

INSTANA, INC.

ENTERPRISE TERMS

PLEASE READ THESE ENTERPRISE TERMS (“TERMS”) CAREFULLY BEFORE USING ANY OFFERING PROVIDED BY INSTANA, INC. (“INSTANA”). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH INSTANA WHICH REFERENCE THESE TERMS (EACH, AN “ORDER FORM”), YOU (“CLIENT”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS, THE “AGREEMENT”). YOUR USE OF (I) THE INSTANA SOFTWARE PRODUCT FOR ON-PREMISES DEPLOYMENT SET FORTH IN AN ORDER FORM (“LICENSED PRODUCT”) OR (II) THE HOSTED, SOFTWARE-AS-A-SERVICE VERSION OF THE INSTANA SOFTWARE PRODUCT SET FORTH IN AN ORDER FORM (“SAAS SERVICE”), (COLLECTIVELY, “INSTANA OFFERING”), IS CONDITIONED ON, AND YOUR USE OF THE INSTANA OFFERING SHALL CONSTITUTE, ASSENT TO THE TERMS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS. IN ADDITION, ANY ONLINE ORDER FORM WHICH YOU SUBMIT VIA INSTANA’S STANDARD ONLINE PROCESS AND WHICH IS ACCEPTED BY INSTANA SHALL BE DEEMED TO BE MUTUALLY EXECUTED. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. GRANT OF LICENSE; OWNERSHIP; RESTRICTIONS.

- 1.1 This Section 1.1 only applies if Client has purchased a license to the Licensed Product: Subject to Client’s compliance with the terms and conditions of this Agreement (including any limitations and restrictions set forth on the applicable Order Form), Instana grants Client a limited, personal, non-sublicensable, non-transferable, nonexclusive license to use internally a Licensed Product during the applicable Order Form Term (as defined below) for the internal business purposes of Client, only as provided herein and only in accordance with Instana’s applicable documentation (which is available at: <https://docs.instana.io/>) (the “Documentation”).
- 1.2 This Section 1.2 only applies if Client has purchased access to the SaaS Service: Subject to Client’s compliance with the terms and conditions of this Agreement (including any limitations and restrictions set forth on the applicable Order Form), Instana grants Client the right to access and use the SaaS Service during the applicable Order Form Term for the internal business purposes of Client, only as provided herein and only in accordance with Instana’s Documentation.
- 1.3 As between the parties, Instana retains all intellectual property rights relating to the Instana Offering and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Instana or any third party relating to the Instana Offering, which are hereby assigned to Instana. Client will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement.
- 1.4 Except as expressly set forth in this Agreement, Client shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Instana Offering (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Instana Offering; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Instana Offering; (iv) use the Instana Offering for the benefit of a third party; (v) remove or otherwise alter any proprietary notices or labels from the Instana Offering or any portion thereof; (vi) use the Instana Offering to build an application or product that is competitive with any Instana product or service; (vii) interfere or attempt to interfere with the proper working of the Instana Offering or any activities conducted on the Instana Offering; or (viii) bypass any measures Instana may use to prevent or restrict access to the Instana Offering (or other accounts, computer systems or networks connected to the Instana Offering). Client is responsible for all of Client’s activity in connection with the Instana Offering, including but not limited to uploading Client Data (as defined below) onto the Instana Offering. Client (a) shall use the Instana Offering in compliance with all applicable local, state, national and

foreign laws, treaties and regulations (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (b) shall not use the Instana Offering in a manner that violates any third party intellectual property, contractual or other proprietary rights.

2. **PROFESSIONAL SERVICES.** Upon payment of any applicable professional services fees and related expenses, Instana agrees to use reasonable commercial efforts to provide agreed upon professional services only if and to the extent such professional services are set forth in an Order Form. If Instana cannot complete the professional services within the estimated hours, or if Instana provides additional professional services, Client will pay Instana at its then-current hourly rates for consultation. Instana retains ownership of all results of professional services.

