



SERVICE DESCRIPTION AND SLA FOR MANAGED WAN OPTIMIZATION

Managed WAN Optimization. This is the service description and service level agreement (the "SLA") for Managed WAN Optimization Service (the "Service") which applies to the provision of the Service 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.

1 Service Overview

- 1.1 **Service Description.** The Service is an optional enhanced feature available (only) as part of Global Crossing's Managed Network Services, as described in the SLA for Global Crossing Converged IP Services (the "MNS SLA"). Initial capitalized terms not defined in these terms and conditions have the meanings given to them in the MNS SLA or in the Master Agreement. The Service facilitates the compression and acceleration of mission-critical business applications over wide area networks ("WANs") to enhance application performance for branch office users. A centralized management server consolidates statistics from appliances at each Customer site to provide granular visibility on applications and WAN performance for specific sites.
- 1.2 As part of the Service, Global Crossing will configure, install, manage and monitor WAN Application Acceleration Appliances ("WXCs") at each Customer location at which the Service is to be provided. The compression, caching, and acceleration functions of the Service, as well as the collection of performance statistics is carried out by the WXC's, which transmit performance data on a daily basis to a Global Crossing database. Real time performance reports detailing compression and acceleration statistics, top traffic, trends in WAN throughput, application traffic, latency and packet loss are made available to Customer on Global Crossing's uCommand® web portal ("uCommand"); monthly performance reports will also be made available on uCommand containing summary information on data compression and effective increases in WAN capacity.
- 1.3 Customer shall execute Order Form(s) for the Service which will designate the following elements: (i) Customer's designated program manager for the Service (with contact details), (ii) Customer billing address (iii) bandwidth requirements, (iv) Customer sites at which WXC's are to be installed, (v) Service features / applications to be provided, (vi) on-site maintenance coverage option (as described in Section 3.1 below), (vii) pricing, (viii) requested delivery date, and (viii) length of Service Term for the Service.
- 1.4 Unless otherwise expressly agreed with Customer in writing, the Service is available only at Customer locations at which Global Crossing Converged IPVPN Converged IP Service and Managed Network Services are provided (as described in the MNS SLA).
- 1.5 Customer acknowledges that Global Crossing may use subcontractors for the provision of some elements of the Service.
- 1.6 The Service must be ordered for a minimum Service Term of one year. If the provision of the Service is terminated by Customer before installation or within one year of the Service Commencement Date either (i) by Global Crossing for Customer's breach or (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 monthly recurring charges for the Service for the months then remaining in the one year minimum Service term. These charges shall apply to the early termination of the Service in lieu of any early termination charges provided for in the Master Agreement.

2. Service Activation and Delivery

- 2.1 Activation and delivery of the Service consists of: (i) Information Gathering; (ii) Deployment of Equipment at Customer Premises; (iii) Service Provisioning and Installation, (iv) Configuration Management and (v) Network and Fault Management, as described below.
- 2.2 **Information Gathering.** The implementation process begins with an exchange of information. When Global Crossing receives Customer's Order Form, Global Crossing shall provide Customer with a Service Activation Profile form to be completed. When Customer returns the completed form, Global Crossing shall schedule a conference call to review the

completed form. As part of its Professional Services offering, Global Crossing can assist Customer in network analysis to help complete this form. The provision of Global Crossing Professional Services incurs additional charges (which can be quoted to Customer on request).

- 2.3 **Equipment Deployment.** For each applicable Customer location, a WXC is required. The WXC may be provided either by Customer or Global Crossing.
- 2.3.1 **Customer Procured Equipment:** If Customer chooses to provide its own WXCs, the Customer shall provide a detailed list of WXCs ("**Customer Equipment**") to be covered by the Service. Global Crossing will then notify Customer of (i) all Customer Equipment (including hardware and software) which is (in Global Crossing's sole discretion) ineligible for the Service ("**Non-Eligible Equipment**") and/or (ii) any remedial action which may be required by Customer to ensure that any such equipment (and/or Customer's facilities) qualify for the Service. Global Crossing shall have no responsibility for any Non-Eligible Equipment. To the extent that Global Crossing agrees to provide Service in relation to Non-Eligible Equipment pending replacement or upgrade of that equipment by Customer, Global Crossing shall provide such services on an 'as is' basis without warranty of any kind and the Service Level Agreements set out in these terms and conditions will not apply to the provision of such services by Global Crossing. Customer shall retain ownership of all Customer Equipment provided however that Global Crossing shall have sole control of any Customer equipment which is to be managed by Global Crossing as part of Service. It is a condition of the provision of the Service (on Customer Equipment) that the Customer (i) purchases and keeps maintenance coverage on all such Customer Equipment from the underlying vendor(s) and/or manufacturers of such Customer Equipment (ii) does not do or omit to do anything which would breach the terms of such maintenance contracts and/or cause such Customer Equipment to fall outside the scope of the maintenance services provided under such contract(s) and (iii) does not do or omit to do anything which would or could void any manufacturers' warranties on any Customer Equipment.
- 2.3.2 **Global Crossing Provided Equipment:** Where requested by Customer and agreed by Global Crossing, Global Crossing may provide WXCs to be used in connection with Service ("**GC Equipment**"). In these circumstances, the Monthly Recurring Charge ("**MRC**") payable by Customer for Service shall include the provision of GC Equipment. If Customer requests Global Crossing to upgrade or change GC Equipment during the initial Service Term for the Service, and Global Crossing agrees, then Global Crossing shall provide such hardware upgrades, and the MRC shall be increased. Title to GC Equipment remains with Global Crossing or its suppliers, and Customer may not (i) attempt to sell, charge or encumber GC Equipment or (ii) add to, modify, or interfere with GC Equipment, or allow any third party (other than a third party authorized by Global Crossing) to do so. Customer agrees that Global Crossing and/or its designated agent shall, upon reasonable notice, have the right to inspect all GC Equipment provided to Customer to ensure Customer's compliance with the forgoing sentence. Customer further acknowledges that GC Equipment provided to Customer in the US is subject to a security interest in favor of Wilmington Trust FSB as collateral agent under that certain Pledge and Security Agreement dated as of September 22, 2009, and that GC Equipment provided in other jurisdictions may be subject to similar security interest in favor of Global Crossing's lenders or their designated agents. On termination of the Service for any reason, Customer will make GC Equipment available for removal by Global Crossing or its agent, or return it in the same condition as originally installed (ordinary wear and tear excepted). If Customer does not make such GC equipment available to Global Crossing or its agent or otherwise return it 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 GC Equipment (based on device / make / model etc.)
- 2.4 **Service Provisioning and Installation.** For each applicable Customer location Global Crossing will work with the Customer to develop a comprehensive work plan to deliver and install the WXC to be installed and monitored as part of the Service.
- 2.4.1 Global Crossing is responsible for the following activities for service provisioning and installation (i) providing up to date project milestones install dates and project timeline, (ii) shipping of GC Equipment, (iii) installation of WXCs (whether Customer provided or Global Crossing provided), (iv) configuring applications in accordance with Customer provided profile information, (v) configuring WXCs with central management server to support reporting on uCommand.
- 2.4.2 Customer is responsible for the following activities for service provisioning and installation (i) providing access at site for installation / implementation at scheduled times and ensuring that appropriate contact personnel are on-site and available for installation, (ii) ensuring availability of all necessary power distribution boxes, conduits, grounding, surge and lightning protection and associated hardware and that power outlets are within four feet/ one meter of the location at which WXCs are to be installed, (iii) ensuring all required inside wiring is in place and making any necessary building alterations to meet wiring and any other site requirements, (iv) providing a minimum of one rack unit of space is available for the WXCs, and (v) connecting WXCs to LAN access.
- 2.4.3 **Configuration Management.** Configuration management is the remote configuration of all WXCs. Global Crossing is responsible for, and has sole access to all configuration management and software and hardware changes. Global

