REQUESTOR: Educational Technology

Legal Review Required: ☒ Yes ☐ No

Standard Template Used with No Changes: ☐ Yes ☒ No

Standard Template Type: RFP Agreement

<table>
<thead>
<tr>
<th>VENDOR NAME</th>
<th>AMOUNT AWARDED</th>
<th>REQUIRED PRODUCTS/SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zayo Group, Inc.</td>
<td>Special Construction $8,530,458.00 Monthly Recurring Cost $25,000.00</td>
<td>Fiber Wide Area Network</td>
</tr>
<tr>
<td></td>
<td>Total $11,530,458.00</td>
<td></td>
</tr>
</tbody>
</table>

☐ Contract Renewal
☐ Recurring Contract
☒ New Contract

New Contract Amount $300,000 Annually
Previous Contract Amount $960,000 Annually
Variance -$660,000 Annually

PRICE DECREASE EXPLANATION: The RFP process resulted in increased bandwidth and lower pricing. Our current WAN connectivity is 1 Gbps at each of our locations at a rate of $475 per location. The proposed solution calls for a 10 Gbps connection at $250 per location. This results in a dedicated bandwidth that is 10 times faster than our current shared bandwidth at a 47% savings. Additionally, the contract provides value added internet connection for the first 3 years which will result in zero cost with twice the speed of our current provider. Anticipated savings over the initial 10-year period is $4,829,708.40.

DISCUSSION:
Approval of this agenda recommendation will allow for network capacity growth required to support expanding instructional applications, current business systems and computer-based testing requirements.

The proposed Wide Area Network (WAN) will connect all sites into one centralized network comprised of 10 Gbps connectivity. The architecture would include a 100 Gbps network ring connecting the two data centers with load balancing capabilities. The costs for the construction portion of this project total $8,530,458.00 and will take approximately 18 months to complete. Both the monthly recurring fee of $25,000.00 and the special construction of $8,530,458.00 are subject to Federal E-Rate discounts. Current discounts are at 80%. Special Construction cost of $8,530,458.00 will be reduced to $1,706,091.60 when the 80% E-rate discount is awarded. Equal payments would be made over 4 years at $426,522.90 each. Brevard Public Schools may also qualify for additional state sponsored discounts in addition to the E-Rate discount for Special Construction resulting in an additional 10% reduction. In the event that BPS is not approved for E-rate funding, the agreement may be terminated in full.
The standard agreement template has been used, with modifications approved by Legal Services, Risk Management, and Educational Technology on March 18, 2020.

**CONTRACT TERM:**
The initial contract term shall commence July 1, 2020 and continue until June 30, 2030 with two (2) optional five (5) year renewal terms.

**RECOMMENDATION:**
It is the recommendation of Russell Cheatham, Assistant Superintendent/Chief Information Officer and Chris Ault, Projects and Technology Manager to approve the attached agreement with Zayo Group, Inc. in the amount of $11,530,458.00.

**AUTHORITY FOR ACTION:**
Florida Administrative Code 6A-1.012 (10)
AGREEMENT
By and Between
The School Board of Brevard County, Florida
and
Zayo Group, LLC

This Agreement ("Agreement") is made by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as “BPS”) and Zayo Group, LLC whose business address is 1621 18th Street, Suite 100, Denver, Colorado, 80202, (hereinafter referred to as “Contractor”), each individual referred to as a “Party” and, collectively, the “Parties.”

WITNESSETH:

WHEREAS, BPS desires to secure a contractual relationship for the purpose of Fiber Wide Area Network and Related Services for Brevard County Public Schools, as outlined in Exhibit “A,” Scope of Services (“Services”), and

WHEREAS, these Services have been competitively solicited pursuant to RFP 20-328-P-WH, which has been assigned to the tracking number indicated above by BPS for tracking purposes.

NOW THEREFORE, for good and valuable consideration and the mutual promises contained herein, the Parties agree as follows:

1. RECITALS. The above Recitals are true and correct and are incorporated herein.

2. DEFINITIONS. The following definitions of terms associated with this Agreement are provided to establish a common understanding between both Parties to this Agreement, as to the intended application, interpretation, and usage of terms in connection with this Agreement.

2.1. "AGREEMENT" refers to the executed Agreement by and between BPS and Contractor.

