

Client Service Agreement



1. **PARTIES.** _____ ("Client") engages **Afinety, Inc.** ("Afinety"), as an independent contractor, to provide computer system & software service, support and/or monitoring and related services, ("Services") in accordance with the terms of this Client Service Agreement ("Agreement"). Afinety agrees to perform such Services in accordance with the scope of work authorized by the Client.
2. **TERM.** This Agreement is effective as of **February 20, 2009** and will remain in effect until terminated in accordance with the terms of this Agreement ("Term").
3. **AUTHORIZED INDIVIDUALS.** Service can only be requested by the following individuals: **XXX XXXXXXXXXXXX and/or any full time employee**. Afinety will have the right to select which technician it deems qualified to perform the services required under this Agreement or as otherwise requested by Client. Client will have the right to reasonably request a change of the Afinety technician assigned to perform the services under this Agreement, which Afinety will attempt to accommodate.
4. **SERVICE RATES – Regular.** Client will pay Afinety **\$155** per hour for computer service & support work during Standard Business Hours (8:00 am PST to 6:00 pm PST, Monday through Friday, not including holidays). Client will pay Afinety **\$155** per hour for scheduled work performed at anytime after 6:00 p.m. PST Monday through Friday, on weekends and holidays. On-site service visits are invoiced in 6-minute increments, minimum 2-hours. Remote telephone service support/calls and Monitoring repair service are invoiced in 6-minute increments, subject to Section 7 below.
5. **SERVICE RATES – Emergency.** Client will pay Afinety **\$300** per hour for unscheduled emergency services that are requested during Non-Standard Business Hours (6:00 pm PST to 8:00 am PST Monday to Friday, weekends, and holidays). Please call 310-339-6056, an on call technician will be paged, and generally will return the call within 90 minutes. On-site emergency service visits are invoiced in 1-hour increments, with a 2 hour minimum.
6. **TRAVEL/PARKING** – Client agrees to pay for all travel and travel related expenses incurred for service calls outside of Los Angeles County and Orange County, including but not limited to, air fare, taxi, rental car, parking (if not validated), gas etc., unless otherwise agreed. All air travel will be billed as incurred or paid in advance by Client as determined by Afinety.
7. **SERVICE AND MONITORING OPTIONS.** Client selects the following proactive and remote service options:
 - a. **Weekday Monitoring:** @ **\$135** monthly, per site.
 - i. Client agrees to pre-authorize up to **2 hours** of service to correct any issues found during monitoring.
 - b. **Windows Server Update Service:** @ **\$100** monthly for the 1st server and **\$50** for each additional server.
 - c. **Anti-Spam/Virus screen:** @ **\$1.00** per mailbox, per month. (minimum of \$25 per month if selected as a stand alone service).
 - i. By checking this box, you agree to the Postini Client Service Level Agreement available on the Afinety web site: www.afinety.com/pages/shop.htm
 - d. **Remote Support:** @ **\$25** monthly, per site.
 - e. **Reserve OffSite Backup:** @ per stored gigabyte of data (rate chart available upon request).
8. **WARRANTY.** AFINETY WARRANTS THAT ALL SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. AFINETY WILL PERFORM THE SERVICES REQUESTED OF CLIENT UNDER CLIENT'S REASONABLE DIRECTION WHERE REQUIRED. EXCEPT AS SET FORTH HEREIN, AFINETY MAKES NO OTHER WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED.
9. **LIMITATION OF LIABILITY.** IF ANY SERVICE PERFORMED BY AFINETY RESULTS IN DAMAGE TO CLIENT'S SYSTEMS OR EQUIPMENT, AFINETY'S LIABILITY WILL BE LIMITED SOLELY TO THE COST TO REPAIR OR REPLACE (AT AFINETY'S SOLE AND ABSOLUTE DISCRETION) THE DAMAGED SYSTEMS OR EQUIPMENT. NO OBLIGATIONS OR LIABILITY SHALL ARISE OUT OF AFINETY'S RENDERING OF TECHNICAL OR OTHER ADVICE IN CONNECTION WITH SERVICES RENDERED HEREUNDER. AFINETY STRONGLY RECOMMENDS THAT CLIENT BACKUP ALL DATA BEFORE MAKING ANY CHANGES TO EQUIPMENT OR SYSTEMS, WHICH MIGHT AFFECT SUCH DATA. AFINETY WILL NOT BE RESPONSIBLE FOR LOST OR DAMAGED DATA IN THE EVENT THAT SAME IS NOT BACKED UP ON A REGULAR BASIS BY CLIENT OR PRIOR TO ANY SERVICES TO BE PROVIDED BY AFINETY TO CLIENT. SERVER BACKUPS ARE THE SOLE AND ABSOLUTE RESPONSIBILITY OF THE CLIENT. CLIENT UNDERSTANDS THAT THERE ARE MANY FACTORS BEYOND THE CONTROL OF AFINETY, WHICH CAN CAUSE LOSS OF DATA, AND AFINETY IS NOT RESPONSIBLE FOR ANY LOSS OF DATA, IRRESPECTIVE OF THE MANNER IN WHICH SAID DATA WAS LOST OR DESTROYED. CLIENT WILL INDEMNIFY AND HOLD AFINETY HARMLESS FROM ALL DAMAGES, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) AND OTHER COSTS OR LIABILITIES RESULTING FROM ANY SUCH LIABILITY FOR LOST OR DESTROYED DATA. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, AND EXCEPT AS SPECIFICALLY OTHERWISE SET FORTH ABOVE, AFINETY'S TOTAL LIABILITY UNDER THIS AGREEMENT, FROM ALL CLAIMS AND CAUSES OF ACTION UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE PAYMENTS ACTUALLY RECEIVED BY AFINETY FROM THE CLIENT FOR THE EVENT GIVING RISE TO ANY CLAIM OR LIABILITY. FOR A VALID CLAIM, THE CLIENT AGREES TO REPORT SUCH AND EVENT AND SUBMIT THE CLAIM WITHIN 30 DAYS OF ITS OCCURRENCE. THE EVENT SHALL BE DEFINED BY IDENTIFYING THE SPECIFIC LINE ITEMS ON AN INVOICE THAT HAVE CAUSED THE REPORTED CLAIM. 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 AGREEMENT OR THE USE OR OPERATION OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OR CONTRACT, BREACH OR WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
