2. LICENSE GRANT AND ACCESS.

2.1 License Grant and Acceptable Use Policy. TierPoint grants Customer a nonexclusive, revocable, and non-transferable right and license to use the Services set forth in an Order during an Order Term (defined in Section 5.1). In its use of the Services, Customer shall adhere to TierPoint's then-current Acceptable Use Policy ("AUP") and all subsequent versions, incorporated by this reference and set forth at http://www.tierpoint.com.

2.2 Limitations. Customer may only access and use the Services in accordance with the terms of this MSA and the applicable Schedule(s). Customer shall not (a) circumvent, copy, modify, decompile, reverse engineer or disassemble TierPoint's proprietary technology used in connection with Services ("TierPoint Technology"), (b) rent, lease, sublease, license, timeshare or rebrand the TierPoint Technology or Services, or (c) disclose or publish performance benchmark results or test results to non-affiliated third parties with respect to the Services without TierPoint's prior written consent in each instance. Customer employees, agents, and contractors will abide by the applicable Premises rules and guidelines while at the Premises.

2.3 Third-Party Software As Part of Services. As part of the Services and/or as described in a Schedule or an Order, Customer may be allowed to use certain software and related documentation developed and owned by TierPoint's third-party software licensors. This software is neither sold nor distributed to Customer, and Customer may use it solely as part of the Services and for no other purpose. Customer may not transfer such third-party software outside the Services or to any other person or entity. Except as otherwise provided for in a Schedule or an Order, TierPoint's third-party software licensors are not responsible for providing any support in connection with the Services or the third-party software. Customer's use of any such third-party software is governed by the third party software licensor's terms, copies of which are available at Customer's request. Customer covenants to comply with the terms of such licenses during an Order Term (as defined in Section 5) as if it were the licensee.

2.4 Access to Premises by Customer. Only those individuals designated by Customer to TierPoint as persons with authorized access to the Premises (each such individual being an "Authorized Contact") will be authorized to enter the Premises. Customer will have the sole responsibility for maintaining the accuracy of the Authorized Contact list and communicating any changes to the Authorized Contact list to TierPoint. TierPoint may refuse access to the Premises to any person not designated as an Authorized Contact or to any Authorized Contact who violates any rules or regulations of TierPoint or, in TierPoint's sole opinion, behaves inappropriately or creates a hazard of any kind. Customer will not provide access to any person not designated as an Authorized Contact or to any previously designated Authorized Contact who is subsequently refused by TierPoint, unless agreed to by TierPoint. All Authorized Contacts will be required to present photo identification at TierPoint's front entrance before entering the Premises. Authorized Contacts will remain on the Premises only so long as necessary.

3. FEES AND PAYMENT.

3.1 Fees.

(a) Recurring and Nonrecurring Charges. For each Order, Customer shall pay all monthly recurring charges (each a "MRC") and nonrecurring charges (each a "NRC") set forth in such Order (collectively, "Fees") in U.S. dollars to the address or in the manner designated on an invoice from TierPoint within thirty (30) days following TierPoint's invoice date. If an Order Term (defined in Section 5.1) is one (1) month or less, Customer shall pay all Fees upon receipt of invoice. Notwithstanding the foregoing, the amount of the MRC relating to electricity and/or power ("Power Fee"), if any and if applicable, shall be subject to potential increase by TierPoint upon written notice to Customer if the applicable utility provider has increased the prices paid by TierPoint for such electricity and/or power, and any such increase shall be proportionate to the increase imposed upon TierPoint by the applicable utility provider.

(b) Late Payment. All payment obligations are non-cancellable, non-refundable non-contingent and without rights of setoff. Payments of Fees not received when due will be subject to a late fee equal to five percent (5%) of such outstanding amount, and all such unpaid Fees will bear interest from the due date at the lesser of one and one half percent (1½%) per month or the maximum rate allowed by applicable law. If Customer does not timely pay any Fees, any applicable Service Level Credits (defined in Section 7.1) shall be forfeited, and TierPoint may, in its sole discretion, terminate or suspend any Services pursuant to Sections 5.2 and 5.4, respectively.

TierPoint will continue to charge Customer and Customer will be responsible for charges for Services during any period of suspension. Customer is liable for all costs of collection of delinquent Fees, including, without limitation, reasonable attorneys' fees.

(c) Invoice Disputes. In the event Customer disputes an invoice, Customer shall pay the Fees in such invoice in full by the due date and file a separate dispute with TierPoint. Customer will provide a summary of the dispute together with supporting documentation. Following TierPoint's receipt of a dispute summary and the supporting documentation, TierPoint will investigate and make a final determination on the dispute using TierPoint's reasonable discretion. For any sums found to be owed to Customer, TierPoint will issue Customer a credit on the next succeeding invoice. Customer waives any billing dispute not made in writing with supporting documentation within thirty (30) days from the date of Customer's receipt of the applicable TierPoint invoice.

(d) Smart-Hands Services. If specified in an Order, TierPoint's technical staff will provide Customer with technical labor services on a monthly basis for the number of hours and at the hourly rate described in an Order ("Smart-Hands Services"). Smart-Hands Services time must be used within the calendar month of issue, and any Smart-Hands Services time not used within such calendar month shall be forfeited. Customer will be invoiced for Smart-Hands Services provided beyond the hours per month specified in the applicable Order, including in cases of an emergency in which Customer requests Smart-Hands Services not provided for in an Order, in fifteen (15) minute increments at TierPoint's current rate of $150.00 per hour which is subject to change upon written notification from TierPoint. Smart-Hands Services are subject to all of the terms of this MSA, and Customer is not eligible to receive any Service Level Credits related to TierPoint's provision of Smart-Hands Services.

3.2 Billing Commencement Date. Unless otherwise specified in an Order, billing for Services specified in an Order commences on the first date TierPoint delivers the Services ("Service Commencement Date"). Customer will be deemed to have accepted all Services upon delivery.

3.3 Credit Approval and Security Deposits. Customer agrees to provide TierPoint with reasonable credit information as requested, and delivery of Services may be subject to credit approval. If Customer fails to pay any Fees when due, TierPoint shall have the right to require Customer to make one or more security deposits as a condition of TierPoint's continuation of Services. Said security deposit(s) will be held by TierPoint as security for payment of future Fees and may be used by TierPoint to pay any unpaid Fees. No interest shall be earned on security deposits. At such time as the provision of Services to Customer is terminated, the amount of the security deposit will be credited to Customer's account and any excess credit balance will be refunded.

3.4 Taxes and Duties. Excluding taxes based on TierPoint's net income, Customer is liable for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties and customs fees relating to Customer's receipt or use of the Services, whether or not TierPoint invoices Customer for such amounts.

4. INTELLECTUAL PROPERTY RIGHTS.

4.1 Reservation of Rights. As between the Parties, TierPoint (or its licensors) retains title to the Services and the TierPoint Technology, including all modifications, alterations, derivative works and enhancements and all intellectual property rights contained therein. Customer may not copy any ideas, features, functions or graphics of the Services or TierPoint Technology or modify or make derivative works based upon the Services. TierPoint grants Customer no license, right or intellectual property right in any TierPoint trademark, trade name or service mark.

4.2 Customer Content. As between the Parties, Customer owns all data, imagery, information and other content ("Customer Content") transmitted by or on behalf of Customer in connection with the Services, and Customer has sole responsibility for Customer Content and its intellectual property ownership and right to use. Customer grants to TierPoint the non-exclusive right and license to receive, retrieve, process, and transmit any Customer Content necessary to perform the Services.

5. TERM AND TERMINATION.

5.1 Term. This MSA shall be effective as of the MSA Effective Date and shall remain in effect until ninety (90) days following the termination or expiration of all Order Terms (as defined below). This MSA shall terminate automatically ninety (90) days after the MSA Effective Date if no Orders are entered into by the Parties during that time period. The term for each Order commences on the Service Commencement Date of the applicable Order and continues for the length of time stated in such Order ("Initial Term"); provided that some Services may be provided on an hourly basis, as more fully described in Section 3 . Orders whose Initial Term is for one (1) year or longer shall automatically renew for additional periods of one (1) year, and Orders whose Initial Term is for less than one (1) year shall automatically renew for the same period of time as the Initial Term stated in the Order (each renewal a "Renewal Term", and, collectively, the Initial Term and any Renewal Term(s) shall comprise an "Order Term"). Notwithstanding the foregoing, either party may cancel the renewal of an Initial Term or a Renewal Term by notifying the other party at least sixty (60) days prior to the expiration of the Initial Term or then-current Renewal Term.