2.2. "AMENDMENT" means a written document authorized by the parties to this Agreement which, when executed by both parties, sets forth any changes to that certain scope of services ("Services"), attached hereto as Exhibit “A” and incorporated herein by reference, that contemplates a change in the Services, work, and materials to be provided and performed by Contractor pursuant to this Agreement, sets forth the basis of compensation due to Contractor of, and sets forth the time period and/or schedule for performance and completion thereof.

2.3. “BPS” shall mean The School Board of Brevard County, Florida and may be used interchangeably with Brevard Public Schools.

2.4. “CONFIDENTIALITY” For purposes hereof, “Confidential Information” shall mean any non-public information of the other party that is designated as confidential, or that the receiving party knew or reasonably should have known was confidential because it derives independent value from not being generally known to the public. Confidential Information shall not include any information which: (a) a party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the other party; (b) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of a party; (c) a party has developed independently without reference to any Confidential Information of the other party; (d) a party can demonstrate such information came into its possession from a third-party who had a bona fide right to make such information available; or (e) is subject to the Florida Public Records Law, Chapter 119, F.S., or any other information required to be disclosed by a valid court order or agency of government.

2.5. "CONTRACTOR" means Zayo Group, LLC a Party hereto, who is authorized to conduct business in the State of Florida, offering Services hereunder, which has executed this Agreement, and which shall be
legally obligated, responsible, and liable for providing and performing any and all of the Services, work, and materials, including services and/or work of any approved sub-contractors, required under the covenants, terms, and provisions contained in this Agreement and any and all Amendments thereto.

2.6. “FUNDS” shall mean payment made by BPS to Contractor hereunder.

2.7. "PARTIES" shall mean the parties entering into this Agreement, BPS and Contractor, respectively; individually, a “Party.”

2.8. "SERVICES” shall mean the services as set forth and required, pursuant to the Agreement and described in further detail in Exhibit “A,” attached hereto and incorporated herein by reference.

2.9. “SCHEDULE” shall mean the applicable customer schedule that sets forth terms and conditions that apply to that type of service.

3. AMENDMENTS AND MODIFICATIONS. No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the Parties.

4. TERM AND TERMINATION.

4.1. The term of this Agreement will cover the period beginning July 1, 2020 through June 30, 2030 and may be renewed at the end of the term up to two (2) additional five (5) year renewal periods. The Agreement term recommendation will be that which is determined to be in the best interest of the School Board. The renewal option shall be exercised at the same or substantial similar terms by mutual written agreement of the Parties.

4.2. Contractor shall give BPS written notice of any substantial failure to perform under this Agreement through no fault of Contractor. If BPS fails to correct or diligently pursue cure of such failure within ten (10) business days of receipt of notice, this Agreement may be terminated by Contractor, at its option, upon thirty (30) calendar days’ prior written notice to BPS.

4.3. E-Rate Funding, Non-Appropriations. Customer represents that it is a public entity and/or that the Access or Services provided under the Agreement are subject to public funding sources, including E-Rate funding.

4.4. Cancellation for Denial of E-Rate Funding. Customer shall seek funding through E-Rate for some or all of the Access and Services purchased under the Agreement. In the event that Customer's good faith application for E-Rate funding to purchase Access and Services hereunder is either (a) denied in its entirety by USAC or (b) partially granted and Customer is unable to make up the difference with its own funding, then the Parties agree to enter into good faith negotiations to amend the applicable Customer Orders to allow for Customer's purchase of Access and Services at a reduced level (i.e.: fewer fibers, fewer locations served, removal of diversity, etc.). In the event such reduction is not feasible or the Parties cannot reach an agreement on the reduced Access and/or Services, Customer may, upon written notice to Zayo, cancel the affected Customer Order with no further liability to Zayo. Notwithstanding the foregoing, Customer expressly acknowledges and agrees that Zayo shall not be obligated to perform any work or to incur any costs to provide the Access and/or Services to Customer prior to USAC approval of Customer's E-Rate funding and Customer agrees to reimburse Zayo for any such costs incurred by Zayo for any work related to a cancelled Customer Order for E-Rate Access and/or Services prior to the date of Customer's cancellation.

