

SERVICE LEVEL AGREEMENTS

The SLAs described below are designed to set measures against which Hughes' performance will be evaluated and to establish a system of remedies, including liquidated damages (to be applied in the form of credits against future Service Charges), through which the Customer may receive compensation for Hughes' failure to achieve its Service Level commitments. The SLAs specify (i) the metrics to be satisfied and reported on for Services; (ii) a numerical standard representing the minimum performance expected from Hughes (the "Service Levels"); and (iii) Customer's remedy whenever Hughes fails to meet the Service Level. Any such credit or liquidated damages shall be the Customer's sole and exclusive remedy for any failure by Hughes to meet these Service Levels. They will be applied only toward the monthly recurring Service Charges (exclusive of any equipment lease charges), and, for any calendar month, shall not exceed the total Services Charges for such month.

The following schedule describes the Service Level Agreements and Service Level Objectives:

- Service Level 1: Availability
- Service Level 2: Throughput
- Service Level 3: Time to Restore
- Service Level 4: Time to Install
- Service Level 5: Round Trip Delay
- Service Level 6: Chronic Sites
- Service Level 7: Monthly Service Reports

3.1 DEFINITIONS

For the purposes of this schedule, the following terms have the meanings set forth below. If any capitalized term is used in this Attachment but is not defined below or elsewhere herein, the definition set forth in the Agreement or its other attachments shall apply.

- **Help Desk** means Customer's Help Desk is accountable for all site communications issues and resolutions.
- **VSAT Site** means a site where a VSAT is to be installed by Hughes.
- **Customer Premises Equipment (CPE)** means the equipment and other network hardware that the Customer (or its agent or assignee) manages, and that resides at a site.
- **Demand Services** means certain supplementary services that Hughes may perform upon the request of the Customer, including supplementary maintenance and repair services, which are outside the scope of the Services herein described.
- **Throughput** means the volume of data traversing the network, stated in a per-hour average volume of bits per second.
- **NOC** means the Hughes Network Operations Center.
- **Outage Minutes** means each minute Network Service is determined to be unavailable.
- **Problem** means an error, defect, or omission related to the Equipment, Installation Service, or Services.
- **Scheduled Outage** means the preplanned, regularly scheduled interruptions, or all network operations or Services.
- **Commencement Date** is the start of the measurement period for each Service Level is specified in each description.

3.2 SERVICE LEVELS

The following Service Levels apply to the VSAT Equipment, Installation Services, and Services at all sites:

3.2.1 Service Level 1: Availability

Application	Metric	Inputs / Calculations	Measurement Window	Service Level Requirement
This Service Level applies to each Site.	Measurement of the percentage of time each site is available each month.	<p>The duration of a Service interruption is measured by the number of minutes during the Scheduled Service Time that elapse from the time that a trouble ticket is opened indicating an outage of the service to the time that the service has been restored. An outage counts against the availability when the network service is down. Scheduled Service Time shall be deemed to be 24 hours a day, 7 days a week. The availability for a given calendar month shall be a percentage.</p> <p>A site is included in the calculation starting with the first day of the first full month following installation.</p> <p>The formula for calculation of Individual Site Availability is set forth below:</p> $\text{SOM} \div \text{SST}$ <p>Where: SST = Scheduled Service Time SOM = Individual site outage minutes in a calendar month</p> <p>Because any outage that requires a site visit will cause a site to fail this SLA, this SLA is intended to apply to sites that do not require a dispatch. The Time to Restore SLA covers the penalties for not restoring a failed site within the appropriate time. Thus, for the avoidance of doubt, any period of outage between the time that the service technician is dispatched to the applicable site and the time the site is restored shall not be deemed to be "outage minutes" for the purposes of this calculation.</p>	Individual Site Service Availability commences on the first calendar day of the month, and ends on the last calendar day of the month.	Not less than 99% per month

- (a) The Commencement date for this Service Level will start with the first full month following installation of a site.
- (b) In addition, notwithstanding that this Service Level provides for the payment of certain credits in the event that the requirements hereof are not met, Hughes agrees to use its best reasonable efforts to rectify any individual site availability problem as soon as such problem manifests itself.

