

VIRTUOUS SOFTWARE SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) is incorporated by reference in any executed Subscription Order Form between Virtuous Software, Inc. (“Virtuous”) and Customer. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Subscription Order Form between Virtuous and Customer. Subject to the Agreement (as defined in the Subscription Order Form), Virtuous will use commercially reasonable efforts to make the Services available as set forth in this Service Level Agreement.

1. AVAILABILITY

- A. Formula. The Services will, subject to the limitations and exceptions listed below, be available 99.9% of the time during each calendar month from the Service Effective Date (referred to herein as the “Availability Commitment”). The Services will be “available” if the Services are available for access and use by Customer and its Users over the Internet and operating in material accordance with the Documentation provided to Customer. The availability of the Services for a given month will be calculated according to the following formula (referred to herein as the “Availability”):

Where: Total minutes in the month = TMM

Total minutes in the month the Online Services are unavailable = TMU

And: $(TMM - TMU) / TMM$

- B. Limitations. For purposes of this calculation, the Services will be deemed to be unavailable (referred to herein as “Unavailable”) only (i) if the Services do not respond to HTTP requests issued by Virtuous' monitoring software, or (ii) for the duration of a Severity-1 Error as defined in the Virtuous Customer Support Guide currently in effect (available at www.virtuous.org/legal) Further, the Services will not be deemed Unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth in Section 2 of this SLA. Virtuous' records and data will be the basis for all SLA calculations and determinations.
- C. Requested Maintenance. Maintenance performed at Customer's request outside of the normally scheduled maintenance will not be considered an outage or as Unavailability of the Services.

2. EXCEPTIONS

- A. The Services will not be considered to be Unavailable for any outage that results from any maintenance performed by Virtuous (a) prior to the Service Effective Date; or (b) during Virtuous' standard maintenance windows which occur Saturdays and Sundays between 12:01am and 6:00am Eastern Standard Time (collectively referred to herein as “Scheduled Maintenance”).
- B. The Services will not be considered Unavailable for any outage of the Services due to (a) Customer's information content or application programming, acts or omissions of Customer or its agents; (b) delays or failures due to circumstances beyond Virtuous' reasonable control that could not be avoided by its exercise of due care; (c) failures of Internet backbone itself and the network by which Customer connects to the Internet backbone or any other network unavailability outside of the Virtuous network; or (d) any suspension of the Services as set forth in the Agreement.

3. REMEDIES

- A. Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below.
 - i. If the total Availability (as calculated in Section 1 above) for a given month is less than the Availability Commitment, Customer will receive one Service Credit. In addition, each 100-minute increment by which the allowable Unavailability is exceeded, Customer will receive one-half (1/2) of a Service Credit.
 - ii. For purposes of this SLA, a Service Credit will be deemed to be an amount equal to the pro-rata Fee for one (1) day of the subscription to the affected Services (herein referred to as "Service Credit"). The total Service Credits for a given month will, in no event, exceed an amount equal to fifty percent (50%) of the then-current pro-rata monthly Fee for the applicable subscription to use the affected Services. Service Credits will be applied to extend the Term of Service of the applicable Subscription Order Form.
 - iii. Remedies will not accrue (i.e., no Service Credits will be issued and an outage will not be considered Unavailable for purposes of this SLA) if Customer is not current in its payment obligations. Virtuuous has no obligation to issue any Service Credit unless Customer reports the Unavailability to Virtuuous immediately upon becoming aware of such outage.
- B. Upon written request from Customer, Virtuuous shall promptly provide a report specifying the level of Unavailability and Service Credits due (if any) for the requested month. To receive Service Credits, Customer must submit such request within 90 days after the end of the month in which the Services were Unavailable.
- C. This Section 3 sets forth Virtuuous' sole obligation and liability and Customer's sole remedy for any service level failure as set forth in this section 3.

4. MODIFICATIONS

- A. Virtuuous reserves the right to modify this Service Level Agreement, at any time, by providing notice of such modified terms to Customer as set forth herein. Customer will be notified of such modifications at least thirty (30) days prior to posting of the modified Service Level Agreement. Modifications will be deemed accepted and become effective thirty (30) days after the date of such notice unless Customer provides Virtuuous written notice of rejection of the modifications during such thirty (30) day period. Customer's continued use of the Service following the effective date of the modification and silence during the notice period will constitute Customer's consent to the modified Service Level Agreement.