



Internet Access Service Terms

version 1.0

The following Internet Access Service Terms are the Service-Specific Terms applicable to the provision of Internet Access Service by Digital Agent, LLC ("DA") except to the extent expressly provided otherwise in a written agreement between DA and Customer.

1. General Terms and Conditions

These Internet Access Service Terms supplement DA's General Terms and Conditions (the "GTCs") applicable to all services offered by DA. In the event of any conflict between the provisions of these Internet Access Service Terms and any provision of the GTCs, the provisions of these Internet Access Service Terms shall prevail.

2. Definitions

When used in Customer's Application, the DA Quote, the GTCs or these Internet Access Service Terms, the following terms shall have the definitions set forth below. Other terms are defined in Customer's Application, in the GTCs and elsewhere in these Internet Access Service Terms.

- a. **"Internet Access"** means a connection to the Internet backbone, monitoring of connectivity between Customer's Premises and DA's data center, troubleshooting, telephone support, Domain Name Service and assignment of IP address(es) to Customer.
- b. **"Service Point"** means that part of DA's systems within DA's data center that is solely necessary to the provision of Internet Access Service.
- c. **"Service Point Border Router"** means the router at the boundary of the Service Point through which Customer gains access to the Internet.

3. Scope of Services

During the Term DA shall, subject to the terms and conditions of these Internet Access Service Terms, provide customer with Internet Access as described on the DA Quote accompanying Customer's Application.

4. Transport Circuit Required

DA's provision of Internet Access to Customer requires the use of a dedicated telecommunications transport circuit connecting Customer's Premises to DA's data center, which Customer must purchase from DA as a Transport Circuit. Such transport circuit shall be subject to DA's Transport Circuit Terms.

5. Service Availability

Subject to the terms and conditions of these Internet Access Service Terms, DA shall provide Internet Access to Customer twenty-four (24) hours a day, seven (7) days a week, three-hundred sixty-five (365) days a year.

6. Rates and Payment Terms

The rates and payment terms for Internet Access shall be as set forth on the DA Quote. Customer agrees to pay all such rates and charges in accordance with the terms of the GTCs. Customer also agrees to pay DA's standard rates and charges for any ancillary services or features used with Internet Access for which rates and charges are not set forth in the DA Quote.

7. Customer Responsibility

- a. **Customer Equipment.** Customer is solely responsible for all equipment and software used with Internet Access. DA provides no equipment or software to be used with Internet Access.
- b. **Other Responsibilities of Customer.** In addition to the foregoing, Customer shall be responsible at its own sole expense for the following:
 - i. Customer shall notify DA's Customer Service upon any Internet Access failure.
 - ii. Customer shall allow DA full and free access to Customer's equipment and use of necessary data communications facilities and equipment, subject to Customer's security rules.
 - iii. Customer shall maintain site environmental conditions throughout the period of these Internet Access Service Terms suitable to the provision of Internet Access.
 - iv. If Customer elects not to implement or make changes to any of Customer's equipment pursuant to DA's technical recommendation, DA shall not be held liable nor responsible for any outcome or results from the Customer's decision or any adverse effects for such decision upon Internet Access.
 - v. Customer shall cooperate with and assist DA to the extent necessary in the provision of Internet Access and will provide any resources



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of Customer reasonably necessary for DA's performance hereunder.

8. Permitted Use

a. Internet Access is only to be used for lawful purposes and under the terms of the Acceptable Use Policy located on DA's website. Any transmission or retransmission of material in violation of any federal or state laws and/or regulations is expressly prohibited. This extends to and includes, but is not limited to: any copyrighted materials, materials or communications judged to be threatening or obscene, hosting or promoting gambling activities, and any material or communications protected by trade secret laws. Any and all access to other networks via Internet Access must be in compliance with all policies and rules of those networks.

b. Customer acknowledges that there is some content and material on the Internet or otherwise available through Internet Access which may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations or may violate Customer's protected rights or those of others. DA assumes no responsibility for this content or material. Anyone who accesses such content and material does so at his or her own risk. DA shall have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content or material by Customer or others. Questions or complaints regarding content or material should be addressed to the content or material provider. Customer acknowledges that software programs are commercially available that claim to be able to restrict access to sexually explicit or other objectionable material on the Internet. DA makes no representation or warranty regarding the effectiveness of such programs.

c. DA shall have no obligation to monitor postings or transmissions made in connection with Internet Access. However, Customer acknowledges and agrees that DA and its agents have the right to monitor, from time to time, any such postings and transmissions, including without limitation e-mail, newsgroups, chat, and IP audio and video. DA may also use and disclose Customer's transmissions in accordance with DA's Acceptable Use Policy and other applicable policies, and as otherwise required by law or government request. DA reserves the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in DA's sole discretion, is unacceptable, undesirable or in violation of these Internet Access Service Terms.

d. DA's facilities are used by numerous persons or entities including, without limitation, other Internet Access subscribers. As a result, there is a risk that Customer could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor Customer's Internet Access. If Customer posts, stores, transmits, or disseminates any sensitive or confidential information, Customer does so at its sole risk. DA shall have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions by Customer. Customer acknowledges that software programs are commercially available that claim to be capable of encryption or anonymization. DA makes no representation or warranty regarding the effectiveness of these programs.

e. Customer acknowledges that when using Internet Access there are certain applications such as FTP (File Transfer Protocol) or HTTP (Hyper Text Transfer Protocol) which may be used by other persons or entities to gain access to Customer's equipment. Customer is solely responsible for the security of the Customer's equipment or any other equipment used in connection with Internet Access, including without limitation any data stored on such equipment. DA shall have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to the use of such applications by Customer, or the access by others to Customer's equipment.

f. Customer Equipment that does not meet DA's minimum technical or other specifications constitutes a "Non-Recommended Configuration." DA does not warrant that a Non-Recommended Configuration will enable Customer to successfully use the Internet Access. Customer acknowledges that any such installation, access, operation or use could cause Customer's equipment to fail to operate or cause damage to Customer's equipment. DA shall have no liability whatsoever for any such failure or damage. DA reserves the right to deny Customer support and/or terminate Internet Access if Customer uses a Non-Recommended Configuration.

