

## SERVICE LEVEL PERFORMANCE AGREEMENT (“SLA”)

This Service Level Performance Agreement (“SLA”) for Broadband.com Services (“SLA”) is made and entered into as a supplement to the Agreement as agreed upon in the Terms and Conditions (“Ts and Cs”) including any related Exhibits, Attachments, Schedules, other applicable Addenda, all of which are fully incorporated by reference within this Exhibit) between Broadband.com, Inc. (“Broadband”, “Broadband.com”, “Bandwidth” or “Bandwidth.com”) and \_\_\_\_\_ (“Customer”), entered into on \_\_\_\_\_.

### **I. Overview.**

This SLA describes Broadband.com’s target network performance and service level metrics for the Services identified in Customer’s Service Order Form(s) (“SOF” or “SOFs”). Where Broadband.com fails to meet a given standard of performance as defined below (“Performance Standard”), Customer shall be eligible for a corresponding credit, also defined below (“Service Credit”), subject to the qualifications contained herein. By executing an SOF, Customer agrees to the terms of this SLA, and that this SLA constitutes the entire agreement between Broadband.com and Customer as to the Service Performance and/or SLA credits available, except and unless as may additionally provided in writing and executed by both Parties. All Service Outages, service impacting and non-impacting situations, and potential Service Level credits, will be handled according to the guidelines and priorities as defined and set forth in this SLA, and which may be subject to change from time to time with written notice to Customer. In the event of a material change to the SLAs, Customer may notify Provider in writing of any concern with such a change and both Parties agree to negotiate in good faith to resolve any Customer concerns.

### **II. Definitions.**

- a. Affected Service – a Broadband.com Service experiencing a Service Outage or a Service Degradation for which a Trouble Ticket has been opened.
- b. Combined Service – more than one Service purchased by Customer that are billed as a single product and therefore are not independently invoiced, such as “BoxSet”.
- c. Contract Year – a calendar year beginning on the Service Activation date.
- d. Customer Premise Equipment (the “CPE”) – equipment purchased by the Customer and used to support the Services on the Customer’s network.
- e. Data Services – Services purchased from Broadband.com for traditional internet usage, including Services described as dedicated internet (“DIA”), point-to-point (“PP”), private line, frame relay, multi-protocol label switching (“MPLS”), Ethernet, digital subscriber line (“DSL”), or satellite.
- f. Monthly Recurring Charges (“MRC”) – the charges billed by Broadband.com to the Customer each month for provided Service, exclusive of usage fees, taxes, and other non-recurring charges.
- g. Service Outage – an unscheduled period during which the Services are interrupted and not usable.
- h. Customer Specific Service Outage Time – the length of the Service Outage, beginning when the Customer first opens an appropriate Trouble Ticket and ending when the Service is fully functional; **Service Outage credits will NOT be issued unless and until an appropriate Trouble Ticket is opened by the Customer.**
- i. Network Service Outage Time – the actual length of the Service Outage, beginning from first outage and ending when the Service is fully functional; **Service Outage credits will NOT be issued unless and until an appropriate Trouble Ticket is opened by the Customer.**
- j. Service Degradation – an unscheduled period during which the Services are available but do not perform as defined herein, in the Support Structure or in the Terms and Conditions, including, but not limited to, circuit bouncing, call quality issues, or latency.
- k. Service Degradation Time – the length of the Service Degradation, beginning when the Customer first opens an appropriate Trouble Ticket and ending when the Service is fully

functional; **Service Degradation credits will NOT be issued unless and until an appropriate Trouble Ticket is opened by the Customer.**

