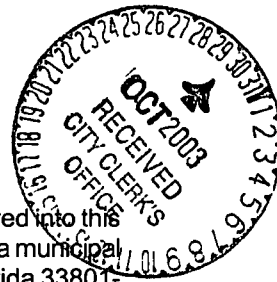


INTERNET ACCESS SERVICE AGREEMENT



15th THIS INTERNET ACCESS SERVICE AGREEMENT (the "Agreement") is made and entered into this day of October, 2003, by and between the CITY OF LAKELAND, a Florida municipal corporation (hereinafter referred to as "Lakeland"), located at 501 E. Lemon Street, Lakeland, Florida 33801-5050 ("Lakeland's Premises"), and Smart City/mpiNET, LLC, a Florida limited liability company doing business as mpiNET (hereinafter referred to as "mpiNET") and located at 1101 No. Keller Road, Suite B, Orlando, Florida 32810.

WITNESSETH:

WHEREAS, Lakeland and Volaris Online, Inc. entered into a Connectivity & Service Agreement dated April 15, 2002 (the "C&S Agreement") with an initial service period of 12 months pursuant to which Volaris Online, Inc. provided certain internet access service to Lakeland at Lakeland's Premises; and

WHEREAS, on December 17, 2002, mpiNET acquired a certain portion of the Central Florida commercial customer base and assets of Volaris Online, Inc. pursuant to which certain of Volaris Online, Inc.'s then existing customer contracts were transferred and/or assigned to mpiNET (the C&S Agreement between Lakeland and Volaris Online, Inc. was one of the customer contracts included in said transfer and assignment and Lakeland thus became a customer of mpiNET at that time);

WHEREAS, the initial 12 month service term of the transferred C&S Agreement expired on April 14, 2003 however, pursuant to the terms and conditions of said C&S Agreement, it has automatically continued on a month to month basis at the current rates and Lakeland has remained connected to the mpiNET's network and has continued to receive internet access service (the "Service") through mpiNET;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1) AGREEMENT TERM

The initial term of this Agreement shall become effective November 1, 2003, and shall continue thereafter for a period of 12 months, after which the term of the Agreement will automatically renew on a month to month basis at the same rates and under the same terms and conditions until terminated by either party upon 30 days prior written notice to the other party. Except for cause as defined herein, Lakeland is not permitted to suspend or terminate Service or the Agreement during the initial 12 month term without payment of the remaining monthly charges as more particularly set forth in paragraph 15b. This Agreement hereby cancels, supercedes and replaces the C&S Agreement in its entirety.

3) LAKELAND COMPUTER EQUIPMENT REQUIREMENTS

The current minimum Lakeland computer equipment requirements for Service are:

- Windows 98, Millennium, Windows 2000, or XP operating system
- 500 Mhz processor (or greater)
- Minimum of 128 Mb RAM
- Availability of a minimum of 50 Mb hard disk space equipped with a NIC card

10.14.03 PB

4)

