



The following terms and conditions of this Service Level Agreement (as amended from time to time, this "SLA") apply only to Data Center Products and Services and govern (A) the use and availability of The RackWire Network to those persons that have purchased Products and Services directly from RackWire (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 the RackWire Network and/or the failure of RackWire to provide the Products and Services purchased by Customer from RackWire in accordance with (i) the Terms of Service, (ii) RackWire'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 RackWire's website, The RackWire 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. **RACKWIRE HEREBY RESERVES THE RIGHT TO AMEND, ALTER, MODIFY, REPLACE OR SUSPEND, FROM TIME TO TIME IN ITS SOLE DISCRETION, ALL OR ANY PORTION OF THIS SLA, ITS AUP OR PRIVACY POLICY. CURRENT COPIES OF RACKWIRE'S TERMS OF SERVICE, AUP AND PRIVACY POLICY MAY BE REVIEWED OR PRINTED BY CUSTOMER AT THE LEGAL SECTION OF RACKWIRE'S WEBSITE. CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THE SLA AND AUP.** By submitting a signed work 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:

"*AUP*" means RackWire's standard acceptable usage policy, as in effect and listed on RackWire's website from time to time and subject to all changes, modifications and replacements as RackWire may effect in accordance with the Terms of Service and AUP

"*Work Order Form*" means RackWire's standard service exhibit, service addendum or order form, specifying the products and services purchase by Customer, as in effect from time to time.

"*Data Center Products and Services*" means those products and services offered by RackWire to its general customer base, in each case as purchased by a Customer and set forth on an Work Order Form, but expressly excludes all products and services offered by RackWire's managed hosting division and expressly marketed as managed hosting services.

"*Privacy Policy*" means RackWire's standard privacy policy, as in effect and listed on RackWire's website from time to time and subject to all changes, modifications and replacements as RackWire may effect in accordance with the Terms of Service and AUP.

"*Scheduled Maintenance*" means all maintenance services for which RackWire gives Customer at least five (5) days prior notice of such maintenance services via RackWire's outage mailing list maintained on RackWire's customer portal.

"*Service Credit*" means a credit, calculated in accordance with this SLA, issued by RackWire to the Customer in respect of products and services contracted for, but not delivered by RackWire in accordance with the Agreement due to a Qualified Network Downtime Event.

"*Terms of Service*" means either (i) RackWire's standard terms of service as in effect and listed on RackWire's website as of the date of Customer's purchase of Products and Services or (ii) solely to the extent RackWire and Customer have separately negotiated written terms of service different from those referred to in clause (i), RackWire'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.

2. 100% RackWire Network Availability Assurance: RackWire assures Customer 100% uptime availability of RackWire's Network covered by this SLA. Subject to Section 3 below, in the event that RackWire 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 RackWire's Network or the failure of RackWire's Network to pass Customer's TCP/IP traffic with less than three percent (3%) packet loss and less than 30ms latency across RackWire's Network (other than as specified below, each such event, a "Qualified Network Downtime Event"), RackWire will issue Customer a Service Credit calculated as follows.

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 RackWire's customer portal or through RackWire's technical support department and are subject to confirmation by RackWire prior to qualifying for any Service Credit. Subject to Section 3 below, 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 first 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 first occurred.

All Service Credits are calculated by RackWire on a "per-event-basis/per-related-series-of-events-basis" 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 RackWire's Network out to internet backbone carriers and does not include third party carrier latency or peering issues not utilized by RackWire.

