

## **TIER FOUR POWER SERVICE LEVEL AGREEMENT**

Electricity provided to Customers by Tier Four as part of Colocation or other services is 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 Tier Four Power Systems and Power. This SLA applies only to Tier Four Customers (Customer) receiving Electricity (Power) 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:

"Power" means the electricity provided to Customer by Tier Four.

"Power Systems" means the systems used for providing electricity to Customer such as uninterruptible power supplies, battery backup systems, generators, and power distribution systems owned and operated by Tier Four and used to provide electricity to Customer.

"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 Access, Internet Protocol (IP) addresses, third party local-loop(s), support, space 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.

"Power Outage" means an instance in which Power ceases to be delivered to the Customer's power distribution unit.

## **Power Availability Guarantee**

Tier Four Power Systems are guaranteed to be available and capable of providing power 100 percent of the time, as averaged over a calendar month.

The Power Availability Guarantee does not include Customer owned or operated Power Distribution Units, any power systems in direct control of Customer (such as Power Distribution Units mounted in the a rack), scheduled maintenance events that are approved in advance by Customer, Customer caused outages or disruptions, 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 the Power Distribution Unit, disconnecting the Power Distribution Unit or overloading the circuit and causing the circuit breaker to trip.

If a Power Outage occurs and the Power Availability Guarantee is not met as averaged over a calendar month, the customer will receive a credit for the entire (MRC) for the affected service for that month. Limits on the credit, measurement, and reporting procedures are detailed below.

## **Measurement**

Tier Four will periodically measure the availability and load of Tier Four Power Systems using software and hardware components capable of monitoring Power Systems.

Customer acknowledges that not every component of the Power System may be covered by such measurements 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 Power Outage or the Power Availability Guarantee must be received by Tier Four within five work days of the Power Outage and must be confirmed by Tier Four's measurements or a Tier Four technician.

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 for the affected Service or Combined Service for the month in which the service or 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 Power System 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 Power Systems outside the direct control of Tier Four.
3. Failure of customer to utilize redundant power connections.
4. Failure of a Power Distribution Unit (PDU) within the customer's rack, whether or not that PDU is currently covered under warranty. Any claims regarding the malfunction of a rack mounted PDU or power bar must be made directly to the manufacturer of said component.
5. 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, or inability to obtain power.
6. False SLA breaches reported as a result of errors made by any measurement system.
7. 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 Power Systems 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 circumstances.

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.