

Thursday, November 16, 2006

This Service Level Agreement ("SLA") between you ("Customer", "you" or "your") and Webair Internet Development, Inc. and its affiliates and subsidiaries ("Webair" or "we", "our" or "us") describes certain rights and remedies you have regarding the performance of the "Webair Network" which is comprised of the Webair owned and operated Internet Protocol (IP) routing infrastructure through which Webair provides Internet connectivity and IP routing and transit to its customers and Webair's equipment, technology, services, and facilities. This SLA applies only to Network Outages (as defined herein) on the Webair Network. It does not apply to Webair-branded connectivity services (e.g., DSL) or any other services that Webair may provide. The terms and conditions of this SLA are in addition to the terms and conditions of your applicable service agreement with Webair ("Service Agreement") and in no event shall the terms and conditions of this SLA supersede, limit or qualify the terms and conditions of your Service Agreement. In the event of any conflict of terms between this SLA and your Service Agreement, the terms and conditions of your Service Agreement shall control.

We reserve the right, any time and from time to time, for any reason in our discretion, to change the terms of this SLA, as well as the [Acceptable Use Policy](#), [Intellectual Property Agreement](#), and any additional terms that apply to the Webair Network. We will post or display notices of material changes on our website and we may also send you an email about these changes. Once we post them, these changes become effective immediately. If you use the Webair Network after we post a notice of any change, you will be bound by the change. Please check back frequently and review the terms and conditions of this SLA so you are aware of the most current terms and conditions of your agreement with us.

## **1. Network Availability**

Customer understands and acknowledges that the Webair Network is subject to unavailability, including emergency situations, transmission limits, network problems or limitations and problems associated with the Internet generally. Webair may suspend Webair Network availability, or block certain kinds of usage, in its sole discretion, in order to: (a) comply with governmental regulations, (b) respond to emergency situations, (c) to prevent harm to Customers and/or the Webair Network; or (d) perform maintenance, upgrades or service to the Webair Network. Webair will use commercially reasonable efforts to minimize and remedy any such disruptions to or suspension of availability to the Webair Network as soon as reasonably practicable. The Webair Network speed is an estimate and is not a guarantee of the speed at which a Customer may send or receive data. Actual Webair Network speed will vary based on equipment configuration, compression, Internet congestion, traffic and other factors beyond the control of Webair. The accuracy and timeliness of data received is not guaranteed; packet loss and latency may occur.

A "Network Outage" is an instance in which you are unable to transmit IP packets from the Webair Network to the public Internet, and receive packets sent to the Webair Network from the public Internet, for more than thirty (30) consecutive minutes. For the purposes of this SLA, a Network Outage is deemed to begin at the time you notify us of the outage via our online ticketing system, or, if the ticketing system itself is unreachable, via telephone; and to end at the first moment thereafter that our administrators successfully perform a traceroute to your website from outside the Webair Network.

## **2. Credit for Network Outages**

Subject to the exceptions set forth in Section 3, for each Network Outage that you report to us and that we confirm, in our discretion, by analysis of our router logs, we will (as our sole

obligation and your sole and exclusive remedy therefor) issue you a credit equal to one thirtieth (1/30) of the base service plan fee as set forth in your Service Agreement that would otherwise be billed to you in the month in which the Network Outage occurs, multiplied by the number of hours (or portions of hours) that the Network Outage persists, up to a maximum of fifty percent (50%) of your monthly base service plan fee as set forth in your Service Agreement. Network Outages separated by less than one hour shall be treated as a single Network Outage.

The "monthly base service plan fee" consists of the base monthly fee paid by Customer under the applicable service plan as set forth in your Service Agreement, exclusive of all other fees which might be charged to Customer, including, by way of example only and not limitation, fees for set-up, bandwidth usage in excess of that included in the service plan, data storage, extra IP addresses, backup service, or any other services other than those available without additional charge under Customer's service plan.

