



## NITEL MPLS / VPLS SERVICE LEVEL AGREEMENT

This Service Level Agreement (SLA) is effective as of the first day of the second month after initial installation of Nitel MPLS Network Service (the "Service"). The provisions of this SLA state Customer's sole and exclusive remedies for Service interruptions or Service deficiencies of any kind whatsoever.

### 1. Network and Port Components.

**1.1 Components.** This SLA applies only to the Service (and the underlying network components of the Nitel MPLS Network used solely for the purpose of providing the Service). The Nitel MPLS Network includes routers, switches, fiber and any other facilities that are owned by Nitel or other providers specifically designated by Nitel for underlying MPLS network Service. As used in this SLA, a "POP" means a point of presence location, as determined by Nitel that represents the provider edge of the Nitel MPLS Network.

### 2. Domestic Network and Port-Related Goals

The following Service level goals ("Goals") apply to MPLS ports purchased from Nitel. If a usage tier applies to the Nitel MPLS Port, the Goals for such Nitel MPLS Port only apply to the portion of traffic that is within the contracted usage tier and will not apply to the Nitel MPLS Port bandwidth usage that exceeds the usage tier. The Goals associated with Latency, Packet Delivery and Jitter are measured using monthly averages from the Nitel MPLS Network and apply in the listed regions after the Service Start. Individual circuit outages of MLPPP (NxDS1) bundles are not subject to the Network Availability or Reporting Goals.

**2.1 Network Availability.** The availability of the Service ("Network Availability") is measured by "Network Downtime," which exists when the Nitel MPLS Network is unable to transmit and receive data. Network Downtime is measured from the time a trouble ticket is opened by Nitel in the Nitel trouble management system to the time the Affected Service is again able to transmit and receive data. "Affected Service" means the Port that fails to meet the applicable Goal.

<b>Network Downtime = Remedy (Credit is applied to MRC of the Affected Service)*</b>	
Region	Goal
Intra U.S.	100%
Intra U.S. DSL	99.9%
Intra U.S. Ethernet over Copper / EoC	99.9%
Canada	100%
Europe	99.9%
South America	99.8%
China	99.9%
India	99.5%
South Africa	99.8%

\*Each cumulative hour of Network Downtime qualifies Customer for a credit of equal time charges pro-rated from the applicable MRC.

**2.2 Latency.** The average network transit delay ("Latency") will be measured via round-trip pings on an ongoing basis every 5 minutes to determine a consistent average monthly performance level for Latency at all the POPs within the region. Latency is calculated as follows:

$$\frac{\sum (\text{Roundtrip Delay for POP-POP trunks})}{\text{Total Number of POP-POP trunks}} = \text{Latency}$$

Region	Goal	<b>Latency = Remedy (as a % of the MRC for the Affected Service)*</b>		
<b>North America</b>				
Intra U.S.	75 ms	75– 85 ms = 10%	86 – 100 ms = 25%	Greater than 100ms = 50%
Intra U.S. DSL	n/a			
Intra U.S. Ethernet over Copper / EoC	75 ms	75– 85 ms = 10%	86 – 100 ms = 25%	Greater than 100ms = 50%
Intra Canada	80 ms	80 – 90 ms = 10%	91 – 100 ms = 25%	Greater than 100 ms = 50%
U.S. to Canada	80 ms	80 – 90 ms = 10%	91 – 100 ms = 25%	Greater than 100 ms = 50%
Intra South America	120 ms	120 – 130 ms = 10%	131 – 150 ms = 25%	Greater than 150 ms = 50%
U.S. to South America	140 ms	140 – 150 ms = 10%	151 – 170 ms = 25%	Greater than 170 ms = 50%
China	140 ms	140 – 150 ms = 10%	151 – 170 ms = 25%	Greater than 170 ms = 50%
India	285 ms	285 – 300 ms = 10%	301 – 350 ms = 25%	Greater than 350 ms = 50%
South Africa	n/a			

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**2.3 Packet Delivery.** Packet Delivery will be measured on an ongoing basis every 5 minutes to determine a consistent average monthly performance level for packets actually delivered between the POPs.

Region	Goal	Actual Packet Delivery = Remedy (as a % of the MRC for the Affected Service)*		
Intra U.S.	99.9%	99.01% - 99.89% = 10%	90% - 99% = 25%	Less than 90% = 50%
Intra U.S. DSL	99.5%	98.01% - 99.49% = 10%	90% - 98% = 25%	Less than 90% = 50%
Intra U.S. Ethernet over Copper / EoC	99.5%	98.01% - 99.49% = 10%	90% - 98% = 25%	Less than 90% = 50%
Canada	99.9%	99.01% - 99.89% = 10%	90% - 99% = 25%	Less than 90% = 50%
South America	99.5%	98.01% - 99.49% = 10%	90% - 98% = 25%	Less than 90% = 50%
China	99.9%	99.01% - 99.89% = 10%	90% - 99% = 25%	Less than 90% = 50%
India	99.0%	98.01% - 98.99% = 10%	90% - 98% = 25%	Less than 90% = 50%
South Africa	99.0%	98.01% - 98.99% = 10%	90% - 98% = 25%	Less than 90% = 50%

**2.4 Jitter.** Jitter is a measurement of the interpacket delay variance and packet loss in the Nitel MPLS network, averaged over a calendar month, which is measured by generating synthetic user datagram protocol (UDP) traffic.

