

Spanning Backup - Service Level Agreement

[November 21, 2017]

Overview

This Service Level Agreement (this “SLA”) describes the service levels applicable to Customer’s access to Spanning’s proprietary Service as a Customer of Spanning pursuant to the Subscription Agreement (the “Agreement”) between Customer and Spanning. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

Service Levels

While the Customer is receiving Service under the Agreement, Spanning shall use commercially reasonable efforts to provide the Service in accordance with Sections 1. Service Availability Goal, 2. Daily Backups and if applicable, 3. Accurate Restores. If the Service does not meet or exceed the service levels specified in those sections, and provided that Customer satisfies the conditions and otherwise meets its obligations under this SLA, Customer will be eligible for Service Credits or other compensation as described in the respective section.

For purposes of this SLA, a “Service Credit” shall mean an additional day of the affected Service added to the current subscription term for all Users thereof. This SLA states Customer’s sole and exclusive remedy for any failure by Spanning to meet the service levels set forth herein.

1. Service Availability Goal

Spanning will use commercially reasonable efforts to provide the Service with a Monthly Uptime Percentage of at least 99.9% for each calendar month during the term of a subscription (the “Service Availability Goal”). The Monthly Uptime Percentage for each month shall be calculated as follows:

$$\frac{\text{(total number of minutes in month – total number of minutes of Downtime in month)}}{\text{total number of minutes in month}}$$

For purposes of calculating the Monthly Uptime Percentage, the following terms shall have the following meanings:

- “Downtime” means the Service is unavailable to Customer, excluding Permitted Downtime.
- “Permitted Downtime” means downtime that occurs as part of Spanning's maintenance activities where Customer has been notified of the outage before it occurs.

If Spanning does not meet the Service Availability Goal for a given month during the term of a subscription and Customer meets its obligations under this SLA, Customer will receive Service Credits per the schedule below.

Monthly Uptime Percentage:

- < 99.9% - >= 99.0% → 5 Days Added to Subscription Term
- < 99.0% - >= 95.0% → 10 Days Added to Subscription Term
- < 95.0% → 20 Days Added to Subscription Term

2. Daily Backups

Following the Service’s first initiation, finishing (successfully or partially due to errors beyond Spanning’s control) and saving of a copy of Customer’s data that is available through the applicable third party API(s) used by the Service (“Backup”), the Service will conduct daily Backups (the “Daily Backup Goal”) during the term of the subscription. If Spanning does not meet the Daily Backup Goal in any calendar month and Customer meets its obligations under this SLA, Customer will receive Service Credits per the schedule below.

Days without Backups:

- 1 Day without Backups → 3 Days Added to Subscription Term
- 2 Consecutive Days without Backups → 7 Days Added to Subscription Term
- 5 Consecutive Days without Backups → 15 Days Added to Subscription Term

For purposes of the foregoing schedule, a “Day without Backups” means a calendar day where the Service failed to conduct a Backup.

3. Accurate Restores (applicable only to Spanning Backup for G Suite)

Spanning will provide Accurate Restores for Customer’s Backed Up Data. If Spanning fails to provide Accurate Restores, the Customer will receive compensation. Details for Accurate Restores and compensation for Spanning’s failure to provide them are outlined in the “Accurate Restores” section below.

Customer Obligations

In order to be eligible for any of the Service Credits or other compensation described above, Customer must be current in all payment obligations and be in full compliance with the terms and conditions of the Agreement and this SLA. Additionally, in order to receive any of the Service Credits or other compensation described above, Customer must notify Spanning in writing within thirty days from the time Customer becomes eligible to receive a Service Credit or other compensation. Failure to comply with this requirement will forfeit Customer's right to receive such Service Credit or compensation.

