



SPECIFIC TERMS FOR GLOBAL CROSSING
APPLICATIONS PERFORMANCE MANAGEMENT SERVICES

Global Crossing Applications Performance Management Services. These are the service terms and service level agreement for Global Crossing Applications Performance Management Services (the “Service”), which apply to the provision of the Service by Global Crossing in addition to the terms of any Master Services Agreement, Retail Customer Agreement or other Global Crossing master agreement (in each case a “Master Agreement”) executed by the Customer and Global Crossing. Initial capitalized terms not defined in the body of these terms and conditions have the meanings given to them in the Master Agreement. These terms and conditions shall apply to the provision of the Service (including the supply of ASEs and/or Software (as those terms are defined below) in lieu of any ‘shrinkwrap’ terms and conditions (including warranties) which may be delivered to Customer with, or included in the packing for, any such GC Equipment and/or Software.

1. Description of Service

1.1 The Service provides near real-time information for live monitoring and historical data for analysis and reporting on all network traffic end-to-end, including advanced statistics on latency, jitter and packet loss, as well as general utilization, to facilitate capturing application-specific performance data used to measure applications performance and compliance with service level agreements in support of VoIP and other services with critical Class of Service (CoS) requirements. The Service provides the information necessary for network managers to identify and resolve the causes of performance issues that are network-based versus those that are application-specific. With historical data, network managers are enabled to optimize current network configuration and utilization, as well as plan for changes in network design or the mix of applications supported. The Service is powered by Global Crossing’s partner; Fluke Networks (formerly Visual Networks). Inline Analysis Service Elements (“ASEs”) installed at Customer locations collect performance statistics which are transmitted on a daily basis to a Global Crossing database and made available to Customer via Global Crossing’s uCommand® web portal.

1.2 The following Service features are separately available as part of the Service:

- Network Integrity
- Applications Integrity
- VoIP Integrity

The Network Integrity Service feature is provided to Customer as part of the installation of Global Crossing Converged IP Services. If Customer wishes to order the Applications Integrity and/or VoIP Integrity Services features, Customer’s requirements for those Service features will be set out on the Converged IP Services Order Form, including Customer’s shipping and billing location; the specific Service elements to be delivered; the term and the Monthly Recurring Charge (MRC) and any Non-Recurring Charges for the Service.

1.3 Unless otherwise expressly agreed with Customer in writing, the Service is available only at Customer locations where Customer has ordered and installed Global Crossing IPVPN Service. Customer acknowledges that Global Crossing may use subcontractors for the provision and installation of some or all of the Service.

1.4 The provision of Application Integrity and VoIP Integrity Service features is subject to a minimum initial Service Term requirement of twelve months. If (a) Customer terminate its order for these Service features before installation, or (b) these Services features are terminated prior to the one year anniversary of their installation either (i) by Global Crossing for Customer’s breach of (ii) by Customer other than pursuant to a right to do so under the Master Agreement because of a breach by Global Crossing, Customer agrees to pay Global Crossing 100% of the remaining MRCs for the terminated Services features through the end of that one year minimum term. These charges shall apply to the early termination of Application Integrity and VoIP Integrity Service features in lieu of any general early termination charges provided for in the Master Agreement.

2. Provision of Equipment

2.1 Global Crossing Provided Equipment: For each applicable Customer location, Global Crossing provides, on a rental basis, an ASE for use in connection with the Service. The Monthly Recurring Charge (“MRC”) payable by Customer for the Service includes a rental charge for ASEs. ASEs are matched to the speed of Customer’s network / port, as identified at the time of ordering the service. If Global Crossing is requested to upgrade ASEs during the Initial Term of the Service, Global Crossing shall provide such upgraded ASEs and any incremental

rental charges shall, unless otherwise agreed between the parties on a case by case basis, be amortized over the remaining period of the Initial Term of the Service and shall be added to the MRC payable by the Customer for the Service.

2.2 Implementation and Installation. Global Crossing will work with the Customer to develop a comprehensive work plan to deliver and install ASEs to be provided as part of the Service. Customer shall execute Order Form(s) for the Service which will designate the following elements: (i) number and bandwidth of ASEs to be provided, (ii) MRCs and any non-recurring installation fees payable; (iii) a requested delivery date (the “Requested Delivery Date”); and (iv) Customer’s contact name, telephone number, fax number, and shipping and billing addresses for the locations at which ASE’s are to be installed. On receipt of an Order, Global Crossing shall establish a shipment schedule for ASEs to be provided. If the proposed shipment schedule is different than that requested by Customer, Global Crossing shall promptly notify Customer of the final shipment schedule which shipment schedule shall be deemed accepted by the parties, unless, within two (2) days of receipt of such final shipment schedule, Customer gives Global Crossing written notice that the revised shipment schedule is unacceptable and Customer withdraws its Order in writing. Packaging and means of shipment of ASEs shall be determined by Global Crossing. Global Crossing shall bear all shipping costs. Global Crossing is responsible for the following activities for implementation and installation:

