

THIS SERVICE LEVEL AGREEMENT (SLA) is a part of the Master Services Agreement (MSA) between Customer and Phyber Communications, LLC (PHYBER). Capitalized terms used herein that are not defined in this SLA shall have the meaning attributed to them in the MSA.

1. SERVICE COMMITMENT

PHYBER is committed to providing a reliable, high-quality network to support its high-speed Internet access service (Service). As part of this commitment, PHYBER is pleased to offer eligible Customers the following guarantees as concerns the Service in the United States:

- Installation Guarantee
- Network Availability and Notification Guarantee
- Network Latency Guarantee
- Packet Delivery Guarantee

If PHYBER fails to meet any of these guarantees, it will provide eligible Customers with a Service Credit, as set forth below in this Service Level Agreement.

2. GUARANTEES

2.1. INSTALLATION GUARANTEE

For Customers located within a building to which PHYBER currently has fiber distribution, equipment deployed and acceptable riser facilities, PHYBER guarantees that Internet connectivity for such Customer will be installed within seventeen (17) business days after a Service Order Form has been accepted and entered into PHYBER's provisioning system by its Account Coordination team.

For Customers located within a building to which PHYBER currently does not have fiber distribution, PHYBER will provide an estimated installation date in a "Welcome Letter" sent to the Customer after a Service Order Form has been accepted and entered into PHYBER's provisioning system by its Account Coordination team. Once fiber connectivity from such Customer's building to PHYBER's Network has been successfully completed, PHYBER guarantees that Internet connectivity for such Customer will be installed within seventeen (17) business days.

An order will not be accepted until PHYBER has received a signed MSA, signed price quotation or authorized Service Order Form, and (if requested by PHYBER) a completed credit application.

If PHYBER fails to meet these commitments, Customer will receive, at Customer's request, one (1) week Service Credit. Customer may obtain no more than one (1) week Service Credit for any given month. PHYBER's Installation Guarantee is subject to the following conditions:

- Customer or its representative must cooperate with PHYBER in the installation process, which includes accurate completion of a Service Order Form containing detailed demarcation information and other onsite contact listings. Changes in a Service Order Form made by or on behalf of Customer or the occurrence of events outside the reasonable control of PHYBER, such as Force Majeure (as defined in the MSA), may result in delays for which PHYBER is not responsible hereunder.

- Customer or its representative must be physically present at the time of installation and must provide access to the designated building's phone closet(s) on the date(s) agreed to by PHYBER's Installation Coordination Department. Such building access and escort must also be provided to other necessary personnel to perform the installation of the Internet connection.
- This Installation Guarantee applies to the interval between the original order date and original Installation Guarantee date. If Customer requests a change to an order date during implementation of Service, the Installation Guarantee date shall, at PHYBER's sole discretion, begin again upon change acceptance.
- The Service Credit for failure to meet the Installation Guarantee is not available to Customers for whom installation charges have been waived or reduced.

2.2. NETWORK AVAILABILITY AND NOTIFICATION GUARANTEE

PHYBER guarantees Network Availability of the Service of 99.9% across its facilities-based nationwide backbone and metropolitan Network (such Service within a given metropolitan Network referred to herein as "Metro Ethernet Service"). If the connection between Customer and PHYBER (the "PHYBER Network") experiences Network Unavailability for more than 15 consecutive minutes, Customer will receive, at Customer's request, six (6) hours Service Credit for each cumulative hour of Network Unavailability in any calendar month. Provided the PHYBER Network experiences at least one (1) hour of Network Unavailability in any given calendar month, additional Network Unavailability of less than one (1) hour will result in a proportional Service Credit. (Example: 2 hours, 15 minutes of Network Unavailability will result in 13.5 hours of Service Credits.) Customer may obtain no more than one hundred sixty eight (168) hours Service Credits for any given month.

PHYBER's Outage Notification policy is to proactively notify Customer within 20 minutes after PHYBER determines that Customer's Service is unavailable. PHYBER's standard procedure is to ping the Customer's router every five (5) minutes. If Customer's router does not respond after two (2) consecutive ping cycles or if PHYBER determines unavailability through other monitoring means, PHYBER will deem the Service unavailable and will contact Customer's designated point of contact by a method elected by PHYBER (telephone, email, fax, or pager).

2.3. NETWORK LATENCY GUARANTEE

The PHYBER Network carries packets with an average Network Latency over a one month period as follows:

- Metro Ethernet Services: 18 milliseconds or less
- Other Services: 90 milliseconds or less

PHYBER monitors aggregate latency within the PHYBER Network by monitoring round-trip times between PHYBER and Customer on an ongoing basis. Network Latency (or Round trip time) is defined as the

average time taken for an IP packet to make a round trip between backbone Hubs on the PHYBER Network.

After being notified by Customer of Network Latency in excess of the above parameters, PHYBER will use commercially reasonable efforts to determine the source of such excess Network Latency and to correct such problem to the extent that the source of the problem is on the PHYBER Network.

If the source of the problem is on the PHYBER Network and PHYBER fails to remedy such Network Latency within two (2) hours of being notified of any excess Network Latency and average Network Latency for the preceding 30 days has exceeded the above parameters Customer will receive, at Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Network Latency for the preceding 30 days is less than the above parameters. Customer may obtain no more than one (1) month Service Credit for any given month. If the source of the problem is on the PHYBER Network and PHYBER fails to remedy such Network Latency within two (2) days after notification, Customer shall have the right to immediately terminate any applicable Service Order(s).