(c) Conditions and Exclusions:

No failure to meet this Service Level shall count toward the calculation of service level credits when due to any of the following causes:

- The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities.
- The fault, negligent act, or negligent failure to act of Customer, its employees, agents, or invitees;
- Scheduled maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by HNS at least fifteen (15) business days beforehand) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
- An event of Force Majeure to the extent performance is excused under the Agreement.
- Any sites to which HNS is not providing remote maintenance services shall be excluded from the calculation of Individual Site Availability

(d) Remedy:

- Service Level Credits issued by HNS to Customer for failure to meet this Service Level are as follows:

Monthly Single Site Availability:	Service Level Credit:
99.0% or greater	No credit
98.0% - 98.99%	2% of the monthly per site Service Charge for the site failing to meet the SLA
95% - 97.99%	5% of the monthly per site Service Charge for the site failing to meet the SLA
Less than 95%	10% of the monthly per site Service Charge for the site failing to meet the SLA

3.2.2 Service Level 2: Throughput

Metric	Inputs/Calculations	Measurement Window	Service Level Requirement
VSAT throughput will be measured on receipt of report from Customer of a suspected violation of this Service Level.	Throughput is defined as a bit-per-second measurement based on the total transfer time in seconds of a measured object or file of a given size calculated in kbytes. Hughes will provide a minimum throughput for each site subscribing the defined Enterprise Service Plans. Upon the opening of a trouble ticket by Customer on a site suspected of being in violation of this Service Level, Hughes will measure the Customer’s upstream and downstream network throughput. This measurement will be performed by a Hughes server in the NOC. The server will measure the network throughput of actual Customer transfers as they are being transmitted and received. The measurement process will not impact the performance of the Customer’s application.	As required	85% of typical throughput.

HNS will maintain a record of the Expected Data Throughput for each site. The value will reflect the configured speed for each site. For example, a site which subscribes to the S-100 Service Plan should have typical speeds of 128 kbps upstream and 1024 kbps downstream.

In addition, notwithstanding that this Service Level provides for the payment of certain credits in the event that the requirements hereof are not met, Hughes agrees to use its best reasonable efforts to rectify any throughput problem as soon as such problem manifests itself.

a. Conditions and Exclusions

- This Service Level only applies to transactional-based applications with numerous bulk file transfers and shall not apply to streaming type applications.
- This Service Level is not applicable if the Customer’s applications and number of users are not consistent with the specified definition of the particular Service Plan in use. Should the Customer’s usage exceed the intended purpose of the Service Plan, Hughes and the Customer will meet to discuss other appropriate service plans or how much additional capacity is required to accommodate the Customer’s additional data traffic. Such discussion will address both current and future traffic
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by Hughes on behalf of the Customer, including any out-of-tolerance earth station conditions not caused by Hughes
 - The fault, negligent act, or negligent failure to act of the Customer, its employees, agents, or invitees
 - Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by Hughes) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause

- An event of Force Majeure suspending Hughes’ performance obligations

b. Remedy

If less than 85% of the measurements indicate that this Service Level is not being met, Hughes shall modify the network parameters within 15 days of the test in order to achieve requirements of this Service Level. Once these modifications have been completed, similar measurements will be taken over the next 15 days, and a report will be provided to the Customer showing the results of these measurements. In the event that the required throughput is not still being met (for at least 85% of the measurements) after the network modifications have been implemented, Hughes will then provide the Customer a credit in the subsequent billing cycle according to the following table:

Percentage of Measurements Meeting the Applicable Service Level	Service Level Credit
85% or greater	No credit
75% to 84.99%	5% of the monthly per site Service Charge for the applicable site
60%–74.99%	10% of the monthly per site Service Charge for the applicable site
50%–59.99%	20% of the monthly per site Service Charge for the applicable site
Less than 50%	50% of the monthly per site Service Charge for the applicable site

3.2.3 Service Level 3: Times to Restore

Metric	Inputs/Calculations	Measurement Window	Service Level Requirement
Service restoration completed within the Total Time to Restore period.	Restoration time will be calculated from the opening of a trouble ticket to the end of the Time to Restore. In the event the ticket is opened by Hughes as a result of fault detection of the outage proactively, the Restoration time commences upon the verification of the fault by the Customer’s Tier 1/Tier 2 Help Desk. If Hughes is performing Tier 1/ Tier 2 Help Desk support for the Customer, confirmation of the outage comes from Hughes’ internal Help Desk.	Per incident report monthly	For sites that have experienced equipment failures that required field service dispatch, Hughes will restore service in 90% of the instances within the time period specified in Attachment I for the maintenance response plan selected, plus 3 hours.

