

# FPUAnet Communications Dark Fiber Link (DFL) Service Agreement

## 1. GENERAL

### (A) Introduction

FPUAnet Communications services are provided by the FPUAnet Communications division of Fort Pierce Utilities Authority ("FPUA"), Ft. Pierce, Florida, USA and the terms, FPUA, and FPUAnet are service marks that may be used interchangeably in this Agreement. By using this service (the "Service") or by establishing an account, "you," the customer, agree to be bound by this agreement (the "Agreement") and to use the Service in compliance with this Agreement; the Acceptable Use Policy; all other applicable user policies (collectively "Terms of Service") available on the World Wide Web at <http://www.fpuanet.com/policies.html>; as well as online or hard copy Sales Order(s) (if any) by which you ordered your Service; and any other related documents signed by you. Special notes printed in the Sales Order prior to execution by both parties shall supersede the corresponding language of this agreement. Unless otherwise specified, this Service alone does not include Internet service or maintenance of your network, but such services may be available separately, either as separate line items or on separate, additional Sales Order(s). FPUA may update this Agreement from time to time, and will publish the current version on the above website. FPUA will also announce such revisions by email to a list it maintains for this purpose. You are responsible for submitting your email address to this list on the [www.fpuanet.com](http://www.fpuanet.com) website, and for updating your email address if it changes. Agreement updates are effective 30 days after their publish dates. If you do not agree to any future revisions of this Agreement, and you have a current Sales Order, you may notify FPUA in writing within 30 days after the notice of revision. If you have thus notified FPUA and have a current Sales Order that has been executed prior to the revision date, the revision to which you have reported objection will not apply for the duration of the current term of your Sales Order. In the absence of your notification under a current Sales Order, your continued use of this Service following the posting of any revisions to this Agreement constitutes your acceptance of those revisions.

### (B) Definitions

"Network" shall refer to the linked communications system created by the installation of the fiber optic cables, other cables, wired and wireless devices owned by FPUA.

"Demarcation" shall refer to the point of connection between the connector at the end of FPUA's Network and the mating connector of the Customer's network, as defined in the Sales Order.

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“Dark Fiber Link” (DFL) service is a dedicated fiber or fibers creating a communications pathway between two Demarcations via FPUA’s optical fiber and Network facilities. You may not use the DFL to provide communication services to other parties or government agencies, except as specifically authorized in the Sales Order. The location and specifications of a DFL are defined in the Sales Order.

## 2. SERVICES

- (A) In consideration for the payments to be made by you, pursuant to the terms of each Sales Order and this Agreement, the Service Provider (“FPUAnet”), will provide for your use the Service, one or more Dark Fiber Links, as defined in the Sales Order, via FPUA’s optical fiber and Network facilities, between two Demarcations for each DFL service, in each included customer premise. You shall not use the Link to provide communication services to other parties or government agencies, except as specifically authorized in the Sales Order.
- (B) FPUA shall install and maintain all portions of its Network up to each Demarcation Point. FPUA shall give you at least 10 business days notice prior to the date of any scheduled, non-emergency work on the Network that may affect the Service.
- (C) Except as modified in the Sales Order, you will provide FPUA with ingress and egress to your premises from the public right of way, for the installation to each Demarcation Point. You will be responsible for all costs associated with any building modifications or conduit installation from the right of way or on the premises. If requested by FPUA, you must provide access to FPUA or its designate to allow inspection of your connection frame and attached or wireless equipment, to insure its compatibility with the Network and to verify usage of Network resources. Whether or not the premises are owned by you, you shall obtain all necessary approvals, including easements where applicable from the owner which will allow FPUA to locate, install and maintain its equipment, including for emergencies, and to remove its equipment, cable and wire in the event of your default of any of the provisions of this Agreement or at the termination of this Agreement. FPUA retains the right to leave in place and continue use of any of its equipment, cable and wire beyond Service termination, until FPUA decides to remove part or all of it.
- (D) Any unscheduled outage of the Service will require FPUA to perform emergency repairs. You agree to report the outage on the website at [www.fpuanet.com](http://www.fpuanet.com), whenever possible; otherwise by telephone to FPUA’s Network Support line. FPUA will remotely troubleshoot and, if necessary, dispatch repair crew personnel for emergency dispatch 24 hours a day, seven days a week, and shall not be prohibited from contracting for the repair when deemed necessary. FPUA shall use reasonable best efforts to have its first maintenance person at the site requiring an emergency repair within four hours after the fault is identified and dispatch is deemed necessary. FPUA will attempt to restore the Service no later

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than six hours after the fault is identified. FPUA retains the right to charge you for time and materials expended, if you tamper with FPUA equipment, or report system outages that are not faults of the Service, such as outages caused by failure of your equipment.

