



## RELIA TEL AS A SERVICE TERMS OF SERVICE

These Terms of Service apply to you, a user of our Service, and along with the Order Form executed by you and Tone constitute a binding agreement (the "**Agreement**") between the legal entity that you represent ("**you**" or "**Client**") and Tone Software Corporation ("**Tone**").

Please read all the terms and conditions of the Agreement carefully. By accepting an Order Form and/or using the Service, you agree that you are bound by the terms and conditions of the Agreement, and you represent and warrant that you have full power, authority and legal capacity to enter into the Agreement. Please contact Tone at [Contracts@tonesoft.com](mailto:Contracts@tonesoft.com) if you have any questions about the Agreement.

### 1. Definitions

**Downloaded Software** means client software downloaded by an Authorized User (defined below) from the Site that augments your use of the Service, including as applicable agents, API's and ancillary programs.

**Effective Date** means the date that an Order Form has been signed or otherwise accepted by the parties.

**MSP/Outsourcer** means a Client in the business of providing IT services to its customers and for whom the "MSP/Outsourcer" box is checked on the Order Form.

**Order Form** means a web-based or signed paper order form completed by you when ordering the Service.

**Service** means the provision by Tone to you of software and tools to manage and monitor VoIP quality and VoIP, PBX, UC, and IT infrastructure, in accordance with the Agreement. The Service includes the provision on a hosted basis of non-exclusive use and access to the Software, and associated hosting and support services as described herein.

**Site** means the web site or sites that Tone communicates to you where you may access the Service.

**Software** means Tone's proprietary software used by Tone to deliver the Service, made available to you through the Site on a "Software as a Service" basis, and all updates and associated documentation thereto made available as a part of the Service pursuant to the Agreement. The term "Software" includes the Downloaded Software.

### 2. Service

- a. Subject to Client's compliance with the terms and conditions of the Agreement, including payment of all applicable fees, Tone will provide the Service to you during the term of the Agreement. You may use and access the Service and Software solely through the Site and solely for your own business purposes (which will include, unless otherwise specified in the Order Form, the right to use the Service in support of your IT service customers). Your rights to use the Service are non-exclusive and non-transferable. The Downloaded Software may be used solely in support of your use of the Service, and for no other purpose. Notwithstanding the foregoing, if you are an MSP/Outsourcer, subject to the payment and other terms herein, you may install the Downloaded Software in your customers' environments solely for the purpose of supporting use of the Service for the benefit of such customers.
- b. Tone will provide Client with telephone and e-mail support in accordance with Tone's standard support procedures. Unless otherwise mutually agreed on a case by case basis, in the event Tone determines an issue results from a cause other than a Software defect or Service issue, and/or Tone cannot recreate an issue after exercising commercially reasonable efforts to do so, Tone shall notify Client thereof and cease any work thereon until instructed by Client to proceed. In case of such instruction, Client shall pay Tone the then-current fees for time and expenses Tone incurs in diagnosing and/or correcting such issue. Tone's provision of additional configuration, customization or other professional services will be subject to (a) Tone's then applicable fees, terms and conditions and (b) the written statement(s) of work detailing the professional services to be performed by Tone. Changes to a statement of work must be made in advance in writing between the parties and may affect the fees for such services.
- c. The parties agree to the terms of the Service Level Agreement in Exhibit A. Tone may modify or remove its Service Level Agreement upon at least ninety (90) days' notice to you.

