

This Service Level Agreement (SLA) is a part of the customer subscriber agreement (CSA or Agreement) between Customer and hi(Q) Data Corp. Capitalized terms used herein that are not defined in this SLA shall have the meaning attributed to them in the CSA.

1. SERVICE COMMITMENT.

Hi(Q) Data Corp is committed to providing a reliable, high-quality network to support its high-speed network services (Service). As part of this commitment, Hi(Q) Data Corp is pleased to offer eligible Customers the following guarantees as concerns the Service in the United States.

- Installation Guarantee
- Network Availability
- Network Latency Guarantee
- Packet Delivery Guarantee

Ethernet Point to Point Services Customers are not eligible for any of the guarantees under the SLA. The Latency Guarantee and Packet Delivery Guarantee apply to Hi(Q) Data Corp Dedicated Internet Access Customers only. If Hi(Q) Data Corp fails to meet any of these guarantees, it will provide eligible Customers with a Service Credit, as set forth below in this Service Level Agreement.

2. GUARANTEES.

A. INSTALLATION GUARANTEE.

For each of the Services listed below, Hi(Q) Data Corp guarantees connectivity for Customers will be installed within the corresponding timeframe, as measured from the date an order has been validated and entered into Hi(Q) Data Corp provisioning system by its Account Coordination team.

- On-Net: 21 business days
- Colo: 21 business days
- Ethernet Loop: 90 business days
- Wireless 4G: 14 Business days

An order will not be validated until a signed Order Form and CSA and any other required documentation specified by Hi(Q) Data Corp, has been received, validated, approved and entered into Hi(Q) Data Corp's provisioning system by its Account Coordination team. Additional required documentation may include a completed credit application and a completed questionnaire for IP Allocation as well as completed questionnaires for BGP, SMTP and DNS configurations when requested by the customer on the IP Allocation Questionnaire.

The Installation guarantee for Hi(Q) Data Corp colocation services does not apply to third-party data centers. For point-to-point connections, the port with the longest install time governs the entire order, e.g., if one port is On-Net and the other port requires an Ethernet Loop, the longer install time corresponding to the Ethernet Loop applies to both orders.

If Hi(Q) Data Corp fails to meet these commitments, Customer will receive, at Customer's request, one (1) month Service Credit. Customer may obtain no more than one (1) month Service Credit for any given month. Hi(Q) Data Corp's Installation Guarantee is subject to the following conditions:

- Customer or its representative must cooperate with Hi(Q) Data Corp in the installation process, which includes accurate completion of an Order Form containing detailed demarcation information and other onsite contact listings. Changes in an Order Form made by or on behalf of Customer or the occurrence of events outside the reasonable control of Hi(Q) Data Corp, such

as Force Majeure (as defined in the CSA), may result in delays for which Hi(Q) Data Corp is not responsible hereunder.

- Customer or its representative must be physically present at the time of installation and must provide access to the designated building's installation areas on the date(s) agreed to by Hi(Q) Data Corp Installation Coordination Department. Such building access and escort must also be provided to other necessary personnel to perform the installation of the connection. Customer understands that its failure to provide Hi(Q) Data Corp and/or its representatives and/or contractors with the building access necessary to perform such installations upon the agreed upon installation date/s will make all installation commitments null and void and in some cases may result in fees to be owed by customer by Hi(Q) Data Corp.
- This Installation Guarantee applies to the interval between the original order date and original Installation Guarantee date. If Customer requests a change to an order date during implementation of Service, the Installation Guarantee date shall, at Hi(Q) Data Corp's sole discretion, begin again upon change acceptance.
- The Service Credit for failure to meet the Installation Guarantee is not available to Customers for whom installation charges have been waived or reduced.

B. NETWORK AVAILABILITY GUARANTEE.

Hi(Q) Data's Network is designed to ensure 99.9% availability.

