

Network Service Level Agreement

Serventus Inc. (www.serventus.com)



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The following terms and conditions of this Service Level Agreement (as amended from time to time, this "SLA") apply only to Products and Services and govern (A) the use and availability of Serventus Network to those persons that have purchased Products and Services directly from Serventus (each, a "Customer"), and (B) the right, under certain circumstances specified below, of a Customer to receive services credits in respect of the failure of Serventus Network and/or the failure of Serventus to provide the Products and Services purchased by Customer from Serventus in accordance with (i) the Terms of Service, (ii) Serventus's AUP and (iii) this SLA, each of which is incorporated herein by reference and made a part hereof (collectively, the "Agreement"). Capitalized terms used herein without being defined herein shall have the meaning ascribed to such capitalized term in the Terms of Service or AUP, as applicable. Customer's use of Serventus's website, Serventus Network, and the Products and Services is also subject to Customer's acceptance and compliance with this SLA, the Terms of Service, the AUP and the Order Form. SERVENTUS HEREBY RESERVES THE RIGHT TO AMEND, ALTER, MODIFY, REPLACE OR SUSPEND, FROM TIME TO TIME IN ITS SOLE DISCRETION, ALL OR ANY PORTION OF THIS SLA, ITS AUP OR PRIVACY POLICY. CURRENT COPIES OF SERVENTUS'S TERMS OF SERVICE, AUP AND PRIVACY POLICY MAY BE REVIEWED OR PRINTED BY CUSTOMER AT THE LEGAL SECTION OF THE SERVENTUS'S WEBSITE. CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THE SLA AND AUP. By submitting the online order form, Customer hereby agrees to the following:

Definitions

When used in this SLA, the following capitalized terms shall have the definitions set forth below:

1. "AUP" means Serventus's standard acceptable usage policy, as in effect and listed on Serventus's website from time to time and subject to all changes, modifications and replacements as Serventus may effect in accordance with the Terms of Service and AUP.
2. "Order Form" means Serventus's standard service exhibit, service addendum or order form, specifying the products and services purchase by Customer, as in effect from time to time.
3. "Products and Services" means those products and services offered by Serventus to its general customer base, in each case as purchased by a Customer and set forth on an Order Form, but expressly excludes all products and services offered by Serventus's managed hosting division and expressly marketed as managed hosting services.
4. "Privacy Policy" means Serventus's standard privacy policy, as in effect and listed on Serventus's website from time to time and subject to all changes, modifications and replacements as Serventus may effect in accordance with the Terms of Service and AUP.
5. "Scheduled Maintenance" means all maintenance services for which Serventus gives Customer at least five (5) days prior notice of such maintenance services via Serventus's outage mailing list maintained on Serventus's customer portal.
6. "Service Credit" means a credit, calculated in accordance with this SLA, issued by Serventus to the Customer in respect of products and services contracted for, but not delivered by Serventus in accordance with the Agreement due to a Qualified Network Downtime Event.

7. “Terms of Service” means either (i) Serventus’s standard terms of service as in effect and listed on Serventus’s website as of the date of Customer’s purchase of Products and Services or (ii) solely to the extent Serventus and Customer have separately negotiated written terms of service different from those referred to in clause (i), Serventus’s standard terms of service which incorporate such other written terms of service, duly executed and delivered by each party; in each case, as amended from time to time.

8. “The Serventus Network” means the portion internal computer network owned or operated on behalf of Serventus that extends from the outbound port on a Customer’s cabinet switch to the outbound port on the border router and includes all redundant internet connectivity, bandwidth, routers, cabling and switches.

99.9% Serventus Network Availability Assurance

Serventus assures Customer 99.9% uptime availability of Serventus Network covered by this SLA. Subject to Section 3 below, in the event that Serventus fails to provide Customer with the Products and Services purchased by Customer in accordance with the Agreement and such failure results from the complete unavailability of Serventus Network or the failure of Serventus Network to pass Customer’s TCP/IP traffic with less than three percent (3%) packet loss and less than 30ms latency across Serventus (other than as specified below, each such event, a “Qualified Network Downtime Event”), Serventus will issue Customer a Service Credit calculated as follows.

