

Managed Services – System Service Level Agreement (SLA)

The following terms will apply to the availability of the Managed Devices and IBM Infrastructure. This SLA provides Customer's sole and exclusive remedy for IBM's failure to meet the standards and commitments established herein. All standards and commitments are subject to the limitations and exclusions set forth herein.

- 1. Support Response Time and Severity Levels.** IBM will provide technical support twenty-four (24) hours a day, seven (7) days a week, to assist Customer with issues pertaining to the Managed Devices set forth in the applicable Statement of Work ("SOW" or "Order"). Response Times begin when monitoring alerts are discovered and validated. IBM will respond to validated monitoring alerts according to the following Severity Levels:
 - a. Severity Level A – Critical impact problem that makes the Customer environment unavailable to conduct business. IBM will respond to all Severity A problems within fifteen (15) minutes.
 - b. Severity Level B – Major Impact. A business impacting function or service is not available. IBM will respond to all Severity Level B problems within thirty (30) minutes.
 - c. Severity Level C – Minor impact. The Customer environment is not seriously affected. IBM will respond to all Severity Level C problems within twenty-four (24) hours.
 - d. Severity Level D – No impact. Response times may vary for Severity Level D support depending on the project work associated with the request.
- 2. Network and Data Center Infrastructure Availability.** The IBM Network extends from the Managed Devices to the data center located router that provides the outside interface of each of IBM's WAN connections to its backbone providers. The IBM Data Center includes HVAC, managed power systems, backup generators, and battery backup systems. The IBM Network and Data Center Infrastructure (referred to herein as the "IBM Infrastructure"), subject to the exceptions in sections 8(a) and 8(b), will be available for a percentage of each calendar month equal to the Availability Calculation specifically set forth in section 7 of this SLA.
- 3. Hardware Replacements.** IBM will provide hardware replacements within two (2) hours for any Managed Device that participates in the IBM Hardware Maintenance Program ("Hardware Replacement Commitment"). Hardware Replacement Commitments are subject to the exceptions in section 8(c).
- 4. Operating System Availability Commitment.**
 - a. The Operating Systems for the Managed Devices will, subject to the exceptions listed in sections 8(a) and 8(b), be available for a percentage of each calendar month equal to the Managed Device Service Level Commitment as specifically set forth in the applicable SOW (referred to herein as the "Availability Commitment"). The availability of the Managed Devices for a given month will be calculated according to the formula in section 7.
 - b. For purposes of this calculation, the Managed Device(s) will be deemed to be unavailable if its monitoring agent fails to respond to a request issued by IBM's monitoring software (referred to herein as "Unavailable"). Further, the Managed Device(s) will not be deemed Unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth in section 8 of this SLA.
- 5. Patch Notification and Patch Deployment.** IBM will provide Customer with notification of approved patches within 72 hours after release from vendor. Patching services are included for supported operating systems, databases, and applications that are installed by IBM. Installation services for approved patches are available within 48 hours after notification and must be scheduled during a mutually agreed upon maintenance window. Patch Notifications and Patch Deployment services are subject to the exceptions in section 8(e).
- 6. Backup and Data Restoration Services.** IBM will provide fee based Data Restoration Services for events unrelated to catastrophic failures according to the timelines below. Data Restoration timelines shall commence after Customer has submitted a request with IBM technical support and Customer have accepted, in writing, the fees associated with the Data Restoration Services.
 - a. Data Restoration commencement within four (4) hours if backup media physically resides within the central tape backup library within the IBM Data Center.
 - b. Data Restoration commencement within six (6) hours if backup media physically resides within the IBM Data Center but is not contained within the central tape backup library.
 - c. Data Restoration commencement within ten (10) hours if backup media physically resides at an IBM offsite tape storage and archival facility.
- 7. Availability Calculation.** The availability of the IBM Infrastructure and Managed Device for a given month will be calculated according to the following formula (referred to herein as the "Availability"):

Where: **Total minutes in the month x total servers = TMM**
Total minutes in month Managed Device(s) unavailable = TMU

