

SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) sets forth the provisions and commitments relating to service quality between Blackfoot (“Blackfoot”) and Customer. This SLA is added as a schedule to the Master Service Agreement General Terms and Conditions (“Terms”) between Customer and Blackfoot.

1 Definitions

Unless otherwise designated in this SLA, capitalized terms in this SLA shall have the same meaning as set forth in the Terms.

- 1.1 “Average Jitter Performance,” with respect to a given month, is the average delay variation in the end-to-end delay between received packets of an IP or packet stream during such month, as measured by Blackfoot.
- 1.2 “Average Packet Delivery,” with respect to a given month, means the average percentage of IP packets transmitted during such month that are successfully delivered, as measured by Blackfoot.
- 1.3 “Average Round-Trip Latency,” with respect to a given month, means the average time required for round-trip packet transfers between points of presence (POPs) on the Blackfoot Data Network during such month, as measured by Blackfoot.
- 1.4 The “Blackfoot Data Network” means the Blackfoot owned and operated Data Protocol (IP) routing infrastructure consisting of network to network interfaces (NNIs) and selected Blackfoot POPs and the connections between them in the United States. Dedicated internet access is included on the Blackfoot Data Network up to peering ports to the internet at large. The Blackfoot Data Network does not include (i) Customer premise equipment; (ii) any local loop or access facilities connecting Customer’s premises to the Blackfoot NNI if not owned by Blackfoot; (iii) interconnections with other data service providers, (iv) other data service provider networks, or (v) other ISP networks beyond peering points for traffic routing.
- 1.5 “Interruption” (whether capitalized or not) shall mean a Blackfoot caused failure to satisfy the applicable network availability, latency, packet delivery, or jitter guarantees referenced in sections 2.1 through 2.4 below, entitling the Customer to a credit pursuant to the terms and conditions of article 3, below. “Interruption” does not include and no allowance shall be given for Service difficulties such as slow dial tone, circuits busy, or other network and/or switching capacity shortages.
- 1.6 “Last Mile” means the point of demarcation at the Customer’s premises to a network owned by, or leased to, Blackfoot.
- 1.7 A “Network Outage” is an instance in which there is a complete loss of Service and Customer is unable to transmit and receive IP packets (or for phone services other than VoIP, unable to complete calls) due to a Blackfoot caused outage for more than thirty (30) consecutive minutes.

2 General Standard – Parameters

Blackfoot will use reasonable efforts under the circumstances to maintain its overall network quality. The quality of service provided hereunder shall be consistent with other common carrier industry standards and government regulations.

- 2.1 Network Availability Guarantee
 - 2.1.1 The Blackfoot Data Network shall be available to Customer free of Network Outages for 100% of the time, and Last Mile shall be available to Customer free of Network Outages for 99.999% of the time (the “Network Availability Guarantee”).
 - 2.1.2 Mean Time to Repair (“MTTR”) For Failure of Network Availability Guarantee. Blackfoot’s MTTR is measured as the average time it takes to restore all failures of network availability for all Customer sites with similar circuit types during a calendar month. (For the purposes of determining MTTR measurements, only a failure of the Network Availability Guarantee shall constitute a failure; failures of other guarantees do not apply to MTTR.)
 - ▶ T1, NxT1, DS3 – 4 hours
 - ▶ Ethernet – 4 hours

- 2.2 Latency Guarantee - Average Round-Trip Latency on the Blackfoot Data Network shall be fifty (50) milliseconds or less.
- 2.3 Packet Delivery Guarantee - Average Packet Delivery shall be 99.999% or greater.
- 2.4 Jitter Guarantee - The Average Jitter Performance measurement shall be twenty (20) milliseconds or less.

3 Credit for Interruptions

An Interruption period begins when Customer reports a Service, facility, or circuit to be interrupted through the opening of a trouble ticket by e-mailing creditrequest@blackfoot.com with Blackfoot and makes it available for testing and repair. An Interruption period ends when the Service, facility, or circuit becomes operative. If Customer reports a Service, facility, or circuit to be inoperative but declines to make it available for testing and repair, it is considered to be impaired, but not interrupted and shall not be eligible for credit. Customer must request the credit for Interruptions within the time-frames specified herein.

