

TIER FOUR INTERNET ACCESS SERVICE LEVEL AGREEMENT

Tier Four Internet Access, and Combined Services are backed by specific service level guarantees and credits as set forth in this Service Level Agreement (SLA).

Introduction

This service level agreement (SLA) provides certain Tier Four, Inc. (Tier Four) Customers with certain rights and remedies regarding the performance and availability of the Tier Four Access Network (Access Network), the Tier Four Backbone Network (Backbone Network), and selected Tier Four Internet Points of Presence (POP). This SLA applies only to Tier Four Customers (Customer) receiving dedicated Internet access service (Internet Access) from Tier Four pursuant to a fully executed Tier Four service agreement (Service Agreement).

Definitions

For the purpose of this SLA, the following terms have the following meanings as set forth below:

"Access Network" means Tier Four Network Infrastructure used to connect Customer to one or more selected Tier Four POPs. The Access Network includes, by way of example but not limitation, Tier Four owned and operated local-loop circuits. The Access Network does not include any local-loop circuits, transmission lines, routing and switching infrastructure, or other items used to connect customer to Tier Four POPs that are owned or operated by third parties.

"Backbone Network" means the Tier Four IP Network that connects selected Tier Four POPs to each other.

"Latency" means the average time required for round-trip packet transfers between Selected POPs during a calendar month, as measured and reported by Tier Four.

"Monthly Recurring Charge or MRC" consists solely of the base monthly fee paid by Customer to Tier Four for the affected service and excludes all other fees which might be charged to Customer, including, by way of example and not limitation fees charged for, installation or setup, Internet Protocol (IP) addresses, third party local-loop(s), support, space

Version 2.0

rental, co-location fees, managed services, etc. The MRC does not include any fees paid by customer to third parties, such as third-party local-loop fees, even if such fees are included on Customer's Tier Four bill due to Tier Four convergent billing agreements with certain third parties.

"Network Outage" means an instance in which no IP Packets can pass in or out of Selected POPs for more than 26.26 consecutive seconds (.001% of one average length month).

"Packet Loss" means the average percentage of IP packets transmitted between Selected POPs during a calendar month that are not successfully delivered, as measured and reported by Tier Four.

"Point of Presence or POP" means a Tier Four owned and operated gateway on the Tier Four Backbone Network providing Customer access to the public Internet.

"Tier Four IP Network" means the combined Tier Four Access Network, POPs, and Backbone Network.

"Tier Four Network Infrastructure" means Tier Four owned and operated network components, consisting of IP routing and switching infrastructure, circuits, transmission lines, and measurement devices. Tier Four Network Infrastructure also includes any Tier Four leased but controlled and operated transit connections.

Network Availability Guarantee

The Tier Four IP Network, as defined in the definitions section, is guaranteed to be available and capable of forwarding IP packets 99.999 percent of the time as averaged over a calendar month.

The Network Availability Guarantee does not include the local access circuit (local loop) if it is not part of the Tier Four Access Network, Customer Premises Equipment (CPE) or Customer Local Area Network (LAN), scheduled maintenance events that are approved in advance by Customer, Customer caused outages or disruptions, specific interconnections to or from and connectivity within other specific ISP networks, and force majeure events (as defined in the Service Agreement).

Examples of a customer-caused outage include but are not limited to the following: turning off infrastructure responsible for providing continuous connectivity to Customer, disconnecting or tampering with the connection to the Tier Four Access Network including disconnecting or cutting network access lines, overloading the circuit or exceeding the amount of purchased bandwidth being supplied, breaching the AUP.

If a Network Outage occurs and the Network Availability Guarantee is not met as averaged over a calendar month, the customer will receive a credit for the entire (MRC) for that month. Limits

Version 2.0

on the credit, measurement, and reporting procedures are detailed below.

Latency Guarantee

The Tier Four IP Network is guaranteed to have an average round trip packet transit time within the Tier Four Backbone Network over a calendar month of 65ms or less. The average latency is measured as the average of 15-minute samples across the Tier Four IP backbone network taken throughout the month by Tier Four.

