

OlyPen

Network Service Level Agreement (SLA)

Introduction

This Service Level Agreement (SLA) applies only to OlyPen Internet Subscribers.

This SLA provides Subscribers with certain rights and remedies regarding the performance of the OlyPen Internet Network. The OlyPen Internet Network means the OlyPen Internet owned and operated Internet Protocol (IP) routing infrastructure consisting solely of OlyPen Internet measurement devices at selected OlyPen Internet points of presence (“Selected POP’s”) and connections between them. The amount of credit available per month is subject to a cap described below.

1.0 Network Availability – 99.99%

OlyPen’s Internet network is guaranteed to be available and capable of forwarding IP packets 99.99% of the time, averaged over a calendar month. OlyPen’s Internet IP network includes Subscriber access port (the port on the OlyPen Internet aggregation router upon which the Subscriber’s circuit terminates) and the OlyPen Internet IP backbone network. OlyPen’s Internet Network Availability Guarantee does not include the Subscriber’s Local Area Network (LAN), the local access circuit (e.g. local loop), scheduled and unscheduled maintenance events, Subscriber Premise Equipment (router and/or CPE), Subscriber caused outages or disruptions, interconnections within other Internet Service Provider (ISP) networks and force majeure events. If the Network Availability Guarantee is not met in a calendar month, then upon request (in accordance with procedure set forth in Sec. 7 below) the Subscriber is eligible to receive a credit of 1/30th of the monthly service charge (MRC) for that month for each full hour of outage in excess of the 99.99% guaranteed under this SLA up to a maximum of one month’s recurring charge.

2.0 Latency Guarantee – 29ms

The OlyPen Internet network (as defined in the previous section) is guaranteed to have an average round trip packet transit time within the OlyPen Internet backbone network over a calendar month of 29ms or less. The average network latency is measured as the average of 5 minute samples taken throughout the month. The OlyPen Internet Latency Guarantee does not include the Subscriber’s Local Area Network (LAN), local access circuit (e.g. local loop), scheduled and unscheduled maintenance events, Subscriber Premise Equipment (router and/or CPE), Subscriber caused outages or disruptions, interconnections within other Internet Service Provider (ISP) networks and force majeure events. If the Latency Guarantee is not met in a calendar month, then upon request (in accordance with procedure set forth in Sec. 7 below), the Subscriber is eligible to receive a credit up to 1/30th of the monthly service charge (MRC) for that month.

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3.0 Data Delivery (Packet Loss) – 99%

The OlyPen Internet network (as defined in previous section) is guaranteed to have a maximum Average Packet Loss of 1 percent or less during any calendar month. The OlyPen Packet Loss guarantee does not include the Subscriber's Local Area Network (LAN), local access circuit (e.g. local loop), scheduled and unscheduled maintenance events, Subscriber Premise Equipment (router and/or CPE), Subscriber caused outages or disruptions, interconnections within other Internet Service Provider (ISP) networks and force majeure events. If the Average Packet Loss exceeds 1% during a calendar month, then upon Subscriber's request (in accordance with the procedure set forth below Sec. 7 below) Subscriber is eligible to receive a credit up to 1/30th of the monthly service charge (MRC) for that month.

4.0 Service Restoration (24 Hours)

4.1 Restoration. Subscriber connectivity shall be restored in 24 hours or less from the time OlyPen is notified of the outage. If OlyPen fails to meet the 24 Hour Service Restoration, then (in accordance with procedure set forth in Sec. 7 below) Subscriber is eligible to receive a credit up to 1/30th of the monthly service charge (MRC) for that month.

4.2 Limits & Exceptions. Any calculation of 24 Hour Service Restoration shall not include any failure attributable to (a) scheduled Network maintenance; (b) the occurrence of a Force Majeure event; (c) the failure of non-service impacting equipment or systems responsible for network measurements; or (d) any CPE failures; (e) any outage involving access facilities; including Central Office (CO), Remote Terminal (RT), or Digital Subscriber Line Access Multiplexer (DSLAM) equipment.

5.0 Maintenance Window

5.1 Scheduled Network Maintenance. Scheduled Network Maintenance refers to upgrades or modifications to network equipment software, network equipment hardware, or Network capacity. Scheduled Network Maintenance may temporarily degrade the quality of OlyPen's Internet Service, including the possibility of short-duration outages. Such effects related to Scheduled Network Maintenance shall not give rise to service credits under this SLA. Scheduled Network Maintenance shall be undertaken between the hours of 2:00AM and 5:00AM Pacific Standard Time. OlyPen will provide 7 day advance notification of schedule notice by (a) posting notification on the OlyPen website and/or (b) email notification sent to Subscriber's primary email address as listed in OlyPen's Subscriber database.