PREMISE EQUIPMENT

- a. mpiNET shall be responsible for maintaining, repairing, inspecting, and removing any customer premise equipment ("CPE") required to be located by mpiNET on Lakeland's Premises in order to provide the Service, and for obtaining any necessary licenses.
- b. Unless otherwise agreed to in writing by the parties hereto, mpiNET shall retain title to any such CPE and shall be solely responsible for the performance or maintenance thereof. At all times during the term of this Agreement, Lakeland shall be responsible for and assumes all risk of loss for any and all damage to CPE provided by mpiNET and located on Lakeland's Premises. Upon termination of the Agreement, Lakeland is required to return all mpiNET provided CPE. If Lakeland does not return any mpiNET provided CPE, Lakeland will be required to pay mpiNET the fair market value of said CPE.
- c. Unless otherwise agreed to in writing by the parties hereto, mpiNET is not responsible for extending the Lakeland demarc or running Ethernet beyond fifteen (15) feet from the room where the Lakeland demarc is located. In such case, mpiNET's costs associated with extending the Lakeland demarc, etc. will be charged to Lakeland at mpiNET's then current hourly rate(s) and charges.
- d. Unless otherwise agreed to in writing by the parties hereto, mpiNET will support the mpiNET provided CPE, i.e. router, remotely.
- e. If said router is provided by or purchased from mpiNET, additional charges will apply for required on-site support except if due to hardware defects and product returns to manufacturers during the normal warranty period of the router. These charges will be assessed for support provided which may include, but is not limited to: login changes, resetting to default configuration, VPNs, NAT, port and IP forwarding or any other custom configuration requested by Lakeland. mpiNET is not responsible for damage caused by lightning, flood, fires, acts of God, negligence on the part of Lakeland or any damage caused by events beyond the control of mpiNET. Any required hardware replacement outside the normal product warranty is the responsibility of Lakeland. Router username and password will remain confidential to mpiNET and be recorded in mpiNET's work order database. Changes to the router login by anyone other than mpiNET are not permitted and may result in immediate suspension of Service hereunder or termination of the Agreement in mpiNET's sole discretion.
- f. mpiNET accepts responsibility up to the Ethernet port on the router when mpiNET has provided the router. mpiNET will demonstrate Internet connectivity by pinging the Ethernet port on the router. Lakeland's LAN is the sole responsibility of Lakeland. Lakeland's computers should also be currently connected to Lakeland's LAN and have properly installed Network Interface Cards ("NIC") mpiNET will supply information for the configuration of workstations such as IP addresses, server names, usernames, and passwords.
- g. If Lakeland chooses to support its own router, then Lakeland is responsible for all router information including, logins, usernames, passwords, configurations, settings and defaults. mpiNET accepts responsibility to ping the WAN side of the router and provide verification with the local telephone company of online circuits. mpiNET assumes no other responsibilities for Lakeland's network unless otherwise agreed to in writing by the parties hereto.

5)

ACCESS TO LAKELAND'S PREMISES

- a. mpiNET assumes no liability for delays or interruptions in Service due to strikes, riots, floods, fires, acts of God or any other causes beyond the control of mpiNET. mpiNET assumes no liability for limitations with Lakeland's designated telephone circuit that may cause Lakeland to receive bandwidth that is less than that originally ordered.
- b. In so far as mpiNET (including its subcontractors and their respective employees and agents) provides Lakeland with proper and reasonable prior notice and adheres to Lakeland's safety and security policies and procedures, a then current copy of which Lakeland will provide to mpiNET at said time, Lakeland authorizes and agrees to provide mpiNET, its subcontractors, and their respective employees and agents with access (including access to associated equipment) to enter Lakeland's Premises where Service is provided as necessary for mpiNET, its subcontractors, and their respective employees and agents to maintain, inspect, repair, and remove mpiNET equipment and/or the Service.

10/14/03 AB

6) **NOTICE**

Any notices required to be given under the terms of this Agreement shall be delivered by hand or mailed, postage prepaid, to:

For Lakeland:

Attn: Contracts Administrator, Mail Code A24
Contracts/Right-of-Way Division
City of Lakeland, Department of Electric Utilities
501 East Lemon Street
Lakeland, Florida 33801-5079

For mpiNET:

Director - Contracts
mpiNET
3100 Bonnet Creek Road
P.O. Box 22555
Lake Buena Vista, Florida 32830-2555

With a copy to:

Mr. Lee McArthur
General Manager
mpiNET
1101 No. Keller Road, Suite B
Orlando, Florida 32810

7) **INVOICING AND PAYMENT TERMS**

- a. All invoices from mpiNET must include Lakeland's Purchase Order number which can be obtained from Lakeland's Network Coordinator listed below. Invoices must be sent to:

Lakeland Electric Finance, Mail Code A34
501 East Lemon Street
Lakeland, FL 33801-5079

With a copy to:

Tom Jones
Network Coordinator, Mail Code A44
501 East Lemon Street
Lakeland, Florida 33801-5079
Telephone No. (863) 834-6339
Email: tom.jones@lakelandelectric.com

- b. Conditional upon mpiNET sending Lakeland a proper invoice, Lakeland agrees to pay mpiNET for Service within 30 days of mpiNET's invoice date. Amounts not paid by Lakeland within 30 days of the date of invoice shall be considered past due. All amounts due for Service shall be billed and paid in United States dollars. Lakeland agrees to pay to mpiNET the lesser of an annual interest rate of 18% (or a monthly rate of 1.5%) or the maximum amount allowed by law on all accounts, which are not paid on or before 30 days from the date of the invoice. Failure of Lakeland to make payment hereunder when due may result in immediate suspension or termination of Lakeland's Service and/or this Agreement by mpiNET. Should Lakeland request mpiNET to reconnect Service after mpiNET has deactivated Service for Lakeland's non-payment, Lakeland agrees to pay a one-time per incident reconnect fee of \$200.00 and any mpiNET setup/configuration fees.

