

## SERVICE LEVEL AGREEMENT ATTACHMENT FOR METRO ETHERNET SERVICE (“Service”)

### 1. STRUCTURE OF THE AGREEMENT

This document (“SLA”) forms an attachment to the Specific Terms and Conditions for the Service and part of the Agreement between Pacnet and Customer, which comprises the following:-

- (a) General Terms and Conditions for Pacnet Service (Business Market) (“GC”),
- (b) Specific Terms and Conditions for the Service (“SC”),
- (c) Order Form properly filled out and duly executed by Customer (“SOF”), and
- (d) any other documents attached to or referenced in GC, SC or SOF, including any acceptable use and securities policies referenced therein.

### 2. DEFINITIONS

In this SLA, the initial capitalized term shall have the following meanings ascribed to them:

- 2.1 “**Clause**” means the relevant clause of this SLA.
- 2.2 “**Fault**” means occurrence of unavailability of the Service reported to Pacnet by Customer and acknowledged by Pacnet by issued a Ticket.
- 2.3 “**Month**” means the billing month of the Service as set forth in the first invoice from Pacnet which may be revised by Pacnet from time to time; The expression “**Monthly**” shall have the corresponding meaning.
- 2.4 “**Monthly Recurring Charges**” or “**MRC**” means the monthly charges of the Service in the relevant Month as specified in the SOF, excluding the charges of any third party telecommunications service or access providers.
- 2.5 “**Outage**” means a Fault: (a) in the event that the Fault is reported by the Customer to Pacnet, commencing from the time Customer reports the Fault to Pacnet and a Ticket is opened as per Clause 4.3, (b) in the event that the Fault is detected by Pacnet, commencing from the time Pacnet recognizes the Fault, both up to the time the Service(s) is restored to Customer either partially or completely.
- 2.6 “**POP**” means one of the designated points of presence at Pacnet international network or the international network of Pacnet’s partners providing the Service.
- 2.7 “**PSC**” means Pacnet Service Centre of Pacnet or the relevant Pacnet subsidiary or affiliate which is providing the Single Point of Contact service support for all Pacnet customers of the Service(s).
- 2.8 “**Service Level**” or “**SL**” means the service level commitments as described in Annex A of this SLA, which are either “Guaranteed SL” or “Target SL” as described in Clause 3.3.
- 2.9 “**SLA Credit**” means a rebate in percentage against Customer’s MRC (see Annex A of this SLA) in corresponding Month for which Service affected by non-fulfillment of a “Guaranteed SL”; computation of SLA Credit is set forth in Clause 6.

Initial capitalized terms that are used in this SLA but not defined herein will have their corresponding meanings ascribed to them in the GC or SOF.

### 3. SERVICE LEVEL COMMITMENTS

- 3.1 Provided that Customer fulfills each and every obligation and covenant under the Agreement (including make any payment when due), Pacnet commits to meet the Service Level described in Annex A of this SLA. The Service Level commitments hereunder may be amended, cancelled or withdrawn by Pacnet at anytime without notice and without liability to Customer, except for any credit claims accrued and due to Customer prior to the date of such amendment, cancellation or withdrawal.
- 3.2 In the event that Pacnet fails to meet the Service Level as described in Annex A of this SLA, then subject to the terms and conditions of this SLA, Pacnet shall compensate Customer the applicable SLA Credit.
- 3.3 Service Level mentioned in this SLA may be either “Guaranteed SL” or “Target SL”. For Guaranteed SL, Pacnet shall ensure the performance and offer SLA Credit for non-fulfillment of Guaranteed Service Level. For Target SL, Pacnet will use its commercially reasonable endeavors to achieve the performance but offer no SLA Credit for non-fulfillment of Target SL.
- 3.4 For the purpose of this SLA, the service coverage countries will be divided as below: -

Table 1 (Regions)	
Region	Countries / Cities
Region 1	Australia, Hong Kong, Singapore
Region 3	Thailand