5.2 Emergency Network Maintenance. Emergency Network Maintenance refers to efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Emergency Network Maintenance may temporarily

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degrade the quality of OlyPen's Internet Service, including the possibility of short-duration outages. Such effects related to Emergency Network Maintenance shall entitle Subscriber to service credits as set forth in this SLA if and only if service degradation or loss-of-service occurs outside of Scheduled Network Maintenance time windows identified in Section 4.1 above. OlyPen may undertake Emergency Network Maintenance at any time deemed necessary and shall provide notice of Emergency Network Maintenance to Subscriber as soon as is commercially practicable under the circumstances.

6.0 Measurement

OlyPen will periodically (every 5 minutes on average) measure the OlyPen Internet Network at Selected POP's using software and hardware components capable of measuring application traffic and responses at such Selected POP's. Subscriber acknowledges that not every POP may be covered by such measurements, that such measurements may not measure the exact path traversed by Subscriber's packets, and that such measurements constitute measurements across the OlyPen Internet Network but not other networks to which Subscriber may connect. OlyPen Internet reserves the right to periodically change the measurement points and methodologies it uses without notice to Subscriber. Measurements for latency and packet loss will be posted to a Web site designated by OlyPen Internet and made available to Subscriber.

7.0 Request for Credit

7.1 Request Procedure. Subscriber must first report a loss of service by opening support ticket with the information on the nature of the outage. Support tickets may be opened by phone (360-683-1456 or 800-303-8696) or email (support@olypen.com), however Subscriber must obtain a support ticket number from OlyPen. Upon resolution of the outage, Subscriber must submit a second support ticket as a request for credit making reference to the original support ticket number. Request for credit must be submitted within 30 days of the disruption in service.

7.2 Delinquent accounts. Notwithstanding anything in the SLA to the contrary, Subscriber shall not receive any credits under this SLA if Subscriber has been 30 days or more delinquent on any bills or payments within the past 90 days, or found in violation of the OlyPen Terms of Service Agreement.

7.3 Exceptions. Notwithstanding anything in the SLA to the contrary, Subscriber shall not receive any credits under this SLA in connection with any failure or deficiency of the OlyPen Internet Network caused by or associated with:

- Circumstances beyond OlyPen's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, storm, strike or other labor disturbance, interruption of or delay in transportation,

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unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Service Level Agreement;

- Failure of access circuits to the OlyPen Internet Network, unless such failure is caused solely by OlyPen Internet;
- General telco failure;
- Scheduled maintenance and upgrades;
- DNS issues outside the direct control of OlyPen Internet;
- Outage or error of any OlyPen Internet measurement system;
- Excessive traffic/load on Subscriber's server(s) which impedes server performance;
- Subscribers' acts or omissions, including without limitation, any negligence, willful misconduct, or use of the OlyPen Internet Network or OlyPen Internet services in breach of OlyPen's Terms of Service Agreement and Acceptable Use Policy, by Subscribers or others authorized by Subscribers;
- Denial of Service (DoS) and/or Distributed Denial of Service (DDoS) (malevolent efforts of a person or persons to prevent OlyPen's or Subscriber's (or clients of Subscriber's) servers or service from functioning efficiently or at all).

8.0 Force Majeure

Neither OlyPen nor Subscriber shall be responsible for damages or for delays or failures in performance resulting from acts or occurrences beyond their reasonable control, including without limitation: fire, lightning, explosion, power surge or failure, water, acts of God, war, revolution, civil commotion or acts of civil or military authorities or public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including strikes, slowdowns, picketing or boycotts; inability to secure raw materials, transportation facilities, fuel or energy shortages, or acts or omissions of other common carriers.

9.0 General

OlyPen Internet reserves the right to change or modify this SLA at any time effective upon the posting thereof on OlyPen's website. Except as set forth in this SLA, OlyPen Internet makes no claims regarding the availability or performance of the OlyPen Internet Network or OlyPen Internet Services.

References:

OlyPen Terms of Service Agreement.
OlyPen Acceptable Use Policy.