

# Visual UpTime® Select™ Software Maintenance

## Software Maintenance Terms and Conditions

### 1. Definitions

"**Error**" means an error in the Software that degrades the Software as compared to published performance specifications.

"**Error Correction**" means the use of reasonable commercial efforts to correct Errors.

"**Fix**" means the repair or replacement of object or executable code versions of Software to remedy an Error.

"**Previous Release**" means at any time the release of Software that has been replaced by the then-current release of the same Software.

"**Software**" means the software that is covered by software maintenance subject to these Software Maintenance Terms and Conditions.

"**Technical Support**" means support services as described in these Software Maintenance Terms and Conditions.

"**Telephone Support**" means technical support telephone assistance provided by Visual Networks during normal business hours concerning problems of the Software.

"**Work-around**" means a change in the procedures followed or data supplied by Visual Networks to avoid an Error without substantially impairing the end-user customer's use of Software.

### 2. Third Level Technical Support to be Provided by Visual Networks

If the channel is providing first and second level support, third level support will be provided only to that channel's technical support personnel. If Visual Networks is providing all three levels of support, then this support will be provided as appropriate and as part of the support escalation process.

- a. off-site Error Correction and Telephone Support concerning Critical and Serious problems, as defined below, regarding the installation and use of the then-current release of the Software and the two Previous Releases (on-site Support may be provided if reasonably necessary and by mutual agreement of both parties);
- b. access to a 24 x 7 help-desk;
- c. other services including training, per the prices on the Price List or as agreed by the parties;

d. telephone consultation with Visual Networks on minor problems and potential product enhancements; and

e. distribution of Software Updates that Visual Networks at its discretion makes generally available. Updates consist of copies of published corrections or revisions to the documentation and copies of corrections or revisions to the machine-readable Software that are not designated by Visual Networks as products for which it charges a separate fee on its Price List, which shall not include revisions designed to correct errors or improve current functionality. All Updates shall be governed by the terms of the applicable license agreement.

### **3. First and Second Level Technical Support**

First Level: Answering basic installation, configuration and operation inquiries regarding the application, use and operation of the Software.

Second Level: Answering and using reasonable commercial efforts to resolve problem inquiries; troubleshooting and isolating product problems vs. network, environmental or non-Visual supplied applications; assist customer with software upgrades and OS upgrades; assist customer with database activities such as upgrades, backup and restoration; providing existing workarounds; collecting all relevant information and attempting to simulate an end user problem, when practical, and sending all relevant information to Visual Networks for further analysis.

### **4. Error Priority Levels**

Visual Networks shall exercise commercially reasonable efforts to correct any Error in the Software and the two Previous Releases in accordance with the priority level reasonably assigned to such Error by Visual Networks.

Critical Errors (Priority 1). A Priority 1 situation exists when a customer's network is completely down or the Software performance is severely degraded, causing critical impact to the business operations if the Software is not restored quickly. No work-around exists.

- a. Call Back Time: 2 hours maximum
- b. Response shall be as follows:
  - i. assign engineers to correct the Error;
  - ii. notify Visual Networks management that such Errors have been reported and of steps being taken to correct such Error(s);
  - iii. provide periodic reports on the status of the corrections; and
  - iv. use best commercially reasonable efforts to provide a work-around or Fix as quickly as possible.

Serious Errors (Priority 2). A Priority 2 situation exists when a customer's Software performance is degraded. This degradation in Software performance is impacting significant aspects of the business operations. A work-around exists to bring the Software back online and in accordance with technical specifications.

- a. Call Back Time: 4 hours
- b. Response shall be as follows:
  - i. provide existing fix, and
  - ii. exercise commercially reasonable efforts to include the Fix for the Error in the next regular Software Update release.

**5. Limitations.**

- a. Visual Networks shall have no responsibility or obligation with respect to any deficiency resulting from accidents, misuse, modifications, improper installation or from maintenance not performed by Visual Networks.
- b. Visual Networks shall have no obligation to support Software that is not either, (1) the then-current release or one of the two immediately previous Releases, or (2) a Release that was shipped by Visual Networks within the last twenty-four (24) months.
- c. No refund or credit will be provided to a customer in respect of any cancellation of Software Maintenance.
- d. In order to be eligible for renewal software maintenance, the Software must have been continuously covered by software maintenance. If Visual Networks elects to offer to renew software maintenance coverage for Software on with the software maintenance has lapsed, then customer shall pay to Visual Networks all amounts in respect of the period of lapsed coverage.

**6. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THE SOFTWARE AND ALL MATERIALS RELATED TO THE SOFTWARE ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE SOFTWARE LICENSE. THESE TERMS AND CONDITIONS DO NOT CHANGE OR SUPERSEDE ANY TERM OF THE SOFTWARE LICENSE EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.**