10.14.03 AB

8) **LAKELAND SERVICE AND SUPPORT**

mpiNET will provide 24 x 7 monitoring and Tier 1 and Tier 2 Help Desk support. Service Support can be accessed by Lakeland local time from 7:00 a.m. to 12:00 p.m., Monday through Friday, and from 9:00 a.m. to 9:00 p.m., Saturday and Sunday, by dialing 1-800-251-8485. After hours, dialing 1-800-251-8485 will reach mpiNET's answering service and mpiNET's on-call technician will respond within two (2) hours to a page that the answering service will send. In the event an outage occurs outside the above identified hours, mpiNET will page the Lakeland Network Administrator at _____ 863/698-5337 or other Lakeland representative designated in writing by Lakeland. In the event an outage takes place during mpiNET's normal business hours of _____, mpiNET will call the Lakeland Network Administrator directly to notify Lakeland of mpiNET's anticipated time of repair.

9) **SERVICE PERFORMANCE LEVELS**

Exhibit "A", Service Performance Levels, attached hereto and incorporated herein by reference, identifies the limited Service performance levels which mpiNET will use commercially reasonable efforts to provide and maintain. Stated Service performance levels are based on the assumption that Lakeland's network is appropriately engineered and working properly for which Lakeland is solely responsible.

10) **SECURITY**

mpiNET WILL NOT BE RESPONSIBLE FOR ANY CORRUPTED FILES OR VIRUSES THAT AFFECT LAKELAND'S USE OR THAT OF ANY OTHER USER OF THE SERVICE. It is Lakeland's responsibility to safeguard Lakeland's system and equipment, through appropriate means (e.g. using passwords, commercially available hardware/software), from theft, unauthorized use or system corruption. Due to the "always on" nature of the Service technology, any detriment caused to Lakeland's computer system as a result of Lakeland's failure to properly secure Lakeland's system will be Lakeland's responsibility. Any detriment caused to mpiNET's network as a result of Lakeland's failure to properly secure Lakeland's system, may result in the immediate suspension of Lakeland's Service or termination of the Agreement by mpiNET.

11) **MPINET'S CONTENT RIGHTS**

mpiNET has neither the liability nor the obligation to: (a) monitor the content on the Service and hereby expressly disclaims any responsibility for any offense or injury arising out of Lakeland's access to dissemination of such content. However, Lakeland acknowledges and agrees that mpiNET has the right to monitor content electronically from time to time and to disclose any information as necessary to satisfy any law, regulation, or other governmental request to operate the Service properly, or to protect itself or its subscribers. mpiNET reserves the right to refuse to post or to remove any information or materials that, in its sole discretion, are unacceptable, undesirable, or in violation of this Agreement; or (b) assume responsibility for the content contained on the Internet or otherwise available through the Service. There may be some content on the Internet or otherwise available through the Service which may be offensive to some individuals, or which may not be in compliance with all local laws, regulations, and other rules. All content accessed by Lakeland through the Service is accessed and used by Lakeland at Lakeland's own risk, and neither mpiNET, nor its parent company or any of its affiliates, nor any of their respective subcontractors, employees and agents, shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content by Lakeland. mpiNET specifically disclaims any responsibility for the accuracy, quality, and confidentiality of information obtained through the Service.

12) **NO MPINET LIABILITY**

a mpiNET shall have no liability for: (a) Eavesdropping. Other service subscribers may be able to access and/or monitor Lakeland's use of the Service. Any sensitive or confidential information (such as credit card numbers or other financial information, medical information or trade secrets) sent by or to Lakeland is sent at Lakeland's sole risk, and neither mpiNET, nor its parent company or any of its affiliates, nor any of their respective subcontractors, employees, or agents, shall have any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to such actions by Lakeland; (b) FTP/HTTP/Proxy/Gateway Server Setup. Lakeland should be aware that when using the Service to access the Internet or any other online service, there are certain applications, such as FTP, HTTP, proxy, or gateway server applications, which may be used to allow other service users and Internet users to gain

10-14-03 AB

access to Lakeland's computer. Neither mpiNET, nor its parent company or any of its affiliates, nor any of their respective subcontractors, employees, or agents, shall have any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from, arising out of or otherwise relating to the use of such applications by Lakeland, including, without limitation, damages resulting from others accessing Lakeland's computer or from any loss of data maintained on Lakeland's network.

