



Service Level Agreement

Last update: Saturday, August 25th, 2009

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 ServerTune Network to those persons that have purchased Products and Services directly from ServerTune (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 ServerTune Network and/or the failure of ServerTune to provide the Products and Services purchased by Customer from ServerTune in accordance with (i) the Terms of Service, (ii) ServerTune'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 ServerTune's website, ServerTune 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. ServerTune HEREBY RESERVES THE RIGHT TO AMEND, ALTER, MODIFY, REPLACE OR SUSPEND, FROM TIME TO TIME IN ITS SOLE DISCRETION, ALL OR ANY PORTION OF ITS AUP OR PRIVACY POLICY. CURRENT COPIES OF ServerTune'S TERMS OF SERVICE, AUP AND PRIVACY POLICY MAY BE REVIEWED OR PRINTED BY CUSTOMER AT THE LEGAL SECTION OF ServerTune'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:

1. **Definitions.** When used in this SLA, the following capitalized terms shall have the definitions set forth below:
 - a. "AUP" means ServerTune's standard acceptable usage policy, as in effect and listed on ServerTune's website from time to time and subject to all changes, modifications and replacements as ServerTune may effect in accordance with the Terms of Service and AUP.
 - b. "Order Form" means ServerTune's standard service exhibit, service addendum or order form, specifying the products and services purchase by Customer, as in effect from time to time.
 - c. "Products and Services" means those products and services offered by ServerTune 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 ServerTune's managed hosting division and expressly marketed as managed hosting services.

- d. "Privacy Policy" means ServerTune's standard privacy policy, as in effect and listed on ServerTune's website from time to time and subject to all changes, modifications and replacements as ServerTune may effect in accordance with the Terms of Service and AUP.
 - e. "Scheduled Maintenance" means all maintenance services for which ServerTune gives Customer at least five (5) days prior notice of such maintenance services via ServerTune's outage mailing list maintained on ServerTune's customer portal.
 - f. "Service Credit" means a credit, calculated in accordance with this SLA, issued by ServerTune to the Customer in respect of products and services contracted for, but not delivered by ServerTune in accordance with the Agreement due to a Qualified Network Downtime Event.
 - g. "Terms of Service" means either (i) ServerTune's standard terms of service as in effect and listed on ServerTune's website as of the date of Customer's purchase of Products and Services or (ii) solely to the extent ServerTune and Customer have separately negotiated written terms of service different from those referred to in clause (iii), ServerTune'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.
 - h. "ServerTune" means ServerTune Internet Services, Inc.
 - i. "ServerTune Network" means the portion internal computer network owned or operated on behalf of ServerTune 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.
2. **ServerTune Network Availability Assurance:** ServerTune assures Customer 100% uptime availability of ServerTune Network covered by this SLA. Subject to Section 3 below, in the event that ServerTune 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 ServerTune Network or the failure of ServerTune Network to pass Customer's

TCP/IP traffic with less than three percent (3%) packet loss and less than 30ms latency across ServerTune Network (other than as specified below, each such event, a “Qualified Network Downtime Event”), ServerTune will issue Customer a Service Credit calculated as follows.

- a. 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 ServerTune’s customer portal or through ServerTune’s technical support department. Upon the passage of five (5) continuous minutes of a Qualified Network Downtime Event, the Service Credit shall equal five percent (5%) of the monthly fees payable by Customer in respect of such Products and Services for the month in which such Qualified Network Downtime Event occurred and thereafter during the pendency of such unavailability, the Service Credit shall increase by an additional five percent (5%) for each continuous thirty (30) minutes of a Qualified Network Downtime Event up to a maximum of one hundred percent (100%) of monthly fees payable by Customer in respect of such Products and Services for the month in which such Qualified Network Downtime Event occurred.

- b. All Service Credits are calculated by ServerTune on a “per-event-basis” each calendar month 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 ServerTune Network out to internet backbone carriers and does not include third party carrier latency or peering issues not utilized by ServerTune.

- c. 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 ServerTune, including any Force Majeure Event, (ii) to any

Customer that is more than thirty (30) days past due on any amount owing to ServerTune or any Customer that has breached the Agreement or (iii) in respect of any products or services contracted for with ServerTune 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 ServerTune's customer portal to customerservice@ServerTune.com, 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. Notwithstanding anything in the Agreement to the contrary, the maximum total Service Credit for any calendar month, including all refunds, guarantees, warranties and other service level agreements Customer may have with ServerTune, shall not exceed one hundred percent (100%) of Customer's monthly recurring fee for Products and Services during such month.

3. **Scheduled Maintenance:** Customer hereby acknowledges that ServerTune may, from time to time, perform maintenance service on ServerTune Network, with or without notice to Customer, which may result in the unavailability of ServerTune Network. 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 ServerTune's outage mailing list and provide accurate and timely information in ServerTune's customer portal in order for ServerTune to notify Customer of all Scheduled Maintenance. Customer's failure to subscribe to ServerTune's outage mailing list or to provide accurate and timely information on ServerTune'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 ServerTune has not given Customer notice in accordance with this SLA shall not be deemed Scheduled Maintenance for purposes of this SLA.
4. **DISCLAIMER:** Customer hereby acknowledges that ServerTune'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 ServerTune's ability to connect ServerTune Network to

such server and monitor such server. In the event that Customer substantially impairs ServerTune's ability to connect ServerTune 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 ServerTune 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 ServerTune to connect ServerTune Network to such server, ServerTune shall provide such technical support services or management services as professional services on a time and material basis and Customer shall be billed at ServerTune's then-current professional services rate. ServerTune 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 ServerTune's products and services (each, a "Force Majeure Event"). ServerTune agrees to exercise reasonable efforts to mitigate the damage arising from Force Majeure Event; however, under no circumstances will ServerTune or its affiliates be held liable for any cost, expense, liability, claim or damage due to such interruptions. In no event shall ServerTune 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 ServerTune's sole and exclusive liability, for any failure of ServerTune Network or failure by ServerTune to provide Customer with the products and services purchased by Customer in accordance with the Agreement which results from a Qualified Downtime Event. ServerTune RESERVES THE RIGHT TO AMEND, MODIFY OR TERMINATE THIS SLA, THE AUP, THE PRIVACY POLICY AND THE TERMS OF SERVICE FROM TIME TO TIME, AND A CUSTOMER'S USE OF ServerTune'S PRODUCTS AND SERVICES AND ServerTune NETWORK AFTER ANY SUCH AMENDMENT, MODIFICATION OR TERMINATION OF THIS SLA, THE AUP, THE PRIVACY POLICY OR THE TERMS OF SERVICE IS POSTED ON THE LEGAL DEPARTMENT PAGE OF ServerTune'S WEBSITE (www.ServerTune.com) WILL CONSTITUTE THE CUSTOMER'S ACCEPTANCE OF ANY SUCH AMENDMENTS, MODIFICATIONS OR TERMINATION.

If you have any questions or concerns, please contact: customerservice@servertune.com