**DEPARTMENTAL INPUT**

**CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION**

- **Contract:**
  - New
  - OTR
  - Sole Source
  - Bid Waiver
  - Emergency
  - Previous Contract/Project No.: N/A
  - Re-Bid
  - Other – Access of Other Entity Contract

- **Requisition No./Project No.:** RFP15/16-63MP
- **Description:** The contract will allow WASD to acquire services over Fibernet Direct's independently owned and operated fiber optic network. This provides network connections to ensure the highest level of network availability to the network components that support the SCADA network.

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

### ANALYSIS

**Commodity Codes:** 92037

| Commodity Codes: | 92037 |

**Contract/Project History of previous purchases three (3) years**

**Contractor:**

**Small Business Enterprise:**

**Contract Value:**

**Comments:**

**Continued on another page(s):**

- **YES**
- **NO**

### RECOMMENDATIONS

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**Basis of Recommendation:**

**Signed:** Natalya Varela

**Date sent to SBD:** 05/30/2018

**Date returned to PM:**

**Rev. 050418**
SERVICE AGREEMENT

This Service Agreement (together with any annexes, addenda and exhibits attached hereto, the "Service Exhibits"), collectively, the "Agreement") is entered into by and between FPL FiberNet, LLC ("FN") and the Customer identified below ("Customer," and together with FN, the "Parties"). This Agreement shall govern services provided by FN in accordance with RFP, RFP16-63MP and Addenda #1, #2 and #3 (hereinafter collectively "RFP"), and one or more FN Service Orders ("SO" or "SOs") executed by the Parties ("Services"). For the avoidance of doubt, SOs submitted through Customer's registered account on FN's Internet portal and accepted by FN shall be considered as executed by the Parties.

Customer
Charlotte County Public Schools
dba name
1445 Education Way
Address
Address
City Port Charlotte State FL ZIP 33988

Billing Contact
Kathy Scott
Company Billing Name
Charlotte County Public Schoo
Toll Free Billing Name
Billing Contact Phone
941-255-0808

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

AGREED AND ACCEPTED

FN SIGNATURE AND DATE
Carmen M Perez President
PRINT NAME AND TITLE

CUSTOMER SIGNATURE AND DATE
Barbara Kendall School Board Chair
PRINT CUSTOMER NAME AND TITLE

1. SERVICES

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

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

2. EQUIPMENT AND FACILITIES

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

3. INSTALLATION

a. FN will notify Customer upon completion of installation of the Services and will request Customer's participation in promptly testing the Services. Customer may elect to participate with FN in testing the Services. The Services will commence upon completion of FN's testing of the Services (with or without Customer's participation) or two (2) business days after FN's installation of the Services and free (6) business days after FN's installation of the Services in the case of dedicated Internet access services, and such date shall hereinafter be referred to as the "Service Commencement Date". Customer may, upon no less than thirty (30) days written notice to FN, request one (1) extension of no more than ninety (90) days of the date upon which the Services shall be installed. Customer shall execute a change order or other documentation as required by FN to effect such extension, and shall be responsible for any associated fees related to such extension request. Subject to FN's acceptance of the extension, the Service Commencement Date shall be the earlier of (i) the date FN completes installation of the Services with or without Customer's participation or (ii) the second (2) business days after FN's installation of the Service and five (5) business days after FN's installation of the Services in the case of dedicated Internet access service, or (iii) the last day of the extension period requested by Customer. Notwithstanding anything to the contrary in this Agreement, any commercial use of the Services by Customer shall commence on the Service Commencement Date to such date of usage.