- b. Lakeland is responsible for any and all telco charges that may be associated with the Service provided by mpiNET. It is Lakeland's responsibility to insure that any phone numbers provided by mpiNET for the use of the Service is a local call for Lakeland. mpiNET will not be responsible for any and all local toll or other charges that may be a result of using or accessing the Service

13) **INSURANCE AND INDEMNIFICATION**

a. Insurance Coverage Requirements

mpiNET shall, throughout the performance of its obligations pursuant to this Agreement, maintain, at mpiNET's sole cost and expense, the following insurance:

- (1) Occurrence basis commercial general liability insurance (including broad form contractual coverage) and automobile liability insurance, with minimum limits of \$500,000, and \$500,000, respectively, combined single limit per occurrence, protecting it and Lakeland from claims for bodily injury (including death) and property damage which may arise from or in connection with the performance of mpiNET hereunder or from or out of any act or omission of mpiNET, mpiNET's affiliates and the officers, directors, agents, employees, and assigns of each; and
- (2) Worker's Compensation insurance as required by applicable law (and employer's liability insurance) with minimum limits of \$100,000 per occurrence.

b. Insurance Certificates

Upon request of Lakeland, mpiNET shall deliver duplicate original Acord certificates to Lakeland evidencing that all insurance has been obtained and is being maintained as required in this paragraph. Said certificates shall also evidence the agreement by insurers (i) to give Lakeland at least 30 days prior written notice of cancellation, non-renewal or reduction in coverage, and (ii) name Lakeland as additional insureds with respect to the commercial general liability, automobile liability and employer's liability insurance.

c. Indemnification

mpiNET agrees to indemnify, defend, and hold harmless Lakeland from and against any and all claims, suits, and demands of liability, loss, cost, expense or damage, including, without limitation, reasonable attorney's fee (collectively "Damages"), arising out of or in connection with any breach of this Agreement by mpiNET or arising out of or in connection with any negligent or willful act or omission of mpiNET (or its employees or agents) relating to the installation, operation or provision of the Services pursuant to this Agreement (including, without limitation, Damages incurred by Lakeland as a result of any loss, injury, death, or damage to any person or persons or property, including without limitation all agents and employees of mpiNET and all property owned by, leased to, or used by mpiNET or Lakeland or either of them). There are excluded from this indemnity provision any such claims, suits, and demand of liability, loss, or damage resulting from Lakeland's negligence or willful intent to cause injury or damage. The indemnity obligations set forth herein shall survive expiration or termination of this Agreement.

14) **LIMITATION OF LIABILITY**

In no event shall mpiNET, its parent company, its affiliates, or any of their respective subcontractors, employees, agents or suppliers be liable to Lakeland or to any third party, whether in contract, tort (including negligence), warranty or otherwise, for any indirect, incidental, special, consequential, exemplary or punitive damages (including, without limitation, loss of profits) arising out of or relating to this Agreement, even if advised of the possibility of such damages. In addition, in no event shall mpiNET, its parent company, its affiliates', or any of their respective subcontractors', employees, agents or suppliers) total liability, in the aggregate, to Lakeland or to any third party under this Agreement, exceed the limits of mpiNET's insurance service fees and charges actually paid by Lakeland to mpiNET pursuant to this Agreement.

15) **TERMINATION OF SERVICE**

- a. If, during the initial term or any renewal term of this Agreement, either party shall be in default of any of the material provisions of this Agreement, the non-defaulting party may suspend its performance hereunder until such delinquency or default has been corrected; provided, however, that no suspension of performance shall be effective unless and until the non-defaulting party

10.14.03 AB

gives written notice of the default to the defaulting party with at least 10 business days given to cure such default. If the defaulting party fails to correct such delinquency or default within 30 days of suspension of performance by non-defaulting party, then the non-defaulting party may terminate this Agreement and seek such remedies as may be available.