### **3. Exceptions**

Notwithstanding anything contained herein to the contrary, Webair shall have no liability and no credits shall be issued to you in connection with any Network Outage caused by, in whole or in part, directly or indirectly or otherwise associated with:

- (a) Failure of power, facilities, equipment, applications, systems or connections provided or maintained by a third party;
- (b) Failure of access circuits to the Webair Network, unless such failure is caused solely by Webair;
- (c) General telco or Internet failure;
- (d) Scheduled maintenance, repair, upgrade or downtime;
- (e) DNS issues outside the direct control of Webair;
- (f) Outage or error of any Webair measurement system;
- (g) Customer's acts or omissions, including without limitation, any negligence, willful misconduct, or use of the Webair Network or Webair services in breach of the Service Agreement and [Acceptable Use Policy](#), by Customer or others acting through or on behalf of Customer;
- (h) Any acts of God or any governmental body, emergency, terrorism, riot, war, sabotage, storm, fire, flood, earthquake or labor disturbance; or
- (i) Any other reason or events beyond the control of Webair.

### **4. Data Backup**

In Webair's normal course of operations, Webair makes periodic backups of some or all of the content on the Webair Network. Webair may, but has no obligation to, make backups available to Customer upon request; provided that such backups exist. WEBAIR PROVIDES BACKUPS AS A COURTESY ONLY AND SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF OR DAMAGE TO DATA OR INFORMATION, DOWNTIME RESULTING FROM ANY FAILURE TO BACKUP ANY SPECIFIC CONTENT, OR ANY LOSS OR DAMAGE WHATSOEVER RESULTING FROM SAME.

### **5. Credit Request and Issuance Procedures**

Requests for Network Outage credits must be made by e-mail sent to [billing@webair.com](mailto:billing@webair.com) within seven days of the Network Outage for which credit is requested, and must include your Webair account number, the date and time your website was unavailable, and the duration of the Network Outage. Webair may require that you provide additional information before issuing a Network Outage credit. Failure to provide such notice and

information will cause Customer to forfeit the right to receive Network Outage credits. Credits will usually be applied within two billing cycles of your request. All credits are exclusive of taxes. Notwithstanding anything in this SLA to the contrary, the total amount credited to Customer in connection with Network Outages in any calendar month will not, in any event, exceed the base service plan fees as set forth in the Service Agreement paid by Customer to Webair for that given month.

## **6. Disclaimer and Limitation of Liability**

CUSTOMER ACKNOWLEDGES THAT OTHER THAN AS EXPRESSLY PROVIDED HEREIN OR IN CUSTOMER'S SERVICE AGREEMENT, WEBAIR MAKES NO CLAIMS REGARDING THE AVAILABILITY OR PERFORMANCE OF THE WEBAIR NETWORK. THE WEBAIR NETWORK AND ALL SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER WEBAIR NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, DEALERS, SUPPLIERS, PARENTS, SUBSIDIARIES OR AFFILIATES WARRANT THAT THE DATA, INFORMATION, PRODUCTS, PROCESSES, AND/OR SERVICES AVAILABLE THROUGH THE WEBAIR NETWORK WILL BE UNINTERRUPTED, NON-INFRINGEMENT, ACCURATE, COMPLETE, USEFUL, FUNCTIONAL, SECURE OR ERROR FREE.

THE CREDITS DESCRIBED IN THIS SERVICE LEVEL AGREEMENT PROVIDE YOUR SOLE AND EXCLUSIVE REMEDY FOR NETWORK OUTAGES AND/OR INTERRUPTIONS IN CONNECTIVITY. OTHER THAN AS EXPRESSLY PROVIDED HEREIN, WEBAIR SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM INTERRUPTION OR FAILURE OF THE WEBAIR NETWORK, LOSS OF OR DAMAGE TO DATA OR INFORMATION, LOST PROFITS, LOSS OF BUSINESS, COST OF REPLACEMENT PRODUCTS AND SERVICES, SUSPENSION, TERMINATION, OR THE INABILITY TO USE THE WEBAIR NETWORK, THE CONTENT OF ANY DATA TRANSMISSION, COMMUNICATION OR MESSAGE TRANSMITTED TO OR RECEIVED BY USERS OF THE WEBAIR NETWORK, OR LOSSES RESULTING FROM ANY GOODS OR SERVICE PURCHASED, DATA TRANSMITTED, MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE WEBAIR NETWORK.

Revised Thursday, November 16, 2006