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

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

ALL TERMS OF THIS AGREEMENT, INCLUDING PRICING, ARE CONFIDENTIAL AND PROPRIETARY INFORMATION OF FN

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CUSTOMER'S INITIALS
5. PAYMENT. Customer agrees to pay all usage based billing along with any monthly recurring charges ("MRCs") and/or Non-Recurring Charges ("NRCs") set forth in each SO (collectively, "Service Charges"). Except to the extent Customer may be exempt therefrom, Customer shall be responsible for and agrees to pay all applicable federal, state and local taxes, fees, assessments, surcharges or additional charges imposed by any regulatory or quasi-regulatory authority. Customer and Provider shall cooperate in taking all commercially reasonable actions with each other so that the Customer qualifies for any exemptions from, any such taxes, duties or liabilities, including the furnishing of a universal service waiver form. The MRCs will accrue beginning on the Service Commencement Date (or such earlier date as the Customer and FN may agree upon in writing), and will be billed monthly in advance. The NRCs will be billed in the 1st invoice as a nonrecurring fee. Payments shall be made by electronic transfer or on-time payment, unless otherwise agreed, and shall be due no later than forty (40) days after the date of the invoice. Interest will accrue on past-due balances at one percent (1%) per month. If Services are discontinued as a result of non-payment of fees and subsequently reconnected, Customer will be required to pay a reconnection fee in addition to any applicable interest. Notwithstanding anything to the contrary in this Agreement, Customer agrees to reimburse the fees of any collection agency, which may be based on a percentage of the amount due and owed, and all costs and expenses, including reasonable attorneys’ fees, incurred by FN in any collection efforts undertaken to recover past due balances from Customer, or Customer’s heirs, successors or assigns.

6. BILLING DISPUTES. All Bona Fide Disputes (as defined below) along with complete documentation must be submitted in writing together with payment of all undisputed amounts due. If Customer has already paid any such invoice, Customer shall have sixty (60) calendar days from invoice date to give notice of a Bona Fide Dispute regarding such invoice, and documentation thereof, otherwise such invoice will be deemed correct. Notice of a Bona Fide Dispute must be sent to: FPL FiberNet, LLC, 9250 W. Flagler St., Miami, FL 33174, Attn: ACCOUNTS RECEIVABLE, until such time asFN has provided FN with written notification and complete documentation of the Bona Fide Dispute, and the parties will promptly address and attempt to resolve the same. FN may, in its sole discretion, request additional supporting documentation or reject such Bona Fide Dispute as inapplicable. If FN rejects such Bona Fide Dispute, FN will so notify Customer and Customer shall pay the undisputed amount within fifteen (15) days thereafter. If FN determines that the Customer is entitled to credits or adjustments for Services outages pursuant to provisions of applicable Service Exclusions then FN will credit Customer’s invoice for such amount on the next subsequent billing cycle. As used herein, a “Bona Fide Dispute” means a good faith assertion of a right, claim, billing adjustment or credit which Customer reasonably believes it is entitled to under the Agreement.

7. SUPPORT AND MAINTENANCE. FN will provide support and maintenance to Customer in accordance with the Support and Maintenance Terms ("SLA(s)") set forth in the applicable Service Exclusions related to each specific Service (which may be amended from time to time upon no less than ten (10) days’ prior written notice to Customer). SLA credits due to Customer shall first be deducted from any past due amount owed FN. Application of credits by FN shall not wipe out Customer’s obligation to pay any remaining balances or amounts for any instances in which the Service does not meet the SLAs and such failure was attributable to the damage to or loss of function of fiber optic cables/owned by Customer/ and/or the Services. FN shall not be held responsible for, and will not be liable for, damages that arise out of, or in any way related to, or resulting from, any failure to perform under the Agreement. FN shall be responsible for payment of all labor charges incurred in repairs or restoration required to such Customer-owned fiber optic cables/owned by Customer/ and/or the Services. The following table of rates and charges shall apply:

- **Splicing**: $225.00 per hour for 1 man/spline crew with 1-machine
- **Restoration Splicing**: $285.00 per hour for 1 man/spline crew with 1-machine
- **Buried Fiber Repair/Replacement**: $165.00 per hour regular time for 1 man underground crew with hand tools & truck.
- **Aerial Fiber Repair/Replacement**: $78.25 per hour of regular time for 1 man aerial crew with bucket truck and minor aerial gear.
- **Trenching**: $6.55 per linear foot, not to exceed 36”
- **Directional Drilling**: $13.45 per linear foot
- **Handhole Repair/Replacement—cost noted is for the removal & replacement of one handhole.**

*Standard HH is 30x48x36 $810.00 Mid-size HH 24x26x30 $665.00*
Customer receives a notice of monetary default and such time that Customer does so, said default, if FN terminates this Agreement, at any time, as a result of any uncured default of the Customer or if Customer terminates the Service following the Service Commencement Date, in a manner not permitted by law, and FN, at its own option, may liquidated damages and as a penalty, the sum of the following: (1) 100% of any remaining Service Charges for the remaining months of the Service Term plus (2) all previously accrued and due under this Agreement and any charges of a third party providing any portion of the Services.

