

## Service Level Agreement (SLA)

### Overview

This 10,000% Guaranteed, 100% Uptime Service Level Agreement (this “**SLA**”) supplements the [Terms of Service](#), and together such documents, and others referenced in the Terms of Service, form a binding agreement (the “**Agreement**”) between ColoServe and Customer. Terms defined in the Terms of Service will have the same meaning when used in this SLA.

This SLA covers the following elements of the Service:

- Network Performance
- Support Response Time
- Domain Name Services
- Power Availability & Performance
- Cooling & Environment
- Server Power Cycling
- Physical Security
- 24 x 365 Engineering Support

This SLA does not apply to any feature of the Service not specifically identified in the SLA, or to any feature ColoServe identifies as “beta.” If ColoServe chooses to provide SLA credits for beta features, such choice will not impose any obligation on ColoServe, and ColoServe may reverse that choice at any time.

### I. REMEDIES FOR SERVICE FAILURE

This SLA lists certain ColoServe standards for provision of the Service, and it offers Customer a 10,000% Service Credit (as defined below) for any failure to meet those standards. This SLA also lists several additional Service standards—standards of quality ColoServe strives to meet, even though they’re not guaranteed or subject to credits, and even though Customer might not notice any failure to meet some of them. These additional standards are listed alongside the credit standards below, for informational purposes only, to provide a sense of ColoServe’s commitment to excellence. (Each listing of a standard below states whether it’s a credit standard or an additional one.)

#### A. 10,000% Guaranteed

- If the Service does not achieve the performance levels described in Parts II and V through VII below (“**Failure**”), ColoServe will provide Customer with a 10,000% Service Credit (as defined below), pursuant to the provisions, requirements, and limitations of this SLA, including Parts X through XII.
- A “**10,000% Service Credit**” is a credit equivalent to one hundred (100) times Customer’s fees for the impacted Service feature for the duration of the Failure. (For example, where applicable: a Failure lasting seven (7) hours would result in credit of seven hundred (700) hours of free service for the feature in question; a Failure lasting fifteen (15) minutes would result in a 1500-minute, or 25-hour, credit.) No credit will exceed one hundred percent (100%) of Customer’s fees for the Service feature in question in the Customer’s then-current billing month.

- Each Service standard described below lists the fees that are subject to the 10,000% Service Credit. As used in those listings:
  - a. **“Colocation Fees”** refers to the billing line item for space occupied;
  - b. **“Transfer Fees”** refers to fees for optional prepaid transfer plans;
  - c. **“Power Fees”** refers to optional fees for additional power; and
  - d. **“Miscellaneous Fees”** refers to fees for any other Service feature (e.g., managed firewall service, managed monitoring service).

## **B. Contract Termination Option**

Customer may terminate the Agreement, pursuant to Subsection 3(b) of the Terms of Service, without advanced notice, in the event that ColoServe awards it 60 or more days of total credits during any single contract year, provided 3 or more separate instances of Failure occurred during such year. For purposes of this clause, a contract year is the 12-month period beginning on first day ColoServe provides Service. Notwithstanding the foregoing, this SLA does not authorize termination of the Service if ColoServe purchased telecommunications circuits or other resources for Customer’s sole use.

## **C. Limitations & Warranty Disclaimer**

The remedies set forth in this SLA are Customer’s sole and exclusive remedies for any Failure or other failure of the Service, including without limitation for any breach of warranty, except as specifically set forth in the Terms of Service.

PERFORMANCE PURSUANT TO PARTS III, IV, VIII, and IX BELOW IS NOT GUARANTEED, AND NEITHER THIS SLA NOR ANY OTHER PORTION OF THE AGREEMENT PROVIDES CREDITS OR OTHER REMEDIES FOR FAILURES TO MEET THE STANDARDS LISTED THERE.

## **II. NETWORK PERFORMANCE**

ColoServe will deliver 100% Uptime, as defined in Part II.B below. In addition, ColoServe will deliver network performance meeting or exceeding the specifications listed in this Part II.