The Latency Guarantee does not include the local access circuit (e.g. local loop) if it is not part of the Access Network , CPE or Customer LAN, scheduled maintenance events approved in advance by Customer, Customer caused outages or disruptions, specific interconnections to or from and connectivity within other ISP networks, and force majeure events (as defined in the Service Agreement).

If the Latency Guarantee is not met in a calendar month, the customer will receive a credit of 1/30th of the monthly recurring charge (MRC) for that month for each full 1ms above the 65ms average maximum guaranteed under this SLA. Limits on the credit, measurement, and reporting procedures are detailed below.

Packet Loss Guarantee

The Tier Four IP Network is guaranteed to have average packet loss within the Tier Four Backbone Network over a calendar month of 1% or less. The average packet loss is measured as the average of 15-minute samples across the Tier Four Backbone Network taken throughout the month by Tier Four.

The Packet Loss Guarantee does not include the local access circuit (e.g. local loop) if it is not part of the Access Network , CPE or Customer LAN, scheduled maintenance events, Customer caused outages or disruptions, specific interconnections to or from and connectivity within other specific ISP networks, and force majeure events (as defined in the Service Agreement).

If the Packet Loss Guarantee is not met in a calendar month, the Customer will receive a credit of 1/30th of the monthly recurring charge (MRC) for that month for each full 1 percent above the 1 percent average maximum guaranteed under this SLA. Limits on the credit, measurement, and reporting procedures are detailed below.

Measurement

Tier Four will periodically measure the availability and performance of the Tier Four IP Network using software and hardware components capable of measuring traffic and responses across the

Version 2.0
network.

Customer acknowledges that not every POP, Access Network connection, or Backbone Network link may be covered by such measurements, that such measurements may not measure the exact path traversed by Customer packets, and that such measurements constitute measurements across the Backbone Network but not other networks to which Customer may connect. Tier Four reserves the right to periodically change the measurement points and methodologies it uses without notice to Customer.

Credit and Reporting Procedures

In order to receive a credit, Customer must make a request therefore by phone to a Tier Four Customer Service Representative. Instructions for contacting Tier Four may be found in the Service Agreement. Each request in connection with a Network Outage or the Network Availability Guarantee must be received by Tier Four within five work days of the Network Outage and must be confirmed by Tier Four's measurements of the IP Network.

Each request in connection with Latency or Packet Loss in a calendar month must be received by Tier Four within five work days after the end of such month and must be confirmed by Tier Four's measurements of the IP Network.

Each valid credit will be applied to an invoice of Customer within two billing cycles after Tier Four's receipt and confirmation of Customer's request therefore. Credits are exclusive of any applicable Federal, State, or Local taxes charged to Customer, which may or may not be collected by Tier Four.

Credit Limits

Total credits under this SLA in connection with Network Outages, Latency and Packet Loss in any calendar month are limited to the MRC (as defined in definitions section) for the affected Service or Combined Service for the month in which the service does not meet the guarantees set forth above.

Exceptions

Customer shall not receive any credits under this SLA in connection with any failure or deficiency of the IP Network caused by or associated with any of the following:

1. Scheduled or emergency maintenance or upgrades approved in advance by Customer.
2. Failure of third party access circuits (local loops) unless such failure is caused solely by Tier Four.

Version 2.0

3. DNS issues outside the direct control of Tier Four.
4. Circumstances beyond Tier Four's reasonable control. Such circumstances include, by example but not limitation war, terrorist activities, acts of governmental bodies, acts of God, sabotage, attacks by hackers, fire, flood, strike or other labor disturbance, failure of software provided by third parties, inability to obtain power used by or equipment needed for the IP Network.
5. False SLA breaches reported as a result of errors made by any measurement system.
6. Customer's acts or omissions (or act or omissions of others engaged or authorized by Customer), including without limitation, any negligence, willful misconduct, or use of the Tier Four IP Network or Tier Four services in breach of Tier Four's Acceptable Use Policy (AUP).

Nevertheless, Tier Four will make every commercially reasonable effort to ensure that service is not interrupted by any of the foregoing reasons.

Customer shall not receive any credits under this SLA if the Customer's account carries a past due balance, is in default or is not in good standing for any reason including AUP breaches.