And: **Availability = ((TMM-TMU) x 100)/TMM**
- 8. Exceptions.**
 - a. The Managed Device(s), IBM Network, and/or Data Center Infrastructure will not be considered to be Unavailable for any outage that results from any maintenance performed by IBM (i) of which Customer is notified 24 hours in advance; (ii) during Customer's implementation period; (iii) during IBM's then-current standard maintenance windows (collectively referred to herein as "Scheduled Maintenance"); or (iv) as a result of Customer's request outside of the normally scheduled maintenance.
 - b. The Managed Device(s) will not be considered Unavailable for any outage unavailability of the Managed Device(s) due to (i) Customer's information content or application programming, acts or omissions of Customer or its agents, failures of equipment or facilities provided by Customer, network unavailability outside of the IBM Network; (ii) issues arising from bugs or other problems in the software, firmware or hardware of IBM's suppliers; (iii) delays or failures due to circumstances beyond IBM's reasonable control that could not be avoided by its exercise of due care; or (iv) any outage or downtime outside the IBM Network. The configuration being provided under the SOW, including the number of servers being deployed is based on assumptions made by Customer. As a result, IBM will not be responsible, under this SLA or otherwise, for any outages or performance issues caused by inaccuracies in these assumptions, including equipment and software failures or performance problems caused by traffic volume or the number of concurrent user sessions.
 - c. Any Managed Device not included under the IBM Hardware Maintenance program or any Managed Device serviced by a third party's maintenance or support agreement will be excluded from Hardware Replacement Credits.
 - d. Any Managed Device that does not participate in IBM's backup management services will be excluded from any Availability calculations.
 - e. Applications installed by Customer and/or not supported by IBM will be excluded from Patch Notification and Patch Deployment services.
- 9. Configuration Changes; Customer Supported Software.**

- a. The configuration of the Services set forth in the SOW has been designed by the parties to provide the performance level contemplated by the Availability Commitment in this SLA. If IBM notifies Customer that it has determined that Customer's configuration is not suited to provide this level of performance, this SLA will be suspended until Customer and IBM agree upon and implement a new or modified configuration designed to provide this level of performance.
 - b. The Managed Devices, IBM Network, and Data Center Infrastructure shall adhere to the following forms to qualify for the applicable Availability Commitment:
 - 99.0% - Any Managed Device
 - 99.9% - IBM Infrastructure
 - c. The Managed Device(s), as depicted in the applicable SOW, will be held as adhering to the forms detailed above for the applicable Availability Commitment set forth in the SOW.
- 10. Remedies.** Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below.
- a. If the Availability of a Managed Device, the IBM Network, or the Data Center Infrastructure (as calculated in section 7 above) for a given month is less than the applicable Service Level Commitment, Customer will receive one (1) Service Credit for the Managed Device(s). In addition, for the first 100 minute increment by which the allowable unavailability is exceeded, Customer will receive one (1) Service Credit for the Managed Device(s). Thereafter, for each additional 100-minute increment by which the allowable outage is exceeded, Customer will receive one (1) additional Service Credit for the Managed Device(s).
 - b. If IBM fails to meet the Hardware Replacement obligations in section 3 of this SLA Customer will receive one (1) Hardware Replacement Credit for the Managed Device(s). Thereafter, each additional sixty (60) minute increment by which the Managed Device is not replaced, Customer will receive one (1) additional Hardware Replacement Credit for the Managed Device(s).
 - c. For purposes of this SLA, a Service Credit will be deemed to be an amount equal 1/30th of the Services monthly fee for the Managed Device(s) which are affected (herein referred to as "Service Credit"). The total Service Credits for a given month will, in no event, exceed an amount equal to 50% of the then-current Services monthly fee for the Managed Device(s) which are affected. Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All service credits will be calculated assuming a 30-day month. Customer's right to receive service credit(s) will be Customer's exclusive remedy for IBM's failure to satisfy the Availability Commitment.
 - d. For purposes of this SLA, a Hardware Replacement Credit will be deemed to be an amount equal 1/30th of the Services monthly fee for the Managed Device(s) which are affected (herein referred to as "Hardware Replacement Credit"). The total Hardware Replacement Credits for a given month will, in no event, exceed an amount equal to 50% of the then-current Services monthly fee for the Managed Device(s) which are affected. Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All service credits will be calculated assuming a 30-day month. Customer's right to receive service credit(s) will be Customer's exclusive remedy for IBM's failure to satisfy the Hardware Replacement Commitment.
 - e. In the event Customer is not current in its payment obligations when an outage occurs, remedies will accrue, but Service Credits and/or Hardware Replacement Credits will not be issued until Customer becomes current in its payment obligations.
 - f. To receive Service Credits or Hardware Replacement Credits, Customer must submit a written request or notify their Customer Service Manager, within 30 days after the date which the Managed Device(s) were Unavailable, or Customer's right to receive Service Credits or Hardware Replacement Credits with respect to such unavailability will be waived.
 - g. No more than once each calendar quarter, upon 10 days written notice from Customer, IBM will make available its records and data relevant to calculating Availability so that Customer may audit such records and data for the sole purpose of determining the accuracy of SLA calculations and determinations.
- 11. Effective Date.** This SLA will become effective when IBM transitions Customer to service and support, or 30 days from the Activation Date, whichever is longer.