

## **SERVICE LEVEL AGREEMENTS (SLA)**

### **General Terms**

This Service Level Agreements ("SLA") sets forth the provisions and commitments relating to service quality between Vertex Telecom, Inc., d/b/a VTX Telecom ("VTX"), and Customer. This SLA is hereby added as a schedule to the Service Agreements ("Agreement") between Customer and VTX.

#### **1. General Standard**

VTX will use reasonable efforts under the circumstances to maintain its overall network quality. The quality of service provided hereunder shall be consistent with other common carrier industry standards, government regulations and sound business practices.

#### **2. Service Interruptions**

Subject to the provisions of Section 6 hereof, interruptions in service will be credited to Customer as set forth below for the part of the service that the interruption affects. In the event that Customer subscribes to data or other services from VTX, VTX may offer additional service level standards with respect to such services. In such event, a service schedule shall be added to this SLA. The provisions of this SLA shall apply to the interpretation of such service schedule.

#### **3. Credit for Interruptions**

An interruption period begins when Customer reports to VTX a service, facility, or circuit has been interrupted through opening a trouble ticket and makes it available for VTX to test and repair. An interruption period ends when the service, facility, or circuit becomes operative. If Customer reports a service, facility, or circuit has been inoperative but declines to make it available for VTX to test and repair, it is considered to be "impaired" instead of "interrupted". The following conditions apply while considering credit calculation:

- a. For calculating credit allowances, every month is considered to have thirty (30) days. A credit allowance is applied on a pro rata basis against the monthly recurring charges for the affected service and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit. No credit will be given on the usage sensitive portion of the service and no credit shall apply for interruptions with respect to the advantage service products.
- b. A credit allowance will be given for interruptions based on durations stated in each service schedule, upon a written request by Customer no later than ten (10) business days after the occurrence of outage to either the Customer's VTX Account Manager (if applicable) or to the VTX Customer Support Center in Los Angeles, California.
- c. Credit allowance calculation may vary by service type.
- d. Two or more interruptions of thirty minutes or more during any one 24-hour period shall be considered as one interruption.

#### **4. Maximum Credit**

In no event shall credits provided for hereunder (either individually or on a cumulative basis) in any billing period exceed the total monthly recurring charges of that period for the service and facilities furnished by VTX. VTX will issue only one credit for the same incident within the same month, regardless of how many of the parameters in Section 2 above were affected. The credits set forth in this SLA shall be VTX's sole liability and Customer's sole remedy in the event of any interruption and under no circumstances shall an interruption be deemed a breach to the Agreement.

#### **5. Definition of "Interruption"**

For the purpose of applying this provision, the word "interruption" (whether capitalized or not) shall mean a complete loss of service resulting in the inability to complete calls due to equipment malfunction or human errors for a continuous period of more than thirty (30) minutes. "Interruption" does not include and no credit shall be given for service difficulties such as slow dial tone, circuits busy, latency or other network and/or switching capacity shortages. No credit will be made for interruptions due to electric power failure where, by the provisions of this Agreement, Customer is responsible for providing electric power. Additional parameters (such as network availability, latency, packet loss and jitter) for coverage under the SLA will be considered when Customer purchases data services with separate service schedules (as applicable) to this SLA.

#### **6. Limitations on Credit Allowances**

No credit allowance will be made for:

- a. Interruptions arising from the acts or omissions of, or non-compliance with the provisions of the Agreement or any schedule thereto (including without limitation this SLA, the Service Product Specific Standard Terms and Conditions or

Acceptable Use Policy) by, Customer or any authorized user, or any interruptions due to any party other than VTX or for events happening on any other party's network, including but not limited to Data service providers or other common carriers connected to, or providing service connected to, the service of VTX or to VTX's facilities;

- b. Interruptions due to the failure or malfunction of non-VTX equipment, including service connected to Customer provided electric power;
- c. Interruptions of service during any period in which VTX is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- d. Interruptions of service during any scheduled maintenance period or when Customer has released service to VTX for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- e. Interruptions of service due to force majeure events beyond the reasonable control of VTX.

