

Phoenix Internet Data Center SLA

1. **Overview; Application.** The purpose of this Service Level Agreement ("SLA") is to describe the "Data Center Services" provided by Phoenix Internet. This SLA may be viewed online at <http://www.phoenixinternet.net>. This SLA is effective for each customer who orders Data Center Services from Phoenix Internet, but Phoenix Internet retains the right to make such changes, amendments and modifications to this SLA and its terms from time to time in its sole discretion, with such changes, amendments and modifications being effective immediately upon being posted online at <http://www.phoenixinternet.net>. Certain terms used in this Service Level Agreement are defined in Section 11 below.

2. **Data Center Services.** The Data Center Services consist of data access to the Data Center on the Phoenix Internet Network, data storage in the Data Center, and management services in maintaining and operating the Data Center.

3. **Data Center.** The Data Center will have power, backup emergency power, and cooling for all components physically located within it, but no guarantee is made or implied with respect to uninterrupted operations. Physical access to the Data Center will be controlled on behalf of Phoenix Internet.

4. **Changes Affecting the Data Center Services.** Phoenix Internet reserves the right to have Service Changes made from time to time, and Phoenix Internet will endeavor to notify customers at least 2 days before any Service Change. If, however, a shorter notification period is necessary in Phoenix Internet's reasonable judgment, then any such Service Changes may nevertheless be made with such prior notification to customers as is practical and reasonable under the circumstances. Phoenix Internet will attempt to have minimized any service unavailability that may be caused by or required by any Service Change, but if an outage is required, the outage will be considered a Planned Downtime.

5. **Customer's Own Obligations.** Each customer is responsible for not allowing any circumvention or other interference with all reasonable security precautions relating to the Data Center Services. Each customer must provide Phoenix Internet with prior notification of any change in configuration that could interfere with the Data Center Services, and if necessary (and upon Phoenix Internet's request), will provide a qualified, knowledgeable representative to be physically present at the Data Center.

6. Data Center Services Availability Guarantees.

(a) **Power Availability.** Phoenix Internet guarantees to supply contracted AC power ("Power") to Customer's service at least 99.999% of the time in each calendar month. Upon receiving a Service Credit Request, Phoenix Internet will calculate the duration of any Power Unavailability to Customer. See **Section 9** hereof for the Service Credit Process.

(b) **Phoenix Internet Data Center Network Availability.** Phoenix Internet guarantees to supply Customers with Phoenix Internet Data Center Network connectivity ("Data Center Connectivity") at least 99.999% of the time in each calendar month. "Data Center Connectivity" shall mean the connection provided by Phoenix Internet from the Customer's demarcation point, but not including Customer's equipment, through the Phoenix Internet Data Center Network up to Phoenix Internet's Backbone Network demarcation point. Upon receiving a Service Credit Request, Phoenix Internet will calculate the duration of the Data Center Connectivity Unavailability to Customer. See **Section 9** hereof for the Service Credit Process.

(c) **Backbone Network Availability.** Phoenix Internet guarantees at least 99.999% Phoenix Internet Backbone Network uptime in each calendar month. "Backbone Network Unavailability" shall mean the failure of the Phoenix Internet Backbone Network, for reasons not involving the Phoenix Internet Data Center Network Availability Guarantee, resulting in Customer's equipment being unable to connect to the Phoenix Internet Backbone Network. Upon receiving a Service Credit Request, Phoenix Internet will calculate the duration of the Phoenix Internet Backbone Network Unavailability to Customer. See **Section 9** hereof for the Service Credit Process.

7. **Reporting of Data Center Services Unavailability.** When a customer experiences a Data Center Services Unavailability, and the customer believes that the fault is not in or due to its own network, internet service provider or other system host, then the customer must open a Trouble Ticket by reporting the Data Center Services Unavailability to Phoenix Internet by email at support@phoenixinternet.net or by telephone to 602-234-0917 within 24 hours of its occurrence. If a Trouble Ticket is not opened as provided in this Section, then the customer will not be entitled to any Service Credit under this SLA or any other remedy from Phoenix Internet. Phoenix Internet will discuss the issue with the customer, and try to resolve it immediately, but if immediate resolution is not possible, Phoenix Internet will assign a Trouble Ticket number to the issue and begin an investigation in order to resolve the issue.

