

SCHEDULE XII SERVICE LEVEL AGREEMENT

1. General

1.1 Introduction.

This Attachment defines the understanding between the parties as to the levels of service that HNS will provide during the term of the Agreement. The objective of this Attachment is to set measures against which HNS' performance will be evaluated, and to establish a system of remedies, including liquidated damages (to be applied in the form of credits against future Service Charges), through which Customer may receive compensation for HNS' failure to achieve its service level commitments. This Attachment specifies (i) the metrics to be satisfied and reported on for Services, (ii) a numerical standard representing the minimum performance expected from HNS (the "**Service Levels**"), and (iii) Customer's remedy whenever HNS fails to meet the Service Level. Any such credit or liquidated damages shall be Customer's sole and exclusive remedy for any failure by HNS to meet these Service Levels. They will be applied only toward the monthly recurring Services Charges (exclusive of any equipment usage charges bundled into such monthly charges), and, for any calendar month, shall not exceed the total Services Charges for such month.

This Schedule describes the following Service Level Agreements and Service Level Objectives:

- Service Level 1: Network Availability
- Service Level 2: Throughput – VSAT Only
- Service Level 3: Data Delivery Ratio – DSL Only
- Service Level 4: Time to Restore
- Service Level 5: Time to Install
- Service Level 6: Round Trip Delay – VSAT and DSL Only
- Service Level 7: Chronic Sites
- Service Level 8: Monthly Service Reports

1.2 Definitions. For the purposes of this Schedule, the following terms have the meanings set forth below. If any capitalized term is used in this Attachment but is not defined below or elsewhere herein, the definition set forth in the Agreement or its other attachments shall apply.

HELP DESK means Customer's Help Desk accountable for all site communications issues and resolutions.

VSAT Site means a site where a VSAT is to be installed by HNS.

Customer Premise Equipment (CPE) means the equipment and other network hardware that Customer (or its agent or assignee) manages, and that resides at a Site.

Demand Services shall mean certain supplementary services which HNS may perform upon the request of Customer, including supplementary maintenance and repair services, which are outside the scope of the Services herein described.

DSL means digital subscriber line technology, a terrestrial, broadband, IP-based technology being provided by HNS to Customer.

Throughput means the volume of data traversing the network, stated in a per hour average volume of bits per second.

NOC means the Network Operations Center.

Outage Minutes means each minute Network Service is determined to be non-available.

Problem means an error, defect or omission related to the Equipment, Installation Service, or Services.

Scheduled Outage means the pre-planned, regularly scheduled interruptions, or all network operations or Services.

1.3 Commencement Date.

The start of the measurement period for each Service Level is specified in each description.

2.0 Service Levels:

The following Service Levels apply to the VSAT and Terrestrial Equipment, Installation Services, and Services at all Sites:

2.1 Service Level 1: Network Availability

Application	Metric	Inputs / Calculations	Measurement Window	Service Level Requirement
This Service Level applies to all Sites (VSAT DSL, cable, cellular wireless, and T-1 Sites).	Network Service Availability commences on the first calendar day of the month, and ends on the last calendar day of the month.	<p>The duration of a Service interruption is measured by the number of minutes during the Scheduled Service Time that elapse from the time that a trouble ticket is opened to the time that the Service has been restored. Scheduled Service Time shall be deemed to be 24 hours a day, 7 days a week. The availability for a given calendar month shall be a percentage. This figure will include both individual site outages as well as network level outages. A site is included in the calculation after it has been in service for one (1) full calendar month. The formula for calculation of Network Availability is set forth below:</p> $((SST * X) - SOM) \div (SST * X)$ <p>Where: SST = Scheduled Service Time</p> <p>X = Average Number of Sites in the Network for the applicable month</p> <p>SOM = Aggregate site outage minutes in a calendar month</p>	Monthly	Not less than 99.7% per month, excluding Dial Backup

(a) The Commencement date for this Service Level will be 90 days after network rollout has begun or when at least 100 sites have been installed, whichever comes first.