- 3.1 For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the monthly recurring charges for the affected Service and is dependent upon the length of the Interruption.
- 3.2 For credits associated with the Network Availability Guarantee (Section 2.1 above), a credit allowance will be given for Interruptions of 30 minutes or more, upon written request of the Customer no later than ten (10) business days after the occurrence of the outage to Blackfoot by e-mail to creditrequest@blackfoot.com. Credit allowances will be calculated as follows:
 - 3.2.1 if the Interruption continues for less than 24 hours:
 - 3.2.1.1 1/30th of the monthly recurring charge if it is the first Interruption in the same billing period.
 - 3.2.1.2 2/30ths of the monthly recurring charge if there was a previous Interruption of at least 24 hours in the same billing period.
 - 3.2.2 If the Interruption continues for 24 hours or more, 1/30 of the monthly recurring charge for the first 24 hours and 1/30th of the monthly recurring charge for each additional 24 hours (or fraction thereof).
 - 3.2.3 Two or more Interruptions of thirty minutes or more during any one 24-hour period shall be considered as one Interruption.
- 3.3 For credits associated with the Latency Guarantee (Section 2.2. above), if average round-trip latency on the Blackfoot Data Network for a calendar month exceeds 50 milliseconds, Blackfoot will issue a credit to Customer equal to one day's worth of the base IP monthly recurring charge paid by Customer for such month. In order to qualify for the credit, Customer is responsible for reporting any suspected latency problems to Blackfoot within twenty-four hours from the time Customer became aware of the problem through the opening of a trouble ticket by e-mailing creditrequest@blackfoot.com.
- 3.4 For credits associated with the Packet Delivery Guarantee (Section 2.3 above), if Average Packet Delivery falls below 99.999% during a calendar month, then upon Customer's request, Blackfoot will issue a credit to Customer equal to one day's worth of the base IP access fee paid by Customer for such month. In order to qualify for the credit, Customer is responsible for reporting any suspected packet delivery problems to Blackfoot within twenty-four hours from the time Customer became aware of the problem through the opening of a trouble ticket by e-mailing creditrequest@blackfoot.com.
- 3.5 For credits associated with the Jitter Guarantee (Section 2.4 above), if Average Jitter Performance on the network for a calendar month exceeds twenty (20) milliseconds, then Blackfoot will issue a credit to Customer equal to one day's worth of the base IP monthly recurring charge paid by Customer for such month. In order to qualify for the credit, Customer is responsible for reporting any suspected jitter problems to Blackfoot within twenty-four hours from the time Customer became aware of the problem through the opening of a trouble ticket by e-mailing creditrequest@blackfoot.com.

4 Maximum Credit

In no event may the credits provided for hereunder (either individually or on a cumulative basis) in any billing period exceed the total monthly recurring charges for that period for the Service and facilities furnished by Blackfoot. Blackfoot shall issue only one credit for the same incident in the same month, regardless of how many of the Services were affected. The credits set forth in this SLA shall be Blackfoot's sole liability and Customer's sole remedy in the event of any Interruption and under no circumstances shall an Interruption be deemed a breach of the Terms.

5 Limitations on Credit Allowances

No credit allowance will be made for:

- 5.1 Interruptions resulting from the acts or omissions of, or non-compliance with the provisions of the Service Order or Terms or any schedule thereto (including without limitation this SLA, the Service Product Specific Standard Terms and Conditions or Acceptable Use Policy) by, Customer or any authorized user;
- 5.2 Interruptions resulting from the acts or omissions of any person or entity other than a Blackfoot employee;
- 5.3 Interruptions sourced from, or events happening on, any other person or entity's network, including but not limited to data service providers or other common carriers connected to, or providing service connected to, the Service of Blackfoot or to Blackfoot's facilities;
- 5.4 Interruptions resulting from the failure or malfunction of non-Blackfoot equipment, including service connected to Customer-provided electric power;
- 5.5 Interruptions of Service during any period in which Blackfoot is not given full and free access to its facilities and equipment, and to Customer's premises, for the purpose of investigating and correcting Interruptions;
- 5.6 Interruptions of Service during any scheduled maintenance period or when Customer has released Service to Blackfoot for maintenance purposes or for implementation of a Customer order for a change in Service arrangements;
 - 5.6.1 Scheduled maintenance occurs between 11 PM and 5 AM seven days per week. During this period various maintenance functions and network reconfigurations or upgrades may occur. Normally these activities are not Service impacting. If an activity is likely or known to impact customers operating within this window, notice of the activity will be given 48 hours in advance. Blackfoot reserves the right to change the maintenance schedule if the need arises.
- 5.7 Interruptions resulting from power outages, other than power outages at Blackfoot's collocation facility if Blackfoot provides Customer hosting services at Blackfoot's collocation facility.
- 5.8 Interruptions resulting from a Blackfoot disconnect for Customer's breach.
- 5.9 Interruptions resulting from incorrect, incomplete or inaccurate orders from Customer.
- 5.10 Interruptions due to improper or inaccurate network specifications provided by Customer.
- 5.11 Interruptions of Service due to Force Majeure Event beyond the reasonable control of Blackfoot.