4.5 Termination for Non-Appropriation of Funds. Customer represents and warrants that, subject to USAC approval of Customer's application for E-Rate funding, all other necessary funds have been appropriated to satisfy the Customer's obligations for the underlying Access and/or Service(s) through the first anniversary of the Commencement Date as set forth in the applicable Customer Order (the “1st Anniversary”). If, for any year of the term following the 1st Anniversary: (a) no funds are appropriated for any of the Customer’s communications facilities, services or technologies for any of the locations listed in any applicable Customer Order, (b) the Customer has no alternative but to discontinue all facilities,
access, services and technologies to such locations for that funding year (for example, no internet connections may be made from any of such locations during such year, etc.), and (c) Zayo has received a written Notice from Customer confirming the occurrence of items (a) and (b) of this paragraph (the “No Funding Notice”), then, on the following terms, Customer, may terminate the affected Customer Order(s). The “Effective Date of Termination” for this Customer Order shall be the later of (a) the 1st Anniversary; (b) the first day of the funding year for which no funds are appropriated for any of the Customer’s communications facilities, services or technologies for any of the locations listed above in the affected Customer Order; or (c) thirty (30) days from the date the above referenced No Funding Notice is received by Zayo. In the event of such a termination, the Parties agree that Customer shall pay for all access and/or services rendered under the affected Customer Order(s) through the Effective Date of Termination; but Customer shall not incur any further termination liability of any sort for such termination. Customer agrees not to deprive Zayo of the anticipated benefit of any attached Customer Order by artificially terminating, or allowing for an artificial termination of, such access and/or service and shall not “terminate” any access and/or service and then immediately replace the order for the same access and/or service with Customer, a Customer affiliate, or another supplier.

5. PAYMENT.

5.1. BPS agrees to provide funds for the Agreement in the amount not to exceed eleven million five hundred thirty thousand four hundred fifty eight dollars and zero cents ($11,530,458.00) as outlined in Exhibit “B”, Fee Schedule, which is attached hereto and incorporated herein. In accordance with the Local Government Prompt Payment Act, payments shall be made within forty-five (45) days after BPS’s receipt of invoice. BPS shall pay these fees to Contractor for services rendered as outlined in Exhibit “B” which includes all direct charges, indirect charges, and reimbursable expenses, if any. BPS shall incur no obligation for payment until issuance of a purchase order to Contractor.

5.2. Expenses shall only be incurred as authorized by BPS and as provided for in Section 112.061, F.S.

5.3. If the Services are divided into phases, completion of a phase is defined by an appropriate signoff by BPS’s and Contractor’s project manager that all activities of that phase have been satisfactorily completed according to the project schedule, as agreed upon by both parties attached Exhibit “A”. Contractor and BPS will agree upon planned completion dates for each phase and work in good faith to meet the planned schedule. BPS reserves the right throughout each phase to conduct a quality assurance check to ensure accuracy, quality, and delivery of work.

5.4. Subject to Contractor’s right to cure under Section 4 herein, should the Services not be completed as scheduled, Contractor and BPS will jointly plan a revised completion date for the Services. Failure on the part of Contractor to complete its work in an accurate and quality manner shall be considered a default of this Agreement.

5.5. Final Notice. The final invoice for payment shall be submitted to BPS no more than forty-five days (45) after the Agreement term ends or the Agreement is terminated. Any payment due under the terms of this Agreement may be withheld until all reports due from Contractor, and necessary adjustments thereto, have been approved by BPS.

6. AVAILABILITY OF FUNDS. Deleted (See Section 4.3-4.5)

7. TRUTH-IN-NEGOTIATION CERTIFICATE. If applicable to the Services contained herein, signature of this Agreement by Contractor shall be deemed an acknowledgement and certification by Contractor that the wage rates and costs used to determine the funds provided for in this Agreement are accurate, complete, and current as of the date of this Agreement. The said rates and costs shall be adjusted to exclude any significant sums should BPS determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to Contractor. BPS shall exercise its rights under this provision within one (1) year following final payment of the funds.
8. **PERSONNEL.**

8.1. All of the Services herein shall be performed by Contractor or under its supervision, and all personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under applicable state and local law to perform such Services.

8.2. **Jessica Lunsford Act (Background Check).**

8.2.1. Contractor shall comply with the Jessica Lunsford Act, effective September 1, 2005, as same may be amended from time to time and with all requirements of Sections 1012.32 and 1012.465, F.S.