1. A Qualified Network Downtime Event shall start upon Customer’s submission of a written trouble ticket specifying that a Qualified Network Downtime Event has occurred and the details associated with such Qualified Network Downtime Event. All such trouble tickets must be submitted by Customer through Serventus’s technical support department.

2. All Service Credits are calculated by Serventus on a “per-event-basis/per-related-series-of-events-basis” and in no event will downtime or unavailability be cumulated during any monthly period for purposes of determining a Customer’s right to any Service Credit. The following events do not constitute a Qualified Network Downtime Event or qualify for any Service Credit under this SLA: (i) Scheduled Maintenance or (ii) Customer generated outages created by failed equipment, customer mis-configurations, exploited servers, or traffic in excess of the maximum allowed by contract. Service Credits are based directly on all equipment and/or services affected by a Qualified Network Downtime Event. Products, services or hardware not related to a Qualified Network Downtime Event do not qualify for a Service Credit. Redundant Internet connectivity is measured as traffic routing into and out of a Customer’s equipment through Serventus Network out to internet backbone carriers and does not include third party carrier latency or peering issues not utilized by Serventus.

Service Credits

Service Credits: Service Credits do not constitute a refund in respect of any product or service and may not be carried forward to future months, paid for or exchanged for cash or other monetary consideration or value. Service Credits are not available (i) in respect of any outage or event associated with Scheduled Maintenance or arising from any denial of service attack, virus, hacking attempts or any other circumstances or events that are not within the control of Serventus, including any Force Majeure Event, (ii) to any Customer that is more than thirty (30) days past due on any amount owing to Serventus or any Customer that has breached the Agreement or (iii) in respect of any products or services contracted for with Serventus that expressly exclude technical support or such Service Credits.

Valid approved Service Credits will appear as a credit for products and services and be applied against the amounts owing in respect of such products and services on the next billable invoice following the month in which occurred the Qualified Network Downtime Event giving rise to such Service Credit. In order for a Customer to qualify for a Service Credit, the Customer must (A) have purchased and paid for Products and Services, (B) utilize redundant input network drops running Hot Swap Router Protocol (HSRP) in its equipment and (C) submit a request for a Service Credit, as applicable, in writing via Serventus's customer portal to within three (3) days from the date of event giving rise the requested Service Credit and in accordance with the terms of this SLA. Failure to request a Service Credit in accordance with the terms of this SLA will result in an automatic waiver of any rights to such Service Credit under this SLA in respect of the event giving rise to such Service Credit. IN THE EVENT THAT ANY OUTAGE OR RELATED SERIES OF OUTAGES GIVING RISE TO ANY SERVICE CREDIT HEREUNDER SPANS MORE THAN ONE CALENDAR MONTH, THE MAXIMUM TOTAL SERVICE CREDIT TO WHICH CUSTOMER SHALL BE ENTITLED FOR SUCH OUTAGE OR RELATED SERIES OF OUTAGES SHALL NOT EXCEED ONE HUNDRED PERCENT (100%) OF CUSTOMER'S MONTHLY RECURRING FEE FOR THE PRODUCTS AND SERVICES DURING THE FIRST MONTH IN WHICH SUCH OUTAGE OR RELATED SERIES OF OUTAGES FIRST OCCURRED AND CUSTOMER SHALL NOT BE ENTITLED TO ANY OTHER SERVICE CREDITS IN RESPECT OF SUCH OUTAGE OR RELATED SERIES OF OUTAGES FOR THE OTHER MONTHS DURING THE PENDENCY OF SUCH OUTAGE OR RELATED SERIES OF OUTAGES. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM TOTAL SERVICE CREDITS TO WHICH CUSTOMER MAY BE ENTITLED UNDER THIS SLA DURING ANY CALENDAR MONTH TOGETHER WITH ALL OTHER SERVICE CREDITS, REFUNDS, GUARANTEES, WARRANTIES AND OTHER SERVICE LEVEL AGREEMENTS CUSTOMER MAY HAVE WITH SERVENTUS, SHALL NOT EXCEED ONE HUNDRED PERCENT (100%) OF CUSTOMER'S MONTHLY RECURRING FEE FOR THE PRODUCTS AND SERVICES AFFECTED DURING SUCH MONTH.