- d. Tone may from time to time modify the Service and add, change, or delete features of the Service in its reasonable discretion, without notice to you. Your continued use of the Service after any such changes to the Service constitutes your acceptance of these changes. Tone will use commercially reasonable efforts to notify you regarding material changes to the Service.
- e. The Service may be used and accessed for your internal business purposes only by your employees and independent contractors with a need to access the Service (“**Authorized Users**”). In addition, if you are an MSP/Outsourcer, you may allow use of the Service by employees and independent contractors of your customers and end users with a need to access the Service. These individuals will also be considered Authorized Users under the Agreement. You shall be fully responsible for use of the Service by Authorized Users and their compliance with the terms of the Agreement.
- f. You agree that all user information provided to Tone by you and/or the Authorized Users, whether for purposes of obtaining a user name and password or otherwise, will be accurate and complete in all respects. You agree to promptly notify Tone of any changes to any user information. You further acknowledge that you are solely responsible for: (a) all use of the Service made using your Authorized Users’ user names and passwords, and (b) maintaining the confidentiality of your Authorized Users’ user names and passwords. Only one individual may access the Service at the same time using the same user name and password. You agree to notify Tone immediately of any unauthorized use of an Authorized User’s email address, user name or password, or any other breach of security regarding the Service of which you become aware.
- g. Client agrees to let Tone use Client’s name and logo on Tone’s marketing website and in a marketing one-pager or similar marketing materials highlighting current Tone Clients.
- h. You warrant and agree not to:
  - o Violate any local, state, national or international law or regulation in connection with use of the Service, or otherwise use the Service in any way that is in furtherance of criminal, fraudulent, or other unlawful activity
  - o Interfere with or disrupt the Service or servers or networks connected to the Service
  - o Violate any codes of conduct, requirements, terms of use, policies or regulations of networks connected to the Service
  - o Interfere with or attempt to interfere with any other person’s use of the Service
  - o Gain access to or attempt to gain access to any account, computers or networks related to the Service without authorization
  - o Use the Service in a manner that results in excessive bandwidth usage, as determined in Tone’s sole discretion
  - o Forge headers or otherwise manipulate identifiers in order to disguise the origin of any content or communication transmitted through the Service

### 3. Intellectual Property

- a. No right, title or interest in any intellectual property rights in the Software or Service is transferred to Client, whether express or implied. You agree that Tone and its licensors own all intellectual property rights in and to the Service, the Software, and the Site, including but not limited to the look and feel, structure, organization, design, algorithms, templates, data models, logic flow, text, graphics, logos, and screen displays associated therewith. You will not reverse engineer, decompile or disassemble the Software, or otherwise attempt to reconstruct or discover the source code for the Software. You further agree not to resell, lease, assign, or distribute the Service or Software available to any third party for such third party’s benefit. You may make a single copy of the Downloaded Software for backup purposes only; provided that any such copies contain the same proprietary rights notices that appear on the Downloaded Software. Tone reserves all rights in the Service and Software not expressly granted to you hereunder.
- b. You shall retain ownership of all your rights in the content and data provided to Tone in connection with your use of the Site and the Service (“**Client Data**”). You hereby grant Tone a non-exclusive right to copy, use, distribute and disclose the Client Data solely as necessary to provide the Service.
- c. Tone may derive and compile from your usage of the Service certain aggregated and/or analytical information, so long as such aggregated or analytical information does not reveal any information about you or any individual. Such aggregated data and metadata may be used for Tone’s own purposes without restriction, including, but not limited to, using such data in conjunction with data from other sources to improve Tone’s products and services and create new products.

- d. Tone shall have a royalty-free, worldwide, transferable, and perpetual right to use or incorporate into the Service any suggestions, ideas, enhancement requests, and feedback provided by you or any Authorized User relating to the Service.

#### 4. Fees and Expenses

- a. You shall pay Tone all applicable fees associated with the Service as set forth in the Order Form. Unless otherwise set forth in the Order Form, Tone will invoice you for the Service annually or quarterly in advance, as set forth on the Order Form. All invoices are due and payable upon receipt. The amount and structure of all fees and rates, including without limitation fees for additional Services, may be adjusted by Tone for any Renewal Term; Tone will provide Client with a copy of then-current fees and rates upon request.
- b. All payments under the Agreement are non-refundable and, unless otherwise agreed, shall be made in United States dollars. Past-due payments will be subject to late payment charges of the lesser of: (a) one and one-half percent (1 ½ %) per month, or (b) the highest rate allowed by law.
- c. You shall be responsible for all applicable taxes, however designated, incurred in connection with the Agreement, including but not limited to state and local privilege, excise, sales, VAT, and use taxes and any taxes or amounts in lieu thereof paid or payable by Tone, but excluding taxes based upon the net income of Tone.
- d. Tone has the right to change payment terms, including by requiring upfront payment for the Service, in its discretion based on your payment history and/or financial status.