(b) Conditions and Exclusions:

No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:

- The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS;
- The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;
- Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
- An event of Force Majeure suspending HNS' performance obligations; and
- For trouble tickets requiring site visits, the time outside the maintenance coverage is not counted toward this Service Level. For example, if Customer has Normal Service

Coverage with response times between 9:00 a.m. and 5:00 p.m., then the time outside the contracted coverage hours will not count as outage minutes in the event of an individual site outage.

- All sites to which HNS is not providing remote maintenance services shall be excluded from the calculation of Network Availability

(c) Service Level Credits issued by HNS to Customer for failure to meet this Service Level are as follows:

Monthly Network Service Availability:	Service Level Credit:
99.7% or greater	No credit
99.4% – 99.69%	2% of the monthly per site Service Charge times the number of sites in the Network
99% - 99.39%	5% of the monthly per site Service Charge times the number of sites in the Network
98% - 98.99%	10% of the monthly per site Service Charge times the number of sites in the Network
Less than 98%	20% of the monthly per site Service Charge times the number of sites in the Network

2.2 Service Level 2: Throughput – VSAT Only

Application	Metric	Inputs / Calculations	Measure-ment Window	Service Level Requirement
This Service Level applies to VSAT Sites only	VSAT Throughput will be measured on receipt of report from Customer of a suspected violation of this Service Level.	<p>Throughput is defined as a bit per second measurement based on the total transfer time in seconds of a measured object or file of a given size calculated in Kbytes. HNS will provide a minimum throughput for each site subscribing to a specific Enterprise Service Plan as specified herein.</p> <p>Upon the opening of a trouble ticket by Customer on a site suspected of being in violation of this Service Level, HNS will measure the Customer's upstream and downstream network throughput. This measurement will be performed by an HNS server in the Network Operations Center (NOC), and will be performed when there is no other traffic being transmitted by the terminal. The server will measure the network throughput of actual Customer transfers as they are being transmitted and received. A minimum of 100 measurements per day for seven (7) days will be required. The measurement process will not impact the performance of Customer's application.</p>	As Required	See Table Below

VSAT Throughput Table

All values in kbps	Enterprise 100	Enterprise 200/ Access Continuity 50	Enterprise 300/ Access Continuity 100	Enterprise 400	Enterprise 800/ Access Continuity 200	Enterprise 900/ Access Continuity 500
Upstream	N/A	64	128	128	256	600
Downstream	N/A	768	1024	1024	1200	1600

(a) Conditions and Exclusions

- This Service Level only applies to transactional based applications with numerous bulk file transfers and shall not apply to streaming type applications.
- This Service Level is not applicable if customer's applications and number of users are not consistent with the specified definition of the particular service plan in use. Should Customer's usage exceed the intended purpose of the service plan, then HNS and Customer will meet to discuss other appropriate service plans or how much additional capacity is required to accommodate Customer's additional data traffic. Such discussion will address both current and future traffic
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:

- 1) The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS;
- 2) The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;
- 3) Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
- 4) An event of Force Majeure suspending HNS' performance obligations

(b) Remedy

If less than 75% of the measurements indicate that this Service Level is not being met, then HNS shall modify the network parameters within fifteen (15) days of the test. Once these modifications have been completed, similar measurements will be taken over the next fifteen (15) days and a report will be provided to the Customer showing the results of these measurements. In the event that the required throughput is not still being met (for at least 75% of the measurements) after the network modifications have been implemented, HNS will then provide the Customer a credit in the subsequent billing cycle according to the following table:

Percentage of Measurements Meeting the Applicable Service Level:	Service Level Credit:
75% or greater	No credit
60% - 74/99%	5% of the monthly per site Service Charge for the applicable site
50% - 59.99%	10% of the monthly per site Service Charge for the applicable site
Less than 50%	20% of the monthly per site Service Charge for the applicable site

2.3 Service Level 3: Data Delivery Ratio – DSL Only

Application	Metric	Inputs / Calculations	Measurement Window	Service Level Requirement
This Service Level applies to DSL Sites only	The Data Delivery Ratio will be measured on receipt of report from Customer of a suspected violation of this Service Level.	<p>The Data Delivery Ratio (DDR) is defined as the percentage of packets successfully delivered between the HNS NOC and the remote site</p> <p>Upon the opening of a trouble ticket against the site suspected of being in violation of this Service Level, HNS will initiate a test between the HNS NOC and the remote site to determine the DDR. The measurement is from the HNS data center to the site and back to the HNS data center. It does not include backhaul to Customer's headquarters. Other traffic transmitted to or received from the suspected site should be minimized for the duration of the test.</p>	As Required	The average DDR will be no less than 98% during periods when the circuit is less than 75% utilized.

