



# Service Level Agreement for On-Net Data Service(s) Addendum

QUOTATION NUMBER(S)

PAGE \_\_\_\_ OF \_\_\_\_

ACCOUNT NAME (AS LISTED ON COMMERCIAL SERVICE AGREEMENT AND ORDER FORM PAGE 1)

ACCOUNT #

This addendum sets forth the Service Level Agreement (hereinafter "SLA") applicable to the data services as provided by Midwest Telecom of America, Inc. (hereinafter "MTA"). Except as otherwise set forth herein, capitalized terms shall have the definitions assigned to them in the agreement. MTA shall have sole responsibility for the MTA service and its compliance, or failure to comply, with the SLA. The SLA is effective as of the first day of the second month after initial installation of service.

### COMPONENTS INCLUDED

All relevant On-Net network components are subject to this SLA. This includes On-Net network components such as POPs, Core routers, access radios, and managed Customer Premise Equipment (hereinafter CPE.)

### COMPONENTS NOT INCLUDED

This SLA specifically excludes (a) CPE owned by Customer, (b) connections between MTA's Network Service Provider, and other Internet Service Providers, and (c) other Internet Service Provider Networks.

### NETWORK AVAILABILITY

For purposes of this SLA, "Network Availability" will be defined as the total amount of time in which the network service(s) described by quotation number(s) listed on the top of this SLA is/are available for use by the Customer during any one calendar month. "Network down-time" will be defined as the opposite of "Network Availability" and also defined as the total amount of time in which the network service(s) described by the quotation number(s) listed on this SLA is/are not available for use by the Customer during any one calendar month. "Network downtime" shall exist when the network service(s) described by the quotation number(s) listed on this SLA is/are not able to transmit & receive data & MTA records such failure in the MTA trouble ticket system (Affected Service). "Network downtime" on the "Network Service" in question or the "Affected Service" begins on the date and time a technical service request (TSR), reporting "Affected Service", is submitted and will continue until such time that the "Affected Service" is again able to transmit & receive data.

### TECHNICAL SUPPORT

MTA supports and monitors its service(s) described by the quotation number(s) listed on the top of this SLA up to the Customer's network demarcation point 24 hours per day and 7 days a week. MTA Technical Support is available toll-free 24 hours per day and 7 days a week for all TSRs reporting an "Affected Service" and "network down-time".

### ACCESS TO EQUIPMENT

Customer agrees to allow personnel of MTA and its sub-contractors reasonable access to the Customer's site for the purpose of installing, repairing, and removing the MTA equipment and, if necessary, Customer shall obtain appropriate authorization from the building landlord.

### PERFORMANCE GUARANTEE

If MTA's network is not performing as stated below; Customer is entitled to a credit. The three components of the MTA Service Level Agreement are:

- 1. Service Availability Guarantee:** MTA guarantees 99.5% network availability during each calendar month that MTA's service is utilized. If during any calendar month MTA does not meet the "Service Availability Guarantee" of 99.5 % the Customer will be entitled to a onetime credit of 10% of the monthly billed revenue for the "Affected Service" for the calendar month in question.
- 2. Network Latency:** For the purposes of this SLA "Network Latency" will be defined as any data packet latency less than 75ms round trip delay on MTA's core network backbone, and less than 50ms round trip delay on MTA's last mile network, during each calendar month that MTA's service(s) is/are utilized. If during any calendar month MTA does not meet the "Network Latency Guarantee" of 99.5 %, then Customer will be entitled to a one time credit of 10% of the monthly billed revenue for the "Affected Service" for the calendar month in question.
- 3. Packet Loss:** For the purposes of this SLA "Packet Loss" during any one calendar month must be less than 1 % on MTA core backbone and last mile network for the service(s) described by the quotation number(s) listed at the top of this SLA. If during any calendar month MTA does not meet the "Packet Loss Guarantee" of less than 1 %, then Customer will be entitled to a onetime credit of 10% of the monthly billed revenue for the "Affected Service" for the calendar month in question.

### CREDIT FOR LOSS OF CONNECTIVITY

Unless it is otherwise stated herein, the Customer's exclusive remedy for loss of connectivity is repair of service and credit for the period of lost connectivity to the Internet. Credits will be paid for loss of connectivity as listed below if the elapsed time from Ticket Open exceeds the following:

- Exceeding 2 hours: 5% of monthly billed service revenue.
- Exceeding 4 hours: 15% of monthly billed service revenue.
- Exceeding 6 hours: 30% of monthly billed service revenue.

Every subsequent 4-hour increment shall receive an additional 10% credit, the sum of which is not to exceed 100% of the total monthly bill for that location. The period of lost connectivity to the Internet or other On-Net Data Service shall be solely determined by records kept by the MTA Network Operations Center ("NOC") and based on measurements to the Customer Demarcation. MTA will incur no liability and issue no credits due to any causes beyond its reasonable control, including, but not limited to, Acts of God, War, Strikes, Electrical Storm, Hurricane and, if needed, lack of access to its equipment at the Customer Site. All monies owed MTA and not in dispute must be paid in full before a credit is applied.

Credits must be requested within 30 days of service outage. The Customer is responsible for providing adequate voltage surge protection with a UPS (Uninterruptible Power Supply) for the MTA router/equipment at the Customer Demarcation. Customer may request, at an additional \$15 monthly charge, that MTA supply all adequate voltage surge protection with a UPS (Uninterruptible Power Supply).

### NORMAL MAINTENANCE

Normal Maintenance refers to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the service, including possible outages. Such effects related to Normal Maintenance shall not give rise to service credits under this SLA. Effective October 15, 2005 MTA reserves the right to complete Normal Maintenance seven days a week between the hours of 12:00 AM and 06:00AM local time. For the purposes of this SLA, "Local Time" refers to the local time in the time zone in which an affected service is located. Normal Maintenance shall under no circumstance be viewed as an outage hereunder.

### EMERGENCY MAINTENANCE

Emergency Maintenance refers to efforts to correct network condition(s) that is/are likely to cause a service outage and that require immediate action. Emergency Maintenance may degrade the quality of the services, including possible outages. Such effects related to Emergency Maintenance shall entitle customer to service credits as set forth in this SLA. MTA may undertake Emergency Maintenance at any time deemed necessary and shall provide notice of Emergency Maintenance to customer as soon as possible and practicable under the circumstances.