- Providing up to date project milestones install dates and project timeline.
- Shipping and installation of ASEs,
- Removal of ASEs out of boxes, replacement of packing material back into empty boxes and stacking of boxes,
- Comparing ASEs on site with shipping / delivery notices and making any discrepancies known to the Customer contact person,
- Connecting ASEs to WAN access,
- Insuring installed ASEs are accessible in-band and out-of-band (if applicable).

2.3 Customer is responsible for the following activities for network implementation and installation:

- Providing contact information for each location where service is being turned up,
- Providing access at site for installation/implementation at scheduled times. Ensuring that appropriate contact personnel are on-site and available for installation,
- Ensuring use of all necessary power distribution boxes, conduits, grounding, surge and lightning protection and associated hardware. Power outlets must be within four feet/ 1 meter of the equipment to be installed,
- Ensuring all required inside wiring is in place and making any necessary building alterations to meet wiring and any other site requirements,
- Ensuring that ASE placement is within six feet/two meters of the telecommunications access demarcation point,
- Ensuring that each Telco Access Demarcation is clearly marked in a way that allows the installer to connect the correct circuit to ASEs,
- Ensuring environmental requirements meet equipment manufacturer’s requirements,
- Storing ASEs in a responsible manner pending arrival of Global Crossing installer, retaining original packing lists and providing a copy of the packing list to the Global Crossing designated installer.

2.4 Installations at each Customer Site will be scheduled by mutual agreement between Global Crossing and Customer. Installations are based upon two-hour blocks of time; the time of installation begins when the technician arrives on site. Installations requiring more than a single two-hour block of time due to Customer requests or Customer delays will be billed for additional two-hour blocks of time as outlined under “Ad-Hoc Engineering” charges set out in the Order Form for the Service. If installation is unsuccessful due to failure by the Customer to comply with its obligations under these terms and conditions, or for any other reason within the Customer’s control, then the Customer will be charged for a Faulty Truck Roll, as set out in the Order Form for the Service. This includes, but is not limited to (i) Site Not Ready, where the location at which GC Equipment is to be installed does not have the proper power, LAN equipment, or equipment racks, (ii) No Access, where the technician is not able to gain access to the installation area or (iii) cancellation by Customer of the scheduled installation with less than three business days’ notice to Global Crossing. Global Crossing installs GC Equipment during normal business hours, that is, between 08:30 and 17:30 local time Monday to Fridays, excluding local bank and other public holidays. Installations carried out, at Customer’s request, during periods outside those times, may incur additional charges as indicated on the Order Form for the Service.

2.5 In the event of the failure of an ASE, Global Crossing will remotely troubleshoot the issue to establish if an ASE needs to be repaired or replaced. Global Crossing or its agent will contact the Customer’s designated contact person to assist with troubleshooting, and, if necessary, will dispatch an engineer to repair or replace the faulty ASE. Faulty ASEs will be repaired or replaced within three (3) Business Days of determining that an ASE

requires repair or replacement. Customer will be charged a faulty truck roll charge (as set out in the Order Form for the Service) if an engineer is dispatched to Customer premises in response to a fault, and that field engineer determines that the fault is or was not caused by any fault or failing in the ASE or in the related Global Crossing applied service.

- 2.6 Title to ASEs will remain with Global Crossing or its suppliers, and Customer may not (i) attempt to sell, charge or encumber ASEs or (ii) add to, modify, or interfere with ASEs, or allow any third party (other than a third party authorized by Global Crossing) to do so. Customer will be liable for the costs of repair or replacement of ASEs if damaged or lost due to theft, negligence, intentional acts, unauthorized acts or other causes within Customer's reasonable control or that of its agents or employees. On termination of the Service for any reason, Customer will make ASEs available for removal by Global Crossing or its agent, or return them in the same condition as originally installed (ordinary wear and tear excepted). If Customer does not make ASEs available to Global Crossing or its agent or otherwise return them to Global Crossing within sixty days of termination of the Service, Global Crossing shall have the right to charge Customer the fair market value of such ASEs.