Crossing is responsible for (i) configuring WXC's (ii) maintaining database of logical configuration, physical configurations and software specification, (iii) performing emergency re-loads, (iv) providing configuration in-band to re-configure WXC's for lifecycle changes, and (v) updating WXC software as required to support the ongoing provision of the Service.

- 2.5 **Network and Fault Management.** Global Crossing monitors network elements that have a constant connection to Global Crossing's Network. WXC's are monitored seven days a week, 24 hours a day. Global Crossing will handle all proactive and reactive Customer communications. Global Crossing is responsible for (i) isolation and resolution of all logical faults to determine if the problem is with software, hardware or the network, and (ii) emergency fixes and software updates.

3. Equipment Maintenance

- 3.1 WXC's are configured to default to pass traffic through without compression when a fault occurs. Global Crossing provides on-site maintenance and repair for WXC's once Global Crossing has determined through fault resolution that an error has occurred. The on-site coverage options, as selected by Customer, will be set out in the Service Order Form, and (subject to availability) are as follows.
- 3.1.1 7x24, Four Hour Response: Repair coverage is 24 hours per day, seven days per week. A field engineer will arrive at the Customer site within four hours of problem dispatch (dispatch is within thirty (30) minutes of problem identification).
- 3.1.2 5x9, Next Business Day Response: Repair coverage is 8:00 a.m. to 5:00 p.m. local time. If dispatch is required, a field engineer shall arrive on site no later than 5:00 p.m. the next business day. Trouble calls must be received by 5:00 p.m. local time to ensure next business day response. Prior to dispatching maintenance assistance or in case of customer request for maintenance assistance, Global Crossing may request that the customer verify that the local environment (including power, LAN connectivity, and inside wiring / cabling) have been diagnosed and ruled out as the source of the reported fault.
- 3.2 All WXC's will be maintained and serviced only by or at the specific direction of Global Crossing and should not be moved / serviced or otherwise interfered with by Customer without Global Crossing's specific approval in each case. The standard maintenance cover provided under this Section will not apply to WXC's which are damaged or which otherwise require maintenance or replacement as a result of Customer (or anybody under Customer's control) attempting to maintain / service / move or otherwise interfere with such WXC's. In such event, Customer will be liable for all costs associated with repair and/or replacement of that WXC.

4. Provision of Software

- 4.1 In order to use uCommand, Customer will be required to download and install a Java software application from the uCommand portal. 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 WXC's provided to Customer by Global Crossing, (c) any modifications, enhancements and/or upgrades to and/or replacements of such software and (d) any documentation provided in connection with such software.
- 4.2 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 the jurisdiction in which WXC's are installed 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.
- 4.3 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, GC Equipment, 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.

- 4.4 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.

5. General Provisions

- 5.1 Customer understands and acknowledges that data collected and transmitted by WXC's to the Global Crossing server ("Data") is not accessed or reviewed by Global Crossing, and is collected solely for analysis by Customer via uCommand. 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.
- 5.2 Global Crossing reserves the right to add, modify or discontinue the provision of WXC's 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 the provision of any particular type of WXC and/or license any Software, and shall, for a period of twelve (12) months thereafter continue to support such WXC's and/or Software in accordance with these terms.
- 5.3 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 FOR THE SERVICE DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE LAST EVENT GIVING RISE TO THE CLAIM. THIS LIMITATION SHALL APPLY TO THE SERVICE IN LIEU OF ANY LIMITATIONS OF LIABILITY SET FORTH IN THE MASTER AGREEMENT.

6. Terms applying to US Government Customers

- 6.1 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).