5.2 Termination for Cause. TierPoint may terminate any or all Orders:

(i) upon Customer's failure to pay any Fees when due if Customer fails to pay such Fees within ten (10) days of Customer's receipt of notice of such failure to pay from TierPoint;
(ii) upon Customer's failure to pay any Fees when due or in full two (2) times or more in any twelve (12) month period;
(iii) for breach of a material provision of this MSA, a Schedule or an Order if Customer fails to cure such breach within ten (10) days of Customer's receipt of notice of such breach from TierPoint;
(iv) if TierPoint is unable to provide Service(s) hereunder due to Customer's acts or omissions;

(v) as to any applicable Service(s), upon any regulatory or governmental order requiring TierPoint to suspend such Service(s) or which is reasonably likely to result in the loss of TierPoint's operating authority, upon reasonable notice to Customer; or
(vi) if Customer, or a third party through Customer, violates any provision of the AUP.

5.3 Termination Charge. In addition to all of its other obligations under this MSA, in the event either Party elects not to renew an Order pursuant to Section 5.1, an Order is terminated by TierPoint pursuant to 5.2, or an Order is terminated by Customer for any reason, in all three of those instances, Customer shall owe TierPoint a termination charge ("Termination Charge") of an amount equal to, as of the effective date of termination, 100% of all remaining MRCs that would have been incurred and payable to TierPoint by Customer for the remainder of the Initial Term or the then-current Renewal Term of each such Order, as applicable.

CUSTOMER ACKNOWLEDGES THAT THE TERMINATION CHARGE SET FORTH IN THIS SECTION 5.3 IS A REASONABLE ESTIMATE OF DAMAGES TO BE SUFFERED BY TIERPOINT AS A RESULT OF THE TERMINATION OF AN ORDER, WHICH AMOUNTS ARE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THAT SUCH TERMINATION CHARGE IS NOT INTENDED AS A PENALTY BUT AS LIQUIDATED DAMAGES.

5.4 Suspension of Services. TierPoint may, in its sole discretion, suspend Customer's access to a Premises and/or the provision of any Services immediately in the event (a) Customer fails to timely pay any Fees when due; (b) Customer or a third party through Customer, violates the AUP or any other policies or rules of TierPoint; (c) Customer has materially defaulted under any other term of this MSA, a Schedule or an Order and failed to cure such default within five (5) calendar days after Customer's receipt of written notice of such default from TierPoint; or (d) TierPoint reasonably believes that any element of the Services, or Customer's receipt or use of the Services, violates any applicable law, rule or regulation.

5.5 Notice to TierPoint of Nonrenewal or Termination. If Customer intends not to renew or to terminate an Order, as permitted by this MSA, Customer must provide notice from an authorized representative of Customer of such nonrenewal or termination via an email to TierPoint addressed to ContractAdmin@tierpoint.com. Customer shall not be deemed to have provided an effective notice of nonrenewal or termination if TierPoint does not receive such notice at this email address and in accordance with the terms of this MSA.

5.6 Effect of Termination or Nonrenewal. Upon termination or nonrenewal of an Order, Customer shall immediately pay to TierPoint: (a) all third party charges incurred by TierPoint arising from such termination or nonrenewal; (b) all unpaid Fees through the effective date of termination or nonrenewal; and (c) if applicable, the Termination Charge. Customer agrees to pay all amounts owing pursuant to this Section 5.6 on or before the termination date. If requested by Customer within thirty (30) days from the effective date of termination of an Order or expiration of the Order Term, TierPoint will make available to Customer a file of the Customer Content in its possession, if any. Rights and obligations that, by their nature, continue after the termination or expiration of an Order and this MSA including, but not limited to, Sections 3.1, 3.4, 4, 5.3, 5.6, 6, 7.3, 8, 9 and 10 shall survive and continue after the termination or expiration of an Order or this MSA, and shall bind the parties, their successors, heirs and permitted assigns.

5.7 Removal of Equipment and Property. If Customer has equipment or property at the Premises at the end of an Order Term, Customer will remove all such equipment and property at the Premises within ten (10) days of the last day of the Order Term, provided that all Fees have been paid in full. If Customer does not remove such equipment or property or cannot remove such equipment or property because of unpaid Fees within such ten (10) day period, TierPoint may move any and all such equipment or property to storage and charge Customer for the cost of such removal and storage, without any cost, obligation or liability of TierPoint to Customer. If Customer does not pay all Fees due to TierPoint and remove such property from the Premises or storage facility within thirty (30) days of last day of an Order Term, TierPoint may liquidate and sell the equipment or property in any reasonable manner and apply any proceeds against unpaid Fees without any obligation or liability to Customer.

6. CONFIDENTIALITY, PUBLICITY AND NONSOLICITATION.

6.1 Confidentiality. Each Party agrees that all information furnished to it by the other Party, including maps, layouts, pricing, financial terms, business plans or models, network routes, design information, methodologies, specifications, locations or other information to which it has access, are deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the disclosing Party and will remain the property of the disclosing Party. Each Party will take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Proprietary Information of the disclosing Party and shall use at least the same degree of care the receiving Party employs with respect to its own Proprietary Information, but in no event less than a reasonable standard of care. Neither Party will directly or indirectly, without the prior written consent of the disclosing Party, disclose the disclosing Party's Proprietary Information or terms of an Order, this MSA or any Schedule(s) to anyone other than: (a) the receiving Party's officers, directors, affiliates, subsidiaries, shareholders, financing sources, attorneys, and employees on a need to know basis and who agree to be bound by confidentiality terms at least as restrictive as those contained in this Section 6.1; or (b) as required by governmental law, rule, or regulation including judicial proceedings. Information will not be deemed Proprietary Information if it: (i) becomes publicly available other than through the actions of the receiving Party in breach of this Section 6.1; (ii) is independently developed by the receiving Party without reference to the Proprietary Information of the disclosing Party; or (iii) becomes available to the receiving Party without restriction from a third party. If the receiving Party is required by a governmental or judicial law, order, rule, regulation, or permit to disclose Proprietary Information of the disclosing Party or the terms of an Order, this MSA or any Schedule(s), then the receiving Party will give prompt written notice to the disclosing Party of the requirements of such disclosure and cooperate fully with the disclosing Party to minimize such disclosure.

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6.2 Duration. The obligations in this Section 6 shall remain in effect for two (2) years following the termination or expiration of this MSA, except that obligations with respect to Proprietary Information that consist of trade secrets shall continue so long as such information constitutes a trade secret under applicable law or two (2) years from the termination or expiration of this MSA, whichever is longer. If Customer has entered into a separate nondisclosure agreement with TierPoint, the terms and conditions of this Section 6 will govern and control all matters relating to confidentiality in the event of a conflict between such separate nondisclosure agreement and the terms and conditions of this Section 6.

6.3 Publicity. While this MSA is in effect, Customer grants TierPoint the right to use Customer's logo and name on TierPoint's website and promotional materials. Customer shall have the right to require TierPoint to terminate any such uses at any time by written notice to TierPoint.

6.4 Non-solicitation. While this MSA is in effect and for a period of one (1) year thereafter, Customer will not solicit or hire for employment any employee, contractor or consultant of TierPoint that Customer has met or had contact with in connection with this MSA, the business relationship between TierPoint and Customer, or the Services provided to Customer by TierPoint, if any.

7. SERVICE LEVEL MATTERS.

7.1. Service Levels and Service Level Credits. TierPoint will use commercially reasonable efforts to perform the Services in an Order in accordance with the service level objectives ("Service Level Objectives") set forth in the Section designated as the Service Level Agreement section ("SLA") in the applicable Schedules with respect to such Order. Subject to the terms of the MSA, in the event TierPoint does not meet a Service Level Objective as applicable to an Order during the period specified in the SLA, as Customer's sole and exclusive remedy and TierPoint's sole liability for not meeting a Service Level Objective under the Order, Customer will be entitled to a credit, if applicable, as set forth in the SLA of the applicable Schedule ("Service Level Credit") for such Order (and no other Orders). Customer will forfeit any unused Service Level Credits that may exist as of the termination or expiration of the applicable Order Term.