On-Net Service. If Customer experiences Network Unavailability for an On-Net Service for more than 60 consecutive minutes, Customer will receive, at Customer's request, one (1) day Service Credit for each cumulative hour of Network Unavailability in any calendar month. Provided the Hi(Q) Data Corp Network experiences at least one (1) hour of Network Unavailability in any given calendar month, additional Network Unavailability of less than one (1) hour will result in a proportional Service Credit. (Example: 2 hours, 15 minutes of Network Unavailability will result in 2.25 days Service Credits.) Customer may obtain no more than one (1) month Service Credit for any given month.

Off-Net Service. If Customer experiences Network Unavailability for an Off-Net Service for more than 60 consecutive minutes, Customer will receive, at Customer's request, one (1) hour Service Credit for each cumulative hour of Network Unavailability in such calendar month. Provided the Hi(Q) Data Corp Network experiences at least two (2) hours of Network Unavailability in any given calendar month, additional Network Unavailability of less than one (1) hour will result in a proportional Service Credit. (Example: 2 hours, 15 minutes of Network Unavailability will result in 2.25 hours Service Credits.) Customer may obtain no more than one (1) month Service Credit for any given month.

VOIP Service. If Customer experiences Network Unavailability for VOIP Service for more than 60 consecutive minutes, Customer will receive, at Customer's request, one (1) hour Service Credit for each cumulative hour of Network Unavailability in such calendar month. Provided the Hi(Q) Data Corp Network experiences at least two (2) hours of Network Unavailability in any given calendar month, additional Network Unavailability of less than one (1) hour will result in a proportional Service Credit. (Example: 2 hours, 15 minutes of Network Unavailability will result in 2.25 hours Service Credits.) Customer may obtain no more than one (1) month Service Credit for any given month.

C. NETWORK LATENCY GUARANTEE.

For Dedicated Internet Access customers only, the monthly average Network Latency for packets carried over the Hi(Q) Data Corp Network between Backbone Hubs for the following regions is as specified below:

- Intra-North America: 65 milliseconds or less
- Intra-Europe: 65 milliseconds or less
- New York to London (Trans-Atlantic): 105 milliseconds or less

Network Latency (or Round trip time) is defined as the average time taken for an IP packet to make a round trip between Backbone Hubs within the regions specified above on the Hi(Q) Data Corp Network. Hi(Q) Data Corp monitors aggregate latency within the Hi(Q) Data Corp Network by monitoring round-trip times between a sample of Backbone Hubs on an ongoing basis.

After being notified by Customer of Network Latency in excess of the rates specified above, Hi(Q) Data Corp will use commercially reasonable efforts to determine the source of such excess Network Latency and to correct such problem to the extent that the source of the problem is on the Hi(Q) Data Corp Network.

If Hi(Q) Data Corp fails to remedy such Network Latency within two (2) business days of being notified of any excess Network Latency and average Network Latency for the preceding 30 days has exceeded the rates specified above, Customer will receive, at Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Network Latency for the preceding 30 days is less than the rates specified above. Customer may obtain no more than one (1) month Service Credit for any given month.

D. PACKET DELIVERY GUARANTEE.

For Dedicated Internet Access customers only, the Hi(Q) Data Corp Network has an average monthly Packet Loss no greater than 1% (or successful delivery of 99% of packets). Packet Loss is defined as the percentage of packets that are dropped between Backbone Hubs on the Hi(Q) Data Corp Network. Hi(Q) Data Corp monitors this aggregate packet loss on an ongoing basis, and compiles the collected data into a monthly average packet loss measurement for the Hi(Q) Data Corp Network.

After being notified by Customer of Packet Loss in excess of 1%, Hi(Q) Data Corp will use commercially reasonable efforts to determine the source of such excess Packet Loss and to correct such problem to the extent that the source of the problem is on the Hi(Q) Data Corp Network.

If Hi(Q) Data Corp fails to remedy such excess Packet Loss within two (2) calendar days of being notified of any excess Packet Loss on the Hi(Q) Data Corp Network and average Packet Loss for the preceding 30 days exceeds 1%, Customer will receive, at Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Packet Loss for the preceding 30 days is less than 1%. Customer may obtain no more than one (1) month Service Credit for any given month.