3. 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 RackWire, including any Force Majeure Event, (ii) to any Customer that is more than thirty (30) days past due on any amount owing to RackWire or any Customer that has breached the Agreement or (iii) in respect of any products or services contracted for with RackWire 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) submit a request for a Service Credit, as applicable, in writing via RackWire's customer ticket area 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. **IN THE EVENT THAT ANY OUTAGE OR RELATED SERIES OF OUTAGES GIVING RISE TO ANY SERVICE CREDIT HEREUNDER SPANS MORE THAN ONE CALENDAR MONTH, THE MAXIMUM TOTAL SERVICE CREDIT TO WHICH CUSTOMER SHALL BE ENTITLED FOR SUCH OUTAGE OR RELATED SERIES OF OUTAGES SHALL NOT EXCEED ONE HUNDRED PERCENT (100%) OF CUSTOMER'S MONTHLY RECURRING FEE FOR THE PRODUCTS AND SERVICES DURING THE FIRST MONTH IN WHICH SUCH OUTAGE OR**



**RELATED SERIES OF OUTAGES FIRST OCCURRED AND CUSTOMER SHALL NOT BE ENTITLED TO ANY OTHER SERVICE CREDITS IN RESPECT OF SUCH OUTAGE OR RELATED SERIES OF OUTAGES FOR THE OTHER MONTHS DURING THE PENDING OF SUCH OUTAGE OR RELATED SERIES OF OUTAGES. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM TOTAL SERVICE CREDITS TO WHICH CUSTOMER MAY BE ENTITLED UNDER THIS SLA DURING ANY CALENDAR MONTH TOGETHER WITH ALL OTHER SERVICE CREDITS, REFUNDS, GUARANTEES, WARRANTIES AND OTHER SERVICE LEVEL AGREEMENTS CUSTOMER MAY HAVE WITH RACKWIRE, SHALL NOT EXCEED ONE HUNDRED PERCENT (100%) OF CUSTOMER'S MONTHLY RECURRING FEE FOR THE PRODUCTS AND SERVICES AFFECTED DURING SUCH MONTH.**

4. Scheduled Maintenance: Customer hereby acknowledges that RackWire, from time to time, perform maintenance service on RackWire's Network, with or without notice to Customer, which may result in the unavailability of RackWire's Network. Downtime or unavailability resulting from Scheduled Maintenance shall not constitute a Qualified Network Downtime Event or qualify for any Service Credit. Emergency maintenance and maintenance for which RackWire has not given Customer notice in accordance with this SLA shall not be deemed Scheduled Maintenance for purposes of this SLA.

5. DISCLAIMER: Customer hereby acknowledges that RackWire'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 RackWire's ability to connect RackWire's to such server and monitor such server. In the event that Customer substantially impairs RackWire's ability to connect RackWire's 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 RackWire 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 RackWire to connect RackWire to such server, RackWire shall provide such technical support services or management services as professional services on a time and material basis and Customer shall be billed at RackWire's then-current professional services rate of \$125.00 hourly. RackWire 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 RackWire's products and services (each, a "Force Majeure Event"). RackWire agrees to exercise reasonable efforts to mitigate the damage arising from Force Majeure Event; however, under no circumstances will RackWire or its affiliates be held liable for any cost, expense, liability, claim or damage due to such interruptions. In no event shall RackWire 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 RackWire's sole and exclusive liability, for any failure of RackWire's Network or failure by RackWire to provide Customer with the products and services purchased by Customer in accordance with the Agreement which results from a Qualified Downtime Event. **RACKWIRE RESERVES THE RIGHT TO AMEND, MODIFY OR TERMINATE THIS SLA, THE AUP AND THE PRIVACY POLICY FROM TIME TO TIME, AND A CUSTOMER'S USE OF RACKWIRE'S PRODUCTS AND SERVICES AND RACKWIRE'S NETWORK AFTER ANY SUCH AMENDMENT, MODIFICATION OR TERMINATION OF THIS SLA, THE AUP OR THE PRIVACY POLICY IS POSTED ON THE TERMS PAGE OF RACKWIRE'S WEBSITE ([WWW.RACKWIRE/](http://WWW.RACKWIRE/)) WILL CONSTITUTE THE CUSTOMER'S ACCEPTANCE OF ANY SUCH AMENDMENTS, MODIFICATIONS OR TERMINATION.**