3. Provision of Software

- 3.1 As part of the Service, Global Crossing will provide Customer with access to its uCommand web based portal via which Customer may review all reports and data relating to the Service. In order to use the system, Customer will be required to download and install a Java software application from the Applications Performance Management section of uCommand. For the purposes of these terms and conditions, "Software" includes (a) the Java software application referred to in this Section, (b) any other software supplied to Customer on disks, diskettes, on-line, and/or as part of the ASEs provided to Customer, (c) any modifications, enhancements and/or upgrades to and/or replacements of such software and (d) any documentation provided in connection with such software.
- 3.2 Subject to (i) these terms and conditions and (ii) payment by Customer of the MRC for the Service, Global Crossing grants Customer a royalty-free, non-exclusive, non-transferable, limited license right, exercisable solely during the term for which Global Crossing provides the Service to Customer, to use the Software in accordance with these terms and conditions in connection with the Service. Customer acknowledges that the Software contains the valuable trade secrets of Global Crossing and its suppliers, and Customer agrees not to cause or permit the reverse engineering, translation, disassembly, or decompilation of, or otherwise to attempt to derive the source code of, such Software, whether in whole or in part, except to the extent that laws in Customer's jurisdiction give Customer the right to do so to obtain information necessary to enable the Software to interoperate with other software; provided that Customer must first notify Global Crossing of its desire to reverse engineer the Software, and Global Crossing may, in its discretion, either provide such interoperation information to Customer or impose reasonable terms and conditions on such use of the Software to ensure that Global Crossing's and its suppliers' proprietary rights are protected. Customer will not use, reproduce, modify, prepare derivative works of, distribute, sublicense, loan, sell, or otherwise transfer the Software in any manner or for any purpose except as expressly permitted in these terms and conditions.
- 3.3 As between Global Crossing and the Customer, Global Crossing and/or its suppliers will retain all title, copyright and other proprietary rights in and to the Service, ASEs, Software and any other technology, services, or materials that Global Crossing may provide to Customer hereunder. All rights in and to the foregoing not expressly granted to Customer in these terms and conditions are reserved to Global Crossing and its suppliers. In particular, but without limiting the generality of the foregoing, no right to or license in the source code for the Software is granted hereunder. Customer will not obfuscate, alter, or remove any copyright, trademark, or other proprietary notice or legend on or in the Software.
- 3.4 OTHER THAN GLOBAL CROSSING'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS SET FORTH IN THE MASTER AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4. General Provisions

- 4.1 Customer understands and acknowledges that data collected and transmitted by ASEs to the Global Crossing server ("Data") is not accessed or reviewed by Global Crossing, and is collected solely for analysis by Customer via Global Crossing's uCommand web portal. Global Crossing does not, and shall have no obligation to, monitor, review or analyze Data for any purpose, including but not limited to the detection of unauthorized or fraudulent use of, or access to Customer's networks, equipment, hardware, software and software applications. Customer is solely responsible for (i) the security of its own networks, equipment, hardware, software and software

applications and (ii) its use of Data, and Global Crossing assumes no responsibility or liability for failures or breaches of Customer's own protective measures, whether implied or actual.

- 4.2 Global Crossing reserves the right to add, modify or discontinue the provision of ASEs and/or Software at any time and from time to time. Global Crossing shall provide customer with at least ninety (90) days prior written notice of its intent to discontinue manufacture of any ASE and/or license any Software, and shall, for a period of twelve (12) months thereafter continue to support such ASEs and/or Software in accordance with these terms.
- 4.3 SUBJECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS SET FORTH IN THE MASTER AGREEMENT, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY OR ITS AFFILIATES OR THIRD PARTY PROVIDERS, UNDER ANY THEORIES OF ACTION WHATSOEVER OR IN ANY FORUMS, EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO GLOBAL CROSSING DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE LAST EVENT GIVING RISE TO THE CLAIM. THIS LIMITATION SHALL APPLY TO THE SERVICES IN LIEU OF ANY LIMITATIONS OF LIABILITY SET FORTH IN THE MASTER AGREEMENT.

5. Terms applying to Government Customers

- 4.1 For US Government Customers: Customer acknowledges that: (a) the GC Equipment and Software has been developed at private expense and are commercially available at published prices and (b) the Software (including related documentation) constitutes "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 CFR 12.212 (or any successor regulations), developed at private expense and subject to these terms and conditions, provided that to the extent that these terms and conditions are determined to be inconsistent with US Federal law or otherwise fail to satisfy a US Government Customer's needs, the Software and documentation shall be provided to such US Government Customer as "RESTRICTED COMPUTER SOFTWARE" as defined in 48 CFR 52.227-19 (or any successor regulations) and the rights granted in such Software and documentation shall in no event exceed those specified in 48 CFR 52.227-19(c) (or any successor regulations).