- l. Trouble Ticket – a record of a Service Outage or Service Degradation and its subsequent resolution, as recorded by Broadband.com; Trouble Tickets are initiated by the Customer calling Customer Care 24x7 at 800-409-4357, by e-mailing support@broadband.com, or by opening a ticket through the Customer’s portal at accounts.broadband.com.
- m. Trouble Ticket Number – the unique Broadband.com number assigned to a Trouble Ticket.
- n. Broadband.com Circuit ID – the unique combination of numbers and/or letters assigned to data circuits provided by Broadband.com.
- o. Broadband.com Point of Demarcation (the “Broadband.com Demarc”) – the physical location in the Customer’s network at which Broadband.com no longer maintains access to and control over the Service as provided by Broadband.com. Broadband.com will issue NO credits for Service Outages or Service Degradation caused by issues beyond the Broadband.com Demarc. **The Broadband.com Point of Demarcation will vary depending on the Service(s) and CPE purchased or used by the Customer – please review the Support Structure for specific details as to the Broadband.com Demarc for the Services you have purchased.**
- p. Latency – the average time for internet protocol (“IP”) packets to travel over the underlying carrier’s network, presented in milliseconds and calculated as an average for a given calendar month.
- q. MRC / Monthly Recurring Charge – the charges which reoccur on a monthly basis for Services as ordered under the Agreement.
- r. Mean Time to Respond – the length of time between the Customer opening a Trouble Ticket and the Customer receiving a call from a Broadband.com engineer; this time is calculated as an average of all response times for the Customer’s Trouble Tickets in the preceding calendar month.
- s. Mean Time to Repair – the length of time between the Customer opening a Trouble Ticket and Broadband.com resolving the Service Outage or Service Degradation; this time is calculated as an average of all repair times for the Customer’s Trouble Tickets in the preceding calendar month.
- t. NRC / Non-Recurring Charges – charges which occur on a one time basis as ordered under the Agreement.
- u. Packet Loss – the total packet loss associated with data delivery for a given month.
- v. Performance Standard – a level of support and regular maintenance provided with the Services,
- w. Priority 1 – a Trouble Ticket level indicating the severity of the Service Outage or Degradation;
- x. Priority 2 – a Trouble Ticket level indicating a less severe Service Degradation than those
- y. Priority 3 – the lowest level Trouble Ticket; Priority 3 Trouble Tickets include changes to
- z. Service Availability – the amount of time during a calendar month that the Service will be
- aa. Service Credit – the amount of credit issued by Broadband.com in response to a Customer’s identified according to common measurement standards; where Broadband.com fails to achieve a Performance Standard, the Customer will be eligible for a corresponding Service Credit.

### III. Qualifications.

**In order to be eligible for a Service Credit as defined herein, Customers must first open a Trouble Ticket to report the Service Outage or Service Degradation. Customer must then e-mail support@broadband.com within thirty (30) days of Trouble Ticket closing to request a Service Credit.** The e-mail should read “Request to Billing” in the subject line, a short explanation of the credit due, and the corresponding Trouble Ticket Number.

- a. Past-due Accounts – if Customer has a past-due balance on the account, review of any credit requests will be delayed until the past-due amount is resolved.

### IV. Performance Standards.

- a. The following Performance Standards apply to Voice and Data Services:

- i. Mean Time to Respond – The Mean Time to Respond to a Trouble Ticket varies according to the Ticket’s priority:
    - 1. Priority 1 – thirty (30) minutes
    - 2. Priority 2 – two (2) hours
    - 3. Priority 3 – twenty-four (24) hours
  - ii. Mean Time to Repair – Broadband.com guarantees a Mean Time to Repair of four (4) hours for Priority 1 Trouble Tickets.
  - iii. Service Availability – Broadband.com guarantees a aggregate Service Availability of ninety-nine point nine five percent (99.95%).
- b. The following Performance Standards apply only to Data Services:
- i. Latency – Broadband.com guarantees that Latency will not exceed fifty-five (55) milliseconds <sup>1</sup>
  - ii. Packet Loss – Broadband.com guarantees that the Packet Loss ratio will be no greater than one-half percent (0.5%).