#### 5. Confidentiality

- a. **“Confidential Information”** means any non-public information or data that is disclosed by one party to the other party pursuant to the Agreement. The Confidential Information of Tone includes the Software, as well as the structure, organization, design, algorithms, templates, data models, logic flow, and screen displays associated with the Software. Confidential Information does not include information that the receiving party can show: (a) is or becomes publicly known or available without breach of the Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the receiving party as shown by its written records.
- b. A receiving party agrees: (a) to hold the disclosing party’s Confidential Information in confidence, (b) to protect the disclosing party’s Confidential Information in the same manner that it protects the confidentiality of its own similar confidential information (but in no event using less than reasonable care); and (c) except as expressly authorized by the Agreement, not to, directly or indirectly, use, disclose, copy, transfer or allow access to the disclosing party’s Confidential Information. Notwithstanding the foregoing, a receiving party may disclose Confidential Information as required by law; in such event, the receiving party shall (if permitted by law) inform the other party prior to any such required disclosure to allow the other party to seek a protective order or other limitations on such disclosure.
- c. Each party acknowledges and agrees that any violation of this Section may cause the disclosing party irreparable injury for which the disclosing party would have no adequate remedy at law, and that the disclosing party shall be entitled to preliminary and other injunctive relief against the receiving party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that disclosing party shall have at law or in equity.
- d. Upon termination or expiration of the Agreement, the receiving party will return to the disclosing party or destroy all Confidential Information delivered or disclosed to the receiving party (including, with respect to you as receiving party, the Downloaded Software), together with all copies in existence thereof at any time made by the receiving party.

#### 6. Term and Termination

- a. The initial term (**“Initial Term”**) of the Agreement begins on the Effective Date and continues for a period equal to the term specified in the Order Form, unless terminated earlier as set forth herein. The Agreement and the Service shall automatically renew for terms equal to the Initial Term (each a **“Renewal Term”**) unless written notice of non-renewal is given by a party to the other party at least sixty (60) days prior to the expiration of the then-current term.
- b. Neither party may terminate the Agreement without cause except prior to a Renewal Term as set forth in the above paragraph.
- c. Either party may terminate the Agreement if the other party materially breaches the Agreement and does not cure such material breach within thirty (30) days after written notice. Tone may suspend the Service if you breach the Agreement (including but not limited to by means of failure to make payments due hereunder) and the breach is not cured within five (5) days after written notice. Tone may, at its sole discretion, resume the Service upon Client’s cure of such breach, but may thereafter reasonably increase Client’s fee(s) and/or charge a one-time fee for re-establishment of the Service.

- d. Upon termination you shall promptly pay Tone all outstanding amounts due to Tone under the Agreement.
- e. The terms provided in Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Agreement shall survive any termination of the Agreement. In addition, upon termination of the Agreement or any Order Form:
  - (i) all outstanding invoices will become immediately due;
  - (ii) you shall promptly pay Tone all outstanding amounts due to Tone under the Agreement;
  - (iii) Tone Software will cease providing the Service and Client's and all former Authorized Users' rights to access the applicable Service will stop;
  - (iv) Unless you have terminated the Service due to material breach by Tone, the remainder of all minimum monthly fees for the current Term will become immediately due; and
  - (v) Tone Software will not be required to maintain or store, and may delete, Client data hosted in connection with the terminated Service, unless otherwise agreed in the applicable Order Form.

## 7. Independent Contractors

- a. The parties are and intend to be independent contractors with respect to the services contemplated hereunder. Tone agrees that neither it, its employees nor its contractors shall be considered as having an employee status with you. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.