2.4. PACKET DELIVERY GUARANTEE

The PHYBER Network has an average monthly Packet Loss no greater than 0.5% (or successful delivery of 99.5% of packets). PHYBER monitors aggregate packet loss within the PHYBER Network on an ongoing basis, and compiles the collected data into a monthly average packet loss measurement for the PHYBER Network. Packet Loss is defined as the percentage of packets that are dropped within the PHYBER Network.

After being notified by Customer of Packet Loss in excess of 0.5%, PHYBER will use commercially reasonable efforts to determine the source of such excess Packet Loss and to correct such problem to the extent that the source of the problem is on the PHYBER Network.

If the source of the problem is on the PHYBER Network and PHYBER fails to remedy such excess Packet Loss within two (2) hours of being notified of any excess Packet Loss on the PHYBER Network and average Packet Loss for the preceding 30 days exceeds 0.5%, Customer will receive, at Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Packet Loss for the preceding 30 days is less than 0.5%. Customer may obtain no more than one (1) month Service Credit for any given month.

3. ADDITIONAL DEFINITIONS

PHYBER Network means the telecommunications/data communications network and network components owned, operated or controlled by PHYBER, including PHYBER's national fiber backbone, its metropolitan fiber networks, any equipment connected to such fiber, and the software, data and know-how used by PHYBER in the provision of the Services. Where PHYBER provides Service to a building through its own facilities, the PHYBER Network includes those facilities. The PHYBER Network does not include customer premises equipment, customer-ordered telephony circuits, and any networks or network

equipment not operated and controlled by PHYBER. Network Unavailability means the number of minutes that the PHYBER Network was not available to Customer, including the number of minutes that the PHYBER Network was not available associated with any non-Scheduled Maintenance to the PHYBER Network.

Network Unavailability will not include Scheduled Maintenance, or any unavailability resulting from: (a) problems with or maintenance on Customer's applications, equipment or facilities; (b) acts or omissions of Customer or an authorized user; (c) unavailability caused by companies other than PHYBER, except PHYBER-ordered telephony circuits; or (d) Force Majeure.

Scheduled Maintenance means any maintenance of the PHYBER Network (or portion thereof) to which Customer's router is connected that is performed during a standard maintenance window from 10:00 pm to 4:00 am (local time of the PHYBER Hub to which Customer's circuit is connected). Customers will be notified via Email two (2) business days in advance of any scheduled maintenance that is likely to effect service. In most cases, maintenance performed will not take the full configuration window, however, PHYBER will inform Customer as to anticipated duration in the maintenance notification E-mail. Notwithstanding the foregoing, PHYBER shall have the right to perform emergency maintenance of the PHYBER Network at any time. PHYBER shall use its best efforts to notify Customer of such emergency maintenance at least four (4) hours before beginning such emergency maintenance.

Service Credit means

- Six (6) hours Service Credit = 1/120th of Customer's Monthly Recurring Charges for the affected Service.
- One (1) day Service Credit = 1/30th of Customer's Monthly Recurring Charges for the affected Service.
- One (1) week Service Credit = 7/30ths of Customer's Monthly Recurring Charges for the affected Service.
- One (1) month Service Credit = Full amount of Customer's Monthly Recurring Charges for the affected Service.

If PHYBER approves a claim for Service Credit for failure to comply with the Installation Guarantee, Service Credit shall mean PHYBER's charge for Customer's first full month of the Service, not including installation charges or other start-up fees.

4. SERVICE CREDIT CLAIM PROCESS

In order to initiate a claim for Service Credit, Customer must contact PHYBER's customer service group within seven (7) business days after the occurrence of the event for which credit is requested. The Service Credit request must provide: (a) the Customer name and contact information; (b) the date and beginning/end time of the claimed outage or failed metric; and (c) a brief description of the characteristics of the claimed outage or failed metric.

Customer will be notified via e-mail upon resolution of the request. If rejected, the notification will specify the basis for rejection. If approved, PHYBER will issue Service Credit to Customer's account,

appearing on the next invoice issued. Multiple Service Credits will not be given for the same period of time, i.e., failure to meet multiple criteria during a period of time generates only a single Service Credit. The total number of all Service Credits for all failures to meet Guarantees occurring in a given month may not exceed the total Monthly Recurring charge actually paid by Customer for Service during that month. Service Credits will be credited against a Customer's monthly payment for Monthly Recurring Charges and may not be received in the form of a refund.

The commitments and Service Credits provided for in this SLA assume compliance by Customer with the terms and conditions of its MSA and any applicable Service Order with PHYBER, and the failure of Customer

to comply with those terms and conditions may invalidate PHYBER's guarantees provided herein. No credit is available for a Customer (a) that is blocking PHYBER from monitoring Customer's premises router; (b) that does not provide the necessary access to personnel and facilities at the Customer's premises to enable PHYBER to perform comprehensive troubleshooting; or (c) whose account is not in good financial standing with PHYBER. PHYBER is not liable for failure to fulfill its obligations hereunder if such failure is due to Customer's use of bandwidth in excess of the amount specified in Customer's MSA or an applicable Service Order, Customer's tampering with any equipment, or acts beyond PHYBER's reasonable control, such as Force Majeure.

All changes to the SLA must be approved in writing by PHYBER's legal department.