**V. SLA Credit Structure.**

Credits under this SLA (the “SLA Credit Structure”) are based on monthly billing intervals for Monthly Recurring Charges (“MRC”) and apply to the Services for which the credit is issued. In no event will the cumulative total of Service Credits exceed the MRC for the month impacted. The available credits are as follows:

- a. For Data Services:
  - i. Mean Time to Respond – The Service Credit available varies according to the Ticket’s priority:
    - 1. Priority 1 –
      - a. If Broadband.com responds less than sixty (60) minutes but more than thirty (30) minutes after the Trouble Ticket is opened, the available credit is fifteen percent (15%) of the MRCs for the Affected Service.
      - b. If Broadband.com responds less than ninety (90) minutes but more than sixty (60) minutes after the Trouble Ticket is opened, the available credit is thirty percent (30%) of the MRCs for the Affected Service.
      - c. If Broadband.com responds more than ninety (90) minutes after the Trouble Ticket is opened, the available credit is fifty percent (50%) of the MRCs for the Affected Service.
    - 2. Priority 2 -
      - a. If Broadband.com responds more than two (2) hours after the Trouble Ticket is opened, the available credit is fifteen percent (15%) of the MRCs for the Affected Service.
    - 3. Priority 3 -
      - a. If Broadband.com responds more than twenty-four (24) hours after the Trouble Ticket is opened, the available credit is fifteen (15%) of the MRCs for the Affected Service.
  - ii. Mean Time to Repair – The Service Credit available varies according to the time taken to resolve the Service Outage or Degradation; Mean Time to Repair credits apply only to Priority 1 Trouble Tickets:
    - 1. If the time to repair is between four (4) and six (6) hours, the available credit is fifteen percent (15%) of the MRCs for the Affected Service.

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<sup>1</sup> Note 1: DSL and Burstable Services are not covered by this Latency guarantee; because of their nature,

2. If the time to repair is between six (6) and eight (8) hours, the available credit is thirty percent (30%) of the MRCs for the Affected Service.
3. If the time to repair is greater than eight (8) hours, the available credit is fifty (50%) of the MRCs for the Affected Service.

iii. Service Availability – The Service Credit available for failure to reach the Service Availability Performance Standard is one (1) day of credit for every hour or fraction thereof of downtime for the outage event in excess of the Service Availability Performance Standard. This credit is equal to one-thirtieth (1/30th) of the MRCs for the Affected Service.

iv. Latency – If Broadband.com fails to reach the Latency Performance Standard, the available credit is one (1) day of credit, which is equal to one-thirtieth (1/30th) of the MRCs for the Affected Service.

v. Packet Loss – If Broadband.com fails to reach the Packet Loss Performance Standard, the available credit is one (1) day of credit, which is equal to one-thirtieth (1/30th) of the MRCs for the Affected Service.

b. Maximums: In no event will Credits be issued where such Credits would exceed thirty percent (30%) of the Customer's MRCs for all Services for the Contract Year.

i. Service Outages – a maximum of fifteen (15) days' credit for a single month will be issued for situations involving Service Outages.

ii. Service Degradations – a maximum of fifty percent (50%) MRC credit for a single month will be issued for situations involving Service Degradations.

## **VI. Chronic Service Conditions.**

Service is considered to have a Chronic Condition if it experiences four (4) or more related Service Outages or Degradations within a consecutive rolling sixty (60) day period. Service Outages/Degradations must be reported as defined and described above. When either party identifies what they believe to be a Chronic Condition, they shall notify the other party.

- a. Upon notification from Customer, Broadband.com shall immediately perform a detailed
- b. In the event the Service Outages/Degradations are related, Broadband.com shall provide to
- c. In the event Broadband.com fails to cure a Chronic Condition in the cure period, or if such an investigation of the affected services. Customer a plan of action to resolve the Chronic Condition and shall have thirty (30) days from the date of Chronic determination to cure such a Chronic Condition. Chronic Condition for the same related reason reoccurs to the affected Service within a sixty (60) day period since clearing a Chronic Condition, Customer shall have the option to terminate such affected services without early termination penalty.