7.2 Service Level Policies. TierPoint will process Service Level Credits as set forth in the SLA. If an event has occurred that qualifies for a Service Level Credit, Customer must open a ticket with TierPoint's network operations center providing the details pertaining to the event within thirty (30) days of the occurrence. Otherwise, Customer acknowledges that it forfeits any right to claim that a Service Level Credit is due. For the purpose of calculating whether a Service Level Credit may be due and/or the duration of a service level event, and unless otherwise set forth in the applicable Schedule, TierPoint will calculate time periods beginning from the earlier of (a) the time stamp of the alert in TierPoint's monitoring systems; or (b) the time stamp of the Customer-submitted ticket, and in each instance continuing until TierPoint has resolved the event. Unless otherwise noted, the performance objective will be based on a full calendar month of the applicable Service in which a SLA event occurs and shall be prorated accordingly for partial months in which Customer receives Services. The maximum Service Level Credits that may be earned for any calendar month shall not exceed one-hundred percent (100%) of the portion of the MRC of the affected Services stated in the applicable Order regardless of the number of service level events that occur in such month. Any amounts that would be credits in excess of such one-hundred percent (100%) amount will be forfeited and shall not be carried over to future months. Service Level Objectives and Service Level Credits apply only to Customer and not to any customers of Customer or to any other third party.

7.3 SLA Exclusions. Customer is not entitled to any Service Level Credit if Customer (a) has not paid all Fees due under all Orders, (b) is in breach of the MSA, the applicable Schedule(s), or the AUP, or (c) as provided in this Section 7.3. Further, TierPoint shall have no responsibility or liability to provide the Services in accordance with any applicable Service Level Objective or to provide any Service Level Credit under any Order if the failure to so provide the Services in accordance with the Service Level Objective is due, in whole or in part, to any of the following:

(a) Maintenance.

(i) TierPoint Internal Maintenance. Scheduled maintenance and repairs, upgrades and modifications to shared infrastructure scheduled for off-peak hours if TierPoint provides notice at least twenty-four (24) hours in advance.

(ii) Customer Maintenance. Repairs, upgrades, or scheduled or Customer-requested service interruptions or modifications to a Service, scheduled in advance or in connection with a previously-agreed upon routine schedule.

(b) Extraordinary Events. Service interruption resulting from denial of service attack, virus attacks or hacking attempts.

(c) Service Commencement Date. Events occurring before a Service Commencement Date.

(d) Other Exclusions.

(i) False Failures. Erroneously reported outage or issue, failures reported as a result of outages or errors of a TierPoint measurement system, or failures resulting from Service monitoring or testing performed to simulate a failure.

(ii) Customer Provided Equipment. Matters caused by or related to Customer provided equipment failure, malfunction or configuration changes.

(iii) Non-Standard Configuration. Matters caused by a Customer-requested non-standard or unsupported configuration.

(iv) External Network Conditions. Matters caused by general network conditions outside the reasonable control of TierPoint.

(v) Non-Impacting Failure. Matters caused by a failure of a Service or feature that does not result in downtime of a guaranteed Service (by way of example only: reporting, dashboard, FTP upload or statistics generation). This includes outages or downtime associated with Customer's designated non-production (staging, testing or development) Service that is unrelated to hardware or network failures.

(vi) Expected Performance. Matters caused by usage patterns or traffic that exceeds the reasonable performance parameters of the affected Services.

(vii) Customer Acts. Matters caused by Customer acts (or acts of others engaged or authorized by Customer), including without limitation, any negligence or willful misconduct.

(viii) Transactional Applications. Matters resulting from the state of transactional applications such as MS SQL, Oracle or Exchange databases.

(ix) Access. Customer has failed to provide TierPoint appropriate access to enable TierPoint to provide the Services.

(x) Schedule. As otherwise provided in an applicable Schedule.

8. DISCLAIMERS AND LIMITATION OF LIABILITY.

8.1 Third Party Products and Services Disclaimer. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CUSTOMER ACKNOWLEDGES AND AGREES THAT TIERPOINT MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ANY THIRD PARTY HARDWARE, SOFTWARE, PRODUCT OR SERVICE INCLUDED WITH THE SERVICES. TIERPOINT ASSIGNS TO CUSTOMER DURING AN ORDER TERM ALL ASSIGNABLE WARRANTIES AND INDEMNITIES GRANTED TO TIERPOINT BY SUCH THIRD PARTIES TO THE EXTENT APPLICABLE TO CUSTOMER'S RECEIPT OR USE OF THE SERVICES IN AN ORDER DURING THE ORDER TERM ONLY. TO THE EXTENT TIERPOINT IS NOT PERMITTED TO ASSIGN ANY SUCH THIRD PARTY WARRANTIES AND INDEMNITIES, TIERPOINT WILL USE COMMERCIALLY REASONABLE EFFORTS TO ENFORCE SUCH PROTECTIONS ON CUSTOMER'S BEHALF TO THE EXTENT IT IS PERMITTED TO DO SO UNDER THE THIRD PARTY AGREEMENTS AND APPLICABLE LAW.

8.2 Services Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, TIERPOINT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SERVICES UNDER ANY ORDER. TIERPOINT EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. TIERPOINT DOES NOT WARRANT THAT THE SERVICES UNDER ANY ORDER ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SERVICES UNDER ANY ORDER WILL BE UNINTERRUPTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO PORTIONS OF THE ABOVE EXCLUSIONS MAY NOT APPLY, BUT ONLY TO THE EXTENT NECESSARY TO BRING THE EXCLUSION INTO COMPLIANCE.

8.3 Limitation of Liability. Neither Party will be liable to the other for any indirect, incidental, special, consequential, exemplary or punitive damages, including, without limitation, loss of use, interruption of business, loss of data, lost profits, lost revenues or the cost of purchasing replacement services, arising out of the performance or failure to perform the Services under an Order or a breach of this MSA, an Order, or a Schedule, regardless of whether such liability is based on breach of contract, tort (including negligence), strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages. TierPoint shall not be liable, in contract, tort or any other theory for: (a) unauthorized nonphysical access, alteration, theft, corruption or destruction of or to Customer's or its customers', end users' or other parties' computer files, databases, network, transmission facilities or equipment; or (b) the content, accuracy or completeness of any Customer Content transmitted through the Services. IN NO EVENT SHALL TIERPOINT'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION FOR DAMAGES, LOSSES, OR COSTS ARISING OUT OF ANY PROVISION OF THIS MSA, A SCHEDULE, OR AN ORDER OR THE SERVICES PROVIDED BY TIERPOINT UNDER ANY ORDER, EXCEED THE FEES PAID BY CUSTOMER TO TIERPOINT UNDER SUCH ORDER IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

9. INDEMNIFICATION AND INSURANCE.

9.1 Indemnification. Customer shall defend, indemnify and hold harmless TierPoint, and its shareholders, affiliates, subsidiaries, officers, directors, employees, agents, contractors and representatives against and from any and all loss, liability, damage and expense, including reasonable attorneys' fees, arising out or in connection with: (a) any action or omission of Customer or Customer's directors, officers, employees, agents, vendors, partners, representatives or contractors under an Order, this MSA or a Schedule (b)

data transmitted, received or stored on or over TierPoint's network by or through Customer; (c) any actual or alleged infringement of a third party's proprietary rights in connection with any information, materials or access to property provided by Customer; (d) the use by an end user of Customer of any Services provided under an Order; (e) the installation, maintenance, or operation of Customer equipment by Customer; (f) Customer's breach or alleged breach of any representation, warranty, or obligation in an Order, this MSA or a Schedule. The provisions of this Section shall survive the termination or expiration of this MSA.

9.2 Insurance. Customer will obtain and maintain: (a) Commercial General Liability insurance coverage with limits of no less than $1,000,000 per occurrence and $2,000,000 annual aggregate providing coverage for premises and operations, products and completed operations, independent contractors, and contractual liability covering obligations under this MSA; (b) "Special Causes of Loss" property insurance or the industry equivalent thereof covering all of Customer's personal property located at each Premises; (c) Workers' Compensation Insurance (coverage A) covering the Workers' Compensation laws applicable in the jurisdiction of each Premises; (d) Employers Liability Insurance (coverage B) in an amount not less than $1,000,000 for each accident, $1,000,000 for policy limit, and $1,000,000 occupational disease; and (e) Umbrella and Excess Liability with limits not less than $5,000,000 covering General, Auto, and Employers Liability. The carriers providing such insurance will have a minimum A.M. Best Rating of A- or better. Upon TierPoint's request, Customer shall provide to TierPoint current certificates of insurance as evidence of the required insurance coverage that show that such policies list TierPoint as an additional named insured, and Customer shall provide at least thirty (30) days written notice to TierPoint in the event that such policy is to be cancelled or materially altered. Customer shall require any contractor, customer or other third party entering a TierPoint facility on Customer's behalf to procure and maintain the same types, amounts and coverage extensions as required of Customer under this Section.

