



**STATEMENT OF WORK FOR  
COMPLIANCE ARCHIVING MESSAGING SERVICES**

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**TERMS AND CONDITIONS**

Capitalized terms not defined in this Attachment will have the meanings set forth in the MSA.

**1. SERVICES.**

**1.1 "Services"** will mean electronic communication archiving services, and monitoring services if applicable, described in the Order Form to this Attachment. The "**Launch Date**" of Services under this Attachment will mean the date on which we first make the Services available to you.

**1.2 Devices and Users.** In some instances, the Services may require the installation of software on your hardware. As applicable in those instances, we will provide the Services with respect to the computer systems and other devices you designate to us (each, a "**Device**"). If you order Services that are User-based and do not require a Device, we will provide end users that you designate to us (each a "**User**") with access to and use of those Services. You and your Users will be responsible at your and their own expense for all hardware, desktop software, wireless devices and Internet connections that are required to reach the servers we use to provide the Services, subject to our minimum recommended specifications, unless otherwise set forth herein. The Services are provided on shared servers, unless we agree otherwise in writing.

**1.3 Administrators.** Prior to the Launch Date, you will appoint up to three administrators, each of whom will have the power to act as your agent, with the authority to make decisions and give notices on your behalf ("**Administrators**") and whose instructions and representations we may rely on. Administrators' authority includes, but is not limited to (i) controlling the creation and deletion of Seats and domain names; (ii) managing changes to Seat information (such as changes to User name or password); (iii) serving as our authorized technical contact for the Services; (iv) setting business rules/policies and/or filters on the Services that may filter and/or terminate emails sent to or by Users without delivering them; (v) requesting the restoration or disclosure of content by submitting an Authorization for Disclosure of Information form to us, and (vi) monitoring complaints against Users. At least one Administrator must attend a training session on the Services, which we will provide at no charge. You may replace Administrators at any time upon notice to us.

**1.4 Compliance with Applicable Law.** Your use of the Services, and the installation of any hardware or software for use in conjunction with the Services (including but not limited to monitoring, intercepting or transmitting to us or any third party, any data or communication) must be in compliance with applicable law. You represent to us that (i) you have received all permissions and authorizations to use the Services as required under applicable law, or (ii) your use of the Services does not require any such permission or authorization. For purposes of this Section 1.4, your use of the Services includes all archiving, monitoring, intercepting, transmitting and other Services conducted by us on your behalf.

**2. TERM AND TERMINATION.**

**2.1 Term and Termination.** This Attachment will be in effect during the Initial Term set forth in Order Form and will thereafter automatically renew for a period equal to the Initial Term as provided in Order Form. The fee schedule listed in Order Form will remain in place during the Initial Term; all fees and related pricing will be subject to a standard price adjustment of a maximum of 5% or the percentage increase in the CPI for the preceding year as publicly reported as of the renewal date. Intention not to renew must be provided at least 60 days prior to the beginning of the renewal term. The sections related to Payment Terms, Limitation of Liability, Warranties, Indemnity, Confidentiality and Intellectual Property from the General Terms and Conditions, as provided in the referenced General Terms and Conditions document, will survive the expiration or termination of this Attachment for any reason. Within 10 days after the expiration or termination of this Attachment for any reason, you must pay all undisputed fees accrued and unpaid at the time of termination, and the cancellation fee if applicable.

**2.2 Retention upon Termination.** Upon the effective date of termination of this Attachment for any reason, we will cease archiving your data. However, we will continue to store your archived data for a period of 90 days ("**Grace Period**") following termination, during which you may access and extract your archived data. If you prefer, and provided your account is in good standing, we will perform an export of your data for delivery to you after receipt of your written request and execution of an SOW stating the fees and terms of the data export and delivery. You must notify us in writing during the Grace Period of your request for an export. If we do not receive a written export request from you prior to the end of the Grace Period, we may, without liability to you or any third party, permanently dispose of your archived data remaining on our system. Such disposal will be done in accordance with applicable industry standards for destruction of data. We will provide a certificate of destruction upon your written request.

**3. ADDITIONAL PAYMENT TERMS.**

**3.1 Fees.** You agree to pay for the Services that you order at the fees set forth in the Order Form for Services you purchase. We will invoice you for Services monthly in advance and/or arrears according to the Service and our established billing cycle.



**3.2 Fee Adjustments due to Regulatory Changes.** In the event of any future regulatory requirement or similar circumstances that increase the cost of providing the Services, the fees for the Services may be adjusted accordingly and we will give you notice of such change. You will have 30 days after notice of a regulation-induced price increase to terminate the affected Service without incurring a termination fee.

**4. ADDITIONAL LIMITATION ON LIABILITY.** In no event will we be liable to you for any loss arising out of or based upon any fee, penalty, assessment or other action asserted by any governmental or regulatory agency against you.

**5. ADDITIONAL INDEMNITY.** In addition to your indemnity obligations under the MSA, you will, indemnify us in the manner described in the MSA, for all loss, cost, damage and expense that we incur as a result of your breach of Sections 1.3 and/or 1.4 of this Attachment.

**6. THIRD PARTY BENEFICIARIES.** You acknowledge and agree that we and you intend to include, as third party beneficiaries of the Agreement, our software vendors, with all rights and remedies available as if such vendors were a party to this Agreement.