8.2.2. Except as provided in Sections 1012.467 or 1012.468, F.S., and consistent with BPS policy, all of Contractor’s personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes and BPS. This background screening will be conducted by BPS in advance of the Contractor or its personnel providing any Services under the conditions described in the previous sentence.

8.2.3. Contractor shall bear the cost of acquiring the background screening required by Section 1012.32, F.S., and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Contractor and its personnel.

8.2.4. The Parties agree that the failure of Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling BPS to terminate immediately with no further responsibilities or duties to perform under this Agreement. Contractor agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death, or property damage resulting from Contractor’s failure to comply with requirements of this section or with Sections 1012.32 and 1012.465, F.S.

8.3. **Key Personnel.** Contractor shall notify BPS as soon as possible, but no later than five (5) working days, after any changes in address or key personnel positions of Contractor. Changes in key personnel may include resignations, approved leaves of absence of six (6) weeks or more, or terminations. Such notification shall be in writing and shall include information related to replacement staff assigned. Contractor agrees to work closely with BPS to ensure that the work and cooperation between the Parties is efficient and mutually productive to both Parties.

8.4. **Background Screening.** To the extent applicable to the Services hereunder, Contractor and all Contractor staff under this Agreement shall meet and comply with all federal, state, county, and city laws, ordinances, rules, and regulations that relate to the background screening process of those applying for work with children, seniors, or the disabled, including those contained in Chapter 408 (Health Care Administration) and Chapter 435 (Employment Screening).

8.5. **Conduct while on BPS Property.** Contractor acknowledges that its employees and agents will behave in an appropriate manner while on the premises of any BPS facility and shall, at all times, conduct themselves in a manner consistent with BPS policies and within the discretion of the premises administrator or designee. It is a breach of this Agreement for any agent or employee of Contractor to behave in a manner which is inconsistent with good conduct or decorum or to behave in any manner that will disrupt the educational program or constitute any level of threat to the safety, health, and well-being of any student or employee of BPS. Contractor agrees to immediately remove any agent or employee if directed to do so by the premises administrator or designee.
9. FEDERAL AND STATE TAX.

9.1. BPS is exempt from federal and state taxes for tangible personal property. Contractor shall not be exempted from paying applicable sales tax to the State of Florida and/or the federal government, as the case may be, for the purchase of materials to fulfill contractual obligations with BPS, nor shall Contractor be authorized to use BPS’s tax exemption number in securing such materials.

9.2. In the event Contractor is also exempt from federal and state taxes for tangible personal property, it shall promptly submit to BPS an appropriate exemption certificate. BPS will sign an exemption certificate submitted to it by Contractor.

9.3. Contractor shall be responsible for payment of its own FICA and social security benefits with respect to this Agreement.

10. DOCUMENTATION AND REPORTING.

10.1. In the performance of this Agreement, Contractor shall maintain books, records, and accounts of all activities in compliance with standard accounting procedures.

10.2. Documentation. Documentation in connection with the description of the Services as set forth in Exhibit “A” attached hereto shall be provided upon request.

10.3. Reporting. Contractor shall provide report containing requested data in the requested format in a timely manner as defined by BPS.

11. INSURANCE.

At its sole expense, Contractor will provide, before commencement of the Services, and submit to BPS along with this Agreement, a certificate(s) evidencing such insurance coverage to the extent listed in 11.1.1 to 11.5.5 below. The following applies to the insurance requirements below for products or services from contractors when all products, services, or work performed, when totaled together, will result in BPS paying to Contractor $25,000.00 or more during the fiscal year. The insurance requirements are as follows:

11.1. Insurance listed in 11.1.1 below is required of all contractors. “The School Board of Brevard County, Florida” shall be named as an additional insured to the insurance policy. If the School Board is not named as an additional insured, then the School Board reserves the right to terminate this Agreement.

11.2. Insurance listed in 11.1.2 below. All contractors whose work for BPS includes products or services, and the value of these products or services are in excess of $25,000.00, are required to carry this insurance to the limit listed below.

11.3. Insurance listed in 11.1.3 below. Any contractor transporting district employees, delivering or transporting district owned equipment or property, or providing services or equipment where a reasonable person would believe that BPS is responsible for the work of the Contractor from portal to portal is required to carry this insurance to the limit listed below.