3. ADDITIONAL DEFINITIONS.

Dedicated Internet Access or Internet Transit refers to Hi(Q) Data Corp's Layer 3 service that provides customers access to the public Internet.

Backbone Hub means a major network facility owned, operated, or controlled by Hi(Q) Data Corp which is directly connected to the Hi(Q) Data Corp fiber backbone network and which contains at least one Gigabit Switch Router (GSR). In larger metropolitan markets containing more than one such facility, one facility in that market will be designated as a Backbone Hub for the purpose of calculating the monthly average Network Latency and Packet Loss statistics.

Off-Net means buildings that are directly connected to the Hi(Q) Data Corp Network using Hi(Q) Data Corp's wireless 4g infrastructure or a third party carriers' facilities and services to provide the last mile portion of the link from the Service Location to the Hi(Q) Data Corp Network.

On-Net means buildings that are directly connected to the Hi(Q) Data Corp Network and, as such, do not require Hi(Q) Data Corp to deploy wireless 4g equipment or lease a third-party local loop in order to provide connectivity.

Hi(Q) Data Corp Network means the telecommunications/data communications network and network components owned, operated or controlled by Hi(Q) Data Corp, including Hi(Q) Data Corp's national fiber backbone, its Wireless 4g infrastructure, its metropolitan fiber networks, any equipment connected to such fiber/wireless, and the software, data and know-how used by Hi(Q) Data Corp in the provision of the Services. Where Hi(Q) Data Corp provides Service to a building through its own facilities, the Hi(Q) Data Corp Network includes those facilities. The Hi(Q) Data Corp Network does not include customer premises equipment, customer-ordered telephony circuits, and any networks or network equipment not operated and controlled by Hi(Q) Data Corp.

Monthly Recurring Charge means the fixed, recurring charge invoiced by Hi(Q) Data Corp to Customer on a monthly basis for the Service, exclusive of any variable charges based upon Customer usage.

Network Unavailability means the number of minutes that the Hi(Q) Data Corp Network was not available to Customer, including the number of minutes that the Hi(Q) Data Corp Network was not available associated with any non-Scheduled Maintenance to the Hi(Q) Data Corp Network. Network Unavailability will not include Scheduled Maintenance, or any unavailability resulting from: (a) problems with or maintenance on Customer's applications, equipment or facilities; (b) acts or omissions of Customer or an authorized user; (c) unavailability caused by companies other than Hi(Q) Data Corp, except Hi(Q) Data Corp -ordered telephony circuits; or (d) Force Majeure.

Scheduled Maintenance means any maintenance of the Hi(Q) Data Corp Network (or portion thereof) to which Customer's router is connected that is performed during a standard maintenance window in North America from 3:00am to 7:00am (local time of the Hi(Q) Data Corp Hub to which Customer's circuit is connected) except the Pacific time zone where the window is from 2:00am to 6:00am PAC. In Europe the standard maintenance window is 4:00am to 8:00am Central European time which is 3:00 to 7:00am GMT. Customers will be notified via Email at least two (2) business days in advance of any scheduled maintenance that is likely to affect their service. In most cases, maintenance performed will not take the full configuration window, however, Hi(Q) Data Corp will inform Customer as to anticipated duration in the maintenance notification E-mail.

Service Credit means

- *One (1) day Service Credit = 1/30th of Customer's Monthly Recurring Charges.*
- *One (1) week Service Credit = 7/30th of Customer's Monthly Recurring Charges.*
- *One (1) month Service Credit = Full amount of Customer's Monthly Recurring Charges.*

If Hi(Q) Data Corp approves a claim for Service Credit for failure to comply with the Installation Guarantee, Service Credit shall mean Hi(Q) Data Corp's charge for Customer's first full month of the Service, not including installation charges or other start-up fees.

