

SERVICE LEVEL AGREEMENT

This document sets out the Service Level Agreement (the “SLA”) for Company’s online subscription services delivered as a subscription to an operating instance of Company’s online Web-based platform; provided, however, that this SLA expressly excludes any third- party applications or services that you (the “Subscriber”) may use whether, or not resold by Company (the “Services”).

1. **DEFINITIONS.** The following capitalized terms will have the definitions set forth below:

1.1 “Force Majeure Event” means any act, event, or occurrence beyond Company’s reasonable control, including, but not limited to, acts of God, war, terrorism, third party strikes, failure of suppliers, fires, floods, earthquakes, Internet or telecommunications failures.

1.2 “Scheduled Downtime” means the total amount of time during any calendar month, measured in minutes, during which the Services are unavailable due to planned system maintenance performed by Company. Company will exercise reasonable efforts to perform service affecting system maintenance between the hours of 8pm and 3am Mountain Time. Company will use commercially reasonable efforts to provide Subscriber with reasonable prior notice of such Scheduled Downtime.

1.3 “Total Monthly Time” means the total minutes in the relevant calendar month less Scheduled Downtime. For any partial calendar month during which Subscriber subscribes to the Services, availability will be calculated based on the entire calendar month, not just the portion for which Subscriber subscribed.

1.4 “Unscheduled Downtime” means the total amount of time during any calendar month, measured in minutes, during which Subscriber is not able to access critical features and functions of the Services, other than Scheduled Downtime. Unscheduled Downtime shall not include any period during which the Services are unavailable as a result of (i) non-compliance by Subscriber with any provision of this Agreement; (ii) incompatibility of Subscriber’s equipment or software with the Services; (iii) acts or omissions of Subscriber or Subscriber’s employees, agents, contractors, or vendors, or anyone gaining access to the Services by means of Subscriber’s passwords or equipment; (vi) any Force Majeure Event; (ix) Scheduled Downtime; or (x) denial of service (“DoS”) and distributed DoS attacks.

1.5 “System Availability” means, with respect to any particular calendar month, the ratio (represented as a percentage) obtained by subtracting Unscheduled Downtime during such month from the Total Monthly Time, and thereafter dividing the difference so obtained by the Total Monthly Time (System Availability = Total Monthly Time – Unscheduled Downtime/Total Monthly Time).

2. **SYSTEM PERFORMANCE**

2.1 **System Availability.** Company will use commercially reasonable measures to ensure that System Availability equals or exceeds ninety-nine and ninety-nine one-hundredths percent (99.99%) during each calendar month (“Uptime Commitment”).

3. **REMEDY**

3.1 **Service Credits.** In the event Unscheduled Downtime occurs, and Subscriber complies with its obligations under this Section 3, Subscriber may request service credits in accordance with this SLA (“Service Credit”) and according to the following table:

<u>System Availability</u>	<u>Service Credit as a % of subscription fee paid for applicable month for affected Services</u>
99.98 – 90.00	2%
98.99 – 98.00	5%
97.99 – 97.00	10%
96.99 – 96.00	15%
< 95.99	25%

3.2 **Request for Service Credit.** Service Credits shall be deducted from subsequent invoices for subscription fees or other fees. Subscriber shall identify the affected users, geographic area affected, affected functionality, and start & stop times of the incident. To receive the Service Credit, Subscriber must request the Service Credit in writing within thirty (30) days following the month for which the Service Credit is requested. The Service Credit and Subscriber’s termination rights are Subscriber’s sole and exclusive remedies for Company’s failure to meet the Uptime Commitment.

3.3 **Limitations.** Service Credits may not be issued if the Subscriber’s account is past due, suspended or pending suspension. Service Credits are exclusive of any applicable taxes for which Subscriber is responsible. Service Credits may be denied where Subscriber submits false or repetitive requests for Service Credits. Notwithstanding anything to the contrary, the total credit to Subscriber for the Services shall not exceed twenty-five percent (25%) of the subscription fees or other fees charged for the affected Service during the month in which the Service Credit is issued.