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

11. RESTRICTIONS ON USE. Customer agrees that it shall abide by FN's Acceptable Use Policy, as may be periodically revised by FN. Notwithstanding any contrary provision hereof, FN reserves the right to suspend Service or terminate this Agreement without notice, written or otherwise, if (i) Customer, in the judgment of FN, fails to abide by or materially breaches any of the terms of the AUP; (ii) FN, in its judgment, is required to prohibit FN's network or services; or (iii) FN determines that the Service is used for illegal purposes or otherwise in violation of FN's Acceptable Use Policy (AUP), which may be periodically updated by FN. By executing this Agreement, Customer agrees to the terms of the AUP.

12. INDEMNIFICATION. Subject to the limitations contained in Section 10.2, any third party claims of loss, damages, liability, costs and expenses (including reasonable attorneys' fees and expenses) to the extent any such claim is asserted against the FN Entities, directly or indirectly, by reason of or resulting from any customer failure to perform an obligation under this Agreement, or any action or inaction of Customer or its employees or agents that is illegal or constitutes negligence or intentional misconduct. In addition, and also subject to the limitations contained in Section 10.2, any third party claims of loss, damages, liability, costs and expenses (including reasonable attorneys' fees and expenses) arising from use of Services by Customer or its end users and/or any violation of FN's Acceptable Use Policy, regardless of whether done with intent or knowledge.

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

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

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

16. THIRD PARTY BENEFICIARIES. Except as set forth in Sections 1 and 10 herein, or otherwise specifically set forth in the RFP, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement.

17. GOVERNING LAW; WAIVER OF JURY TRIAL. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of laws provisions thereof. Any dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof or any breach of any representation or warranty hereunder, shall be settled by binding arbitration in accordance with the then-current rules of the American Arbitration Association, and judgment may be entered on the arbitral award in any court having jurisdiction thereof. To the extent permitted by law, any party to this Agreement shall not commence or maintain any action, proceeding or arbitration in any court or other forum against the other party arising out of, or relating to, this Agreement. Any lawsuit, arbitration or other proceeding in any court or other forum shall be brought solely in the State District Court for the Southern District of Florida, or such other Florida location or forum upon agreement of the parties. IN ANY LITIGATION ARISING FROM OR RELATED TO THE PARTIES HERETO EACH HERE均匀, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

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

19. REGULATORY CHANGES. In the event of any change in applicable laws, regulations, rules or orders issued by the Federal Communications Commission, a state Public Utility or Service Commission, a court of competent jurisdiction or any governmental entity (including any quasi-governmental entity) which materially or adversely affects FN's ability to provide the Services, FN has charges which are the subject of a rate increase as described in the foregoing sentence, then this Agreement will be deemed modified in such a way as the parties mutually agree is necessary to comply with the Regulatory Requirement. If the parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then either party may terminate this Agreement and/or any SO impacted by the Regulatory Requirement effective as of the date of such party's written notice to the other party.

20. NON-DISCLOSURE; CPNI.

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

b. In the course of providing Services to Customer, FN will obtain and possess certain usage-related information about the quantity and type of telecommunications services Customer uses. FN will make, disclose, and share CPNI for the purpose of providing the Services purchased under this Agreement and as otherwise permitted by law. FN may use, disclose, and share CPNI for purposes of fulfilling its obligations under this Agreement and as otherwise permitted by law. FN may use, disclose, and share CPNI to improve and expand the services it performs on behalf of Customer. FN may use, disclose, and share CPNI in connection with investigations to prevent or detect fraud, abuse, or illegal activity.

21. PUBLIC RECORDS REQUIREMENTS. FN shall comply with the public records laws as follows.
(A) Keep and maintain public records that ordinarily and necessarily would be required by the Customer in order to perform the services.

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

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

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

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

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

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

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

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

Technical Specifications

Description of Services

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

Performance Objectives for SONET/SDH Services - DS3

A. Description of Services: Transmission transport links are provided between two or more points which meet at a designated demarcation point between the Provider and Customer. Where the Provider is the provider of local interconnect, local loop availability numbers are provided. The following standards apply for DS3.