### 4. MONITORING, SUPPORT, FAULT REPORTING

- 4.1 **Service(s) Monitoring:** Where applicable and necessary, Pacnet shall monitor the Service on a 24 hours a day and 7 days a week basis.
- 4.2 **Network Report:** Pacnet will grant Customer access to the online network traffic report, which enables Customer to check the utilization of the Service. The details of the report will be provided after successful provisioning of the Service. The availability of the report is dependent upon the type of Service ordered by Customer and is only available for sites covered under service coverage of Region 1 only.
- 4.3 **Reporting and Information:** When reporting any Fault to Pacnet, Customer shall furnish to Pacnet via PSC: (a) full name of Company; (b) Caller information; (c) Service Information; (d) Pacnet Circuit ID or IP address; (e) Fault details and duration; and (f) any other information required by Pacnet to identify Customer and/or the Fault, and for the purposes of Fault rectification. Upon Customer furnishing of sufficient information as mentioned above and upon the PSC’s confirmation of the validity of the Fault based on information by Customer, Pacnet will issue a trouble ticket (“Ticket”) for the Fault so reported by Customer. PSC shall act as single point of contact for the management of the Fault and shall arrange for problem investigation and resolution.

**4.4 Response Time:** After receiving a report of Fault, Pacnet shall use its commercially reasonable endeavor to provide Customer with progress update.

**4.5 Scheduled and Ad Hoc Maintenance:**

- (a) To avoid degradation of the Service(s), Pacnet will conduct regular scheduled maintenance of the Service. When Pacnet considers that a scheduled maintenance is required, Pacnet shall provide advance notice which will be posted at Pacnet's website of the relevant country at least ten (10) working days prior to any scheduled service-impacting maintenance where Pacnet is the sole provider involved. When scheduled maintenance is to be conducted partly by Pacnet's supplier(s) or other business partner(s), Pacnet shall use commercially reasonable endeavors to provide as much notice as reasonably practicable.
- (b) Where practicable, Pacnet will arrange the scheduled maintenance of the Service during non-peak hours of the relevant country.
- (c) In addition, Pacnet reserves the right to conduct ad-hoc, emergency and/or impromptu maintenance work (collectively, "Ad hoc Maintenance" ) without any prior notice to you under urgent circumstances for the purposes of rectification of any fault in the network. In such event, Customers' Service(s) availability may also be interrupted. No compensation or SLA Credit shall be payable by Pacnet for any loss or damage caused by such service interruption.

**5. EXCLUSIONS**

5.1 Pacnet's obligations under this SLA are subject to the following:

- (a) Customer has not committed any breach of the terms of the Agreement or any other terms and conditions that are applicable to the Service.
- (b) Customer shall render all such reasonable assistance and cooperation to Pacnet (including provide access to the applicable site) and do all such acts as reasonably necessary to enable Pacnet to resolve the Outage.

5.2 The granting of SLA Credit to Customer constitutes the sole and exclusive liability of Pacnet and the sole and exclusive remedy of Customer in relation to the performance, non-performance, quality, degradation, suspension or termination of the Service. Save as to the SLA Credit as expressly mentioned herein, Pacnet shall not be liable for any loss (whether direct, indirect, incidental, special, or consequential loss or damages, including loss of revenue or profits or loss of business or opportunities, or other economic loss or damages) sustained by Customer.

5.3 This SLA shall not apply to Fault in any equipment provided by Pacnet or by Pacnet through any third party telecommunication service provider.

5.4 **Fault exclusions:** Any Service unavailability arising from any of the following events shall be excluded in the determination of an Outage for the purposes of calculating SLA Credit:-

- (a) Any Fault due to scheduled maintenance or Ad Hoc Maintenance as mentioned in Clause 4.5.

- (b) Any Fault attributable in whole or in part to Customer or any third party's software applications, equipment, cabling network, network/ computer facilities, as well as local access facilities ordered by Customer.

- (c) Any Fault caused by external causes including but not limited to hacking or security lapses on the Customer's servers or networks.

- (d) Any Fault due to any upstream access providers or Internet exchange providers.

- (e) Any Fault arising from force majeure events as defined in the GC.

- (f) Any Fault (whether partial or in whole) arising from or in connection with any third party telecommunications service providers.