10. MISCELLANEOUS PROVISIONS.

10.1 Governing Law; Venue. All Orders, Schedules, and this MSA will be governed by and construed under the laws of the State of Missouri. Jurisdiction and venue for purposes of any litigation in connection with an Order, this MSA or a Schedule will be in the relevant federal or state court located in St .Louis, Missouri.

10.2 Force Majeure. Except for the Customer's obligation to make payments (unless TierPoint is unable to provide the Services under this Section 10.2) and maintain insurance, neither Party will be liable to the other for any failure or delay in its performance hereunder, due to acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet or other similar acts beyond a Party's reasonable control, provided that the delayed Party: (a) gives the other Party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.

10.3 Assignment. Customer may not assign, transfer, sublease, or sublicense any portion of its rights under an Order, this MSA or a Schedule, or otherwise grant an encumbrance of any of its rights thereunder (except as expressly provided in this MSA, a Schedule or an Order), without TierPoint's prior written consent. In the event of an approved assignment, Customer will remain bound by the terms of the applicable Order, this MSA and the applicable Schedule(s).

10.4 No Waiver. The failure of a Party to enforce any provision of an Order, this MSA or a Schedule will not constitute a waiver of that provision or deprive a Party of the right to subsequently insist upon strict adherence to that provision, or any other provision contained therein.

10.5 Severability. The provisions of this MSA, an Order and the Schedule(s) are severable. If any provision is determined invalid, illegal or unenforceable, in whole or in part, then such provision shall be modified so as to be enforceable to the maximum extent permitted by law. If such provision cannot be modified to be enforceable, the provision shall be severed to the extent unenforceable. The remaining provisions and any partially enforceable provisions shall remain in full force and effect.

10.6 Counterparts. An Order, this MSA or a Schedule may be signed in counterparts with the same force and effect as if required signatures were contained in a single, original instrument.

10.7 Injunctive Relief. The Parties acknowledge that a threatened or actual breach of Section 6.1 or 6.4, or infringement of a Party's intellectual property rights, will result in immediate, irreparable harm, and equitable relief may be sought by the non-breaching Party from a court of competent jurisdiction subject to the provisions of Section 10.1.

10.8 Notices. All notices, consents and communications pursuant to this MSA, an Order, or a Schedule will be in writing and will be deemed to have been duly given (a) when sent by receipt-verified email (b) on the date delivered in person or by courier, or (c) on the date received if sent certified or registered mail, return receipt requested, and addressed to the recipient Party at the address set forth on the Cover Page, or to such other address or individual as the Parties may specify from time to time by written notice to the other Party. A refusal to accept delivery will be deemed delivery.

10.9 No Third Party Beneficiaries. No person or entity, other than the Parties, shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, an Order, this MSA or a Schedule.

10.10 Interpretation. Neither Party shall be considered the drafter of an Order, this MSA or a Schedule so as to give rise to any presumption or convention regarding construction of such Order, this MSA or a Schedule.

10.11 No Modifications. An Order, this MSA and any Schedule(s) entered into by the Parties may not be modified except by a written instrument signed by an authorized representative of TierPoint. Customer may not vary an Order, this MSA or any Schedule(s) in any manner without the written approval of TierPoint, even if Customer purports to condition its acceptance subject to any different or additional terms.

10.12 Conflicts. In the event of a conflict or inconsistency between this MSA and a Schedule or an Order, this MSA shall control in all instances. In the event of a conflict or inconsistency between a Schedule and an Order, the Schedule shall control in all instances.

10.13 Entire Agreement. This MSA together with an Order and the Schedule(s) applicable to the Order constitute the entire agreement between the Parties with respect to the subject matter of the Order and constitute and supersede all prior written or oral negotiations, understandings, agreements and/or MSAs between the Parties concerning the subject matter of such Order.

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SCHEDULE A - COLOCATION SERVICES

This Schedule A - Colocation Services ("Schedule A") by and between TierPoint and Customer is incorporated into and forms an integral part of the Master Services Agreement ("MSA"). Capitalized terms used but not defined in this Schedule A shall have the meanings set forth in the MSA. This Schedule A shall be effective as of the latest signature date below and shall terminate upon the termination of the MSA as specified in Section 5 of the MSA. This Schedule will only apply to Orders that expressly indicate that such Schedule is applicable.

1. COLOCATION SERVICES.

1.1 License for Space and Equipment. Subject to the terms of the MSA and this Schedule A, TierPoint grants Customer a revocable, non-transferable and non-sub-licensable right and license at the Premises as designated in an applicable Order (a) to use and occupy space designated by TierPoint (the "Space") under such environmental conditions as described in this Schedule A, (b) to locate certain of Customer's equipment (the "Equipment"), (c) to receive and utilize power, and (d) to interface and/or connect with such cables, computers, or other equipment as designated in an Order, excluding the provision of Internet bandwidth by TierPoint as provided for in Schedule B, if applicable. The services described in this Schedule A and as specified in an Order shall comprise the "Colocation Services".

1.2 Use of Space. Customer accepts the Space from TierPoint "as is" and agrees to use the Space solely for the location and operation of the Equipment. Customer will keep the Space clean and clear of debris and will not make any alterations to the Space or the Premises without TierPoint's prior written consent. Upon the expiration or termination of an applicable Order, Customer will return the Space under such Order to TierPoint in the same condition as it was prior to the installation of the Equipment, subject to normal wear and tear.

1.3 Access to Space by TierPoint. TierPoint will have access to the Space upon at least three (3) days' notice to Customer, except in the case of an emergency that threatens lives or property in which case notice will not be required. In the event of an emergency that threatens lives or property, as determined in TierPoint's reasonable discretion, TierPoint's work will take precedence over any and all Customer operations, and TierPoint may rearrange, remove, or relocate the Equipment, suspend Customer's operations, and take whatever action TierPoint deems appropriate or necessary without any liability to Customer except when due to TierPoint's gross negligence or willful misconduct.

2. EQUIPMENT; HAZARDOUS MATERIALS.

2.1 Equipment. The Equipment will at all times be configured and run in compliance with its manufacturer specifications, including those regarding power outlet, power consumption and clearance requirements. Customer will not access or tamper with any equipment (other than its own) in or on the Premises, including, without limitation, TierPoint's cabling, power supply, HVAC and floor tiles. Customer will not connect or interconnect the Equipment with any other equipment or services of any third party without TierPoint's prior written consent.

2.2 Responsibility for Equipment. Customer is solely responsible for (a) the installation, system administration, network, hardware or application configuration, repairs and maintenance, and troubleshooting of any kind of the Equipment (including making any arrangements with any providers of telephone or Internet bandwidth services, as may be required by Customer), except as provided in Section 2.3 of this Schedule A or unless otherwise provided for in an Order; and (b) its actions and omissions, and the actions and omissions of its Authorized Contacts, representatives, employees, agents and/or contractors. Customer will be liable for any damages caused by Customer or its Authorized Contacts, representatives, employees, agents and contractors to the Equipment, the Space, the Premises, or any other equipment located in or contents of the Premises or Space. TierPoint will not be responsible for any personal property, such as tools or idle peripheral hardware that may be left at the Premises by Customer or its Authorized Contacts, representatives, employees, agents or contractors.

2.3 Installation or Removal of Equipment by TierPoint. Upon Customer's request and subject to the payment of applicable Fees, TierPoint will receive and install the Equipment in the Space or uninstall and pack the Equipment for shipment. Customer will be responsible for arranging all shipments of the Equipment to and from the Premises and will prepay all applicable insurance, shipping and handling charges.

2.4 Security Interest. Customer hereby grants a security interest in the Equipment under each applicable Order in favor of TierPoint to secure the payment obligations of Customer under such Order. TierPoint may, at such time as it determines appropriate, file a UCC-1 Financing Statement in such places as TierPoint determines to evidence the security interest granted by Customer to TierPoint under this Schedule A.

2.5 TierPoint's Hardware and Software. All hardware, equipment, software and Internet protocol addresses provided by TierPoint to Customer are licensed to Customer and will remain TierPoint's sole and exclusive property at all times.

