

Postini
Client Service Level Agreement



1. **PARTIES.** "Client" engages Afinety, Inc. ("Afinety") as an independent contractor of Client to provide **Postini** anti-spam and anti-virus email scanning.
2. **Service Availability Commitment.** The Postini Services shall be operational at least 99.999% of the time in any given month during the term of the Agreement, meaning that the Outage Percentage (as defined below) in such given month shall be not more than 0.001%. An outage ("Outage") means that Postini fails to apply filtering in accordance with configuration selection. Outage does not include service suspension (i) for reasons outside of Postini's sphere of control (as described in Section 6 of this SLA) or (ii) during times of scheduled maintenance (as described in Section 7 of this SLA). If a dispute arises about whether or not an Outage occurred, Postini shall make a determination in good faith based on its system logs, monitoring reports and configuration records, which Postini shall make available for auditing. If one or more Outages occur in a given month, the total duration of such Outages during such month, expressed as a percentage of the total time during such month, shall be the outage percentage (the "Outage Percentage").
3. **Outage Reporting Process.** Afinety or Client must inform Postini's Customer Support Department in writing or by email within fourteen (14) days of the time it first notices an Outage or first believes that there has been an Outage. Failure to comply with this requirement will forfeit right to receive a remedy for the Outage as described in Section 5 of this SLA.
4. **Remedy.** If an Outage occurs, and if Client is in good standing and account is current, and none of the exceptions in Section 6 of this SLA applies, Client shall have the following sole and exclusive remedy: Afinety will provide Client with a pro-rata credit on Clients fee for the month in which the Outage occurred. The pro-rata credit shall be calculated by multiplying the Outage Percentage with Clients total monthly fee in the month during which the Outage occurred. Furthermore, if Client experiences one (1) or more Outage in each of three (3) consecutive calendar months and/or three (3) or more Outages in any period of thirty (30) consecutive days, Client can terminate the Agreement for cause upon thirty (30) days prior written notice.
5. **Exceptions.** Client shall not have any remedies under this SLA, in connection with any causes beyond its reasonable control including, without limitation, Domain Name Server ("DNS") issues outside the direct control of Postini or Afinety, labor strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages.
6. **Scheduled Maintenance.** From time to time, Postini performs scheduled maintenance, including maintenance at the third party data centers at which the Postini Services are hosted and maintenance on Postini's servers and software. Postini's architecture is designed to enable Postini to provide scheduled maintenance in a manner designed not to interrupt Reseller's receipt of the Postini Services. In all cases where maintenance will be performed, Postini will make all reasonable attempts to ensure that scheduled maintenance that affect the availability of the Postini Services for more than thirty (30) minutes is performed between 12:00 a.m. and 5:00 a.m. Pacific Time, Monday through Friday (excluding U.S. holidays), or between 12:00 p.m. and 5 a.m. Pacific Time on Saturday, Sunday and U.S. holidays.
7. **Limitation of Liability.** POSTINI'S AND AFINETY'S TOTAL LIABILITY UNDER THIS AMENDMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE PAYMENTS ACTUALLY RECEIVED FROM CLIENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO ANY LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL, OR THE COSTS OF PROCURING SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AMENDMENT OR THE USE OR OPERATION OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
8. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state of California. Client agrees to be subject to the jurisdiction of Federal Courts or said state courts.

Client

Firm Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____
Authorized Signature: _____
Title: _____

Afinety

Firm Name: Afinety, Inc.
Address: 1956 Cotner Avenue
City, State, Zip: Los Angeles, CA 90025
Telephone: 310-996-2700
Authorized Signature: _____
Title: Vice President of Operations