**7. COMPLIANCE ARCHIVING DOCUMENTATION.** If you order Services designed to facilitate your compliance with federal, state, and/or local securities-related regulations (“**Compliance Services**”) we will, upon your request and provided we have received the required information from you, send to you written documentation of our compliance with FINRA Rule 17(a)-4 vendor standards for securing and archiving customers’ electronic communications (“**Compliance Documentation**”). You acknowledge that you will be responsible for filing Compliance Documentation with the appropriate agencies and we will incur no liability for your failure to do. You must provide the following required information:

FINRA Broker-Dealer No. \_\_\_\_\_

SEC File No. \_\_\_\_\_

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## SERVICE LEVEL AGREEMENT FOR EMAIL COMPLIANCE ARCHIVE AND EMAIL CONTINUITY SERVICES

This Services Order Attachment will become a part of and is expressly incorporated into, the MSA between the parties, and forms the entire agreement between us with respect to the subject matter set forth herein. Capitalized terms not defined in this Attachment will have the meanings set forth in the MSA. The following terms and conditions will apply to the provision and use of the web user interface to access our Email Archive and/or Email Continuity services. “Service” under this Attachment will mean the Email Compliance Archive and/or Email Continuity service(s).

We are committed to providing a scalable and highly available email archiving solution through the following service commitment (“Service Level Agreement”).

**TERM OF THE SERVICE LEVEL AGREEMENT.** This Service Level Agreement will only become applicable to the Services upon the later of (a) completion of the “stabilization period,” as such term is defined in a Statement of Work (if any), or (b) 30 days from the Service Launch Date.

**DEFINED TERMS.** For the purposes of this Service Level Agreement, the following terms will have the following meanings:

“Available” or “Availability” means that the Customer’s end users are able to access the Service via the web user interface for the Service subject to the exclusions defined in Downtime Minutes below. Availability is calculated by subtracting from 100% the average of the Error Rates from each five minute interval in the monthly billing cycle.

“Downtime Minutes” means the total number of minutes that Customer’s authorized end users cannot access the normal web user interface for the Service. The calculation of Downtime Minutes excludes time the Service is not Available due to any of the following: (i) the Maintenance Minutes; (ii) your or your end users’ own Internet service provider; (iii) a Force Majeure event; (iv) any systemic Internet failures; (v) any failure in your or your end users’ own hardware, software or Network connection, (vi) unavailability of your primary email service, or (vii) your or your end users’ bandwidth restrictions.

“Error Rate” means (i) the total number of internal server errors returned by SilverSky as error status “Internal Error” or “Service Unavailable” divided by (ii) the total number of Requests during that five minute interval. SILVERSKY will calculate the Error Rate for each SILVERSKY Customer (not end user) account as a percentage for each five minute interval in the monthly billing cycle. The calculation of the number of internal server errors will not include errors that arise directly or indirectly as a result of any of the Downtime Minutes exclusions above.

Example: If 1,000 Requests are made during a five minute interval and 800 fail, then the Error Rate for that interval is 80% (=800/1000). There are 8,640 5-minute intervals in a 30-day month. If there is 0% Error Rate in 8,620 intervals and an 80% Error Rate in 20 five minute intervals, then the average Error Rate is calculated as follows:

$$(8620 * 0\% + 20 * 80\%) / 8640 = 0.18\%$$

Using this example, Availability for the month is 99.81% (=100% - 0.18%).

“Maintenance Minutes” means the time period during which the Service will not be Available (i) each month so that we can perform routine maintenance to maximize the performance of the Service, up to 10 hours per calendar month, and (ii) any emergency maintenance we deem necessary in our sole discretion.

“Maintenance Windows” means the scheduled time period during which we might perform routine maintenance each week. Current Maintenance Windows are Thursday from 10PM to Friday 5 AM Mountain Time. We may change Maintenance Windows at any time. We will use reasonable efforts to schedule Maintenance Windows for non-peak usage hours, however, and we will use reasonable efforts to notify you in advance of any changes to our normal Maintenance Windows.

“Network” means the network outside of our border routers.

“Request” means a probe that verifies the site is available by logging into the web user interface.

**MAINTENANCE NOTICES.** We will communicate the date and time that we intend to make the Services un-Available through a global “welcome message” or an email sent to your Administrator at least 24 hours in advance or longer if practical. You understand and agree that there may be instances where we need to interrupt the Service without notice in order to protect the integrity of the Service due to security issues, virus attacks, SPAM issues or other unforeseen circumstances.

**MEASUREMENT.** We use a proprietary system to monitor and measure whether the Service has met the Service level metrics below and you agree that this system will be the sole basis for resolution of any dispute that may arise between you and us regarding this Service Level Agreement. Our measurement system is based on our log files. We will make the log files we use to validate your claim available to you upon request.

### SERVICE LEVEL METRICS-- MEASURED ON A CALENDAR MONTH BASIS.

**Availability.** The Service level metric for Availability is 99.99%.



**AMOUNT OF SERVICE LEVEL CREDITS.**

<b>Availability</b>	<b>Amount of Credit for Affected Users for Affected Month</b>
< 99.99% but ≥ 99.00%	5%
< 99.00%	10%

**REMEDY AND PROCEDURE.** Your sole remedy and the procedure for obtaining your remedy in the event that we fail to meet the Service level metrics set forth above are as follows:

You must notify us in writing at support@silversky.com of the date we failed to meet the Service level metrics within five business days of the date the failure occurred (the “**Claim Notice**”). We will confirm the information provided in the Claim Notice within five business days of receipt of the Claim Notice. If we cannot confirm the alleged failure to meet a Service level metric, then you and we agree to refer the matter to executives at each company for resolution. If we confirm that we are out of compliance with this Service Level Agreement, you will receive the amount of Service Level Credits stated above for the affected User for the affected month (calculated as a percentage of the amount billed to you for the total number of your end users subscribed to the Service), that will be reflected in our invoice to you in the month following our confirmation of the failure to meet the service level metric(s).

Except as expressly stated above, any remedy you may receive pursuant to this section does not relieve you, or allow a set-off, of any other payment obligations to us under this or any other Services Order Attachment.