11.4. Insurance as listed in 11.1.4 below. All contractors that have one (1) or more employees or that subcontract any portion of their work to another individual or company is required to have workers’ compensation insurance to the limits listed below. For contracts of $25,000.00 or more, no State of Florida, Division of Workers’ Compensation, Exemption forms will be accepted. All entities and individuals are required to purchase a commercial workers’ compensation insurance policy.

11.5. Insurance as listed in 11.1.5 below. All contractors providing professional services such as architects, engineers, attorneys, auditors, accountants, etc. are required to have this insurance to the limits listed below.

All Contractors will carry and maintain policies as described in numbers 11.1 to 11.5 above and as checked off in the box to the left of each section 11.1.1 to 11.1.5 below as specifically marked by representatives of the BPS Office of Procurement Services. All required insurance required must be from insurance carriers that have a rating of “A” or...
better and a financial size category of “VII” or higher according to the A. M. Best Company. Such certificates must contain a provision for notification to BPS thirty (30) days in advance of any material change in coverage or cancellation. This is applicable to the procurement and delivery of products, goods, or services furnished to BPS.

11.1.1. **Commercial General Liability Insurance:**

Negligence including Bodily Injury and Property Damage:
- Per Occurrence - $1,000,000
- General Aggregate - $2,000,000

11.1.2. **Product Liability and/or Completed Operations Insurance:**

Negligence Including Bodily Injury and Property Damage - $1,000,000
Products – Completed Operations Aggregate - $2,000,000

11.1.3. **Automobile Liability:**

Negligence Including Bodily Injury and Property Damage:
- Per Claim - $500,000
- Combined Single Limit (each accident) - $1,000,000

11.1.4. **Workers’ Compensation/Employer’s Liability:**

W.C. Limit Required* - Statutory Limits
- E.L. Each Accident - $100,000
- E.L. Disease – Each Employee - $100,000
- E.L. Disease – Policy Limit - $500,000

11.1.5. **Professional Liability Insurance (Errors and Omissions):**

*For services, goods, or projects that will exceed $1,000,000 in value over a year.*
- Each Claim - $1,000,000
- Annual Aggregate - $2,000,000

*For services, goods, or projects that will not exceed $1,000,000 in value over a year.*
- Each Claim - $250,000
- Annual Aggregate - $500,000

Professional Liability coverage must be maintained for a two-year period following completion of the Services in this Agreement.

11.6. All insurance shall be primary and not contributory to any other insurance carried by The School Board of Brevard County, Florida. This shall also apply to any self-insurance maintained by The School Board of Brevard County, Florida.

11.7. Contractor shall notify BPS’s Risk Management Department within thirty (30) days of any material changes or notice of cancellation Contractor received from its insurer on above required insurance.

11.8. Contractor shall provide evidence of all insurance in the form of a Certificate of Insurance (Acord) and specify any deductible or retention applicable to above required insurance.

11.9. Contractor agrees that proof of insurance shall be provided prior to execution of this Agreement and that no Services shall begin until proof of insurance is received by BPS. Receipt of proof of insurance shall not be construed as an approval of Contractor’s insurance or a release or waiver of Contractor's obligation to provide insurance required in this Agreement.

11.10. To the extent permitted by law, Contractor’s insurance shall contain a waiver of rights to recover from BPS or its insurance.
11.11. Any required insurance that Contractor self-insures or carries retentions in excess of Ten Thousand Dollars ($10,000.00) shall be pre-approved by BPS’s Risk Management Department and referenced in an addendum to this Agreement.

12. **TIME OF ESSENCE.** Time is of the essence concerning the performance of all terms and conditions of this Agreement.

13. **STANDARD OF CARE.** In providing Services under this Agreement, Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice by BPS, Contractor will correct those Services not meeting such a standard.

