

VDR/SRO Services – Service Level Agreement (SLA)

The following terms will apply to the availability of the VDR Services, SRO Services 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. Network, Data Center, and Infirastructure Availability.** The IBM Network Infrastructure extends from the Infirastructure computing resources 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 Infrastructure includes HVAC, managed power systems, backup generators, and battery backup systems. Infirastructure includes the servers and the storage. The IBM Network Infrastructure, the Data Center Infrastructure, and Infirastructure (referred to herein as the "IBM Infrastructure"), subject to the exceptions in Section 4, will be available for a percentage of each calendar month equal to the Availability Calculation specifically set forth in section 3 of this SLA.

Bandwidth requirements for replication are dependent upon a number of factors which are outside of IBM's control. Guidelines/estimates can be provided, however these are not guaranteed and Customer may need to increase bandwidth as needs change.

- 2. Failover Initiation.** After Disaster Declaration, IBM will initiate Failover within sixty (60) minutes after verification of the Disaster Declaration Password.
- 3. Availability Calculation.** The availability of the IBM Infrastructure for a given month will be calculated according to the following formula (referred to herein as the "Availability"):

Where: **Total minutes in the month = TMM**
Total minutes in month unavailable = TMU
And: **Availability = ((TMM-TMU) x 100)/TMM**

- 4. Exceptions.** The IBM 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 at least twenty-four (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.

5. Configuration Changes; Customer Supported Software.

- The configuration of the Services set forth in the Statement of Work has been designed by the parties to provide the performance level contemplated by the Availability Commitment in this SLA. If IBM notifies Customer of any of the following it will be determined that Customer's configuration is not suited to provide this level of performance and 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: (i) Customer is not using supported or approved versions of software, operating systems, and/or firmware, (ii) Customer has not maintained, updated, upgraded, or ensured compatibility for the replicated sources in the Customer Environment at IBM's request, (iii) Customer has not made IBM aware of changes to the Customer Environment that result in a failed Failover, or (iv) Customer has not contracted for sufficient capacity to accommodate a Failover.
- The IBM Infrastructure shall adhere to the following Availability Commitments:

99.9% - IBM Infrastructure

6. Remedies.

Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below.

- If the Availability of IBM Infrastructure (as calculated in Section 3 above) for a given month is less than the applicable Availability Commitments, Customer will receive one (1) Service Credit for the VDR Services. In addition, for the first one hundred (100) minute increment by which the allowable unavailability is exceeded, Customer will receive one (1) Service Credit for the VDR Services. Thereafter, for each additional one hundred (100) minute increment by which the allowable outage is exceeded, Customer will receive one (1) additional Service Credit for the VDR Services.
- For purposes of this SLA, a Service Credit will be deemed to be an amount equal to one-thirtieth (1/30th) of the Services monthly fee for the VDR Services 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 fifty percent (50%) of the then-current Services monthly fee for the VDR Services 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 thirty (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.
- In the event Customer is not current in its payment obligations when an outage occurs, remedies will accrue, but Service Credits will not be issued until Customer becomes current in its payment obligations.
- To receive Service Credits, Customer must submit a written request or notify IBM's Customer Service representative, within thirty (30) days after the date which the Virtualized Disaster Recovery Services were Unavailable, or Customer's right to receive Service Credits with respect to such unavailability will be waived.
- No more than once each calendar quarter, upon ten (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.

7. Effective Date.

This SLA will become effective upon the Activation Date.