3. **UPDATES; SUPPORT.**

- 3.1 Instana will provide support and maintenance services for the Instana Offering in accordance with the terms set forth on Exhibit A attached hereto. From time to time, Instana may provide upgrades, patches, enhancements, or fixes for the Instana Offering to its Clients generally without additional charge (“Updates”), and such Updates will become part of the Instana Offering and subject to this Agreement; provided that, except as expressly set forth in Exhibit A, Instana shall have no obligation under this Agreement or otherwise to provide any such Updates.

- 3.2 This Section 3.2 only applies if Client has purchased access to the SaaS Service: Instana will provide support and uptime for the SaaS Services in accordance with the terms set forth on Exhibit B attached hereto. From time to time, Instana may provide Updates for the SaaS Services to its Clients generally without additional charge, and such Updates will become part of the SaaS Services and subject to this Agreement; provided that Instana shall have no obligation under this Agreement or otherwise to provide any such Updates.

- 3.3 Client understands that, with respect to Sections 3.1 and 3.2 above, Instana may cease supporting old versions or releases of the Instana Offering at any time in its sole discretion; provided that Instana shall use commercially reasonable efforts to give Client sixty (60) days prior notice of any major changes. In addition, Client understands that Client may be required install certain updates on Client’s computers in order to continue using the Instana Offering during the Order Form Term, and Client agrees to make any such updates in accordance with Instana’s instructions.

4. **CONFIDENTIAL INFORMATION AND CLIENT DATA.**

- 4.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order,

provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order.

- 4.2 For purposes of this Agreement, "Client Data" shall mean any data, information or other material provided, uploaded, or submitted by Client to the Instana Offering in the course of using the Instana Offering. Client shall retain all right, title and interest in and to the Client Data, including all intellectual property rights therein. Client, not Instana, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data. Instana shall use commercially reasonable efforts to maintain the security and integrity of the Instana Offering and the Client Data. Client is responsible for the use of the Instana Offering and any breach of this Agreement by any person to whom Client has given access to the Instana Offering. In any event, Instana may aggregate data (including Client Data) and use such aggregated data to evaluate and improve the Instana Offering and otherwise for its business purposes, provided that use of such aggregated data must be in anonymized form which can in no way be linked specifically to Client.
- 4.3 In the event and to the extent that Client provides any Personal Data (as defined in the DPA) that is subject to certain Data Protection Laws (as defined in the DPA), the EU Data Processing Addendum located at <https://docs.instana.io/instana-dpa-latest.pdf> (the "DPA") is hereby included and incorporated into this Agreement.
- 4.4 The parties acknowledge and agree that Instana is a service provider for the purposes of the California Consumer Privacy Act ("CCPA") and is receiving personal information from Client pursuant to the Agreement for a business purpose. Instana shall not sell any such personal information. Instana shall not retain, use or disclose any personal information provided by Client pursuant to the Agreement except as necessary for the specific purpose of performing the services for Client pursuant to the Agreement, or otherwise as set forth in the Agreement or as permitted by the CCPA. The terms "personal information," "service provider," "sale," and "sell" are as defined in Section 1798.140 of the CCPA. Instana certifies that it understands the restrictions of this paragraph.

5. WARRANTY; DISCLAIMER.

- 5.1 This Section 5.1 only applies if Client has purchased a license to the Licensed Product: Instana warrants that for a period of thirty (30) days from delivery of the Licensed Product, the Licensed Product will materially conform to Instana's then current Documentation for such Licensed Product; provided that Client's sole remedy, and Instana's sole liability, in the event of a breach of the foregoing warranty will be limited exclusively to product replacement or, if replacement is inadequate as a remedy (or in Instana's opinion, impractical), to refund of an appropriate portion the remaining unamortized fee paid by client. This warranty covers only problems reported to Instana during the warranty period.
- 5.2 This Section 5.2 only applies if Client has purchased access to the SaaS Service: With respect to the SaaS Service, Instana warrants that during the Order Form Term, the SaaS Service will perform in material conformance with its then current Documentation for such SaaS Service; provided that Client's sole remedy, and Instana's sole liability, in the event of a breach of the foregoing warranty shall be for Instana to provide support to Client in accordance with Section 3.2.
- 5.3 EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 3.1 AND 3.2, THE INSTANA OFFERING IS PROVIDED "AS IS" AND "AS AVAILABLE" AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

