

## **XCLUTEL High Speed Data Service Service Level Agreement (“SLA”)**

### **1.0 Service Availability.**

**1.1** Service is guaranteed to be available 99.999% of the time. Service will be considered unavailable if the XCLUTEL Network is unable to send or receive traffic. The XCLUTEL Network includes Customer's access port (the port on the XCLUTEL aggregation router upon which Customer's Circuit terminates) and the XCLUTEL IP backbone network. The XCLUTEL IP backbone network includes XCLUTEL owned and controlled routers and Circuits (including any transit connections). The guarantee does not include the local access Circuit (e.g. local loop), Customer Premises Equipment (router or CPE) or Customer's Local Area Network (LAN), nor does it include scheduled maintenance, Customer caused outages or disruptions, interconnections to or from, and connectivity within, other Internet service provider (ISP) networks, or Force Majeure Events.

An outage is deemed to commence upon XCLUTEL's verification of a disruption of Service as reported by Customer pursuant to XCLUTEL's trouble ticketing procedures ("Outage"). XCLUTEL will respond to all Outages within four (4) hours from the verified disruption of service reported by the Customer or notification received from XCLUTEL's managed services platform. An Outage is deemed to end when Service is fully operative, less any delay experienced by XCLUTEL while either awaiting additional Service information from Customer or access to Customer Premises. If Customer reports that Service is inoperative, but refuses to release it for testing and repair, the Service is considered impaired, but not an Outage for the purposes of this SLA. If credits are due for a particular Outage, credits will not be payable under Sections 2.0 or 3.0 for the same Outage.

**1.2** If Service becomes unavailable for reasons other than an Excused Outage, as defined in Section 4.0 below, Customer will be entitled to a credit equal to one day for every hour the network is unavailable as set forth the following formula:

MONTHLY RECURRING CHARGE (MRC) FOR THE AFFECTED SERVICE, DIVIDED BY THE NUMBER OF DAYS IN THE MONTH, MULTIPLIED BY THE NUMBER OF NORMAL BUSINESS HOURS THE SERVICE WAS UNAVAILABLE, BEYOND THE INITIAL 4 HOUR GRACE PERIOD. CREDIT NOT TO EXCEED THAT MONTH'S TOTAL MONTHLY RECURRING CHARGE. NOTE: SERVICE INTERRUPTIONS LESS THAN 4 HOURS IN DURATION ARE NOT ELIGIBLE FOR SLA CREDIT.

**2.0 Latency.** The latency service Level for XCLUTEL High Speed IP Transit Service is:

**Route Latency Service Level** Intra- U.S. 60 ms

Latency is measured as an average round-trip delay over a calendar month for traffic on the XCLUTEL Network between gateways. Average latency is measured as the average of fifteen (15) minute samples across the XCLUTEL Network as taken throughout a calendar month. This Latency guarantee does not include the local access circuit (e.g. local loop), CPE or Customer's LAN, scheduled maintenance, Customer caused outages or disruptions, interconnections to or from, and connectivity within, other ISP networks, and Force Majeure Events. In the event of a latency delay in excess of 60ms for reasons other than an Excused Outage, Customer will be entitled to receive a credit as set forth in the following formula:

MRC DIVIDED BY THE DAYS IN THE MONTH MULTIPLIED BY THE MILLISECONDS DELAY GREATER THAN 60MS NOT TO EXCEED THAT MONTH'S TOTAL MONTHLY RECURRING CHARGE.

**3.0 Packet Loss Service Level.** The XCLUTEL Network is guaranteed to have a monthly average packet loss of no greater than 0.5% during any calendar month. Average packet loss is measured as the average of fifteen (15) minute samples across the XCLUTEL Network as taken throughout a calendar month. This packet loss guarantee does not include the local access circuit (e.g. local loop), CPE or Customer's LAN, scheduled maintenance, Customer caused outages or disruptions, interconnections to or from, and connectivity within, other ISP networks, and Force Majeure Events. In the event XCLUTEL does not meet this

packet loss service level guarantee for reasons other than an Excused Outage, Customer will be entitled to receive a credit as set forth in the following formula:

MRC DIVIDED BY THE DAYS IN THE MONTH MULTIPLIED BY EACH 0.5% GREATER THAN THE 0.5% MONTHLY LIMIT NOT TO EXCEED THAT MONTH'S TOTAL MONTHLY RECURRING CHARGE

**4.0 Excused Outage.** An "Excused Outage" is an outage: (i) caused by the acts or omissions of Customer and/or its End User or agents; (ii) due to failure of power at the Customer or End User Premises; (iii) caused by the failure or malfunction of non-XCLUTEL equipment or systems, including off-net local loops; (iv) related to a Force Majeure Event; (v) during any period in which XCLUTEL is not given access to the Premises; or (vi) caused by maintenance.

