Service Level Agreement for CloudHealth® by VMware

Last Updated: February 10, 2020

This Service Level Agreement (“SLA”) is subject to the VMware Cloud Service Offerings Terms of Service and the Service Description for the CloudHealth® by VMware service offering (“Service Offering”). Capitalized terms not defined in this SLA will have the meanings specified in the Terms of Service and the Service Description. We reserve the right to change the terms of this SLA in accordance with the Terms of Service.

Definitions

“Application Availability Target” is 99.5%.

“Available” or “Availability” means when a customer can log into the CloudHealth platform.

“Monthly Service Fee” is calculated by taking the annual subscription fee for the Service Offering and dividing by 12.

“SLA Credit” is a percentage credit applicable against the Monthly Service Fee, based on actual Availability of the Service Offering during the applicable month as detailed in the following table.

“SLA Event” each occurrence of VMware not meeting the Application Availability Target in a given month, subject to the SLA limitations set forth below.

Availability and SLA Credits

VMware will use commercially reasonable efforts to ensure that the Service Offering is Available during a given calendar month equal to the Application Availability Target. If the actual monthly Availability of the Service Offering is less than the Application Availability Target, then a customer may be eligible for an SLA Credit, all as set forth in the table, below.

<table>
<thead>
<tr>
<th>Monthly Availability</th>
<th>SLA Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>99.5% or more</td>
<td>0%</td>
</tr>
<tr>
<td>95.0% – 99.4%</td>
<td>10%</td>
</tr>
<tr>
<td>90.0% – 94.9%</td>
<td>20%</td>
</tr>
<tr>
<td>85.0% – 89.9%</td>
<td>30%</td>
</tr>
<tr>
<td>Less than 85.0%</td>
<td>50%</td>
</tr>
</tbody>
</table>

SLA Limitations

This SLA applies only to a customer’s production environment of the Service Offering, and not to any non-production environment, including, without limitation, testing, staging, evaluation, or proof of concept.

The following will be excluded from any time-based calculations related to Availability:

a) scheduled maintenance periods (scheduled maintenance period notices are provided if customers subscribe to receive notification via the mechanism VMware provides at: http://status.cloudhealthtech.com),
b) recurring or zero-impact maintenance that is generally applicable to all customers,
c) your misuse of the Service Offering,
d) force majeure events, denial of service attacks, viruses, or hacking attacks for which there is no commercially reasonable known solution, or any other events that are not within VMware’s control or that could not have been avoided with commercially reasonable care,
e) acts or orders of government, or
f) packet loss, network or internet problems beyond VMware’s border router supporting our public internet connectivity.

You will not be eligible to receive an SLA Credit if:
a) you are delinquent on any payments for the CloudHealth by VMware service offering,
b) you are in violation of Section 3 (“Acceptable Use”) of the Terms of Service during the time of the SLA Event, or
c) the SLA Event was due to your failure to meet your security responsibilities as set forth in the Agreement.

VMware’s monitoring tools, data, and records will be the sole source of information used to track and validate Availability.

SLA Claims

To request an SLA Credit, you must file a support request within the CloudHealth by VMware platform within (30) days of the SLA Event in question. VMware will review the request and issue an SLA Credit when VMware validates the SLA Event based on VMware’s data and records.

A customer may apply the SLA Credits only to its future payments for the Service Offering. SLA Credits will not entitle Customer to any refund or other payment from VMware and cannot be applied towards other VMware products or service offerings. SLA Credits may not be transferred or applied to any other account. SLA Credits will expire twelve (12) months after issuance or when the Subscription Term for the Service Offering ends, whichever first occurs.

The SLA Credits specified in this SLA are your sole and exclusive remedies for any SLA Events occurring during your Subscription Term for the Service Offering or for any other claim in connection with this SLA.