



## **FIRSTDIGITAL INTERNET PROTOCOL (“IP”) DEDICATED SERVICES SERVICE LEVEL AGREEMENTS (“SLA”)**

### **1. POLICY**

FirstDigital is committed to providing reliable, high-quality Internet and Dedicated services on its IP network. One indicator of FirstDigital’s service commitment is our Service Level Agreement covering these services and ongoing measurement of Network Delay, Port Installation Intervals, Packet Loss, and Port Availability. If an Eligible Customer experiences performance that does not meet the applicable metric set forth in this SLA, then FirstDigital will issue the Eligible Customer a service credit. All defined terms are set forth in section 10.

This SLA is valid for the duration in which customer subscribes services from the Company. For purposes of this SLA services shall be defined as telecommunication services provided in the specific Service Agreement (“SA”), which, the Parties mutually agreed and signed.

The captions or headings in this SLA are strictly for convenience and shall not be considered in interpreting this SLA or as amplifying or limiting any of its content. Words in this SLA, which import the singular connotation, shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Capitalized terms used herein that are not defined in this SLA shall have the same meaning attributed to them in the UTOS.

### **2. FIRSTDIGITAL’S NETWORK**

Inclusive of this SLA are the components used on behalf of the Customer to deliver service (routers, servers, access ports - the port on FirstDigital’s aggregation router upon which the Customer’s circuit terminates) and the FirstDigital owned IP Network. This SLA does not include networks owned and/or controlled by other carriers or third parties; local access circuits (local loop); Customer Premise Equipment (CPE); Customer’s local area network (LAN), internal cabling as well as cable extension from the Demarc; interconnection to or from and connectivity within other Internet Service Provider (ISP) network; any act or omission by Customer, its officers, directors, employees, subcontractors, agents, or any other entity under Customer’s control; and/or any circumstances beyond FirstDigital’s reasonable control including internet attacks (denial of service, virus, work activity, etc.) or force majeure event as described in the UTOS.

### **3. COMMITTED NETWORK DELAY**

- a. **Service Quality.** FirstDigital’s commitment to service quality requires having our network available and capable of delivering service to Customers 100% of the time. FirstDigital is steadfast in achieving the highest level of reliability. Our NOC is staffed and managed to 24 hours a day, 7 days a week, 365 days a year to respond to service and equipment interruptions. FirstDigital utilizes several methodologies and tools to monitor the network and engages in preventive diagnosis to determine potential network failures and corrective actions.

- b. **Network Delay Commitment.** If the average FirstDigital IP roundtrip Network Delay exceeds the applicable time set forth in the table below, then FirstDigital will provide a Service Credit to the Eligible Customer. If an Eligible Customer believes FirstDigital has failed to meet the Committed Network Delay set forth in Table 1, Eligible Customer must contact its FirstDigital representative in writing within 15 business days of the Network Delay metrics being generated for the current period. Service credit is defined in Section 9.

**TABLE 1: Committed Network Delay by Customer Port Location**

Service Level Agreement	Service Availability	Commitment
Intralata	99.99 %	<4.38 minutes per month

#### 4. COMMITTED PACKET LOSS

- a. **Packet Loss Performance Commitment.** If the average IP roundtrip Packet Loss exceeds the applicable percentage set forth in Table 2, then FirstDigital will provide a Service Credit to the Eligible Customer. Our frame loss performance parameters are defined as the percentage of frames dropped within, or between, network devices on our network. Items impacting packet delivery, not within the control of FirstDigital, include inadequate signal strength at the destination, natural or human-made interference, excessive noise, hardware failure, software corruption or overburden network nodes. . If an Eligible Customer believes FirstDigital has failed to meet its Committed Packet Loss performance commitment as set forth in subsection 4.A, Table 2. Eligible Customer must contact its FirstDigital representative in writing within 15 business days of the Packet Loss metrics being generated for the current period. Service credit is defined in Section 9.

**TABLE 2: Committed Packet Loss**

Customer Port Location	Service Level Agreement	Commitment
United States	Intra-United States	Less than 0.3%

- b. **Latency.** For purposes of this SLA latency shall be defined to mean the elapsed time interval between the transmission and reception of a packet of data from one point to another. FirstDigital's latency assumption is data should be transmitted instantly between one point and another, there are however several contributing factors to consider when calculating latency. These are:

**Transmission:** The medium used for transmission (fiber, cooper, coax, or some other form) introduces some delay. The size of the packet introduces delay in a round trip since larger packet will take longer to receive and return than a short one.

**Router and other processing:** Each gateway node time to examine and possibly change the header in a packet.

**Propagation:** This is simply the time it takes for a packet to travel between one place and another at the speed of light.