(a) Conditions and Exclusions

- This Service Level only applies to sites that are not experiencing a Service Interruption; i.e., the Service is operational.
- This Service Level is only applicable to "Layer 2" DSL Services. It will not apply to "Layer 3" DSL Service.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - 1) The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS;
 - 2) The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;
 - 3) Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
 - 4) An event of Force Majeure suspending HNS' performance obligations

(b) Remedy

If the test described above indicates that this Service Level is not being met, HNS shall take appropriate steps to remedy the problem within thirty (30) days thereafter. If HNS is not able to remedy the problem within said thirty (30) days period, then HNS will pay Customer liquidated damages in accordance with the following table:

Percentage of Measurements Meeting the Applicable Service Level:	Service Level Credit:
98% or greater at least 75% of the time	No credit
95% - 97.9% at least 75% of the time	5% of the monthly per site Service Charge for the applicable site
90% - 94.9% at least 75% of the time	10% of the monthly per site Service Charge for the applicable site
Less than 90% at least 75% of the time	20% of the monthly per site Service Charge for the applicable site

2.4 Service Level 4: Times to Restore

Appli-cation	Metric	Inputs / Calculations	Measure-ment Window	Service Level Requirement
This Service Level applies to VSAT, DSL, cable, cellular wireless, and T-1	Service restoration completed within the Total Time to Restore period.	<p>Restoration time will be calculated from the opening of a trouble ticket to the end of the Time to Restore.</p> <p>In the event the ticket is opened by HNS as a result of fault detection the outage proactively, then the Restoration time commences upon the verification of the fault by the Customer's Tier 1/Tier 2 Helpdesk. If HNS is performing Tier 1/ Tier 2 Helpdesk support for the customer, then confirmation of the outage comes from HNS' internal Helpdesk.</p>	Per Incident report Monthly	<p>For sites that have experienced equipment failures required field service dispatch, HNS will restore service in 90% of the instances, within the time period specified in Attachment I for the maintenance response plan selected, plus three (3) hours.</p> <p>For outages caused by the failure of a wireline circuit, in 90% of the instances, HNS will restore the service within two (2) business days after the reported outage.</p> <p>For outages not caused by the failure of equipment provided and maintained by HNS under this Agreement, HNS does not guarantee a Time to Restore.</p>

(a) Conditions and Exclusions

- This Service Level only applies to sites located within the contiguous United States.
- This Service Level only applied to site that are receiving remote maintenance services no less comprehensive than "Next Calendar Day" service coverage; e.g., sites with "Next Business Day" coverage are not eligible for this Service Level.
- This Service Level shall commence at the effective date of the Agreement.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - 1) The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS;
 - 2) The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;

- 3) Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
 - 4) An event of Force Majeure suspending HNS' performance obligations
 - 5) The call for remote maintenance was a request for Demand Services
 - 6) Problems due to defective facilities at the VSAT Site (e.g., water leakage) or an operating environment at the VSAT Site that is not in compliance with HNS' documentation (e.g., no air conditioning, where required).
 - 7) The failure of any device, beyond the demarcation points for Services to be provided by HNS.
 - 8) Hub or NOC Outage Minutes counted against Service Level 1 (Network Service Availability) will not be counted against Service Level 4 (Time to Restore).
 - 9) Service Level Credits will not be imposed until Services are being delivered to 100 sites. However, all Service Level data will be tracked and reported to Customer for all Sites following execution of the Agreement.
- The following situations will pause the Service Level 4 timer:
 - 1) Hours during which a site is unavailable for access (e.g. remote site is closed).
 - 2) Hours outside the contracted maintenance coverage selected by Customer.
 - 3) If a Customer employee or landlord prevents the HNS technician from entering the store or delays the technician from starting or completing repairs, HNS shall immediately notify the Customer Help Desk to report and document this event and the Service Level 4 timer will be paused. The timer will restart once the obstruction no longer exists.