## **VII. Mean Time to Repair Proviso for Priority 2 & 3 Trouble Tickets.**

- a. In the event of a Service Degradation which results in a Customer requested Priority 2 or 3 Trouble Ticket and the Mean Time to Repair of such a Priority 2 or 3 Trouble Ticket exceeds five (5) business days after the root cause of the Service Degradation has been isolated to the Broadband.com network, then upon written request by Customer, the affected Service(s) as documented in the Trouble Ticket may be considered to be deemed a Chronic Service Condition as described above.
- b. In the event the criteria described in subsection a. of this Proviso are met, then the provisions provided for in a., b., and, c. of the Chronic Service Conditions Section shall apply.
- c. For the purposes of this Proviso:
  - i. Proactive Trouble Tickets opened by Broadband.com on behalf of the Customer are excluded.

- ii. Mean Time to Repair Credits under the SLA Credit Structure only apply to Priority 1 Trouble Tickets, and therefore are not available for Priority 2 & 3 Trouble Tickets.

#### **IX. Exclusions.**

Service Outages or Service Degradations DO NOT include outages or degradations resulting from one or more of the following causes:

- a. Any act or omission on the part of the Customer, any third party contractor or vendor, or any
- b. The Customer's applications, equipment or facilities;
- c. Broadband.com's, or the Customer's scheduled maintenance with previously agreed other entity over which the Customer exercises control or has the right to exercise control; notification interval;
- d. Any event or occurrence that results in "No Trouble Found" resolution to Trouble Tickets;
- e. Any event or outage lasting less than 60 seconds in duration except in the event of significant and repetitive Customer reports of such outages at which time the Parties may agree to treat such outages as a Chronic Service Condition;
- f. Force majeure event beyond the reasonable control of Broadband.com including, but not limited to, acts of God, natural disasters, cable cuts, government acts and regulation and national emergency;
- g. Trouble Tickets associated with new installations; New installations are limited to five (5) days from initial day and time of commencement of installation process.
- h. Interruptions associated with act or omission on the part of the Customer or a third party not affiliated with or a vendor of Broadband.com for this service, including, but not limited to, any local access provider, or an interruption where the Customer elects not to release the service for testing and repair and continues to use it on an impaired basis;
- i. Interruptions during any period when Broadband.com or its agents are not allowed access to the Customer premises where affected access lines are terminated (only if Broadband.com has made the request of Customer and such request has been denied);
- j. Master Trouble tickets opened by Broadband.com or by a qualified third party on behalf of Broadband.com such as those in the case of a fiber cut;
- k. Interruptions associated with a failure of equipment or software not provided by Broadband.com, including, but not limited to, any local access provider, or an interruption where the Customer elects not to authorize access to the equipment for testing;
- l. Any failure or issue associated with the Customer's underlying network connection;
- m. Time directly attributed to Customer's delay in responding to Broadband.com's requests for assistance to repair an outage.

#### **Conflicting or Controlling Terms.**

In the event of any conflict, ambiguity, or inconsistency between the terms and conditions and this Service Level Performance Agreement (SLA), then as it relates to Service Performance and the provisions set forth in this SLA, the terms of this SLA shall control. This SLA may be subject to change from time to time with written notice to Customer. In the event Customer is notified of a change and Customer has concerns related to any such change, Customer may notify Provider in writing of their specific concern with any such change and both parties agree to negotiate in good faith to resolve any Customer concerns. In event the Parties cannot agree to a resolution related to any such change, the Parties agrees to invoke the Dispute Resolution Process set forth in Section 5 of the Terms and Conditions.

#### **END OF SERVICE LEVEL PERFORMANCE AGREEMENT ("SLA")**