## 8. Warranties; Disclaimers

- a. You and Tone each warrant that they have full authority to enter into the Agreement and are not bound by any contractual or legal restrictions from fulfilling their obligations hereunder. In addition, Tone warrants that the Service will perform substantially as set forth in its then-current documentation. In the event of a breach of this warranty by Tone, as your sole and exclusive remedy, Tone will, at its expense, use commercially reasonable efforts to cause the Service to conform. No third parties offer any warranty or assume any liability (support or otherwise) regarding your use of the Service and Software.
- b. You represent and warrant that all Client Data: (i) is owned by you, or you have the full right to provide the Client Data to Tone; (ii) does not infringe or misappropriate any copyright, trademark, trade secret or other intellectual property right; (iii) does not violate any person's right of privacy or publicity; and (iv) does not contain any unlawful, obscene, defamatory or libelous material. You further represent and warrant that your use of Client Data on the Site or in connection with the Service is not in breach of any covenant or obligation of confidentiality that you have to any other person or entity. You are solely responsible for the Client Data, and acknowledge that Tone has no responsibility or intent to review or monitor any Client Data.
- c. You shall be solely responsible for your use of the Service, and, acknowledge and agree that the Service is strictly a tool to be used in conjunction with good and reasonable business judgment by competent personnel.
- d. The Service may contain features, functionality and information that are provided through or by third-party content, software, web sites, and/or systems ("**Third-Party Materials**"). Your use and access of these features and functionality are subject to the terms published or otherwise made available by the third-party providers of Third-Party Materials. Tone has no responsibility for any Third-Party Materials, and you irrevocably waive any claim against Tone with respect to such Third-Party Materials.
- e. Tone does not warrant that the Service will operate without interruption or error-free, or that the Service will be totally secure. To the extent that data is being transmitted over the Internet hereunder, you acknowledge that Tone has no control over the functioning of the Internet, and Tone makes no representations or warranties of any kind regarding the performance of the Internet. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, TONE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING. BREACH OF THIS AGREEMENT BY CLIENT OR THE MODIFICATION OF THE SERVICE OR SOFTWARE BY CLIENT OR ANY THIRD PARTY SHALL VOID ALL WARRANTIES OF EVERY KIND UNDER THIS AGREEMENT. CLIENT ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT, IT HAS RELIED UPON ITS OWN EXPERIENCE, SKILL AND JUDGMENT TO EVALUATE THE SERVICE AND SOFTWARE, AND THAT IT HAS SATISFIED ITSELF AS TO THE SUITABILITY OF THE SERVICE AND SOFTWARE TO MEET ITS REQUIREMENTS.

## 9. Indemnification

- a. Tone shall defend Client against any third party suits, actions, claims or proceedings to the extent such suits, actions, claims or proceedings are based on allegations that the Service or Software infringes such third party's United States patent rights, copyrights or trademarks, or misappropriates such third party's trade secrets. Tone agrees to indemnify and hold Client harmless from and against any damages finally awarded against Client by a court of competent jurisdiction resulting from any such third party claim, provided that (i) Client promptly notifies Tone in writing of the claim; (ii) Tone has sole control of the defense and all related settlement negotiations; and (iii) Client provides Tone all necessary assistance, information, and authority to perform these duties. To the extent any Client delay in notifying Tone results in cost, expense, or liability to Tone which may otherwise have been avoided, Tone shall be relieved of its obligation to indemnify therefor.
- b. Tone shall have no liability for any infringement claim based on or arising from (i) use of any other than the latest commercially available version of the Software or Service, to the extent the infringement would have been avoided by use of such version; (ii) any unauthorized use of the Software or Service by Client or any modification of the Software by Client or any third party; or (iii) the combination or use of the Software or Service furnished hereunder with materials not furnished or not specified by Tone.
- c. In the event the Software or Service is held to, or Tone believes is likely to be held to, infringe or misappropriate, Tone shall have the right at its sole option and expense to (i) substitute or modify the Software and Service so it retains substantially equivalent features per the documentation but is no longer infringing or (ii) obtain for Client a license to continue using the Software and Service per this Agreement. If Tone determines neither of the foregoing options is reasonably practicable, Tone may terminate the Agreement and refund to Client a pro-rata portion of the Service fee.
- d. Tone's total liability with respect to Section 9(a)-(c) shall be subject to the overall limitations on liability set forth in Section 10.
- e. You, at your expense, shall indemnify, defend and hold Tone and its officers, directors, owners, and employees harmless from and against all claims, actions, proceedings, liability, damages, costs and expenses (including without limitation attorney's fees) arising out of or relating to your use of the Service, including but not limited to liability, damages, injuries, losses, costs and expenses arising from any claims relating to: (a) your breach of this Agreement, (b) your compliance with applicable laws and regulations, and (c) the Client Data. Tone shall provide you with prompt written notice of any such claim.