9. Limitation of Liability

In no event shall DA be liable to Customer for any damages resulting from or related to any failure or delay of DA in providing Internet Access under this agreement. DA shall not be liable to customer for any delays in the performance of services hereunder or for any failure to perform hereunder if such delays or failures are due to strikes, inclement weather, act of God or other causes beyond DA's reasonable control. DA will not be responsible for performance of its obligations hereunder where delayed or hindered by war, riots, embargoes, strikes or acts of its vendors and suppliers, concealed acts of workman (whether of DA or others), or accidents. DA will attempt to notify Customer in the event of any of the foregoing occurrences. In no event shall DA be liable to Customer for any indirect, special or consequential damages or lost profits arising out of or related to this agreement or the performance or breach thereof, even if DA has been advised of the possibility thereof. DA will not be responsible for any damages suffered by Customer in any way related to this Agreement. This includes loss of data resulting from delays, nondeliveries, wrong deliveries, and any and all service interruptions caused by DA and its employees by its own negligence or Customer's errors or omissions.



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10. Limitation of Warranties

DA makes no warranties or representations express or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use or purpose with respect to Internet Access, and all such representations and warranties are hereby expressly disclaimed. Customer acknowledges that, except as expressly provided otherwise herein, the Internet Access is provided to Customer "As Is," "with all faults" and "as available."

11. Service Level Agreement

a. Scope. This Service Level Agreement ("SLA") applies only to Customer's service performance directly relating to Digital Agent's Service Point. The IP access port servicing the Customer at the Digital Agent Service Point Border Router will serve as the demarcation for coverage. The scope of this SLA does not include, under any circumstances, any server on the Internet, customer premise equipment ("CPE") or local access service of any type.

b. Application. Eligibility for any credits is subject to Customer's account being current and having no outstanding balance due. Customer's total credit in any contract year shall not exceed fees for thirty (30) days for the covered service type (i.e., MRPC or DNS). Residual credits may not be carried over to subsequent years. Customer must have contracted for the specific service covered under each provision to qualify for any credits against those provisions.

c. Each credit shall be Customer's sole and exclusive remedy for the corresponding service outage and DA's failure to meet the service objectives. Any disputes or claims arising out of or relating to this SLA must be brought within six months of the occurrence of any such dispute or accrual of any such claim.

d. Proactive Notification and Credits. Internet Access impacting conditions can be reported either by Customer or DA. At the time Customer believes that an Internet Access impacting condition has occurred, Customer must initiate a trouble ticket by contacting DA's Network Operations Center ("NOC"). If the DA NOC believes that a Internet Access impacting condition has occurred, the NOC will open a trouble ticket on Customer's behalf. Once a ticket has been opened, DA will notify Customer of the situation and initiate diagnostic testing and trouble isolation activities to determine the nature of the Internet Access impacting condition. If the Internet Access impacting condition is determined to be one that may be within the scope of coverage of Internet Access, the NOC will assume responsibility and management of the trouble ticket. Any necessary follow-up is the joint responsibility of Customer and DA. A credit will be applied to the Customer's first monthly invoice following DA's determination that an Internet Access impacting condition lies within the scope of coverage of such service.

e. Exclusions. Internet Access impacting conditions do not apply to scheduled, Customer-requested or Customer-caused service interruptions. Measurement of outages will be conducted only in accordance with the sections below. Under no circumstances will any tests (for example PING tests) performed by Customer or any other party be recognized by DA as a valid measurable criterion for outage determination for the purposes of establishing a credit hereunder. The terms in this Section 11 apply only to DA customers; they do not apply to customers of a DA customer. Under no circumstances will credits be given for outages involving: (a) trouble tickets erroneously opened by Customer; (b) trouble tickets opened by Customer for service monitoring purposes only; (c) trouble tickets related to Customer configurations, negligence, accidents or omissions; or (d) events beyond DA's reasonable control.

f. Service Availability Metrics

i. Service Point Problem Resolution Time. DA will use commercially reasonable and good faith efforts to ensure that eligible outages isolated to an area within the Service Point and affecting a Customer's specific resource will be resolved as soon as reasonably possible and, in any event, in less than ten (10) minutes. The IP access port servicing Customer at the DA Service Point Border Router will serve as the demarcation for coverage. These Customer-specific problems exclude backbone and other redundant resource problems. Failure to meet this objective may make Customer eligible for a credit to be applied to Customer's next monthly invoice for Internet Access.

ii. Remedies and Credits. Service Point Problem Resolution Time Guarantee is determined and calculated on a per-occurrence basis, commencing upon the NOC's initial awareness of an outage and ending when the service has been restored. Customer's credit is a prorated amount derived from the length of the service outage and Customer's Monthly Recurring Port Charge ("MRPC") for the affected service. Credits will be applied as follows:



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Length of Outage	Amount of Proactive Credit
Less than 10 minutes	None
10 minutes to 30 minutes	1 day prorated MRPC
31 minutes to 60 minutes	2 days prorated MRPC
61 minutes to 6 hours	3 days prorated MRPC
More than 6 hours	2 weeks prorated MRPC
Second qualifying outage in same calendar month	Two times the amount listed above for the respective second qualifying outage.