10. **BINDING NATURE OF AGREEMENT.** This Agreement shall be binding and inure to the benefit of Afinety and its successors and assigns and binding upon Client and its successors and assigns. This Agreement may not be modified except by a written instrument signed by all parties.
11. **TERMINATION.** Either party may terminate this Agreement at any time and for any reason by providing 30 days prior written notice. If Client cancels or terminates this Agreement prior to its expiration, any amounts that have been prepaid as a retainer for service of Afinety will remain on account for the benefit of Client for a maximum period of one (1) year from the date of termination or cancellation or until the funds have been completely exhausted. In the event that the funds are not exhausted within said one (1) year period they shall be forfeited to Afinety and Afinety shall have no obligation to account to Client or refund any money to Client. In the event that Afinety cancels or terminates this Agreement prior to its expiration, and credit balance will be refunded to Client.
12. **CONFIDENTIALITY.** Afinety and Client mutually agree to consider and hold all matters relating to Client's and Afinety's business in strict confidence and shall not disclose same without the prior written consent of the other. Notwithstanding the foregoing, Afinety shall be permitted to disclose that it has performed work for Client, including the general nature of the work performed.
13. **DISPUTES.** Any disputes between the parties less than \$5,000 shall be resolved in small claims court in the County of Los Angeles. Any disputes in excess of \$5,000 shall be settled by a mutually agreeable dispute resolution provider, in Los Angeles, through their established procedures, which shall be binding on the parties. If the parties can not agree on a provider, then the party filing the arbitration proceeding shall be entitled to choose the dispute resolution provider, such as ARC, ADR Services, or JAMS, but not including the American Arbitration Association ("AAA"). Judgment upon the award rendered by the arbitrator(s) may be entered by any court of competent jurisdiction. The costs of arbitration shall be borne equally by the parties with each party responsible for his or its own attorneys' fees. The arbitrator(s) shall have the authority to determine all issues of arbitrability. The arbitrator(s) may not award punitive or exemplary damages. The parties hereby waive all rights to such damages and to trial by jury.
14. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Client consents to in personam jurisdiction the all courts, whether State or Federal, in the County of Los Angeles, State of California.
15. **FORCE MAJEURE.** No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature(including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or [telephone service]. Any Party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated."
16. **PAYMENT TERMS.** Disputed Invoices must be reported within 30 days of Invoice Date. Outstanding Invoices older than 30 days shall accrue interest at 12% per annum. In the event Client fails or refuses to pay any invoice for 45 days or more, Afinety may cease all further work until such time as payment in full is received.
17. **ATTORNEY FEES AND COSTS.** In the event any party to this Agreement brings suit to enforce any provision of this Agreement or is required to defend any action the defense to which is any provision of this Agreement, the unsuccessful party agrees to pay the successful party all costs and reasonable attorneys' fees as determined by the Arbitrator.
18. **NON SOLICITATION.** During the Term of this Agreement and for one (1) year thereafter, Client and Afinety mutually agree not to solicit for employment the other's employees. It is further agreed that if either firm does hire an employee or representative of the other, that the hiring party will pay the other as liquidated damages the sum of \$50,000, which amount the parties agree is fair and reasonable under the circumstances, since damages are difficult to adequately determine.

Client

Firm Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____

Authorized Signature: _____
Title: _____