2.6 No Hazardous Materials. Customer shall not bring any Hazardous Materials on the Premises. "Hazardous Materials" means chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products or any other chemical, material or substance to which exposure is limited or regulated for health and safety reasons by any governmental authority because of its quantity, concentration, or physical or chemical characteristics, or that poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

3. HOLDOVER CHARGES. In addition to TierPoint's other rights under the MSA and this Schedule A, if Customer fails to vacate the Space or any part of it within ten (10) days of the date of expiration or termination of an Order, then Customer will be obligated to pay TierPoint holdover fees in an amount equal to the MRC payable under such Order immediately prior to the date of expiration or termination of such Order increased by 100%. Customer will also be liable to TierPoint for all damages that TierPoint suffers because of any holding over by Customer in addition to any other payment obligations of Customer under an Order, the MSA or this Schedule.

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4. HIPAA. Customer acknowledges that TierPoint does not require or intend to access Customer data in its performance of the Colocation Services, including but not limited to any confidential health related information of Customer's customers, clients or end users, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"). Customer acknowledges that any exposure to PHI by TierPoint will be random, infrequent or incidental to TierPoint's provision of Colocation Services and is not meant for the purpose of accessing or managing the PHI or creating or manipulating the PHI. Customer acknowledges that such exposure is allowable under 45 CFR 164.502(a)(1)(iii). If Customer is a "Covered Entity" or "Health Care Provider" as defined under the HIPAA Rules or supports the health care industry, TierPoint and Customer agree that TierPoint is not a "Business Associate" or "Covered Entity" under the HIPAA Rules for the purposes of TierPoint's provision of Colocation Services.

5. SERVICE LEVEL AGREEMENT.

5.1 General. Subject to the terms of the MSA and this Schedule A, TierPoint will use commercially reasonable efforts to provide the Colocation Services in an applicable Order in accordance with the Service Level Objectives described in this Section 5 as applicable.

5.2 Colocation Power. If, pursuant to an applicable Order, Customer has purchased and uses the redundant power offered by TierPoint by using both the A and B power feeds ("Redundant Power"), TierPoint will use commercially reasonable efforts to ensure that Customer's power will be available to the Equipment and the Space applicable to such Order 100% of the time except as part of scheduled maintenance or as requested by Customer. Such Service Level Objective does not apply or extend past the power receptacle at the Equipment or the Space and does not include Customer's electrical connections within the Space. Service Level Credits for TierPoint's failure to meet the colocation power Service Level Objectives as stated in this Section 5.2 are calculated as follows:

Colocation Service	Service Level Objective	Amount of Service Level Credit
Redundant Power	100% availability	1.65% of MRC of affected Colocation Services per 30 minute increment over Service Level Objective

If, pursuant to an applicable Order, Customer has not purchased power using both the A and B power feeds, TierPoint will use commercially reasonable efforts to ensure that power to the Equipment and the Space applicable to such Order will not experience a power unavailability event exceeding fifteen (15) consecutive minutes, but Customer will not be eligible to receive Service Level Credits if a power unavailability event occurs.

5.3 Environmental. TierPoint will use commercially reasonable efforts to ensure that the supply inlet air temperature at the Premises under an applicable Order ("Environmental Temperature") will remain between 60 and 80 degrees Fahrenheit, and relative humidity ("Environmental Humidity") will remain between 45% and 75%, except during scheduled maintenance. The Equipment must be properly oriented to cold/hot aisles and otherwise comply with facility installation guidelines for Customer to be eligible for Service Level Credits related to Environmental Temperature or Environmental Humidity events. Service Level Credits for TierPoint's failure to meet the Environmental Temperature and Environmental Humidity Service Level Objectives as stated in this Section 5.3 are calculated as follows:

Colocation Service	Service Level Objective	Amount of Service Level Credit
Environmental Temperature	Between 60 and 80 degrees Fahrenheit	1.65% of MRC of affected Colocation Services per 30 minute increment over Service Level Objective
Environmental Humidity	Between 45% and 75% relative humidity	1.65% of MRC of affected Colocation Services per 30 minute increment over Service Level Objective

5.4 Space. TierPoint will use commercially reasonable efforts to ensure that the Space under an applicable Order is available to Customer 100% of the time ("Space Availability"). Service Level Credits for TierPoint's failure to meet the Space Availability Service Level Objective as stated in this Section 5.4 are calculated as follows:

Colocation Service	Service Level Objective	Amount of Service Level Credit
Space Availability	100% availability	25% of MRC for each instance of unavailability

5.5 Physical Security. TierPoint will use commercially reasonable efforts to ensure that the Space will be monitored and that there will be no unauthorized access to the Space ("Physical Security"). Service Level Credits for TierPoint's failure to meet the Physical Security Service Level Objective as stated in this Section 5.5 are calculated as follows:

Colocation Service	Service Level Objective	Amount of Service Level Credit
Physical Security	No unauthorized access	25% of MRC for each instance of unauthorized access

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The Parties, intending to be legally bound hereunder, have caused this Schedule A to be executed by their duly authorized and empowered officers or representatives as of the Signature Date set forth below.

Customer: First Coast Workforce Development, Inc.	TierPoint, LLC
Signature: DocuSigned by: Bruce Ferguson F9C2DAA2070B47C...	Signature:
Name: Bruce Ferguson	Name: Robert Lyon
Title: President	Title: GM, VP
Signature Date: 10/28/2016	Signature Date: 10-28-16

DocuSign Envelope ID: B4BDDF01-0EC1-41AF-9FD3-FB3C00D9E6A9

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SCHEDULE B – INTERNET BANDWIDTH AND DATA COMMUNICATION CROSS-CONNECTIONS

This Schedule B – Internet Bandwidth and Data Communication Cross-Connections ("Schedule B") by and between TierPoint and Customer is incorporated into and forms an integral part of the Master Services Agreement ("MSA"). Capitalized terms used but not defined in this Schedule B shall have the meanings set forth in the MSA. This Schedule B shall be effective as of the latest signature date below and shall terminate upon the termination of the MSA as specified in Section 5 of the MSA. This Schedule will only apply to Orders that expressly indicate that such Schedule is applicable.

1. BANDWIDTH SERVICES.

1.1 Bandwidth. Customer will be provided with Internet bandwidth from a multi-peer Internet network deployed within the Premises designated in an applicable Order utilizing the TierPoint IP Network (defined in Section 2.2 of this Schedule B) ("Bandwidth Services"). The "TierPoint IP Network" is defined as the combination of Customer's access port (the port on the TierPoint switch upon which the Customer's access terminates), the TierPoint IP backbone network, TierPoint owned and controlled routers and switches, and connectivity provided to TierPoint by the various third party internet service providers from whom TierPoint may purchase IP transit directly over facilities the third party internet service providers own and control. Customer is responsible for proper configuration of dual connections within the Customer provided equipment. Improper configuration of a dual connection may result in a failure of the Bandwidth Services or other Services in the event of a single core network device service interruption. Service Level Objective availability percentages, as defined below, are contingent upon Customer's proper configuration of its network equipment. Customers who subscribe to a single ethernet connection shall be subject to a reduced Network Availability (defined in Section 2.2) percentage equating to 1.5% less than that described below.

1.2 Committed Level. The Bandwidth Services are allocated to Customer on a per Mbps basis. The Mbps of committed Bandwidth Services are described in an Order and shall be deemed Customer's committed level (the "Committed Level"). Usage beyond the Committed Level shall be subject to additional Fees as described in an applicable Order, and usage above the Committed Level shall be calculated using the industry standard method of 95th percentile. Bandwidth Services usage Fees will be calculated and invoiced to Customer on the invoice for the month following the Customer's actual usage.

1.3 Customer Responsibility for Bandwidth Services. Unless Customer and TierPoint have contracted for managed security services separately, Customer assumes all responsibility for maintaining Customer's own network security and for the implementation of the protections necessary to prevent illegal or unauthorized logical access to its equipment, servers and/or environment potentially gained through the Internet connections utilized by the TierPoint IP Network.

2. SERVICE LEVEL AGREEMENT.

2.1 General. Subject to the terms of the MSA and this Schedule B, TierPoint will use commercially reasonable efforts to provide the Bandwidth Services in an applicable Order in accordance with the Service Level Objective described in this Section 2 as applicable.