### 3. SERVICE LEVEL AGREEMENT (SLA)

#### (A) SLA Terms and Conditions

Dark Fiber Links (DFLs) are single fiber paths from one point to another. As single paths, they have no automatic failover or redundancy. Since DFLs do not include FPUA-provided electronic equipment, these links are not monitored or Network-managed by FPUA, unlike other FPUAnet services. Therefore, the SLA for DFL service is limited to the parameters described below.

If FPUA fails to meet any of the service levels defined in this section, your sole remedies shall be for FPUA to use commercially reasonable efforts to correct the deficiencies, for you to terminate the Service in accordance with section 6. (B), and for FPUA to credit your account, as appropriate, based on SLA Guarantee details below.

The SLA Guarantee credits do not apply for failures (i) occurring during scheduled maintenance or configuration events; (ii) attributable to any application, equipment, system, act or omission of you, your employees, contractors, agents or end users; (iii) caused by Force Majeure or other causes beyond the reasonable control of FPUA; (iv) in which testing or repairs are delayed due to insufficient access to equipment in your premises; or (v) of four hours or less in duration.

In case of an SLA failure, you must first make sure the problem is not with your network or equipment. Then, notify FPUA through the Network Support section at [www.fpuanet.com](http://www.fpuanet.com). Website notification is best, but if you are unable to use the website, you may call FPUA's Network Support line to request a trouble ticket be issued to verify and correct the issue. FPUA reserves the right to charge reasonable fees for repeated false alarms.

You must submit your request for credit within 30 days after the service failure event. The request must include your account number, service address, contact information, description and date of the incident, FPUA trouble ticket number, amount of credit requested, and your calculations. The total of all SLA credits shall not exceed the monthly rate for the portion of your service affected. Mail the request to:

Fort Pierce Utilities Authority  
FPUAnet Communications Division  
PO Box 3191  
Fort Pierce, FL 34948

The credit should be applied to your account within two billing cycles.

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**(B) DFL Interruptions in Service Guarantee**

If your DFL service becomes interrupted for any reason other than the exclusions defined for a period in excess of four hours, you will be granted a service credit. This service credit will be the your sole and exclusive remedy in the case of a service interruption, and will be calculated as 1/760th of the monthly rate for the affected service for each hour that the interruption continues.

**(C) Mean Time to Repair (MTR)**

MTR is a monthly measure, and the FPUAnet standard is four hours or less. MTR is defined as (total outages minutes) / (number of outages). No credits are associated with MTR.

**(D) Signal Loss Guarantee**

The signal loss on each fiber of the DFL, as tested from one Demarcation point to the other, using standard OTDR (Optical Time Domain Reflectometer) test equipment set for a test wavelength of 1310 nm (nanometers), shall not exceed the dB (decibel) limit specified on the Sales Order. If the signal loss of your DFL service exceeds this limit for any reason other than a service interruption (see section 3. (D) below) or one of the exclusions above for a period in excess of 48 hours, you may be granted a service credit. This service credit will be your sole and exclusive remedy in the case of excessive signal loss, and will be calculated as 20% of the monthly rate for the portion of your service affected.