- b. In the event that all or any part of the Service provided hereunder or the Agreement is terminated for cause by mpiNET or Service is disconnected or the Agreement terminated at Lakeland's request without cause prior to expiration of the initial 12 month term of this Agreement, then Lakeland will be required to pay mpiNET the remaining monthly charges due through the end of the initial term of the Agreement.

16) MULTIPLE USERS

Lakeland acknowledges that it is executing this Agreement on behalf of Lakeland and all persons who use mpiNET's equipment, network, or Service through Lakeland's computer(s), network, or systems, and is responsible for the activities of anyone using Lakeland's Service. By signing this Agreement and accepting Service from mpiNET, Lakeland shall have sole responsibility for ensuring that anyone using Lakeland's Service understands, will comply with and abide by the terms and conditions of this section and the Agreement.

17) TRANSFER AND ASSIGNMENT

Lakeland may not transfer Service or assign this Agreement or any portion thereof without the express prior written consent of mpiNET, which consent shall not be unreasonably withheld.

18) GOVERNING LAW

This Agreement is subject to the laws of the State of Florida, and shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Florida, without regard to conflicts of law principles

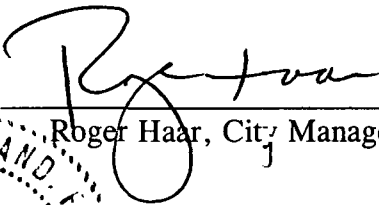
19) ENTIRE AGREEMENT


This Agreement, including the Exhibits attached hereto, together constitute the entire agreement between Lakeland and mpiNET with respect to the Service specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

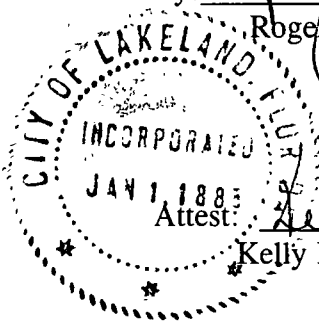
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

LAKELAND:
CITY OF LAKELAND

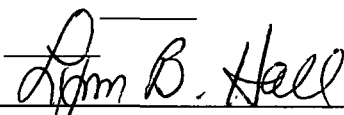
mpiNET:
SMART CITY/MPINET, LLC


By: 
Roger Haar, City Manager

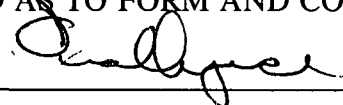
By: 
Name/Title: Allen E. Sims - Chief Operating Officer



Attest: 
Kelly Koos, City Clerk

Attest: 

Its: 

APPROVED AS TO FORM AND CORRECTNESS:

Timothy J. McCausland, City Attorney

10.14.03 AB

Exhibit "A"
Service Performance Levels

mpiNET believes that Service Performance Levels should not only be written in plain language but should also provide a defined escalation process and a clear and simple process for requesting credit on service interruptions. Service Performance Levels should also cover services that can be accurately monitored as well as provide a true statement of mpiNET's network service rather than exist as a mere marketing tool

Service Quality

Service Availability:

mpiNET will use commercially reasonable efforts to attain a service performance level of 99.95% availability of the mpiNET Network (as defined in the Agreement) which also applies to mpiNET's co-location facility where applicable.

Scheduled Maintenance:

Scheduled Maintenance is defined as any maintenance performed by mpiNET at the mpiNET hub to which Lakeland's circuit(s) is/are connected (a) of which Lakeland is notified 48 hours in advance, and (b) that is performed by mpiNET during a standard maintenance window Monday through Friday from 1 AM to 5 AM (time local to the mpiNET hub to which Lakeland's circuit(s) is/are connected) Notice of Scheduled Maintenance will be provided to Lakeland via mpiNET's maintenance website.

Emergency Maintenance:

Emergency Maintenance is defined as any maintenance, performed by mpiNET at the mpiNET hub to which Lakeland's circuit(s) is/are connected, that needs to happen immediately to rectify newly discovered security exploits, bugs, viruses, or anything else deemed by mpiNET, in its sole discretion, to be detrimental to the equipment performance. Notice of Emergency Maintenance will be provided to Lakeland's designated point of contact by a method elected by mpiNET (e.g. email-capable cell phone or pager).