2.2 Network Availability. If, pursuant to an applicable Order, Customer has purchased Bandwidth Services from TierPoint, TierPoint will use commercially reasonable efforts to ensure that the TierPoint IP Network will be available and capable of forwarding IP packets 100% of the time, as averaged over a calendar month ("Network Availability"). The TierPoint IP Network and Network Availability Service Level Objective do not include the Customer's local area network, interconnections to or from and connectivity within other third party Internet service provider networks, or any Customer hardware/software failure. Service Level Credits for TierPoint's failure to meet the Network Availability Service Level Objectives as stated in this Section 2.2 are calculated as follows:

Bandwidth Services	Service Level Objective	Amount of Service Credit
Network Availability	100% Availability	1.65% of MRC of affected Bandwidth Services per 30 minute increment of network unavailability

3. CROSS-CONNECTION SERVICES. Customer will be provided with the data communication cross-connection(s) to third-party Internet bandwidth providers designated in an Order ("Cross-Connection Services"). The Cross-Connection Services are not a part of and do not include the Bandwidth Services or connectively to the TierPoint IP Network. Customer assumes responsibility for maintaining Customer's own network security when utilizing the Cross-Connection Services and for the implementation of the protections necessary to prevent illegal or unauthorized access to its equipment, servers and/or environment potentially gained through the Cross-Connection Services.

The Parties, intending to be legally bound hereunder, have caused this Schedule B to be executed by their duly authorized and empowered officers or representatives as of the Signature Date set forth below.

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Customer: First Coast Workforce Development, Inc.	TierPoint, LLC
Signature: DocuSigned by: Bruce Ferguson F9C10AA307B847C...	Signature:
Name: Bruce Ferguson	Name: Robert Lupo
Title: President	Title: GM, VP
Signature Date: 10/28/2016	Signature Date: 10-28-16

DocuSign Envelope ID: B4BDDF01-0EC1-41AF-9FD3-FB3C00D9E6A9

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SCHEDULE F – WORKSPACE CONTINUITY SERVICES

This Schedule F – Workspace Continuity Services ("Schedule F") by and between TierPoint and Customer is incorporated into and forms an integral part of the Master Services Agreement ("MSA"). Capitalized terms used but not defined in this Schedule F shall have the meanings set forth in the MSA. This Schedule F shall be effective as of the latest signature date below and shall terminate upon the termination of the MSA as specified in Section 5 of the MSA. This Schedule will only apply to Orders that expressly indicate that such Schedule is applicable.

1. WORKSPACE CONTINUITY SERVICES DEFINED (the "WC Services").

1.1 Custom Private Office Suite (1250 Sq. Ft.)

1.2

1.3

2. MISCELLANEOUS.

2.1 TierPoint's Hardware and Software. All hardware, equipment, software and Internet protocol addresses provided by TierPoint to Customer are licensed to Customer and will remain TierPoint's sole and exclusive property at all times.

2.2 No Hazardous Materials. Customer shall not bring any Hazardous Materials on the Premises. "Hazardous Materials" means chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products or any other chemical, material or substance to which exposure is limited or regulated for health and safety reasons by any governmental authority because of its quantity, concentration, or physical or chemical characteristics, or that poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

The Parties, intending to be legally bound hereunder, have caused this Schedule F to be executed by their duly authorized and empowered officers or representatives as of the Signature Date set forth below.

Customer: First Coast Workforce Development, Inc.	TierPoint, LLC
Signature: DocuSigned by: Bruce Ferguson F9C20AA207DB47C...	Signature:
Name: Bruce Ferguson	Name: Robert Lyle
Title: President	Title: GM, VP
Signature Date: 10/28/2016	Signature Date: 10-28-16

CareerSource
NORTHEAST FLORIDA

careersourcenefl.com

MEMORANDUM

DATE: October 3, 2016

TO: ITN Responders

FROM: Dianna Davis

RE: ITN –Data Center Colocation provider

Two responses to our ITN proposal were received in response to the ITN – Data Center Colocation Provider. The request was for colocation services for the period November 1, 2016 through June 30, 2017 with an annual option to renew for up to three additional years, effective July 1 – June 30th, contingent upon performance and funding availability. The reviewers met to rate the proposals and will be contacting TierPoint to enter into negotiations, as they most closely meet the needs of the organization.

Thank you for your interest in working with our organization.

1845 Town Center Boulevard
Suite 250
Fleming Island, FL 32003
p: 904-213-3800 | f: 904-272-8927

First Coast Workforce Development, Inc. (FCWD)
DBA CareerSource Northeast Florida

Issue Date:

August 29, 2016

Invitation to Negotiate (ITN) – Solicitation Number 16-17 #1

DATA CENTER COLOCATION (COLO) PROVIDER

For the period of
November 1, 2016 – June 30, 2017
This ITN allows for the execution of a contract for the specified term with an annual option of renewal for up to 3 additional years, effective July 1 through June 30th, contingent upon performance and funding availability.

INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF PROPOSALS

First Coast Workforce Development, Inc. (FCWD)
DBA CareerSource Northeast Florida
1845 Town Center Blvd., Suite 250
Fleming Island, Fl. 32003
(904) 213-3800
FAX (904) 272-8927

ITN-COLO@careersourcenefl.com

Date	Activities/Events
08-23-16 – 08-28-16	Legal Notices of ITN appear in local newspapers.
08-29-16	ITN Packets are available from 9:00 a.m. to 4:00p.m., Monday-Friday at First Coast Workforce Development, Inc., 1845 Town Center Blvd., Suite 250, Fleming Island, FL 32003
08-29-16	ITN notice mailed to interested parties. ITN will be made available on the Internet at: http://www.careersourcenefl.com/partner_vendor/request_for_proposals.aspx
09-09-16	Clarifying/Technical questions concerning the ITN must be received by 3:00 p.m. in writing, fax or via email at: ITN-colo@careersourcenefl.com
09-12-16	Responses to all questions received will be mailed to interested parties and made available on the Internet at: http://www.careersourcenefl.com/partner_vendor/request_for_proposals.aspx
09-22-16	Responses may be submitted Monday – Friday, 9:00 a.m. – 4:00 p.m. during the solicitation period. However, the deadline for receipt of the responses MUST be by 2:00 p. m. (EST), 09/22/16 at 1845 Town Center Blvd., Suite 250, Fleming Island, Fl. 32003. LATE RESPONSES WILL NOT BE CONSIDERED.
09-22-16	Responses are publicly opened at 2:01 p.m. (EST), 09-22-16, in the First Coast Workforce Development conference room.
09-23-16 – 10-07-16	ITN responses rated for selection.
10-07-16	Notification of Intent to Negotiate is sent by U.S. Mail to all respondents.
10-10-16 – 10-14-16	Contract negotiations & contract execution.
11-01-16	Contract performance commences.

DISCLAIMER: The above Timeline is a best effort attempt to outline the dates involved in this procurement, FCWD may delay scheduled dates if it is to the advantage of FCWD to do so. FCWD will notify Vendors of all changes in the timetable via posting on FCWD website at http://www.careersourcenefl.com/partner_vendor/request_for_proposals.aspx the same location the procurement is posted. Dates may be adjusted by FCWD, particularly if a protest is filed and processed. FCWD reserves the right to reject any or all proposals.

First Coast Workforce Development Board, Inc.

INVITATION TO NEGOTIATE (ITN) FOR DATA CENTER COLOCATION SERVICES

First Coast Workforce Development, Inc. (FCWD), is soliciting proposals for a Provider of Data Center Colocation Services to be funded through federal allocations received by the State of Florida and as authorized through federal and state legislation. The successful responder will provide services as identified in SECTION C under Firm Qualifications within this ITN. The services to be performed under this solicitation will be for the time period of November 1, 2016 – June 30, 2017. The contract may be extended, in one-year increments (July 1, – June 30) through June 30, 2021, if the performance of the provider so warrants. Renewal will be at the option of the Board based on effectiveness of the services and funding availability.

FCWD is a not-for-profit corporation organized under the laws of the state of Florida, and has been determined exempt by the Internal Revenue Service under the provisions of IRS Code, Section 501(c)(3). We have been certified by the Governor as a Regional Workforce Development Board for the purposes of implementing programs authorized by the federal Workforce Investment Act (WIA), Temporary Assistance for Needy Families (also known as TANF or Welfare Transition), Wagner-Peyser, the Workforce Innovation and Opportunity Act (WIOA), Public Law No: 113-128, signed into law on July 22, 2014 and related enabling legislation, and the State of Florida Workforce Investment Act. Our principle function is the provision of, oversight of, and policy guidance to, the workforce development system in the six counties of Baker, Clay, Duval, Nassau, Putnam, and St. Johns.