**5.0 Chronic Outage.** Customer may elect to disconnect an affected XCLUTEL High Speed Data Service prior to the end of the Service Term without incurring early termination charges if, for reasons other than an Excused Outage, Service experiences an Outage: (i) on three (3) or more separate occasions of more than twelve (12) hours each; or (ii) a single continuous Outage of more than forty-two (42) hours in the aggregate in any calendar month. Customer may only terminate Service by providing XCLUTEL written notice of such Chronic Outage within thirty (30) days after the event(s) giving rise to a right of termination hereunder. Except for any credits that have accrued pursuant to this SLA, Section 5.0 sets forth the sole and exclusive remedy of Customer for Chronic Outages.

**6.0 Credit Limits and Reporting Procedures.** Total credits awarded for Service during any calendar month for failure to meet any one or more of the guarantees set forth in this SLA will not exceed the total monthly recurring charge for the affected Service. To be eligible for a credit, Customer must report any failure(s) by contacting XCLUTEL Customer Care at 877.925.8837 and opening a trouble ticket. Customer must comply fully with any information requests made by XCLUTEL in connection with the Outage.

## XCLUTEL VOICE SERVICE LEVEL AGREEMENT (“SLA”)

This Service Level Agreement (“SLA”) sets forth the provisions and commitments relating to service quality between XCLUTEL Communications (“XCLUTEL”), and Customer. This SLA is hereby added as a schedule to the Service Agreement (“Agreement”) between Customer and XCLUTEL.

**1. General Standard.** XCLUTEL will use reasonable efforts under the circumstances to maintain its overall network quality. The quality of service provided hereunder shall be consistent with other common carrier industry standards, government regulations and sound business practices.

**2. Interruptions in Service.** Subject to the provisions of Section 6 hereof, interruptions in service will be credited to Customer as set forth below for the part of the service that the interruption affects. In the event that Customer subscribes to data services from XCLUTEL, XCLUTEL may offer additional service level standards with respect to such services. In such event, a service schedule shall be added to this SLA. The provisions of this SLA shall apply to the interpretation of the service schedule. XCLUTEL will respond to all Outages within four (4) hours from the verified disruption of service reported by the Customer.

**3. Credit for Interruptions.** An interruption period begins when Customer reports a service, facility, or circuit to be interrupted through the opening of a trouble ticket and makes it available for testing and repair. An interruption period ends when the service, facility, or circuit is operative. If Customer reports a service, facility, or circuit to be inoperative but declines to make it available for testing and repair, it is considered to be impaired, but not interrupted. For interruptions resulting from carrier failure the Customer will be entitled to a credit as follows:

MONTHLY RECURRING CHARGE (MRC) FOR THE AFFECTED SERVICE, DIVIDED BY THE NUMBER OF DAYS IN THE MONTH, MULTIPLIED BY THE NUMBER OF NORMAL BUSINESS HOURS THE SERVICE WAS UNAVAILABLE, BEYOND THE INITIAL 4 HOUR GRACE PERIOD. CREDIT NOT TO EXCEED THAT MONTH'S TOTAL MONTHLY RECURRING CHARGE. NOTE: SERVICE INTERRUPTIONS LESS THAN 4 HOURS IN DURATION ARE NOT ELIGIBLE FOR SLA CREDIT.

**4. Maximum Credit.** In no event may the credits provided for hereunder (either individually or on a cumulative basis) in any billing period exceed the total monthly recurring charges for that period for the service and facilities furnished by XCLUTEL. XCLUTEL shall issue only one credit for the same incident in the same month, regardless of how many of the parameters in Section 2 above were affected. The credits set forth in this SLA shall be XCLUTEL's sole liability and Customer's sole remedy in the event of any interruption and under no circumstances shall an interruption be deemed a breach of the Agreement.

**5. "Interruption" Defined.** For the purpose of applying this provision, the word "interruption" (whether capitalized or not) shall mean a complete loss of service resulting in the inability to complete calls due to equipment malfunction or human errors for a continuous period of more than thirty (30) minutes. "Interruption" does not include and no allowance shall be given for service difficulties such as slow dial tone, circuits busy, latency or other network and/or switching capacity shortages. No allowance shall be made for interruptions due to electric power failure where, by the provisions of this Agreement, Customer is responsible for providing electric power.

**6. Limitations on Credit Allowances.** No credit allowance will be made for:

- a)** Interruptions arising from the acts or omissions of, or non-compliance with the provisions of the Agreement or any schedule thereto (including without limitation this SLA or the Network Service Agreement) by, Customer or any authorized user, or any interruptions due to any party other than XCLUTEL or for events happening on any other party's network, including but not limited to Data service providers or other common carriers connected to, or providing service connected to, the service of XCLUTEL or to XCLUTEL's facilities;
- b)** Interruptions due to the failure or malfunction of non-XCLUTEL equipment, including service connected to Customer provided electric power;
- c)** Interruptions of service during any period in which XCLUTEL is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- d)** Interruptions of service during any scheduled maintenance period or when Customer has released service to XCLUTEL for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- e)** Interruptions of service due to force majeure events beyond the reasonable control of XCLUTEL.