



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 ServePath 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
- Hardware Replacement
- 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 ServePath identifies as “beta.” If ServePath chooses to provide SLA credits for beta features, such choice will not impose any obligation on ServePath, and ServePath may reverse that choice at any time.

I. REMEDIES FOR SERVICE FAILURE

This SLA lists certain ServePath 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 ServePath 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 ServePath'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 Part II below (“**Failure**”), ServePath will provide Customer with a 10,000% Service Credit (as defined below), pursuant to the provisions, requirements, and limitations of this SLA, including Parts XI through XIII.
- 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. **“Basic Transfer Fees”** refers to the billing line item for Customer’s physical server;
 - b. **“Transfer Fees”** refers to fees for optional prepaid transfer plans; and
 - c. **“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 ServePath 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 ServePath provides Service. Notwithstanding the foregoing, this SLA does not authorize termination of the Service if ServePath 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 IV, V, VII, IX, and X 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

ServePath will deliver 100% Uptime, as defined in Part II.B below. In addition, ServePath 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 ServePath network or a hardware failure in the ServePath 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 ServePath. ServePath may change the specific measured hardware devices without notice. (ServePath 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.
- ServePath 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.
- ServePath 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.
- ServePath 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.
- ServePath 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
- ServePath 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.
- ServePath currently measures performance to the following South African networks:
 - South Africa: Coza, XSLnet, 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 Basic Transfer Fees if Customer pays on a separate line item for transfer allocation. If Customer only pay Basic Server Fees (which include a bundled transfer allotment) credits will be issued against Basic Server Fees only.

III. HARDWARE REPLACEMENT

60-minute replacement of the following ServePath-provided hardware:

- Hard drive
- Memory
- Processor
- Power supply
- Network Interface Card (two per server)
- Motherboard (results in complete server replacement)
- Hardware firewall



ServePath will repair or remove and install reasonably comparable replacements if it determines, in its sole discretion, that the hardware is defective. The period listed above begins upon such determination. The period listed above refers only to the time required to physically repair or replace the failed hardware element and does not apply to any time spent: (a) addressing data, operating systems, or other software or systems corrupted or destroyed by hardware failures; or (b) communicating with Customer regarding permissions or instructions.

Credits for this Part III will be issued against either Basic Server Fees or Miscellaneous Fees for the affected managed service, depending on the Service feature subject to the Failure. If the Failure impacts both managed services and other Service features, ServePath may choose, in its sole discretion, whether to award a credit against Basic Server Fees or Miscellaneous Fees.

IV. 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 XI.A), and a human support engineer will review the support request within the timeframe listed above. ServePath 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.

V. DOMAIN NAME SERVICES

- Primary DNS availability: 100%

“DNS” means domain name server. A period of DNS failure is any time during which 100% of ServePath’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.

VI. POWER AVAILABILITY & PERFORMANCE

ServePath will provide power availability sufficient to run Customer hardware 100% of the time. ServePath 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 VI will be issued against either Basic Server Fees or Miscellaneous Fees for the affected managed service, depending on the Service feature subject to the Failure. If the Failure impacts both managed services and other Service features, ServePath may choose, in its sole discretion, whether to award a credit against Basic Server Fees or Miscellaneous Fees.

VII. 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. ServePath will monitor, but is not required to report to Customer on, environmental conditions in the Facility.

VIII. SERVER POWER CYCLING

- Server power cycling: < 15 minutes

The Service includes an automated system for cycling each individual power circuit. The Customer Portal allows Customer to request an immediate power cycle (a "Reboot Request"). This SLA applies only to requests for power cycling initiated through such automated system. The figure listed above is the maximum period between the time of the Reboot Request and either the actual server power cycling or notice to Customer that the power cycling failed. To qualify for a credit, Customer must open a Case requesting a manual server power cycle.

Credits for this Part VIII will be issued against Basic Server Fees only.

IX. PHYSICAL SECURITY

- 24 x 365 on-site security

ServePath will ensure the presence of a professional security guard in the Facility at all times, charged with enforcing ServePath's security policies. (Those policies require, among other things, that ServePath 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.)

X. 24 x 365 ENGINEERING SUPPORT

- 24 x 365 Engineering Support

ServePath 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.

IX. 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 ServePath's sole discretion, a ServePath 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 XI.A even if ServePath provides monitoring services.

- B. Customer must provide ServePath with accurate and complete designated points of contact, using the Customer Portal. Customer must provide ServePath with accurate passwords for maintenance and repair use by ServePath engineers. Delays or failures caused by Customer's failure to abide by the requirements of this Part XI.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.

XII. 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. ServePath 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, ServePath 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 VI 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 ServePath's revenues for such period, ServePath 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, "ServePath's revenues" and "all Customers" refer to revenues and customers from Internet hosting services sold under the "ServePath" 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 hosting. ServePath may employ such accounting procedures as it chooses in calculating revenues, in its sole discretion, and nothing herein will be construed to require that ServePath 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. ServePath 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 ServePath 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 ServePath's control;
5. outages resulting from Internet anomalies outside of ServePath'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 ServePath 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, ServePath 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.

XIII. TERMS OF SERVICE

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