## 7. Definitions in Relates to Data Services

- *"Availability"* is defined as a percentage of the total measurement time minus the unavailable time divided by the total time:

$$\frac{\text{Total time} - \text{Total Unavailable time}}{\text{Total time}} * 100$$

- *"Backbone"* is defined as those connections running between international hubs on VTX's wholly-owned private network.
- *"Installation"* is defined as establishing a physical connection and creating a Private Virtual Circuit ("PVC") to permit routing of traffic from equipment at Customer's locations to VTX's Data and/or Voice Network
- *"Metropolitan Private Line (Off-Net) Service"* means to have two or more designated points of the Private Line Service connected within the same region, and provisioned by VTX through a third party carrier for the benefit of Customer.
- *"Network Jitter"* is defined as the variation in the time between data packets arriving at a destination, caused by network congestion, timing drift, or route changes. Specially generated test packets are used to measure Jitter. The test packet sizes are 70 bytes, and measurements are made every five (5) minutes
- *"Network Packet Loss"* is defined as the failure of one or more transmitted packets to arrive at their destination. Specially generated test packets are used to measure Packet Loss. The test packet sizes are 70 bytes, and measurements are made every five (5) minutes.
- *"Network Round-Trip Delay"* is defined as the time taken for a packet to travel from one host on the network to a remote host and back to the initiating host.
- *"Private Line Service"* means a service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.
- *"Protected Private Line"* means a private line service has its protected path built with a completely diverse route. It is often the platform for mission-critical activities.
- *"Scheduled Maintenance"* may occasionally be necessary for VTX to carry out essential maintenance or network upgrades. Scheduled Maintenance shall generally occur no more than three (3) times in any given calendar month, and is generally performed between 02:00 and 06:00 a.m. local time in the region where the Service is located and/or performed. VTX will use commercially reasonable efforts to keep Scheduled Maintenance to a minimum, and assure the availability of its Backbone.

Except in an emergency, or a Force Majeure Event, VTX and Customer will use commercially reasonable efforts to apply the following procedures with respect to Scheduled Maintenance:

- VTX will provide Customer with at least five (5) business days' notice of any planned work that will affect the availability of Service except in case of emergency maintenance work on the network.
- Customer will confirm to VTX within two (2) business days that the Scheduled Maintenance proposals are acceptable. The absence of response from the Customer shall be deemed as acceptance.

Where possible VTX will provide Customer with Scheduled Maintenance proposals and confirmation details should be exchanged by fax / e-mail / telephone as provided in the Agreement.

Where feasible and possible, VTX will make temporary alternative arrangements during a Scheduled Maintenance to avoid a break in the Customer Service.

VTX will give notice of Scheduled Maintenance to the named contacts of the Customer defined in the Agreement.

Customer shall use commercially reasonable efforts to give VTX advance notice of any event of which Customer is aware at its end.

- *"Submarine"* shall mean, in this SLA, any Private Line Service that transits any portion of VTX's under-sea network in the Atlantic or Pacific Oceans.
- *"Terrestrial"* shall mean, in this SLA, any Private Line Service that generally transits VTX's land-based network (with limited water crossings, including, without limitation, bay and channel crossings) and does not in any way transit VTX's under-sea network in the Atlantic or Pacific Oceans
- *"Third Party Service(s)"* refer either to the third party circuit(s) (e.g. leased line(s)) that connect the Customer premises to VTX's network or any Managed Telecoms services (e.g. rack collocation, on-site support services) purchased by VTX in order to serve as a one-stop shop for the Customer.
- *"Trouble Ticket Open Time"* refers to those periods of time when trouble tickets are in "Customer time", meaning, the point at which the Customer must provide information, access, etc., so that VTX can continue with a repair.
- *"Unavailable" or "Unavailability"* means the duration of a break in transmission measured from the first of ten (10) consecutive severely erred seconds ("SESS") on the particular Private Line Service until the first of ten (10) consecutive non-SESSs. An SES is a second with a bit error ratio of greater than or equal to 1 in 1000.
- *"Unavailable time"* consists of the number of minutes that VTX's network is unavailable. The network is considered unavailable when an unscheduled Maintenance prevents VTX from providing the Customer with the ordered Service. This excludes any Service outage defined within "Excused Outage" of this SLA.