14. **INDEMNIFICATION AND LIABILITY.**

14.1. Contractor shall indemnify, defend, and hold harmless BPS, its board members, employees, agents, and representatives from and against any and all third-party claims, suits, actions, damages, losses, expenses, and/or causes of action, including but not limited to, economic loss, reasonable attorneys’ fees, reasonable investigative and discovery costs, court costs, expenses, and all other sums which BPS, its board members, employees, agents, and representatives may pay or become obligated to pay arising out of or in connection with this Agreement, provided that any such claims, suits, actions, damages, losses, expenses, and/or a cause of action, (i) is attributable to any person(s) claiming personal injury, bodily injury, sickness, disease, or death; or damage to tangible property of a third party including the loss of use, (ii) loss of Contractor’s tools and equipment used in connection with this Agreement, and (iii) is caused or incurred in whole or in part by Contractor or any of its subcontractors, agents, or anyone directly or indirectly employed by Contractor, its employees, subcontractor, or agents, or the negligence of the Contractor or the negligence of the Contractor’s employees, subcontractors, or agents when acting within the scope of their employment, regardless if caused in part by BPS. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS’s sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of “solely negligent” should arise, a court agreeable to both Parties may be engaged to settle this dispute.

14.2. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS’s sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS’s rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

14.3. **General Limitations.** To the extent allowed by law, Zayo shall enjoy any statutory protections granted to utility and infrastructure providers and shall not be liable for injury to or death of any person and for damage to or loss of any property arising out of or attributable to its operations and performance under the Agreement except as outlined in section 14.1. BPS’s sole and exclusive remedy for any non-performance, defect or failure to deliver the Access or Service are the performance credits and/or other remedies expressly stated in the relevant Customer Schedule. Zayo’s total liability to BPS for any and all causes and claims whether based in contract, warranty, tort or otherwise shall be limited to the lesser of (a) the actual direct damages sustained by BPS in connection with the affected Service, or (b) an amount equivalent to the total monthly recurring charges (MRC) payable by BPS over the preceding twelve (12) months for the Service affected or if the claim arises prior to the Activation Date, an amount equivalent to the total MRC payable by Customer for the first twelve (12) months of the Order Term. Excluding payments due under any Customer Order that have not been paid, no cause of action under any theory which accrued more than one (1) year prior to the filing of a complaint alleging such cause of action may be asserted by either Party against the other Party.

14.4. **Special Damages.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 14.1, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF DATA, ANTICIPATED SAVINGS OR COST OF PURCHASING REPLACEMENT SERVICES, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL,
EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS MCA OR ANY CUSTOMER ORDER.

15. SUCCESSORS AND ASSIGNS. BPS and Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other Party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither BPS nor Contractor shall assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of BPS, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than BPS and Contractor.

16. GOVERNING LAW AND REMEDIES.

16.1. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary arising out of the Agreement will have its venue in Brevard County and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

16.2. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney’s fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

17. CONFLICT OF INTEREST. Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder, as provided for in Section 112.311, F.S. Contractor further represents that no person having any interest shall be employed for said performance of services. Contractor shall promptly notify BPS in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstances that may influence or appear to influence Contractor’s judgment or quality of Services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstances and the nature of work that Contractor may undertake. Contractor shall request an opinion by BPS as to whether the association, interest, or circumstance would, in the opinion of BPS, constitute a conflict of interest if entered into by Contractor. BPS agrees to notify Contractor of its opinion by certified mail within thirty (30) calendar days of receipt of notification by Contractor. If, in the opinion of BPS, the prospective business association, interest, or circumstance would not constitute a conflict of interest by Contractor, BPS shall so state in its response, and Contractor may, at its option, enter into said association, interest, or circumstance and it shall be deemed not a conflict of interest with respect to the Services provided to BPS by Contractor under the terms of this Agreement. If BPS, in its sole discretion, determines that there is a conflict, Contractor shall not enter into or if already entered into, will immediately terminate such arrangement or Agreement with the subject business associate.

18. INDEPENDENT CONTRACTOR RELATIONSHIP.

18.1. Contractor is, and shall be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of BPS. All persons engaged in any of the work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to Contractor’s sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects to Contractor’s relationship and the relationship of its employees to BPS shall be that of an independent contractor and not as employees or agents of BPS. Contractor does not have the power or authority to bind BPS in any promise, agreement, or representation.

18.2. Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant among the Parties or any affiliate thereof, or to
provide any Party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other Party.

19. **ARREARS.** Contractor shall not pledge BPS’s credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

20. **CONFIDENTIAL INFORMATION AND DISCLOSURE OF DOCUMENTS.**

20.1. Contractor shall deliver to BPS for approval and acceptance, and before eligible for final payment of any amounts due, all documents and materials prepared by Contractor for BPS under this Agreement.