- c. **Network Jitter.** Jitter delay is expected to not exceed 5ms during any calendar month. Where jitter is defined as a variation in the delay of received packets. At the sending site,

packets are sent in a continuous stream with the packets spaced apart evenly. Due to network congestion, improper queuing, or configuration errors, delay between each packet can vary instead of remaining constant. Average Network Jitter will be measured as the average of 15-minute samples across the network taken throughout the calendar month. Reference section 9 for applicable credits.

## 5. COMMITTED PORT AVAILABILITY

- a. **Port Availability Commitment.** If the average IP Port Availability is less than the applicable amount set forth in Table 3, then FirstDigital will provide a Service Credit to the Eligible Customer. If an Eligible Customer believes they have experienced an outage longer than the committed Outage time as defined in table 3. Eligible Customer must contact its FirstDigital representative in writing within 15 business days of such failure. Service credit is defined in Section 9.

**TABLE 3: Committed Port Availability**

Region	Access	Committed Metric	Outage Time
United States	SPA	99.999%	Between 44 Minutes and 1 hour
			Each additional whole hour over 1 hour

## 6. MAINTENANCE

FirstDigital recognizes two types of maintenance “Routine” and “Emergency” as affecting service availability.

**Routine Maintenance:** shall be defined as any planned maintenance required to maintain, operate and expand the FirstDigital network or related services. Routine maintenance may temporarily degrade the quality of the Service, including possible outages. For purposes of this MSLA maintenance outages are not considered service interrupting and therefore will not be considered for an Outage Credit. Routine maintenance will occur between the hours of Midnight and 6:00 am Local Time, with Local Time defined as the local time in the service area. Customers will receive advanced notice of the maintenance outage at least seven (7) Calendar Days in advance and should plan accordingly.

**Emergency Maintenance:** shall be defined as the efforts necessary to correct a service-impacting event requiring immediate and prompt action. Emergency maintenance may degrade the quality of service, including possible outages. FirstDigital will make reasonable and practical efforts to notify customers of emergency maintenance requirements and may, if necessary, provide an RFO (“Request for Outage”) providing details of the outage and steps taken to correct the outage. Outages resulting from emergency maintenance outside the normal maintenance window of Midnight and 6:00 AM Local Time, will be deemed service interrupting and subject to an outage credit.

**Notifications:** Customers are required to provide a contact person and an escalation list for notification purposes. FirstDigital will provide notifications via email, direct calls, and on our website. Customers are obliged to provide confirmation of the acknowledgement of receipt of notification by either sending an email to CustomerService@firstdigital.com or calling 801-456-1000.

## 7. CUSTOMER TERMINATION RIGHTS

Customer may terminate the Affected Services without penalty if, in any single calendar month: (i) Network Downtime exists for at least twenty-four (24) hours in the aggregate; or (ii) any single event entitling Customer to credits under Network Availability exists for a period of at least eight (8) consecutive hours. Such termination must be conducted by written notice to FirstDigital within five (5) business days following the end of the relevant calendar month. Termination of the Affected Services shall be effective as of cessation of use of such services by Customer and receipt by FirstDigital of written notice of termination from Customer.

## 8. EXCLUSIONS FOR FIRSTDIGITAL DEDICATED IP SERVICE LEVEL AGREEMENT

- a. Exclusions. The IP Dedicated Services SLAs are not valid for:
  - i. Customer delays including, but not limited to: (i) acts or omissions by the customer, his agents or vendors; (ii) inaccurate, incomplete or changes to previously accepted orders; (iii) unavailability/faulty customer premises, customer premise equipment (CPE) and/or facilities necessary to install the services; or, (iv) extension of access circuit demarcation point; or,
  - ii. Force majeure events, as defined in the applicable FirstDigital services agreement between the parties; or,
  - iii. Customer's failure to materially comply with its obligations as defined in customer's Agreement for IP Services, including failure to pay valid past-due amounts; order suspensions due to customer's credit worthiness; or,
  - iv. Scheduled standard maintenance window; or,
  - v. FirstDigital-operated modems and FirstDigital Domain Name Servers ("DNS"); or,
  - vi. Any components operated by an Internet Service Provider or a network operator other than FirstDigital; or,
  - vii. Failure of customer-provided local access within the Intra-United States used to access the IP network; or,
  - viii. Failure of customer premise equipment not owned or provided by FirstDigital; or,
  - ix. Troubles resolved as "No Trouble Found"; or,
  - x. Outages less than 60 seconds in duration or time attributed to customer's delay in responding to FirstDigital's requests for assistance to repair and outage; or,
  - xi. Collocation Center Port Availability does not include local access from the Eligible Customer's hosted/collocated equipment cabinet to other sites outside of the Collocation/Hosting Facility/Internet Center.
- b. Amendments. FirstDigital reserves the right to amend the SLA from time to time. All Amendments shall be in writing.