FCWD in most cases operates and administers these programs directly, however in some cases acts as a "pass-through" organization, awarding federal funds to sub-recipients. However, it remains our primary responsibility to ensure that our organization, as well as sub-recipients, adhere to government wide and program specific requirements set forth in the grant agreements through the use of effective monitoring resources.

Purpose and Scope

It is the intent of this ITN to seek vendors who have the demonstrated capacity to provide the services as listed below.

Intent of This Solicitation

FCWD currently is operating a data center in the Cologix facility (formerly Colo5) located at 4800 Spring Park Rd, Jacksonville FL 32207. FCWD Internet connectivity is provided by the hosting facility and comparable Internet service must be included in any response to this solicitation. The FCWD data network is an IPVPN or MPLS Cloud service providing data communications between the data center listed above and the multiple site locations distributed across the 6 counties of Northeast Florida as listed on the CareerSource Northeast Florida website. Selection of a hosting facility may be dependent upon the availability of our contracted Datacom carrier in the facility which is currently AT&T. It is the intent of this solicitation to choose providers who are capable of working with one another and allowing for cross-connects at minimal expense to FCWD.

Service Levels

As reliable data center hosting is essential to the operations of FCWD and the services that FCWD provides under state and federal law, a detailed Service Level Agreement (SLA) will be required as a part of this contract. All responses are required to include a proposed SLA. The SLA terms of selected vendors will be subject to negotiations prior to execution of a contract, however, responses without a proposed SLA will be considered non-responsive and will not be evaluated for further consideration.

Firm Qualifications

Should your firm be interested in providing these services, please include the following information in your response:

A. Cover letter that includes:

1. Legal name of firm
2. Address
3. Name and title of firm owner, principal or managing partner
4. Federal Employer Identification Number (FEIN)
5. Dun & Bradstreet (D&B) number
6. Organization type (Private for profit, private non-profit or governmental corporation, sole proprietorship, community based organization, etc.)
7. Phone/FAX number and email address/website of the firm
8. Name of primary contact for this ITN
9. Phone/FAX number and email address of the primary contact

B. Firm's experience in providing data center colocation services to organizations of similar scale.

1. Provide a brief description of your firm.
2. Describe the engagements your firm currently has in the workforce development industry.
3. Describe the engagements your firm currently has with organizations and networks of similar scale.
4. Describe your firm's approach to customer service including descriptions of customer online portals for both billing and service orders. Please detail how escalation of trouble tickets will work and specify if FCWD will be provided a specific "concierge" point of contact for assistance with service or billing issues.

C. Services

First Coast Workforce Development Colocation and Internet Service Requirements:

Colocation facility MUST have a physical presence in Baker, Clay, Duval, Nassau, Putnam, or St Johns County in the state of Florida.

- Facility must be able to provide 100mbs Internet service by Ethernet handoff to the FCWD cabinets.
- Provider must state in their response, a Service Level Agreement for facilities access, power reliability, and Internet uptime/bandwidth.
- FCWD requires caged secure space for four (4) APC Cabinets with adequate HVAC.
- FCWD requires separate three phase (A + B) 20A 208V power to each of the four cabinets.
- FCWD requires a full class C set of IPv4 addresses to be provided with Internet service.
- Facility must be able to provide full time office space to four FCWD network operations staff members (approximately 500 sq. ft.).
- Facility must be able to provide full time office space to three FCWD call center operations staff members (approximately 500 sq. ft.).
- Facility must be able to provide full time office space for an IT technician's workbench and troubleshooting area (approximately 375 sq. ft.).
- Facility must be able to provide secure parking for six (6) FCWD vans on a permanent basis.
- Facility must be able to demonstrate the ability to continue functioning during and be able to withstand up to and including a Category 5 strength Hurricane storm.
- Facility must be able to continue operating independent of the power grid for a period of 30 days after a disaster.

D. Other Services Available

Please indicate if there are other services available that you wish to propose and if these are a requirement to provide the requested services or optional.

E. Data Communications Partnerships

1. Detail your partnerships with Data Communications (Telco) providers and list each with their level of bandwidth service to your facility.
2. Detail how the provider services are physically connected to the facility and whether the provider has a switch collocated in the facility.
3. Include in the fee structure what if any cross-connect fee is charged to make a provider's service terminate in the FCWD cabinets.

F. Fees

Provide information regarding your proposed pricing breaking out cost by location and separating monthly-recurring costs (MRC) from nonrecurring cost (NRC). Include a subtotal of MRCs. Include a grand total of NRC and all MRCs for a one-year contract period.

G. References

Please provide a listing of clients we may contact. Clients listed should be of similar scale to our organization and be serviced by the same technologies proposed for this engagement. Please include specific contact name and telephone number.

H. Other Information

Please include any additional information not already requested that you consider essential to your response. If there is no additional information to include, please state, "There is no additional information we wish to present."

I. Facility Tour

FCWD evaluators may, at their discretion, schedule a tour of the proposed facility during the grading period.

If an offeror is, or should be aware of any potential conflict of interest, disclosure must be a part of the Certifications attached to this proposal. A conflict of interest would occur if members of the proposing organization whether as an employee, officer or director receives compensation or business for services rendered to the organization or have direct or consulting agreement, including those through family or business ties. FCWD employees and its contracted staff are prohibited from responding to this ITN.

A team will review and rate each proposal utilizing a Proposal Evaluation Form, which is included as an attachment to this document. Upon conclusion of this rating process, FCWD may begin negotiations with one or more successful bidders. It is the bidder's responsibility to present accurate, concise, adequate, and qualitative documentation in each area to be rated in the ITN, so that the raters can make effective appraisals.

The proposal represents only one factor in the selection process of service providers, and may not be the sole basis for selection of a proposal for funding. Other factors, such as the capability of administering and operating these services within the constraints and limitations specified may also be considered in the selection process.

Clarifying/Technical questions concerning this ITN must be received in writing, fax, or email at: ITN-colo@careersourcenefl.com by 3:00 p.m., September 9, 2016.

Responses to all questions received will be mailed to interested parties and made available on the Internet at:
http://www.careersourcenefl.com/partner_vendor/request_for_proposals.aspx
by Monday, September 12, 2016.

One original, three copies, and one electronic version in PDF format on either a CD or USB Flash Drive of your response to this ITN may be submitted Monday – Friday, 9:00 a.m. – 4:00 p.m. during the solicitation period. However, the deadline for receipt of the responses MUST be no later than 2:00 PM local time on September 22, 2016. Responses received after this date and time will not be considered for contract-negotiation purposes. NO electronic submissions via email or FAX will be accepted.

Mailing address and Physical Location for delivery of response to the ITN is:

First Coast Workforce Development, Inc.
Attn: Dianna Davis
1845 Town Center Blvd. Suite 250
Fleming Island, Florida 32003
(904) 213-3800 ext. 2180

Thank you for your interest in our organization.

First Coast Workforce Development, Inc.

Proposal Rating Form

Proposer : _____

Reviewer: _____

	Yes	No
Are all required documents included?		
Did the respondent provide a proposed Service Level Agreement (SLA)?		
Did the respondent clearly define an organizational structure that allows services to be delivered effectively?		
If any of the above questions are answered no, write non-responsive in the adjoining block and proceed no further.		

Cover letter that includes:

1. Legal name of firm
2. Address
3. Name and title of firm owner, principal or managing partner
4. Federal Employer Identification Number (FEIN)
5. Dun & Bradstreet (D&B) number
6. Organization type (Private for profit, private non-profit or governmental corporation, sole proprietorship, community based organization, etc.)
7. Phone/FAX number and email address/website of the firm
8. Name of primary contact for this ITN
9. Phone/FAX number and email address of the primary contact

References that include:

Listing of clients we may contact. Clients listed should be of similar nature to our organization and be serviced by the same staff who would be assigned to this engagement. Please include specific contact name and telephone number.