### **A. Network Performance Terms**

- **“Jitter”** means variation in Latency.
- **“Latency”** refers to the amount of time it takes for a packet of data to travel from one point to another.
- **“Maximum Jitter”** means the highest permissible level of jitter within a given period when there is no Network Outage.
- **“Network Outage”** means an unscheduled period during which IP services are not useable due to capacity-constraints on the ColoServe network or a hardware failure in the ColoServe network.
- **“Packet Loss”** means Latency in excess of 10 seconds.

All Jitter, Latency, and Packet Loss metrics below are monthly averages, unless otherwise noted in this Part II.

## **B. Internal Network Performance**

“100% Uptime” means the following, all as described in this Part II.B.

- Network Outage: None
- Packet loss: < 0.1%
- Latency: < 5ms
- Jitter: < 0.5ms
- Maximum Jitter: 10 milliseconds within any 15-minute period.

## **C. External Network Performance**

At least two (2) of the specified networks in each continent will meet the performance specifications listed below at any given time, as measured by ColoServe. ColoServe may change the specific measured hardware devices without notice. (ColoServe displays current network performance statistics online at <http://www.gogrid.com/latency-graphs.php>.)

### *1. North American Network Performance*

- Packet loss to:
  - West Coast of North America < 0.2%
  - East Coast of North America < 0.3%
- Latency to:
  - West Coast of North America < 45ms
  - East Coast of North America < 90ms
- Jitter to:
  - West Coast of North America < 1.0ms
  - East Coast of North America < 1.2ms
- Maximum Jitter: 10 milliseconds during any 15-minute period.
- GoGrid currently measures performance to the following North American networks: Verio, Level3, Above.net, UUNet.

### *2. South American Network Performance*

- Latency to South America < 220ms
- Maximum Jitter: 10 milliseconds during any 15-minute period.
- GoGrid currently measures performance to the following South American networks:
  - Brazil: UOL, STI
  - Chile: Netline, Firstcom
  - Argentina: UOL Sinectus, Sion

### *3. European Network Performance*

- Latency to Europe < 175ms
- Maximum Jitter: 10 milliseconds during any 15-minute period.
- GoGrid currently measures performance to the following European networks:
  - France: Tiscali, France Telecom, Neuf Telecom
  - United Kingdom: NTL, Zen, Pipex
  - Germany: Star 21 Networks, PJS net, T-Online

4. *Asian Network Performance*

- Latency to Asia < 170ms
- Maximum Jitter: 10 milliseconds during any 15-minute period.
- GoGrid currently measures performance to the following Asian networks:
  - Japan: Singtel, Tuka, IA Japan
  - Hong Kong: Uni Net, Linkage, HK Supernet
  - South Korea: KorNet, Mounet, BoraNet / SuperNet

5. *Australia Network Performance*

- Latency to Australia < 200ms
- Maximum Jitter: 10 milliseconds during any period of 0.1% of a calendar month
- GoGrid currently measures performance to the following Australian networks:
  - Optusnet
  - iiNet
  - Netspace
  - TPG
  - Adam Internet

6. *South Africa Network Performance*

- Latency to South Africa < 480ms
- Maximum Jitter: 10 milliseconds during any period of 0.1% of a calendar month.
- GoGrid currently measures performance to the following South African networks:
  - South Africa: Coza, XSI-net, Inloco
  - Zimbabwe: Mweb, Utande, Telconet

## **D. Limitations**

This SLA does not cover (without limitation): (a) network performance to Customer's physical location or internet access point (such as a local DSL/cable modem); or (b) failures due to denial of service attacks.

## **E. Credits**

Credits for this Part II will be issued against Transfer Fees if Customer pays on a separate line item for transfer allocation. If Customer only pay Colocation Fees (which include a bundled transfer allotment), credits will be issued against Colocation Fees only.

The rate at which the credit is applied will be equal to the fees in question (per the preceding paragraph) divided by 744 hours per month. (Example: Customer has a 100Mbps unmetered Transfer Fee plan with a rate of \$1,499.99 per month—in other words, \$1,499.99 per 744 hours. That is equivalent to \$2.016 per hour. Customer experiences a network outage of 2 hours. Credit is calculated as follows: 100 x 2 hours x \$2.016 = \$403.20. So a credit of \$403.20 is applied to Customer's account.)