Region	Goal	CoS 1 RT	CoS 2 / CoS 3	CoS 4 BE
Intra U.S.	2ms	2ms	2ms	2ms
Intra U.S. DSL				
Intra U.S. Ethernet over Copper/EoC	2ms	2ms	2ms	2ms
Canada	5ms	5ms	5ms	5ms
South America	20ms	30ms	30ms	
China	10ms	20ms	20ms	
India	25ms	35ms	35ms	
South Africa	15ms	25ms	25ms	

**2.5 MTTR.** MTTR Mean Time to Restore is a measurement of time it takes to restore Service from the time Customer opens a trouble ticket with the Nitel NOC.

Region	Goal
Intra U.S.	4 hours MTTR
Intra U.S. DSL	24 hours MTTR
Intra U.S. Ethernet over Copper / EoC	6 hours MTTR
Canada	4 hours MTTR
South America	4 hours MTTR
China	
India	
South Africa	
Managed Hardware*	Next Business Day

\*Managed Hardware will be shipped next business day for replacement once deemed necessary by Nitel's Network Operations Center. To ensure next day delivery, orders must be processed prior to 4:00pm, US Central Time Zone.

### 3. Maintenance.

**3.1 Network Normal Maintenance.** "Normal Maintenance" means scheduled maintenance, including but not limited to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible Network Downtime. "Local Time" means the local time in the time zone in which an Affected Service is located. Nitel may change the maintenance window times upon posting to the website or other notice to Customer. Nitel will undertake Normal Maintenance during the hours and upon the prior notice time period stated below

Region	Normal Maintenance Hours	Prior Notice
Intra U.S.	Sunday thru Saturday mornings between the hours of 12:00 AM and 6:00 AM Local Time	10 business days

**3.2 Network Emergency Maintenance.** "Emergency Maintenance" means efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Emergency Maintenance may degrade the quality of the Service, including possible Network Downtime. Nitel may undertake Emergency Maintenance at any time deemed necessary and will provide notice of Emergency Maintenance to Customers as soon as is commercially practicable under the circumstances.

### 4. General.

**4.1 Remedies.** To be eligible for credits under this SLA, Customer must: (a) enter a trouble ticket at the time the Affected Service

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failed to meet one or more Goals by contacting the Nitel NOC via (866) 892-0915 or (312) 253-4345 or by such other means as may be specified by Nitel from time to time); (b) be current in its payment obligations under the Agreement; and (c) request credits hereunder and submit all necessary supporting documentation within 5 business days of the closure of the trouble ticket. If Customer fails to comply with the conditions set forth in this Section 4.1, Customer will be deemed to have waived its right to any credits for that month.

Customer must submit a written request for Credits within 5 business days of the closure of the trouble ticket to Nitel via email to [billing@nitelusa.com](mailto:billing@nitelusa.com). If Customer is unable to submit the dispute via email, Customer should fax request to (312) 803-5549. The written request notice must include: (a) Customer's name; (b) the circuit identification number for the Affected Service; (c) the trouble ticket number issued by the Nitel NOC; and (d) the duration of the Goal failure.

The credits will apply to the MRCs of the affected Service after application of all discounts and do not apply to MRCs of other Services. The maximum credits issued in any 1 calendar month will not exceed: (a) 7 days' charges pro-rated from the MRC of the Affected Service with respect to Network Availability; (b) 50% of the MRCs of the Affected Service with respect to the other Goals. In no event will the total credit, in the aggregate for all credits issued in 1 month, exceed the equivalent of 50% of the relevant MRCs for the Affected Service. Cumulative Credits in any 1 month must exceed \$25.00 to be processed. If Customer fails to notify Nitel in the manner set forth above with respect to the applicable SLA credits, Customer will be deemed to have waived its right to any SLA credits for that month.

**4.2 Credit Exceptions.** Credits will not be issued where the SLA is not met as a result of: (a) the acts or omissions of Customer, its employees, contractors or agents or its end users; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Nitel or other providers specifically designated by Nitel; (c) Force Majeure Events, as defined in Customer's Service Agreement; (d) Normal Maintenance, Emergency Maintenance, or Service alteration or implementation; (e) the unavailability of required Customer personnel, including as a result of failure to provide Nitel with accurate, current contact information; (f) Nitel's or other providers specifically designated by Nitel's lack of access to the Customer premises where reasonably required to restore the Service; (g) Customer's failure to release the Service for testing or repair and continuing to use the Service on an impaired basis; (h) Nitel's termination of Service for cause or Customer's use of Service in an unauthorized or unlawful manner; or (i) improper or inaccurate network specifications provided by Customer.