**SERVICE LEVEL AGREEMENT (SLA)**

Version 1.1   
Dated: January 1, 2020

**OVERVIEW:**

PLEASE READ THIS DOCUMENT CAREFULLY. This SLA provides important information concerning the support you will receive from Provider with regard to Services. By using Services referenced in the Service Agreement and EULA, you accept the Services “As Is” and “As Available”. If you do not wish to do so, do not use the software or Services.

**IN CONSIDERATION OF** the application of this SLA as Exhibit A to the Service Agreement and EULA, the **Company** and the **Provider** (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

1. **Definitions for Service Commitment:**

**Service Year** is the preceding 365 days from the date of an SLA claim.

**Annual Uptime Percentage** is calculated by subtracting from 100% the percentage of 15 minute periods during the Service Year in which The Software was in the state of “Unavailable.” If you have been using The Software for less than 365 days, your Service Year is still the preceding 365 days but any days prior to your use of the service will be deemed to have had 100% Availability. Any downtime occurring prior to a successful Service Credit claim cannot be used for future claims. Annual Uptime Percentage measurements exclude downtime resulting directly or indirectly from any software SLA Exclusion (defined below).

**Demarcation Point or Points** means the point at which Provider’s technical staff manages and maintains control of the cloud based servers serving you and EXCLUDES loss of connectivity due to any 3rd party servers, Your Servers, networks, broadbands, any and ALL points on the internet not directly under the control of Provider, and as further described in SLA Exclusion (below).

**Unavailable** and **Unavailability** means that The Software is not available at the demarcation point or points for a period of 15 minutes or greater.

**Eligible Credit Period** is a single month, and refers to the monthly billing cycle in which the most recent Unavailable event included in the SLA claim occurred.

**Service Credit** is a dollar credit, calculated as set forth below, that we may credit back to your account.

**Issue Management Levels** are defined in the table shown below. These service levels are the basis by which the technical and support teams will control and manage all SLA claims.

|  |  |  |
| --- | --- | --- |
| Level | Initial Response | Targeted Resolution |
| 5 | 2 hours | 24 hours |
| 4 | 8 hours | 48 hours |
| 3 | 2 days | 7 days |
| 2 | 7 days | 14 days |
| 1 | 14 days | May fluctuate |

1. **SAAS Service Commitment**
   1. Provider will use commercially reasonable efforts to make the software as a Service (“SAAS”) available with an Annual Uptime Percentage (defined below) of at least 99.75% during the Service Year. In the event The Software does not meet the Annual Uptime Percentage commitment, you will be eligible to receive a Service Credit as described below.
2. **Provider Service Commitments and Service Credits**
   1. If the Annual Uptime Percentage for Provider’s Software drops below 99.75% for the Service Year, you are eligible to receive a Service Credit equal to 30% of your monthly Hosted Subscription fee only (excluding one-time payments made for other services such as data imports, training and other services) for the Eligible Credit Period. To file a claim, you do not have to wait 365 days from the day you started using the service or 365 days from your last successful claim. You can file a claim any time the Annual Uptime Percentage over the trailing 365 days drops below 99.75%.
   2. Provider will apply any Service Credits only against future software payments otherwise due from you. Service Credits shall not entitle you to any refund or other payment from Provider. your sole and exclusive remedy for any unavailability or non-performance of The Software or other failure by Provider to provide The Software is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA or termination of your use of The Software.
3. **Credit Request and Payment Procedures**
   1. To receive a Service Credit, You must submit a request by sending an e-mail message to info@prosale.com, include, in the body of the e-mail, the dates and times of each incident of Unavailability that you claim to have and be received by Provider within thirty (30) business days of the last reported incident in the SLA claim. If the Annual Uptime Percentage of such request is confirmed by Provider and is less than 99.75% for the Service Year, then Provider will issue the Service Credit to you within one billing cycle following the month in which the request occurred. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.
4. **The Software SLA Exclusions** 
   1. The Service Commitment does not apply to any unavailability, suspension or termination of The Software caused by factors outside of Provider’s reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of The Software; (i) that result from any actions or inactions, omission, negligence, failure of you (or anyone acting on behalf of you) or any third party; (ii) that result from your equipment, software or other technology and/or third party equipment, software or other technology; (iii) arising from Provider’s suspension and termination of your right to use The Software in accordance with the Provider’s SERVICES AGREEMENT (collectively, “The Software SLA Exclusions”). If availability is impacted by factors other than those explicitly listed in this Exhibit, Provider may issue a Service Credit considering such factors at Provider's sole discretion.
5. **Privacy & Confidentiality**
   1. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Company which would reasonably be considered to be proprietary to the Company including, but not limited to, accounting records, business processes, and Company records and that is not generally known in the industry of the Company and where the release of that Confidential Information could reasonably be expected to cause harm to the Company.
   2. Provider agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which Provider has obtained, except as authorized by Company. This obligation will survive even after termination of the Service Agreement.
   3. All written and oral information and materials disclosed or provided by the Company to Provider under this SLA is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was issued to Provider.
6. **Modification of Agreement**
   1. Provider may administer amendments or modifications to this SLA at any time. Any amendment, modification including additional obligation assumed by either Party in connection with this SLA will be provided in writing (email, USPS, or otherwise) and posted to the designated access location as referenced in the Service Agreement.