Proposal Rating Form Continued – Max 100 Points

Proposer : _____

Evaluate the Vendor's Qualifications and the Service(s) Proposed:	Points
Prior experience with hosting similar scale organizations. 0-5	
Quality of security at facility. 0-5	
How well does the proposal meet the needs of FCWD? 0-40	
How well written is the proposed SLA to ensure maximum performance and minimal disruption to FCWD? 0-10	
Availability of Data Communications (Telco) providers in the facility. 0-10	
Location/Convenience of access to facility. 0-10	
Quality of proposed office space for FCWD staff in the facility. 0-10	
Fiscal Evaluation:	Points
Proposed Pricing 0-10	
Total Points	

Reviewer's Signature:

_____ Date: _____

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ADDENDUM TO VENDOR AGREEMENT
BY AND BETWEEN FIRST COAST WORKFORCE DEVELOPMENT, INC., (FCWD)
dba CAREERSOURCE NORTHEAST FLORIDA
AND
TIERPOINT, LLC

This Addendum is part of the attached Vendor Agreement by and between First Coast Workforce Development, Inc. (FCWD) dba CareerSource Northeast Florida and TIERPOINT, LLC (Vendor) for services described in the Vendor Agreement attached hereto. In consideration of the mutual covenant and stipulations set forth in the agreement and Addendum herein, the parties hereby agree as follows:

1. COMPLIANCE WITH POLICIES AND LAWS

The warranty of this Section specifically includes compliance by Vendor and its subVendors with the provisions of the Immigration Reform and Compliance Act of 1986 (P. L. 99-603), the Workforce Innovation and Opportunity Act (WIOA), the Workforce Innovation Act of 2000, 45 CFR 98, the Temporary Assistance for Needy Families Program (TANF), 45 CFR parts 260-265, and other applicable federal regulations and policies promulgated thereunder and other applicable State, Federal, criminal and civil law with respect to the alteration or falsification of records created in connection with this Agreement. Office of Management and Budget (OMB) Circulars: Vendor agrees that, if applicable, it shall comply with all applicable OMB circulars, such as 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Vendor will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act (40.327-333), regarding labor standards for federally assisted construction subagreements.

2. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER MATTERS

Vendor certifies that it is not currently debarred, suspended, or excluded from or for participation in Federal assistance programs, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency within a three-year period preceding the effective date of the Agreement in accordance with 29 CFR Parts 45, 74, 95 and 98. No contract shall be awarded to parties listed on the GSA List of Parties Excluded from Federal Procurement or Non-Procurement Programs.

3. NON-DISCRIMINATION, EQUAL OPPORTUNITY ASSURANCES, CERTIFICATIONS, OTHER PROVISIONS

As a condition of funding from FCWD under Title I of the WIOA, Vendor assures that it will comply fully with the following:

1) Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color or national origin.
2) Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability.
3) Title IX of the Education Amendments of 1972 as amended, 20 U.S.C. 1681 et. Seq. which prohibits discrimination on the basis of sex in educational programs.
4) The Age Discrimination Act of 1975 as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age.
5) Section 654 of the Omnibus Budget Reconciliation Act of 1981 as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.
6) Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or Participation in any WIOA Title I financially assisted program or activity.
7) The American with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
8) Equal Employment Opportunity (EEO): The Vendor agrees that it shall comply with Executive Order (EO) No. 11246, Equal Employment Opportunity, as amended by EO No. 11375, requires that Federal Vendors and subVendors not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. It also requires the Vendor/subVendor to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin and as supplemented in Department of Labor regulation 29 CFR Parts 33 and 37 as well as 41 CFR Part 60 and 45 CFR Part 80 if applicable.
9) Vendor also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements Vendor makes to carry out the WIOA Title I-financially assisted program or activity. Vendor understands that the United States has the right to seek judicial enforcement of this assurance.

4. CERTIFICATION REGARDING CLEAN AIR ACT, WATER ACT, ENERGY EFFICIENCY AND ENVIRONMENTAL STANDARDS, SOLID WASTE

Clean Air and Water Act: When applicable, if this Contract is in excess of $100,000, Vendor shall comply with all applicable standards, orders or regulations issued under the Clean Air Act as amended (42 U.S.C. 7401), Section 508 of the Clean Water Act as amended (33 U.S.C. 1368 et seq.), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). The Vendor shall report any violation of the above to the contract manager. Energy Efficiency: The Vendor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Florida's Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

Vendor will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d)

evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq .); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq .); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205). The Vendor will comply with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6962).

5. CERTIFICATION REGARDING LOBBYING AND INTEGRITY

Vendor shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) 29 CFR Part 93. When applicable, if this Agreement is in excess of $100,000, Vendor must, prior to contract execution, complete the Certification Regarding Lobbying Form. XX See Appendix A to 29 CFR and Appendix A to 45 CFR Part 74 13.

6. CONFIDENTIALITY

It is understood that the Vendor shall maintain the confidentiality of any information, regarding FCWD customers and the immediate family of any applicant or customer, that identifies or may be used to identify them and which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Vendor shall not divulge such information without the written permission of the customer, except that such information which is necessary as determined by FCWD for purposes related to the performance or evaluation of the Agreement may be divulged to FCWD or such other parties as they may designate having responsibilities under the Agreement for monitoring or evaluating the services and performances under the Agreement, or to governmental authorities to the extent necessary for the proper administration of the law. All release of information shall be in accordance with applicable State laws, and policies of FCWD. No release of information by Vendor, if such release is required by Federal or State law, shall be construed as a breach of this Section.

7. RIGHTS TO DATA/COPYRIGHTS AND PATENTS

FCWD, State of Florida and the U.S. Department of Labor shall have unlimited rights to inventions made under contract or agreement: Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by the awarding agency.

8. MONITORING

At any time and as often as FCWD, the State of Florida, United States Department of Labor, Comptroller General of the United States, the Inspector Generals of the United States and the State of Florida, or their designated agency or representative may deem necessary, Vendor shall make available all appropriate personnel for interviews and all financial, applicant, or participant books, documents, papers and records or other data relating to matters covered by this contract, for examination and/or audit, and/or for the making of excerpts or copies of such records for the purpose of auditing and monitoring activities and determining compliance with all applicable rules and regulations, and the provisions of this Agreement. The above referenced records shall be made available at the Vendor's expense, at reasonable locations as determined by FCWD. Vendor shall respond in writing to monitoring reports and requests for corrective action plans within 10 working days after the receipt of such request from FCWD.

9. PUBLIC ANNOUNCEMENTS AND ADVERTISING

Vendor agrees that when issuing statements, press releases, request for proposals, bid solicitation, and other documents describing the project or programs funded in whole or in part under this Agreement, Vendor shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money under this Agreement and (2) the dollar amount of Federal funds for the project or program.

10. PUBLIC ENTITY CRIMES

Vendor shall comply with subsection 287 .L33(2)(a), F.S., whereby a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Vendor, supplier, subVendor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in section 287.Ot7, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

11. THE PRO-CHILDREN ACT

Vendor agrees to comply with the Pro-Children Act of 1994,20 U.S.C. 6083. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. This clause is applicable to all approved sub-contracts. In compliance with Public Law (Pub. L.) LO3-277, the Contract shall not permit smoking in any portion of any indoor facility used for the provision of federally funded services including health, day care, early childhood development, education or library services on a routine or regular basis, to children up to age 18.

12. TERMINATION FOR DEFAULT/CONVENIENCE

This modified agreement may be terminated as follows:

1. Either party may request termination of modified agreement upon 30 days prior written notice to the other party.
2. FCWD may unilaterally terminate or modify this modified agreement, if for any reason either the U.S. Department of Labor or the State of Florida reduces funding through the grants under which this modified agreement is funded.
3. FCWD may unilaterally terminate this modified agreement at any time that it is determined that:
    a. Vendor fails to provide any of the services it has contracted to provide; or
    b. Vendor fails to comply with the provisions of this modified agreement; or
    c. Such termination is in the best interest of FCWD.
4. Written notification of termination must be by registered mail, return receipt requested.

If Vendor disagrees with the reasons for termination, they may file a grievance in writing within ten days of notice of termination to FCWD, who will conduct a grievance hearing and decide, from evidence presented by both parties, the validity of termination.

In the event this modified agreement is terminated for cause, Vendor shall be liable to FCWD for damages sustained for any breach of this modified agreement by the Vendor, including court costs and attorney fees, when cause is attributable to the Vendor.

In instances where Vendors/sub grantees violate or breach modified agreement terms, FCWD will use all administrative, contractual or legal remedies that are allowed by law to provide for such sanctions and penalties as may be appropriate.

IN WITNESS WHEREOF, Vendor and FCWD have caused this Agreement to be duly executed as of the date set forth below.

APPROVED BY: First Coast Workforce Development, Inc.

BY:_____
Bruce Ferguson, President & CEO

WITNESS:_____

DATE_____

APPROVED BY: TIERPOINT, LLC

DocuSigned by:
BY: Jim Owen
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Signed Authorized Vendor Representative

Jim Owen
Name Printed Authorized Vendor Representative

WITNESS:_____

6/7/2019
DATE_____