- (g) Any Fault that is reported by Customer but is not acknowledged or confirmed by Pacnet as a Fault.

- (h) Any Fault attributable to "off-net circuits," that is, circuits comprising a part of the Service that are provided by third-party suppliers where the circuits are either (i) international circuits, or (ii) long-haul domestic circuits.

- (i) Disconnection or suspension of Service due to non-payment of any charges due and owing by Customer to Pacnet, and/or use of Service by Customer in breach of the Agreement, this SLA or any other terms and conditions applicable to the Service.

- (j) Inability or delay of Customer to grant to Pacnet access to Customer's site causing a delay in the restoration of the Service and in such case, the duration of time that such Service restoration had been delayed shall not be included in the determination of an Outage.

- (k) Interruptions of Service as agreed upon by Customer.

- (l) Any Fault attributable in whole or in part to any act, omission, negligence or willful misconduct of Customer or any third party, including but not limited to, Customer's agents, contractors or vendors.

- (n) Any Fault due to Customer-owned and maintained equipment and/or cabling network.

- (o) Any Service provided on a trial and/or temporary basis.

**6. SLA CREDIT COMPUTATION**

**6.1 SLA Credits for Non-Fulfillment of Guaranteed SL**

- (a) Pacnet shall determine the non-fulfillment of Service Level for each service as reported by Customer in a affecting Month, and the SLA Credit due shall be calculated based on the computation set forth in this Clause 6 and Annex A of the SLA, subject always to the overall maximum SLA Credit entitlement in any Month under this SLA as set forth under Clause 6.2.

- (b) In the event that any Guaranteed SL set forth in Annex A of this SLA is not met in a given Month, Customer shall be entitled to SLA Credit. The Service Credit is a percentage of the MRC of the affected Service in any Month as follows:-

- For Metro Ethernet Service: The SLA Credit for non-fulfillments of Service Availability, Latency and Packet Success commitment are computed as a percentage of the MRC.

- (c) Customer agrees and acknowledges that Pacnet's determination of the duration of any Outage shall be final and conclusive.
- (d) In calculating the SLA Credit, all discounts and other special pricing arrangements, government fees, taxes, surcharges, and similar additional charges shall be deducted from the SLA Credit before crediting into Customer's account.

### 6.2 Maximum SLA Credit Per Month

- (a) Notwithstanding anything to the contrary herein contained, Customer acknowledges and agrees that for any given Month, Customer is entitled to claim up to a certain maximum SLA Credit in Table 2 below:-

Product	Region	Maximum SLA Credit *
Metro Ethernet	Australia	50%
	Hong Kong	30%
	Singapore	100%
	Thailand	50%

\* in term of percentage of MRC in a Month

- (b) SLA Credit provided for hereunder is not cumulative with respect to all the affected sites. If Customer experiences more than one non-fulfillment of Service Level in the same Month, Customer will receive only the highest applicable single credit per Site.

### 6.3 Service Level Claim

- (a) Customer agrees that any SLA Credit offered for Service affected by non-fulfillment of Service level commitments shall be in the form of a rebate against the MRC of the affecting Month only and shall be credited to Customer following the Month in which a SLA Credit claim has been successfully made.
- (b) All claims for SLA Credit must be:-
- Submitted by Customer in writing to Pacnet within the first 14 days of the following Month in which such non-fulfillment of Service Level Commitment occurs; and
  - accompanied by Pacnet's fault report and the duly written request in such manner as may be prescribed by Pacnet from time to time.
- (c) Pacnet will only issue SLA Credit of the affected Month in one lump sum in any Month following the claims are confirmed by Pacnet, regardless of the frequency of SLA Credit claim in the relevant Month.
- (d) Any SLA Credit accrued but remaining unused after termination of the applicable Service may only be applied to charges accruing for other Pacnet services. All unused SLA Credit will expire 6 Months after their accrual. Termination of the Service due to your non-payment or other breach will irrevocably void all accrued but unused SLA Credit.

