

Service Level Agreement (SLA)

APPLICATION OF THE DATAHIVE BACKBONE SLA

These DATAHIVE Backbone Service Level Agreements (SLAs) provide Customer with certain rights and remedies regarding the performance of the DATAHIVE Backbone (as defined below). These DATAHIVE Backbone SLAs apply only to Customers receiving the following services from DATAHIVE:

(i) colocation and/or (ii) or dedicated server services (each a "Customer"), unless otherwise specified for a Customer. Notwithstanding the foregoing, these DATAHIVE Backbone SLAs do not apply to Customers of DATAHIVE for services such as, by way of example but not limitation, managed servers or shared hosting.

DEFINITIONS

For purposes of these DATAHIVE Backbone SLAs, the following terms have the meanings set forth below:

"DATAHIVE Backbone" means DATAHIVE owned and operated Internet Protocol (IP) routing infrastructure consisting solely of selected DATAHIVE points of presence at which DATAHIVE has installed measurement devices ("Selected POPs").

"Network Outage" means an instance in which no traffic can pass in or out of the Selected POP through which Customer connects to the DATAHIVE Backbone for more than 15 consecutive minutes.

"Latency" means the average time required for round-trip packet transfers between Selected POPs on the selected portions of the DATAHIVE Backbone during a calendar month, as measured by DATAHIVE.

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

"Base Fee" consists solely of the base monthly fee paid by Customer for the affected DATAHIVE service and excludes all other fees which might be charged to Customer, including, by way of example and not limitation, set-up fees, fees for local loop, space rental fees, charges for additional services such as managed services, incremental bandwidth usage, electricity, extra IP addresses, RAM, or hard drives beyond that which is available without additional charge under DATAHIVE's standard rates, hourly support charges, and other types of optional additional services.

For example, for Dedicated Server Customers, the Base Fee may include just the fee for the standard server package, which would cover the use of the server and up to the amount of data transfer allowed each month without additional charge. For Customers of other DATAHIVE services, the Base Fee may include just the base monthly access or bandwidth fee paid by a Customer.

SUMMARY OF THE DATAHIVE BACKBONE AND SLA

As described in more detail below, these DATAHIVE Backbone SLAs provide commitments based upon goals in these key areas:

The DATAHIVE Backbone available to Customer free of Network Outages 100% of the time.
Packet Loss of the DATAHIVE Backbone of 0.3% or less.

DATAHIVE BACKBONE AVAILABILITY

DATAHIVE's goal is to make the DATAHIVE Backbone available to Customer free of Network Outages 100% of the time.

Should a Network Outage occur due to data centre equipment failure, DATAHIVE will take every reasonable action to repair or replace the offending device. Subject to "Exceptions" and "Credit Request Payment and Procedures" below, upon Customer's request, DATAHIVE will issue a credit to Customer for Network Outages in an amount equal to one day's worth of the Base Fee paid by Customer, multiplied by each hour (or portion thereof rounded to the next hour) of the cumulative duration of such Network Outages during a particular month.

DATAHIVE BACKBONE PACKET LOSS

DATAHIVE's goal is to keep Packet Loss on the DATAHIVE Backbone to 0.3% or less. If Packet Loss on the DATAHIVE Backbone exceeds 0.3% during a calendar month, DATAHIVE will issue a credit to Customer equal to one day's worth of the Base Fee paid by Customer for such month.

The terms of this DATAHIVE Backbone SLA relating to Packet Loss will take effect the first full calendar month after Customer's first use of the DATAHIVE Backbone.

MEASUREMENT

DATAHIVE will periodically (on average every 15 minutes) measure the DATAHIVE Backbone at Selected POPs using software and hardware components capable of measuring traffic and responses at such Selected POPs. Customer acknowledges that not every POP may be covered by such measurements, that such measurements may not measure the exact path traversed by Customer's packets, and that such measurements constitute measurements across the DATAHIVE Backbone but not other networks to which Customer may connect. DATAHIVE reserves the right to periodically change the measurement points and methodologies it uses without notice to Customer.

EXCEPTIONS

Customer shall not receive any credits under these DATAHIVE Backbone SLAs in connection with any failure or deficiency of the DATAHIVE Backbone caused by or associated with:

- circumstances beyond DATAHIVE's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the DATAHIVE Backbone SLAs;
- failure of access circuits to the DATAHIVE Backbone, unless such failure is caused solely by DATAHIVE;
- scheduled maintenance and emergency maintenance and upgrades;
- DNS issues outside the direct control of DATAHIVE;
- false SLA breaches reported as a result of outages or errors of any DATAHIVE measurement system; or
- 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 DATAHIVE Backbone or DATAHIVE services in breach of DATAHIVE's Terms and Conditions of Service or DATAHIVE's Acceptable Use Policy. Service Level Agreement (SLA)

CREDIT REQUEST PAYMENT AND PROCEDURES

In order to receive a credit, Customer must make a credit request therefor on DATAHIVE's Web site. Each request in connection with a Network Outage must be received by DATAHIVE within seven days of the Network Outage and must be confirmed by DATAHIVE's measurements of the DATAHIVE Backbone. DATAHIVE must receive each request in connection with Latency or Packet Loss in a calendar month within seven days after the end of such month.

Each valid credit will be applied to an invoice of Customer within two billing cycles after DATAHIVE's receipt of Customer's request therefor. Credits are exclusive of any applicable taxes charged to Customer or collected by DATAHIVE.

Notwithstanding anything in this DATAHIVE Backbone SLA to the contrary, the total amount credited to a Customer in connection with Network Outages, Latency and Packet Loss in any calendar month will not exceed the Base Fee paid by Customer for such month.