## 10. Liability

- a. The limit of Tone's liability (whether in contract, tort, negligence, strict liability in tort, or by statute or otherwise) to you or to any third party concerning performance or non-performance by Tone, or in any manner related to the Agreement or the Service, for any and all claims shall not exceed in the aggregate the fees paid by you to Tone hereunder with respect to the Service at issue (excluding any fees or charges relating to approved expenses incurred by Tone on behalf of you) during the three (3) months prior to the date that the relevant cause of action accrued.
- b. In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damage or expenses whether arising in contract or tort, or for any lost profits, loss of data, or the cost of recreating lost data, even if it has been advised of their possible existence.
- c. The allocations of liability in this Section represent the agreed and bargained-for understanding of the parties and Tone's compensation reflects such allocation. These limitations of liability will apply notwithstanding any failure of essential purpose of any limited remedy.

## 11. Dispute Resolution

- a. The parties agree to work together in good faith to resolve any dispute regarding the Agreement internally and by escalating it to higher levels of management and optional mediation, prior to resorting to binding arbitration.
- b. The Agreement shall be governed by and interpreted under the laws of California, without regard to its conflicts of laws principles. Neither the Uniform Computer Information Transactions Act (UCITA) nor the United Nations Convention on Contracts for the International Sale of Goods, or any similar laws, will govern any aspect of the Agreement, even if enacted or adopted in California.
- c. If Client is incorporated or headquartered in the United States of America, then any dispute regarding the Agreement or its subject matter shall be subject to the exclusive jurisdiction of the state and federal courts in Orange County, California, U.S.A., and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts.

- d. If Client is neither incorporated in nor headquartered in the United States of America, then any dispute regarding the Agreement or its subject matter will be submitted by the parties to binding arbitration under the commercial rules then in effect of the International Centre for Dispute Resolution. The arbitration shall be held in Orange County, California, USA. The award rendered by the arbitrator may include, in the arbitrator's discretion, costs of arbitration, reasonable attorneys' fees, and judgment on such award may be entered in any court having jurisdiction thereof.

## 12. Miscellaneous

- a. Neither party shall be liable for any failure or delay in the performance of its obligations (except for payment obligations hereunder) due to causes beyond the reasonable control of the party affected, including but not limited to war, sabotage, insurrection, riot or other act of civil disobedience, strikes or other labor shortages, act of any government affecting the terms hereof, acts of terrorism, accident, fire, explosion, flood, hurricane, severe weather or other act of God, failure of telecommunication or internet service providers.
- b. The Agreement (including the Order Form and any attachments thereto specifically agreed by the parties) constitutes the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral communications, understandings or agreements with respect to its subject matter. Any and all terms and conditions set forth in a Purchase Order or comparable document, whether issued before or after the Effective Date, shall be without effect. No waiver of any provision of the Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance. The failure by any party to exercise any right provided herein shall not be deemed a waiver or forfeiture of any such right.
- c. You shall have no right to assign the Agreement or any of your obligations hereunder. Tone may assign the Agreement and any of its rights hereunder to third parties. The Agreement shall be binding upon each party, its successors and permitted assigns.
- d. Client shall keep complete, accurate records concerning its use of the Service and Software during and for five (5) years following the term of the Agreement, and provide such records to Tone as requested from time to time. Client shall allow Tone, no more than once per calendar year, to inspect and audit Client's records, equipment and/or facilities concerning the use of the Service and Software.
- e. Every provision of the Agreement is intended to be severable. If any section of the Agreement is found to be invalid or unenforceable, then such section will be deemed amended and interpreted, if possible, in a way that renders it enforceable. If such an interpretation is not possible, then the section will be deemed removed from the Agreement and the rest of the Agreement will remain in full force and effect.
- f. The Agreement does not designate either party as the agent, employee, legal representative, partner or joint venturer of the other party for any purpose whatsoever. There are no intended third-party beneficiaries under the Agreement.
- g. You agree to comply with all relevant export laws and regulations, including, but not limited to, the U.S. Export Administration Regulations ("**Export Controls**"). You warrant that you are not a person, company or destination restricted or prohibited by Export Controls ("**Restricted Person**"). You will not, directly or indirectly, export, re-export, divert, or transfer the Software or Service, any portion thereof or any materials, items or technology relating to Tone's business or related technical data or any direct product thereof to any Restricted Person.

