

## Momentum Telecom Service Level Agreement for Fiber Dedicated Internet Access (DIA) Service

This Service Level Agreement (SLA) sets forth the service quality goals and performance metrics applicable to Momentum's Fiber DIA Service, as well as the terms and conditions governing the availability of Service Credits to Customer with respect to that Service. This SLA is subject to the terms and conditions of the applicable Customer Service Order and Master Services Agreement between Momentum and Customer (together with this SLA, the "Agreement"). The monthly SLA metrics are effective as of the first day of the second month after initial installation of the DLA Service.

- 1. Momentum IP Network.** This SLA applies solely to the DIA Service as delivered on the fiber circuit network components of the Momentum IP Network ("Momentum Network") and does not apply to wireless or broadband network connections, including, without limitation, DSL, cable modem, and PON-based services. This SLA does not modify or affect any other SLAs provided by Momentum for any other services purchased by Customer. The Momentum Network includes routers, switches, fiber, and any other facilities that are owned by Momentum or other providers specifically selected by Momentum. The Momentum Network does not include Customer premises equipment, customer-ordered telephony circuits, local access and connection facilities (unless provided by Momentum), and any networks or network equipment not operated and controlled by Momentum.
- 2. Availability Service Level.** The target for availability of Momentum Network for the DIA Service is 99.9%. "Network Availability" measures total downtime of the Momentum Network due to an "Outage," where an Outage is defined to mean the period of time a Customer's DIA port is unable to transmit and receive data on the Momentum Network which exceeds thirty (30) consecutive minutes in duration and the cause of which is not excluded under Section 7 hereof. An Outage is measured from the time a trouble ticket is opened by Customer (provided that Customer has released all or part of the Service for testing, if requested by Momentum) to the time the affected DIA Service is again able to transmit and receive data.
- 3. Service Availability Credit.** If the Network Availability target is not met in a calendar month, subject to the terms herein, Customer, upon request, shall be entitled to a credit equal to 1/30<sup>th</sup> of the Customer's Monthly Recurring Charges ("MRC") for the affected DIA Service for each full hour of Outage exceeding the target; provided that only one such credit shall be available for all Outages within a given 24-hour period. The maximum credit for any calendar month shall not exceed 7/30<sup>th</sup> of the MRC of the affected Service.
- 4. Jitter.** Jitter is a measurement of the standard deviation (packet delay) of latency averaged over a month required for an IP packet (100 bytes) to travel between Core Points of Presence (POPs) on the Momentum Network. For purposes of this SLA, a "POP" means a Momentum POP location that represents the provider edge of the Momentum Network. The objective on the Momentum Network is for jitter not to exceed 15 ms. If such jitter objective is not met, Customer, upon request, shall be entitled to a credit equal to 1/30<sup>th</sup> of the Customer's Monthly Recurring Charges ("MRC") for the affected DIA Service; provided that only one such credit shall be available for all jitter failures within a given 24-hour period. The maximum credit for any calendar month shall not exceed 50% of the MRC of the affected Service.
- 5. Packet Delivery.** Packet Loss is defined as the percentage of packets that are dropped between Backbone Hubs on the Momentum Network. Backbone Hub means a major network facility owned, operated, or controlled by Momentum which is directly connected to the Momentum backbone network. Momentum monitors this aggregate packet loss on an ongoing basis and compiles the collected data into a monthly average Packet Loss measurement for the Momentum Network. The objective of Momentum is an average monthly Packet Loss no greater than 0.1% (or successful delivery of 99.9% of packets). After being notified by Customer of Packet Loss in excess of 0.1%, Momentum 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 Momentum Network. If Momentum fails to remedy such excess Packet Loss within four (4) hours of being notified of any excess Packet Loss and the average Packet Loss for the preceding 30 days exceeds 0.1%, Customer will receive, upon request, a 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 0.1%; provided that the maximum credit for any calendar month shall not exceed 50% of the MRC of the affected Service.

6. Maintenance.

- a. Normal Maintenance. “Normal Maintenance” means scheduled maintenance to Momentum Network, including but not limited to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the DIA Service, including possible Network downtime. Momentum will use commercially reasonable efforts to perform Normal Maintenance during non-business hours.
- b. Emergency Maintenance. “Emergency Maintenance” means efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Emergency Maintenance may degrade the quality of the Service, including possible Network downtime. Such effects related to Urgent Maintenance will entitle Customer to service credits only as set forth in this SLA. Company may undertake Urgent Maintenance at any time deemed necessary and will provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

7. Service Credit Exceptions: Notwithstanding any other provision hereof, Customer shall not be entitled to receive a service credit with respect to any impairment or interruption of the Momentum Network or DIA Service caused by:

- a. The acts or omissions of Customer, its affiliates or their respective employees, contractors, agents or end users, or others authorized by Customer to use the Service, including the failure to comply with all installation requirements (including environmental requirements) for the applicable equipment;
- b. The failure or malfunction of power, facilities, equipment, applications, systems, or connections (including those of Customer) which are not (i) part of the Momentum Network or (ii) owned or controlled by Momentum;
- c. Normal Maintenance, Emergency Maintenance not caused by Momentum, or Momentum Network alterations or implementations;
- d. Fiber cuts that impact the DIA Service;
- e. a Force Majeure event as defined in the Master Services Agreement;
- f. bandwidth saturation, resource exhaustion, or outage caused by malicious traffic such as Viruses, Worms, Trojan Horses, Denial of Service (DOS) attacks, etc.;
- g. Suspension of Customer’s Service due to Customer’s non-payment;
- h. Customer’s failure to release the Service for testing or repair and continuing to use the Service on an impaired basis; or
- i. Customer’s breach of its obligations under the Agreement.

8. General. To be eligible for service credits under this SLA, Customer must (a) be current on its payment obligations and not in breach of the Agreement and (b) report any suspected Outage, Jitter, or Packet Delivery Issue to Momentum within twenty-four (24) hours from the time Customer became aware of the problem by opening a trouble ticket with Momentum. Momentum will determine the credits provided to Customer in accordance with the terms of this SLA. A credit will be applied only to the month in which the event giving rise to the credit occurred. The credits will apply to the MRCs of the Affected Service after application of all discounts and do not apply to MRCs of other services. The maximum service credits issued in any one calendar month will not exceed: (a) with respect to Network Availability, 7/30<sup>th</sup> of the MRC of the Affected Service, and (b) with respect to Jitter or Packet Loss, 50% of the MRCs of the Affected Service. “Affected Service” means the applicable Service hereunder that fails to meet the applicable target. In no event will the aggregate credits issued in one month under this SLA exceed 50% of the MRCs for the Affected Service. Cumulative credits in any one month must exceed \$25.00 to be processed. If Customer fails to notify Momentum in the manner set forth above with respect to the applicable SLA credits, Customer will have waived its right to such SLA credits for that month. CUSTOMER’S RIGHT TO RECEIVE CREDITS UNDER THIS SLA SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND MOMENTUM’S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A PERFORMANCE FAILURE, EVEN IF SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.