(b) Remedy

For each site above the 10% allowance that has not met this Service Level in a given calendar month, HNS will pay Customer liquidated damages in the form of a credit in the amount of 10% of the Service Charge for the applicable site.

2.5 Service Level 5: Time to Install

Appli- cation	Metric	Inputs / Calculations	Measure- ment Window	Service Level Requirement
This Service Level applies to VSAT, DSL, cable, cellular wireless, and T-1)	Time to Install commences when an order is placed and ends when the Site is installed and functioning.	The number of installations completed “on-time” in a month (as defined in the service level requirement).	Per Incident report Monthly	<p>HNS will install at least 90% of all locations released for a standard commercial installation within the timeframes set forth below:</p> <ul style="list-style-type: none"> • For VSAT and Cellular Wireless Sites, thirty (30) calendar days • For shared line DSL, thirty (30) business days • For Dedicated line DSL sites, forty-five (45) business days • For ADSL services ordered on standalone POTs lines sites, thirty (30) business days • For cable sites without buildout required, thirty (30) business days • For T-1 sites, sixty five (65) business.

(a) Conditions and Exclusions

- This Service Level only applies to sites located within the contiguous United States.
- The time period referenced in this Service Level commences when the site is released by the Customer with all information required by HNS for installation to proceed, and HNS has confirmed the order. The Customer shall have the responsibility to supply accurate site list information to facilitate order processing and installation.
- If Customer has specified an order of priority in Schedule I, a change from one service to another will re-start the time period for calculating whether this SLA has been met. For example, if DSL is the first priority service and cable is the second priority service, HNS will first order DSL for a site. If, for example, the site initially qualified for DSL, but HNS is notified by the LEC one week later that installation cannot be completed, HNS will order cable for the site, and the time to install will be 30 business days from when HNS placed the order for cable services.
- This Service Level shall not apply to the initial order rollout or any other large-scale rollouts. In such cases, the Time to Install Service Level, if any, will be as mutually agreed by the parties.
- In the event that site is initially released as a standard installation, but HNS and/or Customer later determines that a standard installation is not feasible, this Service Level will not apply to such site.

- This Service Level shall not apply to instances where HNS' terrestrial service provider rejects the order, or sites which initially qualified for services, but where the installation could not be completed.
- Dedicated line ADSL, SDSL, and IDSL are excluded from this SLA.
- This Service Level will not apply to sites where Customer changes the due date with less than 30 calendar days notice or in instances where Customer or site personnel prevent an installation from occurring.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - 1) The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS;
 - 2) The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;
 - 3) An event of Force Majeure suspending HNS' performance obligations

(b) Remedy

For each site above the 10% allowance not meeting the SLA in a given calendar month, HNS will provide Customer liquidated damages in the form of a credit as follows:

Number of days after the applicable 30-days window in which the installation was completed:	Service Level Credit:
Each site in excess of the 10% allowance that is 10 or less business days late	10% of the applicable monthly Service Charge
Each site in excess of the 10% allowance that is more than 10 business days late	20% of the applicable monthly Service Charge

2.6 Service Level 6: Round Trip Delay

Appli- Cation	Metric	Inputs / Calculations	Measure- ment Window	Service Level Requirement
This Service Level applies to VSAT and DSL	Round Trip Delay will be measured on receipt of report from Customer of a suspected violation of this Service Level.	<p>Round trip delay is defined as the time it takes a packet to be transmitted from the HNS NOC to a remote site and return (or vice versa).</p> <p>Upon the opening of a trouble ticket against the site suspected of being in violation of this Service Level, HNS will initiate a test by measuring the round trip delay between the HNS NOC and the suspect site. Measurements will be done during non-peak hours.</p>	Per Incident report Monthly	<p>For VSAT Sites subscribing to a standard service plan, HNS will use commercially reasonable efforts to ensure that Customer's satellite round trip delay is below 875 ms at the fiftieth (50th) percentile.</p> <p>For DSL Sites, the average round trip delay will be no greater than 150 ms during periods when the circuit is less than 75% utilized.</p>