Accurate Restores

For purposes of this Section, the following terms shall have the following meanings:

- “Backed Up Data” means Customer’s G Suite Data that is retrieved through the Google APIs and successfully saved by the Service. The Google APIs do not make certain items accessible to be backed up by external services. Items not available through the Google APIs include (but are not limited to) the list of items described in the Spanning Backup Knowledge Base. The G Suite Data provided by the Google APIs may not preserve all data and formatting elements.
- “G Suite Account” means an active G Suite user account within the Customer’s domain.
- “G Suite Data” means the data stored in the Customer’s G Suite Account in Gmail, Drive, Calendars, Contacts and Sites.
- “Restore” means returning the Backed Up Data to a G Suite Account in such form and format as provided by Google to Spanning through the Google APIs as part of the Backup process and allowed by the Google APIs as part of the restore process.
- “Restore Operation” means a Restore initiated through the Service by Customer (excluding automated recurring Restore actions).

The Service will Restore Customer’s Backed Up Data into the Customer’s selected G Suite Account when requested by Customer through a Restore Operation.

If the Service encounters a failure and is unable to successfully Restore the Customer’s Backed Up Data to the selected G Suite Account in response to a Restore Operation, the Customer must notify Spanning in writing within 5 business days to investigate the problem.

If Spanning is not able to resolve the issue [and complete the failed Restore] successfully within a 10 business day resolution window, the Customer is eligible for compensation as described below. The resolution window will begin only after the Restore failure occurs in response to a Restore Operation and the Customer provides Spanning with all of the information required to resolve the issue. The determination of whether Customer has provided enough information to resolve the issue will be determined by Spanning in its sole and absolute discretion.

A Restore will not be considered to be unsuccessful if the failure is due to G Suite or a G Suite Account limitation, including but not limited to the selected G Suite Account exceeding storage quota, file size limitations, authorization issues or other G Suite limitations or to errors beyond Spanning's reasonable control. Additionally, a Restore Operation will not be considered to be unsuccessful if Customer causes the failure or if the action or omission that results in the failure could have reasonably been avoided or was taken after Customer has been informed of or become aware of the risk that such action or omission could result in a failed Restore.

Spanning will determine whether a Restore has been successful or unsuccessful in its sole and absolute discretion. Spanning's determination will be final and binding on Customer.

Compensation for an unsuccessful Restore:

- For an unsuccessful Restore, Customer will receive an amount equal to 10 times the amount of the annual subscription fee paid for the current year of the Service for the particular User subscription for which the Restore was not successful. For clarity, if Customer has multiple User subscriptions for the Service (i.e., multiple accounts being for which data is being backed-up through the Service) and the Restore is not successful for Backed-Up Data on only a portion of those subscriptions, then the compensation hereunder will be measured based on the subscription fee only for those subscriptions for which the Restore Operation was unsuccessful. If Customer pays a consolidated amount for all of its subscriptions, then the compensation hereunder will be based on a pro rata portion of the annual subscription fee.
- Customer will have the option to receive its compensation in the form of a credit or a refund.
- The maximum amount of compensation Customer may receive for all failures of this service level is not to exceed the total amount of annual subscription fees paid by the Customer for the affected Service for the then-current year.

Example Compensation Calculation:

- Customer has 100 licenses for which it pays \$48 for each individual subscription for the Service in the current year.
- Customer experiences an unsuccessful Restore for one individual subscription.

- Customer will receive \$480 ($\$48 * 10$) for the unsuccessful Restore.
- Under no circumstances will Customer receive compensation of more than \$4,800 in the current year (e.g., if 15 individual licenses had unsuccessful Restores, Customer would receive \$4,800 (rather than $\$7,200 (\$48 * 10 * 15)$) because of the cap).

SLA Exclusions.

The SLA does not apply to any Service that expressly excludes this SLA (as stated in the documentation for such Service) or any performance issues: (i) caused by force majeure events or other circumstances beyond Spanning's reasonable control; or (ii) that resulted from Customer's or any third party's equipment or services, including, but not limited to, any Microsoft, Salesforce or Google service, including, without limitation, Microsoft Office 365, Salesforce or G Suite; or (iii) that are attributable to or caused by any failure of the Internet or other telecommunications systems.