4. SERVICE CREDIT CLAIM PROCESS.

In order to initiate a claim for Service Credit, Customer must contact Hi(Q) Data Corp's customer service group within seven (7) business days after the end of the month for which credit is requested. The

Service Credit request must provide: (a) the Customer name and contact information; (b) the date and beginning/end time of the claimed outage or failed metric; and (c) a brief description of the characteristics of the claimed outage or failed metric.

Customer will be notified via e-mail upon resolution of the request. If rejected, the notification will specify the basis for rejection. If approved, Hi(Q) Data Corp will issue Service Credit to Customer's account, appearing on the next invoice issued. Multiple Service Credits will not be given for the same period of time, i.e., failure to meet multiple criteria during a period of time generates only a single Service Credit. The total number of all Service Credits for all failures to meet Guarantees occurring in a given month may not exceed the total Monthly Recurring charge actually paid by Customer for Service during that month. Service Credits will be credited against a Customer's monthly payment for Monthly Recurring Charges and may not be received in the form of a refund.

The Guarantees and Service Credits provided for in this SLA assume compliance by Customer with the terms and conditions of its CSA with Hi(Q) Data Corp, and the failure of Customer to comply with those terms and conditions may invalidate Hi(Q) Data Corp's guarantees provided herein. No credit is available for a Customer (a) that is blocking Hi(Q) Data Corp from monitoring Customer's premises router; (b) that does not provide the necessary access to personnel and facilities at the Customer's premises to enable Hi(Q) Data Corp to perform comprehensive troubleshooting; or (c) whose account is not in good financial standing with Hi(Q) Data Corp. Hi(Q) Data Corp is not liable for failure to fulfill its obligations hereunder if such failure is due to Customer's use of bandwidth in excess of the maximum amount specified in Customer's CSA, Customer's tampering with any equipment, or acts beyond Hi(Q) Data Corp's reasonable control, such as Force Majeure.

5. INTERRUPTIONS, LIMITATIONS, AND MODIFICATIONS TO SERVICE

Service may be temporarily interrupted or otherwise limited for a variety of reasons, some beyond the control of Hi(Q) Data Corp. Hi(Q) Data Corp reserves the right to refuse credit allowances for interruptions of Service. Hi(Q) Data Corp also reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Services (or any function or feature of the Services or any part thereof) without liability. You acknowledge that Hi(Q) Data Corp may establish general practices and limits concerning use of the Services.

7. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. Hi(Q) Data Corp EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Hi(Q) Data Corp MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS, OR (v) THE SERVICES WILL NOT CONFLICT OR INTERFERE WITH OTHER SERVICES FROM Hi(Q) Data Corp OR THIRD PARTIES THAT YOU RECEIVE AT YOUR PREMISES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM Hi(Q) Data Corp OR THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TOS.

8. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT Hi(Q) Data Corp SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF Hi(Q) Data Corp HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) USE OF THE SERVICES (WHICH INCLUDES EQUIPMENT, SOFTWARE, AND INSIDE OR OUTSIDE WIRING), (b) THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, (c) THE INSTALLATION, MAINTENANCE, REMOVAL, OR TECHNICAL SUPPORT OF THE SERVICES, EVEN IF SUCH DAMAGE RESULTS FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF AN Hi(Q) Data Corp INSTALLER, TECHNICIAN, OR OTHER REPRESENTATIVE, AND/OR (d) ANY INABILITY TO REACH 911 EMERGENCY SERVICES, ANY ALLEGED INTERFERENCE WITH ALARM OR MEDICAL MONITORING SIGNALS, OR ANY FAILURE OF ALARM OR MEDICAL MONITORING SIGNALS TO REACH THEIR INTENDED MONITORING STATIONS ALLEGEDLY AS A RESULT OF THE SERVICES.

IN ANY EVENT, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH Hi(Q) Data Corp IN CONNECTION WITH THE SERVICE IS A CREDIT NOT TO EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID DURING THE IMMEDIATELY PRECEDING one (1) MONTH PERIOD.

9. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 7 AND 8 MAY NOT APPLY TO YOU.