6. **INDEMNIFICATION.** Each party (“Indemnitor”) shall defend, indemnify, and hold harmless the other party, its affiliates and each of its and its affiliates’ employees, contractors, directors, suppliers and representatives (collectively, the “Indemnitee”) from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys’ fees) (“Losses”), that arise from or relate to any claim that (i) the Client Data or Client’s use of the Instana Offering (in the case of Client as Indemnitor), or (ii) the Instana Offering (in the case of Instana as Indemnitor), infringes, violates, or misappropriates any third party intellectual property or proprietary right. Each Indemnitor’s indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (a) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (b) the option to assume sole control over the defense and settlement of any claim (provided that the Indemnitee may participate in such defense and settlement at its own expense); and (c) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor’s expense). The foregoing obligations of Instana do not apply with respect to the Instana Offering or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (1) not created or provided by Instana (including without limitation any Client Data), (2) made in whole or in part in accordance to Client specifications, (3) modified after delivery by Instana, (4) combined with other products, processes or materials not provided by Instana (where the alleged Losses arise from or relate to such combination), (5) where Client continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (6) Client’s use of the Instana Offering is not strictly in accordance herewith.
7. **LIMITATION OF LIABILITY.** EXCEPT FOR (A) THE PARTIES’ INDEMNIFICATION OBLIGATIONS UNDER SECTION 6, (B) EITHER PARTY’S BREACH OF SECTION 4.1 (CONFIDENTIAL INFORMATION) AND (C) CLIENT’S BREACH OF SECTION 1.4 (USE RESTRICTIONS), IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CLIENT TO INSTANA HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.
8. **FEES AND PAYMENTS.** Client shall pay Instana fees for the Instana Offering as set forth in each Order Form (“Fees”). Unless otherwise specified in an Order Form, all Fees shall be invoiced annually in advance and all invoices issued under this Agreement are payable in within thirty (30) days from date of invoice. Past due invoices are subject to interest on any outstanding balance of the lesser of 1.5% per month or the maximum amount permitted by law. Client shall be responsible for all taxes associated with Instana Offering (excluding taxes based on Instana’s net income). All Fees paid are non-refundable and are not subject to set-off. If Client exceeds any user or usage limitations set forth on an Order Form, then (i) Instana shall invoice Client for such additional users or usage at the overage rates set forth on the Order Form (or if no overage rates are set forth on the Order Form, at Instana’s then-current standard overage rates for such usage), in each case on a pro-rata basis from the first date of such excess usage through the end of the Order Form Initial Term or then-current Order Form Renewal Term (as applicable), and (ii) if such Order Form Term renews (in accordance with the section entitled “Term; Termination”, below, such renewal shall include the additional fees for such excess users and usage.
9. **TERM; TERMINATION.** This Agreement shall commence upon the date of the first Order Form, and, unless earlier terminated in accordance herewith, shall last until the expiration of all Order Form

Terms. For each Order Form, unless otherwise specified therein, the “Order Form Term” shall begin as of the effective date set forth on such Order Form, and unless earlier terminated as set forth herein, (i) shall continue for the initial term specified on such Order Form (the “Order Form Initial Term”), and (ii) following the Order Form Initial Term, shall automatically renew for additional successive periods of equal duration to the Order Form Initial Term (each, a “Order Form Renewal Term”) unless either party notifies the other party of such party’s intention not to renew no later than thirty (30) days prior to the expiration of the Order Form Initial Term or then-current Order Form Renewal Term, as applicable. In the event of a material breach of this Agreement by either party, the non-breaching party may terminate this Agreement by providing written notice to the breaching party, provided that the breaching party does not materially cure such breach within thirty (30) days of receipt of such notice. With respect to Licensed Products, upon termination or expiration of this Agreement, Client shall immediately cease all use of all Licensed Products and return or and return or destroy all copies of all Licensed Products and Documentation that Client has obtained hereunder. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, accrued payment obligations, ownership provisions, warranty disclaimers, indemnity and limitations of liability. Any services provided by Instana to Client shall be billable at Instana’s standard rates then in effect.