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

Performance Objectives

a) Meet or exceed 99.9% percent circuit availability on a monthly basis.
   This objective applies except where a Customer's equipment is disconnected and/or inoperative or Force Majeure (i.e. cable cuts) is in effect or planned maintenance actions initiated by the Customer.
   b) Bit Error Ratio (BER) meet or exceed 10^-10
   c) Meet or exceed 99.5% percent Error Free Seconds (EFS) on a monthly basis.
   d) Does not exceed 0.001% severely errored Seconds (SES) on a monthly basis.
   e) Service Continuity - in the event of primary facility failure, service is guaranteed to switch to an alternate facility in 60 ms or less.

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

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

i. Meet or exceed 99.95% circuit availability on a monthly basis.
   This objective applies except where a Customer's equipment is disconnected and/or inoperative or Force Majeure Event is in effect or planned maintenance actions are being performed.
ii. The circuit is considered to be inoperative when there has been a loss of signal, when loopback tests confirm the observation of severely errored seconds, or when the network monitoring system detects a continuous bit-error rate (BER) of greater than 1 x 10^-9.
iii. Meet or exceed 99.95% Error Free Seconds on a monthly basis.
iv. Does not exceed 0.0001% severely errored Seconds on a monthly basis.
v. Service Continuity - in the event of primary facility failure, service will switch to an alternate facility in 60 ms or less.

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

i. Meet or exceed 99.95% circuit availability on a monthly basis.
   This objective applies except where a Customer's equipment is disconnected and/or inoperative, a Force Majeure Event is in effect or planned maintenance actions are being performed.
ii. Bit Error Ratio (BER) meet or exceed 1 x 10^-10
iii. Meet or exceed 99.95% Error Free Seconds on a monthly basis.
iv. Does not exceed 0.0001% severely errored Seconds on a monthly basis.
v. Service Continuity - in the event of primary facility failure, service is guaranteed to switch to an alternate facility in 60 ms or less. Failure to meet this guarantee will result in a credit as described in Article V.C. The performance objectives for Wavelength services (2.5G or 10G waves) are as follows:

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

i. Availability: "POP to POP" Service - 99.90%
ii. Definition and Measurement: Wave availability is a measure of the relative amount of time during which a wave is available for Customer use during a thirty (30) day calendar month. "Wave Unavailability" is defined as the period for which a wave experiences a complete loss of service, or for which the BER for the wave falls below 1 x 10^-9.

Technical Transmission Specification Standards

Provider and its facilities containing the following Technical References and Standards:

- Telcordia GR-54, GR-253-CORE, and GR-342
- High Capacity
- Self-healing Rings: GR-496
- Ethernet: G742 (LCAS), G7041 (GFP), G707, EEE 802.1Q, IEEE 802.1Q, 802.1W, IEEE 802.1D, IEEE 802.1w (Rapid Spanning Tree (RSTP)), IEEE 802.1w (Multiple Spanning Tree), IEEE 802.3x (Flow control), SNMP v2c, IEEE 802.17, MPLS-TE, MPLS-PWE-3, VPLS, andHAVPLS, MPLS-VPLS, RFC 3619 (EAPS), RFC 2236, RFC 3576, RFC 3579, RFC 3582

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CUSTOMER'S INITIALS
SONET Specifications and Timing Issues

OCN Transmission parameter limits, interface combinations, and technical specifications applicable to the interconnection of SONET transport systems and SDH equipment. This section addresses issues such as frequency, phase, and timing, which are critical for maintaining network synchronization and ensuring data integrity.

SDH Timing Issues

- E1 service signal frame structure will comply with ITU-T G.704.
- STM service signal frame structure will comply with ITU-T G.707.
- Optical signal interfaces will comply with ITU-T G.709.

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

1. Latency (RTD) ≤ 500s intra-metro
   ≤ 200s inter-metro

2. Availability ≥ 99.99% (Unprotected Service) ≥ 99.995% (Protected Service)

3. Jitter ≤ 5 ms

4. Packet Delivery ≥ 99.99% (Unprotected Service) ≥ 99.999% (Protected Service)

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

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

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

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

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

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CUSTOMER'S INITIALS ____________________________________
• Bursting: allows for traffic in excess of CIR up to physical port speed (best efforts for Ethernet/IP VPN & DIA Premium)
• Multicasting: allow for multicasting up to CIR for Ethernet/IP VPN
• Inter Metro: allow for VPN service across multiple Provider Ethernet Metros (for Ethernet/IP VPN)