a. Conditions and Exclusions

- This Service Level only applies to sites located within the contiguous United States.
- This Service Level only applies to sites that are receiving remote maintenance services no less comprehensive than “Next Calendar Day” service coverage; e.g., sites with “Next Business Day” coverage are not eligible for this Service Level.
- This Service Level shall commence at the effective date of the Agreement.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by Hughes on behalf of the Customer, including any out-of-tolerance earth station conditions not caused by Hughes.
 - The fault, negligent act, or negligent failure to act of the Customer, its employees, agents, or invitees.
 - Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by Hughes) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause.
 - An event of Force Majeure suspending Hughes’ performance obligations.
 - The call for remote maintenance was a request for Demand Services.
 - Problems due to defective facilities at the VSAT site (e.g., water leakage) or an operating environment at the VSAT site that is not in compliance with Hughes’ documentation (e.g., no air conditioning where required).
 - The failure of any device, beyond the demarcation points for Services to be provided by Hughes.
 - Service level credits will not be imposed until Services are being delivered to 25 sites. However, all Service Level data will be tracked and reported to the Customer for all sites following execution of the Agreement.
- The following situations will pause the Service Level 3 timer:
 - Hours during which a site is unavailable for access (e.g., remote site is closed).
 - Hours outside the contracted maintenance coverage selected by the Customer.
 - If a Customer employee or landlord prevents the Hughes technician from entering the store or delays the technician from starting or completing repairs, Hughes shall immediately notify the Customer Help Desk to report and document this event, and the Service Level 4 timer will be paused. The timer will restart once the obstruction no longer exists.

b. Remedy

For each site above the 10% allowance that has not met this Service Level in a given six-month period, Hughes will pay Customer liquidated damages in the form of a credit in the amount of 10% of the Service Charge for the applicable site. By way of example, in the event that there have been fifty (50) instances where trouble tickets have been open during a given six-month period, and Hughes has failed to meet the applicable Time to Restore Service Level on seven (7) different occasions, Service Credits would be owing in respect of two incidents.

3.2.4 Service Level 4: Time to Install

Metric	Inputs/Calculations	Measurement Window	Service Level Requirement
Time to Install commences when an order is placed and ends when the site is installed and functioning.	The number of installations completed on-time in a month (as defined in the service level requirement).	Per incident report monthly	For VSAT sites, Hughes will install at least 90% of all locations released for a standard commercial installation within 30 calendar <u>Business</u> days of release of the order.

a. Conditions and Exclusions

- This Service Level only applies to sites located within the contiguous United States.
- The time period referenced in this Service Level commences when the site is released by the Customer with all information required by Hughes for installation to proceed, and Hughes has confirmed the order. The Customer shall have the responsibility to supply accurate site list information to facilitate order processing and installation.
- This Service Level shall not apply to the initial order rollout or any other large-scale rollouts. In such cases, the Time to Install Service Level, if any, will be as mutually agreed by the parties.
- In the event that the site is initially released as a standard installation but Hughes and/or Customer later determines that a standard installation is not feasible, this Service Level will not apply to such site.
- This Service Level shall not apply to instances where Hughes’ terrestrial service provider rejects the order, or sites that initially qualified for services but where the installation could not be completed.
- This Service Level will not apply to sites where the Customer changes the due date with less than 30 ~~calendar~~ Business days notice or in instances where the Customer or site personnel prevent an installation from occurring.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by Hughes on behalf of Customer, including any out-of-tolerance earth station conditions not caused by Hughes
 - The fault, negligent act, or negligent failure to act of the Customer, its employees, agents, or invitees
 - An event of Force Majeure suspending Hughes’ performance obligations

b. Expedited Installations

Customer may request an expedited installation for the charge specified in Attachment II for sites with less than 14 days of lead time. These sites are excluded from the calculation of performance for this Service Level. If an expedited installation is not completed within the agreed time frame, the expedite fee will be waived.

c. Remedy

For each site above the 10% allowance not meeting the SLA in a given calendar month, Hughes will provide the Customer liquidated damages in the form of a credit as follows:

Number of days after the applicable 30-day window in which the installation was completed	Service Level Credit
Each site in excess of the 10% allowance that is 10 or fewer business days late	10% of the applicable monthly Service Charge
Each site in excess of the 10% allowance that is more than 10 business days late	20% of the applicable monthly Service Charge

3.2.5 Service Level 5: Round Trip Delay

Metric	Inputs/Calculations	Measurement Window	Service Level Requirement
Round trip delay will be measured on receipt of report from the Customer of a suspected violation of this Service Level.	Round trip delay is defined as the time it takes a packet to be transmitted from the Hughes NOC to a remote site and return (or vice versa). Upon the opening of a trouble ticket against the site suspected of being in violation of this Service Level, Hughes will initiate a test by measuring the round trip delay between the Hughes NOC and the suspect site.	Per incident report monthly	For VSAT sites subscribing to a standard service plan, Hughes will use commercially reasonable efforts to ensure that Customer’s satellite round trip delay is below 875 ms at the 75 th percentile.