## 13. Agreement and Amendments

- a. By executing an Order Form, you represent that you are 18 years old or older, are authorized to bind any legal entity that you represent, and agree to all of the terms in the Agreement. You may print and keep a copy of the Agreement.
- b. Tone may reasonably modify or change these Terms of Service, including Exhibit A below, at any time by posting the changes to the Site. Your continued use of the Site or Service following the posting of such changes constitutes acceptance of those changes. Tone will use reasonable commercial efforts to provide notice of material changes to you.

# EXHIBIT A

## SERVICE LEVEL AGREEMENT

### 1. Service Commitment

- a. Tone will use commercially reasonable efforts to make Tone Service Available with a Monthly Uptime Percentage of at least 99.8%, in each case during a monthly billing cycle (the “**SLA Commitment**”). In the event Tone does not meet the SLA Commitment, Client will be eligible to receive a Service Credit as described below.
- b. Tone will use commercially reasonable efforts to minimize the amount of scheduled maintenance downtime for each monthly billing cycle. Tone will be allowed a maximum of 4 hours per month of scheduled maintenance. To be considered scheduled maintenance it must occur between the hours of 11PM and 5AM Pacific Time and at least 24 hours’ notice must be given to Client (or Client must approve emergency maintenance if less than 24 hours’ notice is possible).

### 2. SLA Definitions

“**Available**” means that the Service is performing and accessible without any material issues or errors.

“**Monthly Uptime Percentage**” is calculated by subtracting from 100% the percentage of minutes during the month in which Tone Service was not Available (with a minimum of 5 consecutive minutes before counting the Service as not Available). Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Tone SLA Exclusion (defined below).

“**Service Credit**” means a dollar credit, calculated as set forth below:

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.8% but equal to or greater than 98.0%	10%
Less than 98.0%	30%

The Service Credit Percentage is calculated based on your monthly minimum fees as set forth in the Order Form.

### 3. Service Credits

Tone will apply any Service Credits only against future Tone payments otherwise due from Client. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than five dollars (\$5 USD). Service Credits will not entitle you to any refund or other payment from Tone. Service Credits may not be transferred or applied to any other account. Your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

### 4. Credit Request and Payment Procedures

To receive a Service Credit, Client must submit a request by sending an e-mail message within 30 days of the issue to [contracts@tonesoft.com](mailto:contracts@tonesoft.com). You agree to provide Tone with information regarding the request as reasonably requested by Tone. If confirmed by Tone, Tone will issue the Service Credit to Client within one billing cycle following the month in which the request occurred.

### 5. Tone SLA Exclusions

This SLA does not apply to any unavailability, suspension or termination of the Service, or any other Service performance issues: (i) that result from a suspension described in Section 6(c) of the Agreement; (ii) caused by factors outside of Tone’s reasonable control, including any force majeure event or Internet access or related problems; (iii) that result from any actions or inactions of you or any third party other than Tone’s suppliers; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Tone’s or its suppliers’ direct control); (v) arising from scheduled maintenance consistent with this SLA; and (vi) caused by your incorrect use or configuration of the Service (collectively, the “**Tone SLA Exclusions**”). If availability is impacted by factors other than those used in the Monthly Uptime Percentage calculation, then Tone may issue a Service Credit considering such factors at Tone’s discretion.