20.2. All BPS written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by BPS at its expense will be kept as Confidential Information by Contractor and will not be disclosed to any other party, directly or indirectly, without BPS’s prior written consent unless required by a lawful order of court. All drawings, maps, sketches, and other data developed or purchased under this Agreement or at BPS’s expense shall be and remains BPS’s property and may be reproduced and reused at the discretion of BPS. As requested, BPS shall comply with the provisions of Chapter 119, F.S.

20.3. The Party receiving Confidential Information will not at any time disclose to any person or entity (including, without limitation, any member of the media) or use for its own benefit or the benefit of anyone, Confidential Information of the other Party without the prior written consent of said Party. Neither Party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court, authorized agency of government, or in compliance with Chapter 119, F.S.

21. **PUBLIC RECORDS.**

21.1. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BPS CUSTODIAN OF PUBLIC RECORDS AT (321) 633-1000 ext. 11453, recordsrequest@brevardschools.org, BREVARD COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, 2700 Judge Fran Jamieson Way, Viera, Florida 32940.**

21.2. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

21.3. A request to inspect or copy public records relating to BPS’s contract for services must be made directly to BPS’s Custodian of Public Records. If BPS does not possess the requested records, BPS’s Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS’s request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney’s fees.
21.4. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.

21.5. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of this Agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keep and maintains public records upon completion, expiration, or termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this Article. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

22. CONTINGENT FEES. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

23. ACCESS AND AUDITS. Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least seven (7) years after completion of this Agreement. BPS or its duly authorized representatives shall have access to such books, records, and documents as required in this section for the purpose of inspection, audit, excerpts, and transcription during normal business hours, at BPS’s cost, upon five (5) days’ written notice.

24. NON-DISCRIMINATION. Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, or expression, and genetic information or any other category of persons protected pursuant to Florida law.

25. SURVIVAL. All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The insurance and indemnity provisions set forth in the Agreement shall survive the termination of the Agreement.

26. AUTHORITY. Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

27. COMPLIANCE WITH LAWS. Contractor agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations as well as applicable BPS policies and regulations, rules, and guidelines in connection with the Services to be provided hereunder, including, without limitation, BPS Policy 6460 Vendor Relations. BPS agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations in connection with the Services to be provided hereunder.

28. SEVERABILITY. If any terms or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, such term or provision shall be stricken and deemed unenforceable and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

29. NAMES; TRADEMARKS. Contractor shall acquire no rights under the Agreement to, and shall not use, the name of The School Board of Brevard County, Florida or the name of “Brevard County Schools” or “BPS” either
alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, “BPS Marks”) in any of Contractor’s advertising, publicity, or promotion; to express or imply any endorsement by BPS or Brevard County Schools of its Services; or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by BPS, except as expressly permitted herein. No advertisement, publication, or other use of BPS Marks shall be published or otherwise promulgated by Contractor without BPS’s prior inspection and written approval. This clause shall survive the expiration or sooner termination of this Agreement.

30. COPYRIGHTS. Contractor is hereby notified that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and, any rights of copyright to which a grantee, subgrantee, or a Contractor purchases ownership with grant support. Furthermore, the Parties agree that BPS has the right to make copies through in-house printer or other non-commercial means, of any materials, whether in tangible or electronic means or media, that are delivered under the provisions of this Agreement for use within BPS for purposes related to BPS business, operations, the delivery of the educational program, or to comply with the requirements of law, rule, policy, or regulation.

31. PROTECTION AND HANDLING OF DATA. Deleted

32. NON-EXCLUSIVE AGREEMENT. The Parties understand and agree this Agreement is a non-exclusive agreement and the Parties hereto may participate in other comparable services to and from any other person or entity.

33. ENTIRETY OF AGREEMENT. BPS and Contractor agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the Parties, that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto. In the event a conflict arises, the Parties shall discuss any such conflict and the priority of controlling documents shall be as follows: this Agreement, the solicitation, any addenda, and Contractor’s response to the solicitation. Note that BPS reserves the exclusive right to rectify any conflicts in its sole discretion.

34. CONFLICTS. If there is a conflict between this Agreement and the documentation attached as Exhibit A, this Agreement governs.

35. CONSTRUCTION OF AGREEMENT. Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.

36. OTHER CONDITIONS.

36.1. Legal Authority. It is understood that those signing this Agreement have the legal authority to enter into binding Agreements.