8. **Service Credits.** Any Phoenix Internet customer who experiences a Data Center Services Unavailability or whose requests relating to Data Center Services are not acknowledged or acted upon within the time limits set forth above is entitled to a Service Credit under this SLA, but no more than 1 Service Credit may be obtained by any customer for any single calendar day (regardless of the extent of Data Center Services Unavailability or non-acknowledged or non-acted upon requests), and the aggregate of all Service Credits obtained by any customer may not exceed 50% of the average monthly service charges for Data Center Services for the prior 3 months. Any Service Credit requested as provided in this SLA and granted by Phoenix Internet will thereafter be applied to the customer's prospective recurring service charges for the Data Center Services. Service Credits constitute the sole and exclusive remedy relating to Data Center Services for all Phoenix Internet customers.

9. **Requesting a Service Credit.** Any customer who wishes a Service Credit based upon the performance standards set forth in this SLA must request it by notifying the Phoenix Internet Client Support Center within 5 Business Days of the occurrence. This notice must be sent by email to Phoenix Internet at support@phoenixinternet.net, and must include sufficient information to allow the claim to be investigated, including, without limitation, as may be the case, the Trouble Ticket number and the customer request and the date and time such request was made to Phoenix Internet and the manner such request was made. If the customer does not report such failure as provided in this Section, then the customer will not be entitled to any Service Credit under this SLA or any other remedy from Phoenix Internet. Phoenix Internet will notify the customer of its decision about a credit, and its decision is final.

10. Definitions.

(a) **"Business Days"** means Monday through Friday, excluding national holidays.

(b) **"Data Center"** means the centralized repository or repositories for the storage, management, and dissemination of data and information and the supporting components of that data and information that Phoenix Internet provides its customers.

(c) **"Data Center Services Unavailability"** means any time when the Data Center Services are unavailable to the customer, but does not include Planned Downtimes and times when the Data Center Services are unavailable or otherwise affected by Extenuating Circumstances.

(d) **"Extenuating Circumstances"** means (i) the acts or omissions of the customer or any other end-user; (ii) the behavior of the customer's equipment, facilities, or applications; (iii) faults in or failures of the customer's equipment, network, email servers, computers, or software; (iv) faults or failures caused by the customer's internet server provider or any other third parties that host the customer's email delivery systems or web sites, including network outages (to other than the Phoenix Internet Network); (v) external causes, such as vandalism, theft, etc., including non-published and vicious virus attacks on software; (vi) acts of God, Force Majeure, or any other situations beyond the control of Phoenix Internet; and (vii) a customer's circumvention or other interference with the reasonable security precaution relating to the Data Center.

(e) **"Planned Downtime"** means any time when the Data Center Services are unavailable because of (i) Service Changes, (ii) Urgent Maintenance Activities, and (iii) any other scheduled maintenance or upgrade activities that may or may not be periodic, and that may be notified to customers at least 36 hours in advance. (f) **"Point of Demarcation"** means the physical point at which the Phoenix Internet Network ends and the private network of a customer begins.

(g) **"Service Change"** means any change in the Data Center Services or in the manner they are provided.

(h) **"Service Credit"** means 1/30th of the customer's average monthly service charge for Data Center Services for the preceding three months.

(i) **"Phoenix Internet Network"** means the physical communications infrastructure and supporting hardware, software and firmware owned, managed or operated by Phoenix Internet and providing the related Phoenix Internet service(s) to a customer's Point of Demarcation(s). It does not include customers' equipment, telephone circuits provided by telephone companies or other common carriers, any external Internet service provider or an Internet exchange point or any networks or network equipment not owned or controlled by or on behalf of Phoenix Internet.

(j) **"Trouble Ticket"** means the notification by a customer of a perceived Data Services Unavailability.

(k) **"Urgent Maintenance Activities"** are maintenance activities required by applications or systems that cannot, in Phoenix Internet's sole judgment, be postponed until the next available or convenient maintenance window, and may include, but are not limited to, restarting applications, rebooting servers, applying patches or fixes, reconfiguring storage allocations, reloading data, and making DNS or firewall changes to close security holes. Phoenix Internet will endeavor to provide customers as much notice of Urgent Maintenance Activities as is possible under the circumstances, but Phoenix Internet may undertake Urgent Maintenance Activities without advance notice to customers.

11. **Communications and Notifications.** For general inquires, requests under this SLA, billing inquiries, for engineering support about the Data Center Services, to report Email Processing Service Outages and to open a Trouble Ticket, customers should contact the Phoenix Internet Client Support Center 24 hours per day, seven days per week, at 602-234-0917 Option 4, or by email at support@phoenixinternet.net. All requests for Service Credits must be made by email to Phoenix Internet at support@phoenixinternet.net.