**4. THE FPUA EQUIPMENT**

- (A)** Equipment provided by FPUA (“the Equipment”) for the Service is owned by FPUA and is to be returned to FPUA upon termination of the Service, unless otherwise stated in the Sales Order.
- (B)** FPUA agrees to keep the Equipment in good repair for the duration of the Service. Except as modified in the Sales Order, you grant to FPUA and its agents six (6) rack units, or equivalent wall or shelf space at each Demarcation, electricity and access to operate and service FPUA equipment.
- (C)** You will protect the Equipment and premises cabling, and be responsible for any damage to or loss of the Equipment and premises cabling, including the result of abuse, negligence, or acts of God, until it is returned to FPUA.
- (D)** This warranty is in lieu of all other warranties, express or implied, including but not limited to any implied warranties of merchantability or fitness for a particular purpose.
- (E)** You agree to return the Equipment within 7 days after termination of the Service, and to immediately pay the fair market value for any part of the Equipment not

returned to FPUA within that 7-day period. Fair market value will be reasonably determined at FPUA's sole discretion.

- (F) If FPUA damages your premises ("the Premises") during the Service installation or maintenance, FPUA will compensate the owner of the Premises for reasonable, actual and documented costs of necessary repair.

## 5. PAYMENT

- (A) In consideration for the Service to be provided by FPUA, you shall pay fees to FPUA, including a monthly fee, in advance and in accordance with the Sales Order, or in the absence of a Sales Order, FPUA's applicable fee schedule or price list. After the first three months of service, the monthly service rate will be adjusted each March, based on the percent Annual change in the CPI report, "U.S. All items, 1982-84=100 - CUUR0000SA0" available from USDOL Bureau of Labor Statistics (<http://data.bls.gov/cgi-bin/surveymost?bls>). FPUA reserves the right to change pricing at any time, except that your pricing is protected within the current Term of your Sales Order. You shall also pay appropriate deposits and late payment fees in accordance with the then current security deposit, credit and collection policies of FPUA, and any sales tax, Communications Services tax, or any taxes or other fees required by applicable law. To the extent permitted by law, the parties agree to make all reasonable efforts to cooperate and to provide assistance to one another in an attempt to obtain all available exemptions from any taxes to which any party may be subject as a result of entering into this Agreement.
- (B) Payment shall be due in accordance with your Sales Order. Three payment options are available:
- i. Include Communication Services charges on your monthly paper invoice. This option is available at no extra charge if you receive a paper invoice for electric, water, wastewater, gas or other FPUA utilities. If you do not already receive a paper invoice, a monthly processing fee may be added.
  - ii. Automatic bank draft using FPUA's EZPay service. There is no extra charge for this option, which is available to all utility customers of FPUA. EZPay authorizes FPUA to make automatic monthly charges each calendar month against your bank account. This authorization shall be cancelable by you via written notice to FPUA, delivered either by email, facsimile transmission or United States Mail (First Class, postage prepaid). To sign up, go to FPUA's Payment Options page at <http://www.fpua.com/mybusiness/payment.html>.
  - iii. Automatic credit card payments. FPUA reserves the right to pass on to you a third party "convenience fee", if any, for credit card payments. For current details, go to the Online Services page at <http://www.fpua.com/account/index.php>, or call Customer Service at 466-1600.

Signed or Initialed (optional): for Customer \_\_\_\_\_ for FPUA \_\_\_\_\_ Date: \_\_\_\_\_  
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## 6. TERM OF AGREEMENT

- (A) Your Initial Term of Agreement is sixty (60) months, unless otherwise stated in the Sales Order. At the end of the Service Term of Agreement, the Service and Agreement will continue on a month-to-month basis until terminated with at least 30 days notice by either party, or renewed by written agreement of both parties, unless otherwise stated on the Sales Order.
- (B) If FPUA materially defaults in performance of any duty or obligation imposed by this Agreement, you may terminate this Agreement after giving written notice to FPUA specifying the existence and nature of the default, and giving FPUA thirty (30) days from the effective date of the notice to cure the default. Events of material default by FPUA shall include, but are not limited to, failure to perform its duties hereunder three or more times within any calendar month. If you terminate this Agreement in accordance with this paragraph after FPUA fails to cure the fault within 30 days after your notice, then you will not be obligated to pay any monthly Service charges, beyond the month in which you terminate, for the balance of the Term of Agreement.
- (C) FPUA may suspend or terminate the Service upon no less than thirty (30) days prior notice, and Service suspension under this section shall not release you from your monthly payments or other obligations for the remainder of your Service Term of Agreement, upon (i) your failure to pay any amounts invoiced hereunder within thirty (30) days after the date of the invoice; or (ii) your failure or refusal to cure any breach of this Agreement (other than as mentioned above) within thirty (30) days after notice of such breach has been given by FPUA to you. If such failure, which caused FPUA to give notice of suspension or termination, is cured by you within the time periods provided for in this paragraph, such notice shall not be effective and this Agreement shall continue in full force and effect.
- (D) Except as provided for in section 6(B), if the Service is terminated by either party prior to the completion of the full Term of Agreement, you agree to pay FPUA, within 7 days, all of the balance on your account, the fair market value of any Equipment not returned, as described in section 4 of this agreement, and 70% of the monthly Service charges for the balance of the Term of Agreement.