## **III. SUPPORT RESPONSE TIME**

- EMERGENCY Cases – 30 minutes
- The following are the EMERGENCY categories:
  - Server down
  - Packet loss

- Routing issue
- All other Cases – 120 minutes

A tracking number will automatically be provided to Customer promptly after opening of the Case (as defined below in Part X.A), and a human support engineer will review the support request within the timeframe listed above. ColoServe may reclassify any Case misclassified as falling into one of the EMERGENCY categories listed above, and such Case will not qualify for EMERGENCY treatment. Resolution and repair times vary, and this SLA does not address them.

## IV. DOMAIN NAME SERVICES

- Primary DNS availability: 100%

“DNS” means domain name server. A period of DNS failure is any time during which 100% of ColoServe’s Domain Name Servers simultaneously fail to respond to requests for name resolution. This SLA does not guarantee propagation of DNS data across the Internet or the hosting of secondary DNS service for Customer’s primary domain in another location, and it does not guarantee against zone inaccuracies due to operator error.

## V. POWER AVAILABILITY & PERFORMANCE

ColoServe will provide power availability sufficient to run Customer hardware 100% of the time. ColoServe will also provide the power performance required below.

- Availability: 100%
- Voltage fluctuations: +/- 10%

A power Failure is a loss of electrical power or a voltage fluctuation, exceeding the limits above, in any part of the delivery system (utility company supply, on-site generation, UPS, circuit, or power strip) which causes Customer’s hardware to shut down. A period of power-related Failure is measured from the time Customer opens the Case to the time that the electrical supply is restored, and does not include any time required to remedy any issues resulting from the electrical failure.

Credits for this Part V are issued against the billing item that failed. (Cabinets and standalone colocated servers may include power covered by Colocation Fees. Additional power strips are counted as individual billing items, separate from power included with Colocation Fees, and subject to Power Fees.) If a power strip not covered by Colocation Fees experiences a power failure but the power covered by Colocation Fees does not experience a failure, credit will be awarded only against Power Fees for the additional strip that lost power. Power failures to managed services covered by Miscellaneous Fees will result in credits against the Miscellaneous Fees for the managed service in question.

## VI. COOLING & ENVIRONMENT

- Data Center Temperature: 67 - 74 degrees Fahrenheit
- Relative Humidity: 35% - 60%

As used in this SLA: (a) relative humidity is the ratio of water vapor density (mass per unit volume) to saturation water vapor density, expressed in a percentage; and (b) both temperature and relative humidity are averages of several measurements, each from one of the computer server hosting facility’s (the “Facility’s”) CRAC (computer room air conditioning) units. ColoServe will monitor, but is not required to report to Customer on, environmental conditions in the Facility.

Credits for this Part VI are issued against Basic Colocation Fees only.

## VII. SERVER POWER CYCLING

- Server power cycling: < 15 minutes

Credits for this Part VII are issued against the billing item that failed. (Cabinets and standalone colocated servers may include power covered by Colocation Fees. Additional power strips are counted as individual billing items, separate from power included with Colocation Fees, and subject to Power Fees.) If a power cycle request to a power strip not covered by Colocation Fees experiences a power failure, but a power cycle request to the power covered by Colocation Fees does not experience a failure, credit will be awarded only against Power Fees for the additional strip that failed to complete the power cycle request.

## VIII. PHYSICAL SECURITY

- 24 x 365 on-site security

ColoServe will ensure the presence of a professional security guard in the Facility at all times, charged with enforcing ColoServe's security policies. (Those policies require, among other things, that ColoServe employees, vendors, and visitors wear a badge and that visitors who have not been issued a permanent badge leave a valid U.S. driver's license or passport with the guard while in the Facility.)

## IX. 24 x 365 ENGINEERING SUPPORT

- 24 x 365 Engineering Support

ColoServe will maintain support engineers actively on duty 24 hours per day, every day of the year. These engineers will provide support in the Facility, by telephone, or by online chat.