- 10. MISCELLANEOUS.** This Agreement represents the entire agreement between Client and Instana with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Client and Instana with respect thereto. These Enterprise Terms shall govern and take precedence over any inconsistent or conflicting provisions set forth in any Exhibit, Documentation, Order Form or purchase order or the like (even if signed), unless and solely to the extent that the parties expressly state in a separate signed writing that they intend to override these Terms. The Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules, and the parties consent to exclusive jurisdiction and venue in the state and federal courts located in San Francisco, California. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notices must be sent to the contacts for Client as set forth on the Order Form and for Instana to legal@instana.com. Either party may update its address set forth above by giving notice in accordance with this section. Except as otherwise provided herein, no modification or amendment of any provision of this Agreement shall be effective unless agreed by both parties in writing, and no waiver of any provision of this Agreement shall be effective unless in writing and signed by the waiving party. Except for payment obligations, neither party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such party’s reasonable control, including, without limitation, the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts. Neither party may assign any of its rights or obligations hereunder without the other party’s consent; provided that (i) either party may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of substantially all of such party’s business relating to this Agreement (provided further that Client’s rights and obligations may not be assigned to a competitor of Instana) and (ii) Instana may utilize subcontractors in the performance of its obligations hereunder. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys’ fees. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by

the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches.

EXHIBIT A

SUPPORT TERMS To the extent Instana has become obligated for support and maintenance, the following will apply with respect to the Instana Offering so long as they remain Instana's standard terms and the Client is in full compliance with the Agreement. Capitalized terms not defined in Section 5 below have the same meaning as in Instana's Enterprise Terms.

- SUPPORT AND MAINTENANCE SERVICES.** Support and Maintenance Services consist of (a) Error Correction and Telephone Support provided to a single consistent technical support contact concerning the installation and use of the then current release of the Instana Offering and the Previous Sequential Release, (b) E-mail Support, (c) Web Support, and (d) Instana Offering updates that Instana in its discretion makes generally available to its support and maintenance Clients without additional charge.
- ERROR PRIORITY LEVELS.** Instana shall exercise commercially reasonable efforts to correct any Error reported by Client in the current unmodified release of the Instana Offering in accordance with the priority level reasonably assigned to such Error by Instana. The reported Errors are classified in the following manner:

Error Classification	Criteria
Urgent	A production application is down or there is a major malfunction, resulting in a business revenue loss and impacting the application functionality for a majority of users.
High	Critical loss of application functionality or performance, impacting the application functionality for a high number of users.
Medium	Moderate loss of application functionality or performance, impacting multiple users.
Low	Minor loss of application functionality or product feature in question.

FUNCTIONAL DEFINITIONS. For the purposes of Error classification, essential or major functions include: data capture features, SLA and alarming features, performance management features and application performance problem resolution features.

RESPONSE TIME. Instana shall use commercially reasonable efforts to respond to Errors within four (4) hours for Urgent and High Errors. Instana will use reasonable means to repair the error and keep Client informed of progress. Instana makes no representations as to when a full resolution of the error may be made.

Error Classification	Initial Response and Acknowledgement	Manager Escalation	VP Escalation	CEO Escalation	Email Status Updates for Open Cases
Urgent	4 Hrs.	Immediate	1 Business Day	1 Week	Daily
High	12 Hrs.	1 Business Day	1 Week	2 Weeks	Weekly
Medium	1 Business Day	Monthly Review for All Open Issues	Quarterly Review for All Open Issues	None	None

Low	1 Business Day	Monthly Review for All Open Issues	Quarterly Review for All Open Issues	None	None
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3. **EXCLUSIONS.** Instana shall have no obligation to support: (i) an altered or damaged Instana Offering or any portion of the Instana Offering incorporated with or into other software; (ii) any Instana Offering that is not the then current release or immediately Previous Sequential Release; (iii) an Instana Offering problem caused by Client’s negligence, abuse or misapplication, use of the Instana Offering other than as specified in the Instana's Documentation or other causes beyond the control of Instana; or (iv) an Instana Offering installed on any hardware that is not supported by Instana. Instana shall have no liability for any changes in Client’s hardware which may be necessary to use the Instana Offering due to a Workaround or maintenance release.