Service Availability Process:

At Lakeland's request, mpiNET will calculate Lakeland's "Network Unavailability" in a calendar month. Network Unavailability is defined as the number of minutes that the mpiNET Network was not available to Lakeland, and includes unavailability associated with any maintenance performed by mpiNET at the mpiNET hub to which Lakeland's circuit(s) is/are connected other than Scheduled and Emergency Maintenance. Outages will be counted as Network Unavailability only if mpiNET notifies Lakeland of the outage in accordance with the Outage Reporting process set forth below or if Lakeland opens a trouble ticket with mpiNET customer support within two (2) days of the outage. Network Unavailability will not include Scheduled or Emergency Maintenance, or any unavailability resulting from (a) any Lakeland-ordered telephone company circuits; (b) Lakeland's applications, equipment, or facilities; (c) any Local Exchange Carrier facility outage; (d) acts or omissions of Lakeland, or any use or user of the Service authorized by Lakeland; (e) reasons of Force Majeure as defined in the Agreement); or (f) outage due to violation of the Agreement

Service Availability Remedy:

In the unlikely event that mpiNET's network is unavailable, for each cumulative hour of Network Unavailability or fraction thereof up to four (4) hours in any calendar month and upon Lakeland's written request, Lakeland's account shall be credited for the pro-rated charges for each hour of mpiNET's Monthly Fee and each hour of the local telephone company line charges for the Service with respect to which Service Availability has not been met. For each cumulative hour above four (4) hours of Network Unavailability or fraction thereof in any calendar month and upon Lakeland's written request, Lakeland's account shall be credited for the pro-rated charges for one (1) day of mpiNET's Monthly Fee and one day's local telephone company line charges for the Service with respect to which Service Availability has not been met. If the service provided by mpiNET is unavailable for a period of 72 consecutive hours, the Customer may request a cancellation of their Service and/or the Agreement with mpiNET with no penalties.


10-14-03 

Exhibit "A"
Service Performance Levels
(Cont'd)

Outage Reporting:

mpiNET's standard procedure is to ping Lakeland's router every ten minutes. If Lakeland's router does not respond to a ping cycle, mpiNET will verify the outage and will contact Lakeland's designated point of contact by a method elected by mpiNET (e-mail capable cell phone or pager). The duration of the Service Outage starts with the opening of a verifiable Trouble Ticket by mpiNET Customer Care and ends when the Service Outage ends. "Verifiable Trouble Tickets" are defined as those where mpiNET has substantiated that a Service Outage exists. Lakeland must notify mpiNET immediately of a Service Outage by calling mpiNET's trouble resolution telephone number, (407) 660-7900. mpiNET will then assign a trouble ticket number.

Outage Reporting Process:

Outage Reporting is applicable only to service provided in the contiguous United States and is applicable only if Lakeland completes mpiNET's Customer Information Form in its entirety or registers for the Circuit Monitoring Option by submitting the appropriate provided form to Lakeland's dedicated sales representative. Lakeland is solely responsible for providing mpiNET with, and keeping current at all times, accurate and current contact information for Lakeland's designated point(s) of contact. mpiNET will be relieved of its obligations for Outage Reporting if mpiNET's contact information for Lakeland is out of date or inaccurate due to Lakeland's action or omission or if mpiNET's failure is due to reasons of Force Majeure (as defined in the Agreement).

Outage Reporting Remedy:

If mpiNET fails to meet the Outage Reporting service performance level identified above and upon Lakeland's written request, Lakeland's account shall be credited the pro-rated charges for one (1) day's worth of the applicable mpiNET Monthly Fee for the respective service. Lakeland may obtain no more than one (1) credit per day, irrespective of how often in that day mpiNET failed to meet the Outage Reporting service performance level.

Escalation Process and Request for SLA Remedy:

- At the time Lakeland becomes aware of a service performance level issue covered hereunder, it is the responsibility of Lakeland to call mpiNET's Business Service Technical Support at 800-251-8485 and open a trouble ticket.
- During or after the instance, Lakeland should request the appropriate service performance level remedy by requesting a form from mpiNET Business Service Technical Support, filling out the form, and emailing the completed form to sales@mpinet.com.
- mpiNET will acknowledge receipt of Lakeland's service performance level remedy request within 72 hours and will notify Lakeland within 30 days of the resolution.
- If Lakeland wishes to appeal the resolution, a copy of the original form and its response should be emailed to lmcArthur@mpinet.com. All decisions by the General Manager of mpiNET will be final.