## ANNEX A :

### SLA PARAMETERS FOR THE SERVICE

#### 1. NETWORK AVAILABILITY

- 1.1 Pacnet's Service Availability refers to the actual service availability of the Service ordered by Customer in any Month and are measured POP-to-POP
- 1.2 The guaranteed service availability ("GSA") in a Month is calculated as follows, subject to the SLA including Clause 5 (Exclusions):-

$$\text{Service Availability (\%)} = \frac{\text{(Total time for any Month - Aggregate Outage for the Month)} \times 100\%}{\text{(Total Time for the Month)}}$$

- 1.3 Customer entitlement for SLA Credit is calculated based on the Table 3 below; the calculation thereof is strictly based on the definition of "Outage", and "Service Availability" and the exclusions set forth in Clause 5.

	Region	GSA	For each interval below against the GSA	SLA Credit as percent of MRC
POP-to-POP	1,3	99.9%	0.01%	0.05%

#### 2. LATENCY

- 2.1 Latency refers to the monthly average POP-to-POP roundtrip delay in a calendar month ("Average Latency"). Customer agrees and acknowledges that the data for Average Latency is the confidential data of Pacnet and will not be disclosed to Customer.
- 2.2 Average Latency is measured on an ongoing basis (where possible, once every 1 minute) between the relevant POPs. Pacnet's measurement of Average Latency shall be final and conclusive. Average Latency is expressed in millisecond (ms) as calculated by the formula below:-

$$\text{Average Latency (ms)} = \frac{\Sigma(\text{All averaged samplings of Roundtrip delay between relevant POPs per interval})}{\text{Total number of sampling of Roundtrip delay}}$$

- 2.3 If for any reasons that are within Pacnets' control, Pacnet fails to meet the Guaranteed Latency ("GAL") as set forth in Tables 4 below, Customer will receive a SLA Credit against the MRC (excluding any local access charges and burstable access charges) of the affected Service as mentioned below.

From / To	HK	TW	JP-TK	JP	KR	SG	PH	MY	US (West coast)	AU	NZ
HK											
TW	40										
JP – TK	70	52									
JP	79	67	23								
KR	54	88	48	65							
SG	45	65	96	120	80						
PH	54	35	71	88	88	79					
MY	54	67	100	125	90	15	88				
US (West coast)	200	210	150	156	190	245	208	255			
AU	230	217	172	196	216	262	239	269	218		
NZ	238	227	174	203	226	262	245	269	169	60	

If the Latency of the Service exceeds one or more of the matrix above, the SLA Credit shall be 3.33% of the MRC of the relevant Month. Above mentioned POP-to-POP average latency figure are guaranteed when the services are running on direct optimal paths.

3.3 If for any reasons that are within Pacnet's' control, Pacnet fails to meet the Guaranteed Packet Success ("GPS") as set forth in Table 7 below, Customer will receive a SLA Credit against the MRC (excluding any local access charges and burstable access charges) of the affected Service as mentioned below.

Averaged Packet Success	SLA Credit (in MRC)
≥ 99.5%	3.33%

2.4 Tables 5 below are the Target Average Latency for Intra Australia; accordingly no SLA Credit will be granted for non-fulfillment thereof: -

	Sydney	Melbourne	Brisbane	Adelaide	Perth	Newcastle
Sydney		20	20	45	70	20
Melbourne	20		35	30	50	25
Brisbane	20	35		60	80	25
Adelaide	45	30	60		95	60
Perth	70	50	80	95		70
Newcastle	20	25	25	60	70	

### 3. PACKET SUCCESS

3.1 Packet Success refers to the monthly average rate of successful packet delivery between 2 POPs ("Average Packet Success"). Customer agrees and acknowledges that the data for Average Packet Success is the confidential data of Pacnet and will not be disclosed to Customer.

3.2 Average Packet Success is measured on an ongoing basis (where possible, once every 1 minute) between the relevant POPs. Pacnet's measurement of Average Packet Success shall be final and conclusive. Average Packet Success is expressed in percentage (%) as calculated by the formula below:-

$$\text{Packet Success (\%)} = \frac{(100\% - \text{Number of Packets not returned per month}) \times 100\%}{\text{Total Number of Packets Sent per month}}$$