

CHARTING LEGAL LANDSCAPES

Navigating International Complexity, One Issue at a Time
by GC Law Firm

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SLA & Performance: Ensuring Business Continuity in the Cloud

How to translate technical reliability into binding contractual obligations

SSLA 与性能：确保云端业务连续性

在 SaaS 模式下，性能并非商业预期，而是合同标的本身。服务的可用性决定了客户的业务连续性；因此，服务水平协议 (SLA) 中定义的参数成为了核心保证条款



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Abstract

In the SaaS model, performance is not merely a commercial expectation but the very essence of the contractual object. Service availability determines the client's operational continuity; therefore, the parameters defined in Service Level Agreements (SLA) become fundamental guarantee clauses.

在 SaaS 模式下，性能并非商业预期，而是合同标的本身。服务的可用性决定了客户的业务连续性；因此，服务水平协议（SLA）中定义的参数成为了核心保证条款。。

- Key words:
- SLA,
 - Uptime,
 - Service Credits
 - Bug Fixing,
 - Maintenance,
 - Liability.

Service Level Agreement (SLA): Performance Metrics

服务水平协议 (SLA)：性能指标

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1. . Service Level Agreement (SLA): Performance Metrics

1. 服务水平协议 (SLA)：性能指标

The definition of SLAs must not be generic. Tech legal practice suggests moving from "best effort" clauses to certain quantitative parameters.

SLA 的定义不得笼统。科技合同实务建议从“尽力而为” (best effort) 条款转向确定的定量参数。

Parameter 参数	Details and Implications 详情与影响
Uptime (Availability) 在线率 (可用性)	The market standard is 99.9% to 99.99%. Clearly define "down-time" (excluding scheduled maintenance). 市场标准在 99.9% 至 99.99% 之间。必须明确什么是“停机时间”（不包括计划性维护）。
Response/Resolution Times 响应/解决时间	SLAs must distinguish between "acknowledgment" (initial support) and "actual resolution" of the ticket, especially for critical bugs. SLA 必须区分“受理”（初始支持）和工单的“实际解决”，特别是针对关键漏洞。

2. Maintenance: Corrective, Evolutionary, and Adaptive

2. 维护：纠正性、进化性与适应性

Distinguishing between intervention types is crucial to avoid disputes over extra costs.

区分不同类型的干预措施对于避免额外费用纠纷至关重要。

服务水平协议 (SLA)

Intervention Type 维护类型	Details and Implications 详情与影响
Corrective (Bug Fix) 纠正性维护 (漏洞修复)	Intrinsic to the subscription fee. Legal safeguard against software "non-conformity." 应被视为订阅费用的固有组成部分。它是防止软件“不符合”合同约定的法律保障。
Evolutionary 进化性维护	Addition of new features. Must specify if included (standard in SaaS) or if they require tariff upgrades. 代表添加新功能。必须明确这些更新是包含在内的，还是需要升级付费方案。
Adaptive 适应性维护	Integrations for legal compliance (e.g., "Green House" Directive). Guaranteed obligation to maintain compliance. 为合规所需的整合（如“绿色建筑指令”）。必须保证这是维持软件合规性的义务。

3. Remedies: The "Service Credits" System

3. 救济措施：“服务抵扣额”体系

If SLAs are not met, the standard remedy in the SaaS sector is the Service Credit.

如果未能达到SLA，SaaS 行业的标准救济体系是“服务抵扣额” (Service Credit)

Aspect

维度

Details and Implications

详情与影响

Legal

Nature

法律性质

Not damages, but price reductions (discounts on future fees) to rebalance the contract in case of performance below standards.

并非损害赔偿，而是为了在绩效低于标准时平衡对价关系而预设的价格减免。

Legal

Advice

法律建议

The contract must include a "predefined discount table" (e.g., 10% credit under 99.5% uptime, termination for cause under 95%).

合同必须包含“预定义”折扣表（例如：低于 99.5% 在线率抵扣 10%，低于 95% 可解除合同）。

Liability

Cap

责任限制

Negotiating an annual cap on Service Credits is common practice, without limiting damages for gross breaches (e.g., data breach).

商定年度抵扣额上限是惯例，但这不应限制因严重违约（如数据泄露）导致的损害赔偿

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