(a) Conditions and Exclusions

- During the conduct of the test referenced above, other traffic transmitted to or received from the suspected site should be minimized.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - 1) The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS;
 - 2) The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;
 - 3) Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
 - 4) An event of Force Majeure suspending HNS' performance obligations

(b) Remedy

In the event that HNS fails to meet this Service Level, HNS shall take appropriate steps to remedy the problem within thirty (30) days after completion of the applicable test. If HNS cannot remedy the problem within said thirty (30) day period, then HNS will pay Customer liquidated damages in the form of a credit as follows:

For DSL Sites:

- ≤25 ms over SLA: 2% of the site's monthly per site service charges
- 26 - 50 ms over SLA: 5% of the site's monthly per site service charges
- More than 50 ms over SLA: 10% of the site's monthly per site service charges

For VSAT Sites

- ≤200 ms over SLA: 2% of the site's monthly per site service charges
- 201 - 400 ms over SLA: 5% of the site's monthly per site service charges
- More than 400 ms over SLA: 10% of the site's monthly per site service charges

2.7 Service Level 7: Chronic Sites

Appli-cation	Metric	Inputs / Calculations	Measure-ment Window	Service Level Requirement
This Service Level applies to VSAT, DSL, cable, cellular wireless and T-1	The number of trouble tickets opened which result in a field service dispatch.	HNS will keep track of the number of trouble tickets resulting in a field service dispatch during a calendar month.	Per Incident	No sites should experience more than two outages resulting in a field dispatch during any calendar month.

(a) Conditions and Exclusions

- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - 1) The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by HNS on behalf of Customer, including any out-of-tolerance earth station conditions not caused by HNS;
 - 2) The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;
 - 3) Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
 - 4) An event of Force Majeure suspending HNS' performance obligations

(b) Remedy

Upon verification that a site is a Chronic Site, HNS will have thirty (30) days to remedy the problem. In the event that HNS cannot remedy the problem within said period, the Customer may cancel the site without penalty or elect to switch the site to another HNS service

2.8 Service Level 8: Monthly Service Reports

Appli- Cation	Metric	Inputs / Calculations	Measure- ment Window	Service Level Requirement
This Service Level applies to all Sites	Reports will be available to the Customer by the last day of the month following the month in which applicable data has been collected.	Delivery to Customer of the applicable reports.	Monthly or as otherwise agreed	100%

(a) Conditions and Exclusions

- Monthly reports on Service Level's 1, 4, 5, and 7 will be available via the Customer Gateway. The remaining Service Levels will be reported on within 30 days based upon trouble ticket requests.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - 1) An event of Force Majeure suspending HNS' performance obligations

(b) Remedy

The parties agree that this Service Level is a Service Level Objective and that Service Level Credits will typically not accrue for this Service Level. However, if HNS fails to meet the requirement more than one time in a calendar year (e.g., HNS is late by five days on two different occasions), then upon notice from Customer to HNS, this Service Level will immediately convert to a Service Level Agreement HNS will provide a credit Customer in the amount of \$500 for each late report.

3.0 Payment of Service Level Credits

All requests for liquidated damages due to a suspected SLA violation must be initiated by Customer to the HNS Program Manager within sixty (60) days after the end of the applicable calendar month. Requests must have reference data substantiating the assertion that the specific SLA metric has not been met. Upon researching the request, HNS will make the final decision as to whether the credit will be granted and will provide the data justifying the decision if such a request is denied.

Calculation of liquidated damages will be based on the monthly per site Service Charges, excluding any taxes. For terrestrial services (DSL, cable, or T-1), this charge is defined as the remote site related monthly charges. For VSAT, the monthly Service Charge is defined as the remote site related monthly charge excluding amounts attributable to equipment usage. If the Customer's remote site monthly Service Charge is bundled with equipment usage, then the monthly per site Service Charges will (solely for the purpose of determining liquidated damages) be deemed to be fifty percent (50%) of the total monthly bundled charge.

Service Level Credits due to Customer will be separately reported and separately invoiced as a credit to Customer each month.