## X. CREDIT REQUIREMENTS

The following are required for credits:

- A. Customer must open a support case (a **"Case"**) during the Failure in question. Customer will open all Cases through the Customer Portal. In opening a Case, Customer will provide complete information regarding the nature of the problem, including any information reasonably necessary for diagnosis and correction, by following the Case opening procedures at the Customer Portal. However, at ColoServe's sole discretion, a ColoServe representative may open a Case for Customer, without use of the Customer Portal, and Customer will provide all information required in the preceding sentence to the support representative. Customer will provide the information required in this Part X.A even if ColoServe provides monitoring services.
- B. Customer must provide ColoServe with accurate and complete designated points of contact, using the Customer Portal. Customer must provide ColoServe with accurate passwords for maintenance and repair use by ColoServe engineers. Delays or failures caused by Customer's failure to abide by the requirements of this Part X.B do not constitute Failures.
- C. Customer must request any credits by accurately completing the automated SLA Credit Request process online at the Customer Portal within 48 hours of the start of the Failure.

## **XI. CREDIT LIMITATIONS**

- A. The minimum period of Failure eligible for a credit is 60 seconds, and shorter periods will not be aggregated. The maximum credit for any single Failure is one month's Service fees. In the event that multiple periods of Failure overlap in time, credits will not be aggregated, and Customer will receive credit only for the longest such period of Failure. ColoServe is not required to issue multiple credits for a single incident; in the event that a single incident calls for credits pursuant to multiple Parts of this SLA, ColoServe may decide, in its sole discretion, which credits to award. The maximum credit during a single calendar year, for all Service features combined, is two months' Service fees, regardless of the length of Failure or the number of occurrences. The period of Failure for Network Performance and Power Availability & Performance (Parts II and V above) begins when Customer opens a Case and ends when the Failure is remedied.
- B. In the event that credits for any calendar month exceed 25% of ColoServe's revenues for such period, ColoServe may reduce and pro-rate the value of credits given to all Customers for such period so that the aggregate credit given to all Customers does not exceed 25% of revenues. As used in the previous sentence, "ColoServe's revenues" and "all Customers" refer to revenues and customers from Internet colocation services sold under the "ColoServe" brand, and not to revenues or customers from any other business unit operating under another name or providing services other than or in addition to Internet colocation. ColoServe may employ such accounting procedures as it chooses in calculating revenues, in its sole discretion, and nothing herein will be construed to require that ColoServe disclose non-public information about its finances to Customer or to any party.
- C. Credits available pursuant to this SLA apply only to future service delivery. ColoServe is not required to provide refunds pursuant to this SLA. If Customer's Signup provides for a Prepayment Period, credit will apply to any renewal of such Prepayment Period, but Customer may instead elect to apply credit to any additional ColoServe products or services. If Customer retains a credit balance on termination of the account in question, such credit is forfeited. Notwithstanding the foregoing, credits will not be applied against fees for professional services, bundled support, or setup fees.
- D. Notwithstanding any provision to the contrary in this SLA, the following do not constitute Failures:
  - 1. downtime during scheduled maintenance or Emergency Maintenance (as defined below) periods;
  - 2. outages caused by acts or omissions of Customer, including its applications, equipment, or facilities, or by any use or user of the Service authorized by Customer;
  - 3. outages caused by hackers, sabotage, viruses, worms, or other third party wrongful actions;
  - 4. DNS issues outside of ColoServe's control;
  - 5. outages resulting from Internet anomalies outside of ColoServe's control;
  - 6. outages resulting from fires, explosions, or force majeure;
  - 7. outages to the Customer Portal, and
  - 8. failures during a "beta" period.

**“Emergency Maintenance”** refers to any corrective action intended to remedy conditions likely to cause severe Service degradation, as designated by ColoServe in its sole discretion. Emergency Maintenance may include but is not limited to actions intended to address hardware or software failures or viruses/worms. As provided in Section 6 of the Terms of Service, ColoServe will exercise reasonable efforts to inform Customer in advance before interrupting the Service for Emergency Maintenance, but such notice is not guaranteed and failure thereof does not constitute Failure.

## **XII. TERMS OF SERVICE**

In the event of any conflict between this SLA and the Terms of Service, the Terms of Service will govern.