

46 LABS ECO DATA SERVICE LEVEL AGREEMENT

Last Edited 1-20-2020

This Service Level Agreement is effective as of the first day of the second month after initial installation of 46 Labs Eco Data Service. This SLA sets forth the provisions and commitments relating to the Data Service quality between 46 Labs and Customer. The provisions of this SLA state Customer's sole and exclusive remedies for Data Service interruptions or Data Service deficiencies. This SLA applies only to the Data Service and does not modify or affect any other SLAs provided by 46 Labs (if any) for telecommunications or information services purchased by Customer pursuant to other service exhibits or agreements. This SLA is hereby added as a schedule to the Master Services Agreement between Customer and 46 Labs.

1 Definitions:

- 1.1 "Affected Service" means a Data Port that fails to meet the applicable Network Availability goal.
- 1.2 "Contract Year" shall mean the twelve (12) month period from the Start of Service Date based on the applicable SO for the Data Service.
- 1.3 "Data Service" shall mean data communications encapsulated into an internet protocol format for the purposes of transmission.
- 1.4 "Data Gateway" shall mean and refer to.....
- 1.5 "Data Network" shall mean all included equipment including the gateways, routers, switches and fiber as well as any other facilities that are owned by 46 Labs or other providers specifically designated by 46 Labs for the Data Service.
- 1.6 "Data Port" shall mean and refer to the Customer's access port on the Data Gateway.
- 1.7 "Emergency Maintenance" shall mean an unplanned maintenance scheduled for a critical service issue.
- 1.8 "Maintenance Window" shall mean scheduled downtimes, whether for Normal Maintenance or Emergency Maintenance, or to provide upgrades of hardware, software or to increase service capacity. Maintenance Windows may temporarily degrade the quality of the Data Service, including possible outages. Such effects related to Normal Maintenance will not give rise to service credits under this SLA. Normal Maintenance will be undertaken according to the maintenance schedule published at: <https://46labs.com/service-terms/> .
- 1.9 "MPOE" shall mean the minimum point of entry that is the closest practical point to where the cables of a telecommunications service carrier cross a property line or where its wiring enters a multi-unit building.
- 1.10 "Network Availability" is the measure of the availability of the Data Service in any given month. Standard Network availability is ninety-nine and ninety-nine hundredths percent (99.99%) of the time available in a month of service.
- 1.11 "Network Downtime" shall be the time the service is unavailable because of a Network Outage and as further described in Section 3.
- 1.12 "Network Outage" shall refer to the inability of a particular Data Port to transmit and receive data for more than sixty (60) consecutive minutes.
- 1.13 "Support Trouble Ticketing System" shall mean and refer to the software system managed by 46 Labs that is responsible handling trouble tickets submitted by the Customer.
- 1.14 "Normal Maintenance" shall mean the regularly planned maintenance schedule for the Data service available at www.46labs.com/service-terms/.

- 1.15 "Data Service Availability Failure" shall mean a reported Data Service availability of less than ninety-eight percent (98%) of the time for any two consecutive months during the term of the Data Service.
- 1.16 "Data Service Downtime" shall be as described in Section 3.
- 1.17 "Service Level Agreement" or "SLA" as used in this specific document shall mean the Service Level Agreement for the Data Service and shall not refer nor apply to any other 46 Labs service including but not limited to MPLS, internet, wireless, data, security, or any other services that are supplied in conjunction with or exclusive of the Data Service
- 2 **Service Commitment.** 46 Labs will use reasonable efforts under the circumstances to maintain its overall Data Service quality. 46 Labs is committed to providing reliable, high-quality Data Service. The quality of service provided hereunder shall be consistent with other common carrier industry standards, government regulations and sound business practices.
- 3 **Network Downtime Measurement.** Network Downtime is measured from the time a trouble ticket is opened by the Customer in the Support Trouble Ticketing System to the time the affected service is again able to transmit and receive data. If the Network Availability guideline is not met in a calendar month, Customer will receive a credit equal to one thirtieth (1/30th) of the affected Data Service MRC for each one (1) full hour of outage in excess of the Network Availability guideline, at a maximum of one (1) such credit per day. Two or more Network Outages or more during any one 24-hour period shall be considered as one outage. In order to qualify for the credit, Customer is responsible for reporting any suspected network availability problems to 46 Labs within twenty-four hours from the time Customer became aware of the problem. Network downtime must be reported to 46 Labs by opening a trouble ticket in the 46 Labs Support Ticketing System.
- 4 **Credits for Network Failure.** A credit will be given for a service failure subject to the limitations set forth in this section.
 - 4.1 For calculating credit, every month is considered to have thirty (30) days. No credits will be available for any usage-base service or the usage-based portion of Data Service. Any credit given shall not be a refund and 46 Labs will apply any service credits against future service charges. Credits do not survive the end of the contract. Service credits may not be transferred or applied to any other account.
 - 4.2 **Maximum Credit.** A credit will be applied only to the month in which the event giving rise to the credit occurred. The maximum credits available in any one (1) calendar month will not exceed seven (7) days' charges pro-rated from the Data Service MRCs of the Affected Service. In no event will the total credit, in the aggregate for all credits issued under this SLA in one (1) month, exceed the equivalent of 50% of the relevant Data Service MRCs for the Affected Service. Cumulative Credits in any one (1) month must exceed \$25.00 to be processed. If Customer fails to notify 46 Labs of the network downtime in the manner set forth above, Customer will have waived its right to any SLA credits for that month. Total credits under this SLA are limited to the Data Service MRCs for the affected Service for the monthly billing period in which the Service does not meet the Network Availability guideline. The combined cumulative total of service credits issued during a Contract Year under these SLAs will not exceed 20% of an Eligible Customer's total Data Service MRCs invoiced during the Contract Year.
 - 4.3 **Credit Exceptions.** The credits will apply to the Data Service MRCs of the Affected Service after application of all discounts and do not apply to MRCs of other services, nor to circuit loop or port MRC's of the Affected Service. The maximum credits issued for failure to meet any one SLA or combination of SLA's within a 24-hour period will not exceed one thirtieth (1/30th) of the affected service's MRC.
 - 4.3.1 Credits will not be issued where the SLA is not met as a result of:

- 4.3.1.1 Issues caused by the acts or omissions of Customer, its employees, contractors or agents or its end users;
- 4.3.1.2 the failure or malfunction of Customer Premise Equipment, applications, wiring beyond the MPOE or systems, whether owned, installed or controlled by 46 Labs or Customer, including the failure or malfunction of Customer Premise Equipment or systems as a result of a power surge or loss of power originating from Customer provided electric power;
- 4.3.1.3 interruptions due to the failure or malfunction of non-46 Labs equipment, including service connected to Customer provided electric power;
- 4.3.1.4 interruptions due to electric power failure where, by the provisions of this Agreement, the Customer is responsible for providing electric power;
- 4.3.1.5 force majeure events, as described in section 10 of the MSA;
- 4.3.1.6 Normal Maintenance, Emergency Maintenance, or Service alteration or implementation;
- 4.3.1.7 the unavailability of required Customer personnel, including as a result of failure to provide 46 Labs with accurate, current contact information;
- 4.3.1.8 interruptions of service during any period in which 46 Labs is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- 4.3.1.9 customer's failure to release the Service for testing or repair and continuing to use the Service on an impaired basis;
- 4.3.1.10 Improper or inaccurate network specifications provided by Customer;
- 4.3.1.11 the failure or malfunction of 46 Labs supplied equipment, which this SLA specifically excludes;
- 4.3.1.12 interruptions arising from the acts or omissions of, or non-compliance with the provisions of the Agreement or any schedule or attachment thereto by Customer or any authorized user, or any interruptions due to any party other than 46 Labs or for events happening on any other party's network, including but not limited to internet service providers or other common carriers connected to, or providing service connected to, the service of 46 Labs or to 46 Labs' facilities;

4.4 Credit Deductions, Incorrect Service Call.

- 4.4.1 Any Credits issued by 46 Labs as a result of goals not being met on this SLA will be reduced/adjusted as a result of:
 - 4.4.1.1 time attributed to customer's delay in responding to 46 Labs' requests for assistance to address or investigate the issue on the Data Service;
 - 4.4.1.2 time attributed for implementation delays caused by customers delay in providing required technical/operational specifications or info;
- 4.5 if 46 Labs responds to a service call initiated by the Customer, and 46 Labs reasonably determines that the cause of the problem is (i) not due to 46 Labs' Data Network; or (ii) is the Customer's responsibility, Customer must compensate 46 Labs for the service call at 46 Labs' then prevailing rates.

- 5 **Credit Requests.** In order to obtain credits under the above SLAs, Customer must request the credit within ten (10) calendar days from the date when the relevant SLA was not met.

Credit must be made in writing to 46 Labs:

By Mail to:

46 Labs Communications LLC
Attn: Support
1503 E. 19th St.
Edmond, OK 73013

By Fax to:

46 Labs Communications LLC
Attn: Support
1-405-340-1001

By E-mail to:

46 Labs Communications
support@46labs.com