

NetStream Communications™ Service Level Agreement

1. SCOPE

This Service Level Agreement (SLA) outlines the minimum service that Customer may expect from NETSTREAM for:

- Network Availability
- Packet Loss
- Latency

For the purposes of this SLA, NETSTREAM does not include the following items:

- Customer Premises Equipment (CPE) with the exception of the NETSTREAM provided CPE
- Any networks or network equipment not owned or controlled by NETSTREAM
- Cabling from the NETSTREAM Equipment to Customer's equipment

2. NETWORK AVAILABILITY

The NETSTREAM network will be available to Customer an average of 99.9% of the time per calendar month averaged over the previous twelve (12) month period. NETSTREAM's network availability will be measured based on the cumulative number of minutes that the NETSTREAM network was "unavailable," per calendar month, as solely determined by NETSTREAM. "Network Unavailability" shall mean a service outage due to failure of the NETSTREAM network resulting in Customer being unable to connect to the NETSTREAM network from Customer's equipment. "Network Unavailability" shall not include the unavailability of the NETSTREAM network resulting from any of the following events ("Excused Events"):

- Network Maintenance; (Note: Network maintenance windows are periodically scheduled between 12:00 AM and 3:00 AM Friday through Sunday.)
- Emergency Maintenance;
- Circuits or network elements provided by other telecommunications providers or other common carriers;
- An external Internet Service Provider or an Internet exchange point;
- Acts or omissions of Customer or an authorized user;
- Customer equipment, facilities or applications;
- Local access provider outages or service interruptions;
- Force Majeure as defined in the NETSTREAM Service Agreement.

2.1.1 NETWORK AVAILABILITY REMEDY

If NETSTREAM determines that the NETSTREAM network was unavailable during a calendar month, for each 1% of Network Unavailability below the expected 99.9% availability, NETSTREAM shall reduce the applicable monthly service fee by .5% up to a maximum reduction of 15%.

2.2 PACKET LOSS

NETSTREAM network packet loss will not exceed an average of two percent (2%) on the NETSTREAM network during any calendar month. Packet loss is defined as the percentage of packets dropped between Customer's routers/servers and NETSTREAM's core router/switch.

2.2.1 PACKET LOSS REMEDY

If NETSTREAM determines the network's packet loss exceeds an average of two percent (2%) during any calendar month (this excludes link setup time), Customer is eligible to receive a one (1) day credit of the monthly service fee.

2.3 LATENCY

NETSTREAM's monthly network latency will not exceed 750 milliseconds (average) on the NETSTREAM Network (for a single router hop). "Round trip time" or "network latency" is defined as twice the average time it takes an IP packet (32 bytes in length) to enter and exit the NETSTREAM network.

2.3.1 LATENCY REMEDY

If NETSTREAM determines, in its sole discretion, that the average monthly network latency exceeds 750 milliseconds during a calendar month, Customer is eligible to receive a one (1) day credit of the monthly service fee.

2.4 THROUGHPUT

NETSTREAM also commits to delivering 80% of contracted download and 70% of upload speeds 99% of the time when sending a 5Mb or larger file as measured by NETSTREAM or a NETSTREAM approved bandwidth speed test site. All speed tests must use at least a 5Mb or larger file using a NETSTREAM approved testing procedure.

3.0 SERVICE CLAIM PROCESS

To initiate a claim for a service credit with respect to the SLA's described herein, Customer shall submit to NETSTREAM a request in writing for the service credit. For all Network Performance SLA: Customer shall submit the service credit request to a NETSTREAM Representative within seven (10) business days after the end of the month in which the event occurred that gives rise to the claim for the service credit. NETSTREAM shall acknowledge receipt of all service credit requests via email within twenty-four (24) hours after such receipt and will review all requests within ten (10) business days after such receipt. Customer shall be notified via email upon resolution of the request. Customer shall cooperate with NETSTREAM in the service claim investigation. When service requests are submitted, the Customer shall pay its entire service bill, and shall not setoff any service credits it would anticipate receiving from NETSTREAM.

4.0 SERVICE CREDIT

NETSTREAM shall issue a service credit to Customers account upon approval of its service credit request. Service credit will appear on the invoice issued in the month following the month in which the service credit request was approved. NETSTREAM shall not be held liable for failure to fulfill its obligations hereunder if such failure is due to an Excused Event as set forth in Section 2.1.

Service Credits delivered as remedies in conjunction with SLA 's described herein represent NETSTREAM's sole responsibility and Customer's sole remedy related to the service(s) to be provided under this Agreement. NETSTREAM shall provide its service in accordance with this SLA, and the Customer's sole remedy for failure of NETSTREAM to provide such SLA related to NETSTREAM Service is described herein. An SLA and/or warranties, other than the networks performance SLA listed above and as described herein, whether expressed or implied, are hereby disclaimed, including warranties of merchantability and fitness for a particular purpose.

5.0 CANCELLATION

In the event that chronic performance problems remain unresolved after 30 days from the initial trouble ticket submission to the NETSTREAM Network Operations Center (NOC), Customer may cancel contract with no additional penalties or service charges.