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

- Latency (Ethernet VPN only) (RTT) ≤ 10ms per Copper tail added to latency specification SLA for Standard Ethernet VPN and Standard Dedicated Internet Access
- Availability ≥ 99.9% (Unprotected Service)
- Packet Delivery (Ethernet VPN only) ≥ 99.9% (Unprotected Service)

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

As Customer’s sole remedy for any Service Outage identified above for the portion of the Service provided on FN’s network (On-Net Service), Customer will receive credit as follows for each On-Net Service Outage (i.e., a complete disruption of a Service or a degradation of Service below the Technical Specifications) equal to 1/1440 of the MROI applicable to that portion of the Service which is subject to the On-Net Service Outage for each one-hour (1/24 of a calendar month) outage of a Service. If FN receives an outage credit from a third party carrier for a portion of the Service which is not provided on FN’s network (Off-Net Service) FN shall credit Customer’s account with an equitably allocated portion of that credit.

Managed Security Services

Severity Level Response Time and Resource Commitment

Provider agrees to use commercially reasonable efforts to respond to Customer requests based on the Severity of the issue as follows:

Severity 1:

a) an error with a direct security impact on the product;

b) an error isolated to managed security software or hardware, which renders the product inoperative or causes the product to fail catastrophically; e.g., critical system impact, or system down;

c) a reported defect in the managed security software or hardware which cannot be reasonably circumvented, or an emergency condition exists that significantly restricts the use thereof to perform necessary business functions; or

d) inability to use the managed security software or hardware or a critical impact on operation requiring an immediate solution.

Severity 2:

a) an error isolated to managed security software or hardware that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, key operational impact;

b) a reported defect in the managed security software or hardware, which restricts the use of one or more features to perform necessary business functions but does not completely restrict the use thereof; or

c) ability to use the managed security software or hardware, but an important function is not available, and operations are severely impacted.

Severity 3:

a) an error isolated to the managed security software or hardware that causes only a moderate impact on the use of the product; e.g., moderate system impact, performance/operational impact;

b) a reported defect in the managed security software or hardware that restricts the use of one or more features to perform necessary business functions; while the defect can be easily circumvented; or

c) an error that can cause some functional restrictions but does not have a critical or severe impact on operations.

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Response Time</th>
<th>Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1</td>
<td>1 Hour</td>
<td>Provider and Customer will commit the necessary resources around the clock for problem resolution.</td>
</tr>
<tr>
<td>Severity 2</td>
<td>2 Hours</td>
<td>Provider and Customer will commit full-time resources during normal business hours and alternative resources outside of normal business hours to (1) identify and (2) resolve the problem.</td>
</tr>
<tr>
<td>Severity 3</td>
<td>4 Hours</td>
<td>Provider and Customer will commit full-time resources during normal business hours only to (1) identify and (2) resolve the problem.</td>
</tr>
</tbody>
</table>

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

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

DDoS Mitigation Services

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

2. Description of Service.

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

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CUSTOMER'S INITIALS _______
b) Mitigation—If Customer confirms that a DDoS attack is occurring, Provider will route Customer's inbound traffic to its DDoS Scrubbing platform and begin applying countermeasures in an effort to minimize the effects of the DDoS attack. The DDoS Mitigation Service and associated countermeasures are configured to reduce disruption of Customer's legitimate traffic.

c) Provider will review the mitigation countermeasures 24 hours after initial implementation and will remove if Provider determines the DDoS attack has ended. At such time, Provider will redirect Customer's inbound traffic to its normal path and notify Customer that all implemented countermeasures have been removed.

d) If a DDoS attack is impending, or may impact, Provider's network, Provider may take any action, including but not limited to blackhole filtering Customer's traffic, which filtering would result in all traffic destined to Customer being dropped.

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

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

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

4. Limitations. This SLA will not apply, and Customer will not be entitled to receive a credit under this SLA, for any event that adversely impacts the DDoS Mitigation Service that is caused by:
   a) the acts or omissions of Customer, its employees, contractors, agents or its and users;
   b) the failure or malfunction of equipment, applications, or systems not owned or controlled by Provider;
   c) Force Majeure Events;
   d) scheduled service maintenance, alteration, or implementation;
   e) the unavailability of required Customer personnel, including as a result of Customer's failure to provide Provider with accurate, current contact information; 
   f) Provider's lack of access to the Customer premises where reasonably required to restore the Service; or
   g) improper or inaccurate network specifications provided by Customer.