## 9. MAXIMUM SERVICE CREDITS

- a. **Monthly Service Credit.** Service Credits issued in any month under any SLA will not exceed Eligible Customer's total monthly recurring charges for the affected FirstDigital IP Dedicated Port(s).
- b. **Yearly Service Credit.** The combined cumulative total of Service Credits issued during a Contract Year under these SLAs will not exceed 20% of an Eligible Customer's total monthly recurring charges for all FirstDigital IP Dedicated Port(s) invoices during the Contract Year.

**TABLE 4. Service Credits**

Service	Availability Objective	Credit
Network	99.99% ( $< 4.38$ Minutes of unavailability per month)	1/30 <sup>th</sup> of the Monthly Recurring Charge (MRC)
Packet Loss	$< 3.0$ ms	1/30 <sup>th</sup> MRC for each day FirstDigital fails to meet the jitter for real time quality of service during a calendar month.
Port Availability	$> .444$ minutes $< 1$ hour	1/30 <sup>th</sup> of monthly recurring charge
	$> 1$ hour and $< 2$ hours	2/30 <sup>th</sup> of MRC
	$> 2$ hour and $< 3$ hours	3/30 <sup>th</sup> of MRC
	$> 3$ hour and $< 4$ hours	4/30 <sup>th</sup> of MRC
	$> 4$ hour and $< 5$ hours	5/30 <sup>th</sup> of MRC
	$> 5$ hour and $< 6$ hours	6/30 <sup>th</sup> of MRC
	$> 6$ hour and $< 7$ hours	7/30 <sup>th</sup> of MRC
	$> 7$ hour and $< 8$ hours	8/30 <sup>th</sup> of MRC
	$> 8$ hour and $< 9$ hours	9/30 <sup>th</sup> of MRC
	$> 9$ hour and $< 10$ hours	10/30 <sup>th</sup> of MRC
	$> 10$ hour and $< 11$ hours	11/30 <sup>th</sup> of MRC
	$> 11$ hour and $< 12$ hours	12/30 <sup>th</sup> of MRC
	$> 12$	13/30 <sup>th</sup> of MRC

- c. FirstDigital will issue a Service Credit to the Eligible Customer. The Service Credit will equal the applicable amount set forth in Table 4, not to exceed the limits in Section 9. Approved Service Credit(s) will be applied to an Eligible Customer's invoice during the next billing cycle. Any decision made by FirstDigital concerning this SLA or associated credits will be final, binding and conclusive, and is within FirstDigital's sole discretion.

## 10. DEFINITIONS

- As Scheduled-** means the scheduled date as determined to by the FirstDigital representative.
- AV Interval-** means the actual number of days between FirstDigital placing the order for the local access with the access vendor and FirstDigital's acceptance of the local access from the access vendor.
- BMAN-** Broadband Metropolitan Area Network
- Contract Year-** means the 12-month billing period commencing on the first day of the month after the customer's FirstDigital IP services agreement is effective and each successive 12-month billing period.
- Eligible Customer-** means any customer who has purchased FirstDigital Services on or after December 15, 2002, with a minimum 1-year commitment (or an existing FirstDigital IP Services customer that renews its existing agreement for an additional term of 1 year or longer), is in full compliance with the terms of its FirstDigital IP Service Agreement and is not blocking ICMP traffic.

- f. **Demarc** – means the point at which FirstDigital’s network ends and connects to the Customers network.
- g. **Internet Control Message Protocol (“ICMP”)** – means the network layer used by network devices to diagnose network communication issues. ICMP is used to determine if data is reaching its intended destination.
- h. **Measurement Period**- means a calendar month
- i. **Network Delay**- means the average time in the Measurement Period for data traffic to be transmitted between all applicable FirstDigital Access Nodes.
- j. **No Trouble Found**- means a FirstDigital customer reports a problem that cannot be duplicated by FirstDigital. For example, Customer reports an out-of-service condition, but FirstDigital sees its service up and active with no evidence of a recent outage.
- k. **Packet Loss**- means the average percentage of packets in the Measurement Period that are dropped between applicable FirstDigital Access Nodes.
- l. **Port**- means a customer’s physical entrance to, and/or exit from the IP Network.
- m. **Port Availability**- means the percentage of time in a month the FirstDigital Network was available to the customer.
- n. **Port Installation Interval**- means the total number of business days between days between the operational order entry data of a FirstDigital order, excluding network design and order preparation time, and the date the applicable IP Port is installed and available for use, as solely determined by FirstDigital.
- o. **FirstDigital Access Node**- means FirstDigital points of presence connected by long-distance fiber lines that collective form FirstDigital’s IP Network.
- p. **Collocation Center**- a FirstDigital designed and built collocation and web hosting services center.
- q. **FirstDigital Provide Access**- means FirstDigital coordinates, orders and provisions, installs, and maintains access facilities from end to end for telecommunications service.