In addition, notwithstanding that this Service Level provides for the payment of certain credits in the event that the requirements hereof are not met, Hughes agrees to use its best reasonable efforts to rectify any round-trip delay problem as soon as such problem manifests itself.

a. Conditions and Exclusions

- During the conduct of the test referenced above, other traffic transmitted to or received from the suspected site should be minimized.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by Hughes on behalf of the Customer, including any out-of-tolerance earth station conditions not caused by Hughes
 - The fault, negligent act, or negligent failure to act of the Customer, its employees, agents, or invitees
 - Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by Hughes) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause
 - An event of Force Majeure suspending Hughes’ performance obligations

b. Remedy

In the event that Hughes fails to meet this service level, Hughes shall take appropriate steps to remedy the problem within 30 days after completion of the applicable test. If Hughes cannot remedy the problem within said 30 day period, then Hughes will pay the Customer liquidated damages in the form of a credit as follows:

For VSAT sites:

- ≤200 ms over SLA: 2% of the site’s monthly per-site service charges
- 201 – 400 ms over SLA: 5% of the site’s monthly per-site service charges
- More than 400 ms over SLA: 10% of the site’s monthly per-site service charges

3.2.6 Service Level 6: Chronic Sites

Metric	Inputs / Calculations	Measurement Window	Service Level Requirement
The number of trouble tickets opened that result in a field service dispatch.	Hughes will keep track of the number of trouble tickets resulting in a field service dispatch during a calendar month.	Per incident	No sites should experience more than two outages caused by remote equipment failures during any one month period.

a. Conditions and Exclusions

- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - The failure or nonperformance of any Customer-provided facilities or equipment, or third-party facilities or equipment acquired by Hughes on behalf of the Customer, including any out-of-tolerance earth station conditions not caused by Hughes;
 - The fault, negligent act, or negligent failure to act of the Customer, its employees, agents, or invitees;
 - Preventive maintenance and/or other scheduled Service outages (when done pursuant to a preventive maintenance schedule provided by Hughes) as may be necessary to maintain the Services in satisfactory operating condition, to provide additional system capacity, to protect the overall performance of the Services, or for any other reasonable cause;
 - An event of Force Majeure suspending Hughes’ performance obligations

b. Remedy

Upon verification that a site is a chronic site, Hughes will have 30 days to remedy the problem. In the event that Hughes cannot remedy the problem within said period, the Customer may cancel the site without penalty or elect to switch the site to another Hughes service

3.2.7 Service Level 7: Monthly Service Reports

Metric	Inputs/Calculations	Measurement Window	Service Requirement	Level
Reports will be available to the Customer by the last day of the month following the month in which applicable data has been collected.	Delivery to the Customer of the applicable reports.	Monthly or as otherwise agreed	100%	

a. Conditions and Exclusions

- Monthly reports on Service Levels 1, 3, 4, and 6 will be available via the Customer Gateway. The remaining Service Levels will be reported on within 30 days based upon trouble ticket requests.
- No failure to meet this Service Level shall count toward the calculation of liquidated damages when due to any of the following causes:
 - An event of Force Majeure suspending Hughes’ performance obligations

b. Remedy

The parties agree that this Service Level is a Service Level objective and that Service Level credits will typically not accrue for this Service Level. However, if Hughes fails to meet the requirement more than one time in a calendar year (e.g., Hughes is late by 5 days on two different occasions), upon notice from the Customer to Hughes, this Service Level will immediately convert to a Service

Level Agreement. Hughes will provide a credit to the Customer in the amount of \$500 for each late report.

3.3 PAYMENT OF SERVICE LEVEL CREDITS

All requests for liquidated damages due to a suspected SLA violation must be initiated by the Customer to the Hughes Program Manager within 60 days after the end of the applicable calendar month. Requests must have reference data substantiating the assertion that the specific SLA metric has not been met. Upon researching the request, Hughes will make the final decision as to whether the credit will be granted and will provide the data justifying the decision if such a request is denied.

Calculation of liquidated damages will be based on the monthly per-site Service Charges, excluding any taxes. For terrestrial services (DSL, cable, or T-1), this charge is defined as the remote site related monthly charges. For VSAT, the monthly Service Charge is defined as the remote site related monthly charge excluding amounts attributable to equipment leases.

Service Level credits due to the Customer will be separately reported and separately invoiced as a credit to the Customer each month.