36.2. Terms and Conditions. This Agreement contains all the terms and conditions agreed upon by the Parties. Items incorporated by reference are physically attached hereto. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the Parties hereto.

36.3. License and Permits. Contractor shall obtain and possess throughout the term of this Agreement all licenses and permits required for its operations under Federal, Florida, and local laws and shall comply with all fire, health, and other applicable regulatory codes.

36.4. Location. All Services shall be performed and located in appropriate settings that are convenient, safe, clean, and well-maintained.
36.5. **Access.** BPS agrees to provide full accessibility to property owned or leased by BPS for Contractor’s employees to perform Services as agreed upon herein.

36.6. **Covenant Not-to-Hire.** Each Party agrees not to hire or attempt to hire employees of the other Party during the term and for a period of one (1) year after the term (including any renewal term) of this Agreement, without the express written consent of the other Party.

36.7. **Public Entity Crime.** Pursuant to Section 287.133, F.S., the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with BPS: when a person or affiliate has been placed on the convicted vendor list following a conviction for a public entity crime, it 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 contractor, supplier, subcontractor, 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 287.017, F.S., for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted contractor list.

37. **DEBARMENT.** By signing this Agreement, Contractor certifies, to the best of its knowledge and belief, that it and its principals:

37.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.

37.2. Have not, within the preceding five (5) year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

37.3. Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph.

37.4. Have not within the preceding five (5) year period had one (1) or more public transactions (federal, state, or local) terminated for cause or default.

37.5. Contractor agrees to notify BPS within thirty (30) days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described above, with respect to Contractor or its principals.

38. **NON-WAIVER.** The failure of either Party to exercise or delay in exercising any right, power, or privilege provided for hereunder shall not be deemed a waiver thereof; nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege under this Agreement. No Party shall be deemed to have waived a right, power, or privilege provided for herein, unless such waiver is in writing and signed by the waiving Party. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.

39. **FORCE MAJEURE.** Except as otherwise provided herein, none of the Parties shall be obligated to perform, and no Party shall be deemed to be in default of its performance, if prevented by: (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation; (c) labor dispute that results in a strike or work stoppage affecting the performance of this Agreement or (d) acts of third parties not caused by, contributed to, or controlled by the Party seeking protection of this provision.
40. **NOTICE.** All formal notices, proposed changes, and determinations between the Parties hereto including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by United States mail, postage prepaid, to the parties at the contact information listed below:

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**
Attention: Procurement and Distribution Services
2700 Judge Fran Jamieson Way
Viera, Florida 32940

**ZAYO GROUP, LLC.**
Attention: Tyler Schroder
1401 Wynkoop Street Suite 500
Denver, Colorado 80202

41. **COUNTERPARTS.** This Agreement may be executed in counterfeit copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one (1) original document.

**IN WITNESS WHEREOF,** BPS has made and executed this Agreement and Contractor has made and executed this Agreement on the day and year written below.

**ZAYO GROUP, LLC**
By: ____________________________ Date: ________________
Authorized Representative Signature
Print Name: _______________________
Title: ____________________________

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**
By: ____________________________ Date: ________________
Misty Belford, Board Chairperson

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Send required insurance certificates to the Procurement and Distribution Services Department. New Contractors: Send all completed Forms to the Procurement and Distribution Services Department.

Contractor Contact Name: Tyler Schroder
Email Address: tyler.schroder@zayo.com
Phone Number: 303.632.0020
**Exhibit “A”**

**SCOPE OF SERVICES**

Contractor will provide and maintain a fully managed, leased lit fiber wide area network (WAN) solution billed on a monthly basis as outlined in this agreement and associated Exhibits. The WAN will connect all listed sites via the two data centers with built-in load-balancing capabilities. Network will include dedicated, symmetrical transport bandwidth of [1 - 10Gbps] between the designated endpoints and will be scalable to [30Gbps] and [100Gbps]. Support services will ensure reliable and continued service as outlined. All products and services provided will be in compliance with the requirements of the Universal Service Administrative Company (USAC) and the School and Library E-rate program.

The following shall be included in the scope:

Exhibit A1: Customer Schedule Ethernet, IP & WANs  
Exhibit A2: Fiber Order 1602505  
Exhibit A3: IP Order 1602805  
Exhibit A4: IP Justification Form