1. DEFINITIONS.

- **“E-mail support”** means ability to make requests for technical support assistance by e-mail at any time (with reasonable efforts by Instana to respond within one business day) concerning the installation and use of the then current release of an Instana Offering and the Previous Sequential Release.
- **“Error”** means an error which significantly degrades an Instana Offering as compared to the Instana’s published Documentation.
- **“Error Correction”** means the use of reasonable commercial efforts to correct Errors.
- **“Fix”** means the repair or replacement of object or executable code versions of an Instana Offering or documentation to remedy an Error.
- **“Previous Sequential Release”** means the release of an Instana Offering which has been replaced by a subsequent release of the same Instana Offering. Notwithstanding anything else, a Previous Sequential Release will be supported by Instana only for a period of twelve (12) months after release of the subsequent release.
- **“Telephone Support”** means technical support telephone assistance on a 24x7x365 basis concerning the installation and use of the then current release of an Instana Offering and the Previous Sequential Release.
- **“Web Support”** means information available on the World Wide Web, including frequently asked questions, product documentation and bug reporting.
- **“Workaround”** means a change in the procedures followed or data supplied by Client to avoid an Error without substantially impairing Client’s use of an Instana Offering.

AUTHORIZED SUPPORT CONTACTS. Support will be provided solely to Client’s authorized support contacts. Client will be asked to designate its authorized support contacts, including its primary email address.

CLIENT’S OBLIGATION TO ASSIST. Should Client report a purported Error in the Instana Offering to Instana, Instana may require Client to provide Instana with the following information:

- A general description of the operating environment
- A list of all hardware components, operating systems and networks
- A reproducible test case
- Any log files, trace and system files

Client's failure to provide this information may prevent Instana from identifying and fixing the reported Error.

THESE TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. ALL INSTANA OFFERINGS AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE AGREEMENT. THIS ATTACHMENT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT B

SAAS SERVICE LEVEL AGREEMENT

This SaaS Service Level Agreement only applies if Client has purchased access to the SaaS Service:

This SaaS Service Level Agreement forms a part of Instana’s Enterprise Terms. Capitalized terms not defined in this SLA shall have the meaning set forth in the Agreement and in Instana’s Documentation, as applicable.

Instana will: (i) provide Client with 99.5% availability to the SaaS Service (the “SaaS Service Availability”); (ii) use reasonable commercial efforts to maintain the security and integrity of the SaaS Service; and (iii) provide telephone and email support for the SaaS Service to Client on a 24x7x365 basis. The SaaS Service Availability will be measured on a monthly basis, with all hours weighted equally, but the SaaS Service Availability measurement will exclude reasonable scheduled downtime for system maintenance as well as any downtime resulting from outages of third party connections or utilities or other reasons beyond Instana’s control (including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Instana employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Instana’s possession or reasonable control, and denial of service attacks).

In addition, Instana shall not be responsible for downtime: a) if Client does not obtain Instana’s written approval prior to implementing any significant configuration changes, including but not limited to changes that lead to a greater than thirty percent (30%) change in a one week period or greater than fifty percent (50%) change in a one month period in the number of objects under management in the system including but not limited to Agents, Sensors, metrics, events and traces; or b) due to Client’s failure to upgrade the Instana Agents to keep the Agent versions updated within 6 months of the latest release.

If the SaaS Service is unavailable to Client due to defects with the SaaS Service beyond the 99.5% monthly availability metric, then, as Client’s sole and exclusive remedy (and Instana’s sole liability), Instana will provide Client a credit for the subsequent SaaS Service billing cycle as follows:

Availability	Credit
97.5% - 99.4%	5%
95% - 97.5%	10%
< 95%	20%

In order to receive downtime credit, Client must notify Instana within seventy-two (72) hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. All credits provided hereunder are nonrefundable. If Client elects not to renew Client’s subscription to the SaaS Service, such that the above credit cannot be applied, Client will have the option to receive up to one free month of SaaS Service as its sole remedy in lieu of such credit.

Should Client report a purported defect in the SaaS Service to Instana within the required time period, Instana may request that Client provide Instana with the following information:

- A general description of the operating environment
- A list of all hardware components, operating systems and networks
- A reproducible test case
- Any log files, trace and systems files

Client acknowledges and agrees that Client’s failure to provide such information upon Instana’s request may prevent Instana from identifying and remedying the reported defect.