## 7. NO ARCHIVAL SERVICES

This Service DOES NOT include storage or backup services for your data. FPUA shall have no responsibility for your failure to backup, or loss of any of your data. You are responsible for providing any archival history services with respect to your data, whether created by you or a third party.

## 8. DISCLAIMER OF WARRANTIES

FPUA exercises no control whatsoever over the content, accuracy or quality of the information passing through its Network or any products ordered by you via its Network.

The information or products obtained by you through the Service are provided "as is" without any warranties whatsoever, expressed or implied.

**9. LIMITATION OF LIABILITY**

In no event shall either party be liable to the other for any consequential or special damages arising out of or in relation to this Agreement or the Service, including, but not limited to, damages incurred by you resulting from loss of data due to delays, non-deliveries, mis-deliveries or interruptions in Service, regardless of the cause.

**10. FORCE MAJEURE**

Neither party shall be considered in default of its obligations hereunder if performance of such obligations is prevented or delayed by acts of God, government, war, riots, acts of civil disorder, labor disputes, failure or delay of transportation or such other causes as are beyond such party's reasonable control.

**11. ASSIGNMENT**

No party to this Agreement may assign its rights or delegate its duties hereunder, in whole or in part, without the prior, written consent of the other party.

**12. CONSTRUCTION**

Any word in this Agreement shall be read either as singular or plural, and as either masculine, feminine, or neuter gender, as the context may require. Captions are included for convenience only, and shall not be construed to limit, expand, or otherwise modify the text of this Agreement in any manner. Each party assumes equal responsibility for the drafting of this Agreement and this Agreement shall not be construed more strongly against one party or the other on the basis of which party drafted or prepared it or any portion of it.

**13. NOTICES**

Any notice permitted or required by this Agreement shall be in writing and shall be either delivered in person; mailed by United States Mail, certified with return receipt requested and all postage prepaid; delivered by Federal Express, UPS or other widely recognized overnight courier services; or delivered by facsimile or electronic transmission with confirmation of receipt. Notice sent by certified mail shall be effective on the third business day following postmark, whether or not actually received, if properly addressed with postage prepaid. Notice delivered in person shall be effective upon delivery. Notice sent by overnight courier service, properly addressed with all charges prepaid, shall be effective at 5:00 PM on the next business day following placement of the notice in the hands of the courier service for delivery. Notice sent by facsimile or electronic transmission, properly addressed, shall be effective at 5:00 PM on the next business day following confirmation of receipt. Address to:

Fort Pierce Utilities Authority  
FPUAnet Communications Division  
206 South 6<sup>th</sup> Street  
Fort Pierce, FL 34950

Signed or Initialed (optional): for Customer \_\_\_\_\_ for FPUA \_\_\_\_\_ Date: \_\_\_\_\_

**14. GOVERNING LAW**

This Agreement shall be construed under the laws of Florida, and as applicable, of the United States of America. Venue for any action or proceeding arising out of this Agreement shall be in Florida.

**15. DFL MAY NOT BE A TELECOMMUNICATIONS SERVICE**

Entering into this Agreement and providing the Service do not classify FPUA as a Telecommunications Company, Telecommunications Carrier, Telecommunications Service Provider or any other telecommunications entity as defined by federal or state laws, rules, regulations or administrative orders. This Service is provided as a Private Carrier service.

Revised 12/28/09 by 6146