Scheduled Maintenance

Customer hereby acknowledges that Serventus may, from time to time, perform maintenance service on Serventus Network, with or without notice to Customer, which may result in the unavailability of Serventus. Downtime or unavailability resulting from Scheduled Maintenance shall not constitute a Qualified Network Downtime Event or qualify for any Service Credit. Customer must subscribe to Serventus's outage mailing list and provide accurate and timely information in Serventus's customer portal in order for Serventus to notify Customer of all Scheduled Maintenance. Customer's failure to subscribe to Serventus's outage mailing list or to provide accurate and timely information on Serventus's customer portal may result in the forfeiture of any Service Credit based on downtime or unavailability arising from Scheduled Maintenance for which Customer did not receive timely notice. Emergency maintenance and maintenance for which Serventus has not given Customer notice in accordance with this SLA shall not be deemed Scheduled Maintenance for purposes of this SLA.

Disclaimer

Customer hereby acknowledges that Serventus's ability to provide Products and Services and technical support to Customer and to manage any server owned or controlled by or leased to Customer is contingent upon Serventus's ability to connect Serventus Network to such server and monitor such server. In the event that Customer substantially impairs Serventus's ability to connect Serventus Network to any server owned or controlled by or leased to Customer, including, but not limited to, through the installation of software, including, but not limited to, firewall software or load balancing software, or through the configuration of such server, then Serventus shall have no obligation to provide Products and Services or technical support services or any of the services provided for in this SLA for such server and Customer shall not be entitled to any Service Credit under this Agreement with respect to such server. If Customer requests technical support services or management services for a server for which Customer has impaired the ability of Serventus to connect Serventus Network to such server, Serventus shall provide such technical support services or management services as professional services on a time and material basis and Customer shall be billed at Serventus's then-current professional services rate. Serventus shall not be liable for the failure or delay in performing its obligations hereunder or under the Agreement if such failure or delay is due to external circumstances beyond its 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 interruption or delay in telecommunications, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of Serventus's products and services (each, a "Force Majeure Event"). Serventus agrees to exercise reasonable efforts to mitigate the damage arising from Force Majeure Event; however, under no circumstances will Serventus or its affiliates be held liable for any cost, expense, liability, claim or damage due to such interruptions. In no event shall Serventus or its affiliates be liable to Customer or any other person for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, cost of cover, loss of income or cost of replacement services. Customer acknowledges and agrees that the receipt of a Service Credit as provided for in this SLA constitutes Customer's sole and exclusive remedy, and Serventus's sole and exclusive liability, for any failure of Serventus's Network or failure by Serventus to provide Customer with the products and services purchased by Customer in accordance with the Agreement which results from a Qualified Downtime Event. SERVENTUS RESERVES THE RIGHT TO AMEND, MODIFY OR TERMINATE THIS SLA, THE AUP AND THE PRIVACY POLICY FROM TIME TO TIME, AND A CUSTOMER'S USE OF SERVENTUS'S PRODUCTS AND SERVICES AND SERVENTUS NETWORK AFTER ANY SUCH AMENDMENT, MODIFICATION OR TERMINATION OF THIS SLA, THE AUP OR THE PRIVACY POLICY IS POSTED ON THE LEGAL DEPARTMENT PAGE OF SERVENTUS'S WEBSITE (WWW.SERVENTUS.COM) WILL CONSTITUTE THE CUSTOMER'S ACCEPTANCE OF ANY SUCH AMENDMENTS, MODIFICATIONS OR TERMINATION.