

Terms & Conditions

DEFINITIONS

Company

The term "Company" will be used to reference the client engaged in service with 360 PSG, it's corporate or business entity, any individual personally signing this agreement and for all intents and purposes the client referenced in the scope of work. Company information will be defined specifically in the agreement details for which these terms are applicable.

360 PSG

The term "360 PSG" will be used to reference the company, 360 Professional Services Group, LLC, in all forms of spelling. For all intents and purposes this is the vendor in regards to services in the scope of work.

Fission

360 PSG proprietary, hosted web-application platform. Recurring scope of work defines specific usage levels, licenses, or tools that Company may gain access to use during their engagement in this agreement.

License

The right to use (as a service) the specified features and tools of the Fission web software based on the specifics outlined in the recurring scope of work. Licenses do not include access to original works of software/source code, database architecture or direct storage access, private system information, FTP (or other forms of direct original file/server) access, or other such materials used to deploy, execute, modify, repair, or enhance the licensed item. Licenses are only valid while engaged in an active recurring service. Account balances in a past due state are subject to loss of License rights at anytime.

Recurring

Describes items in the scope of work that are regularly billed at a standard interval, usually (but not limited to) weekly, monthly, quarterly, and annually. Recurring scope of work portion of this Agreement outlines the specific items covered by the recurring charges and their respective intervals of recurrence.

Non-Recurring

Describes items in the scope of work that are billed a single time based on the schedule of payments in the Agreement. These items are completed one time and do not recur unless repeated in an addendum agreement or also specified in the recurring scope of work.

Third-Party Service

Any action, service, product, or billing item that is handled by a party other than 360 PSG. Any items in a scope of work will specifically address the level of involvement related to the specific third-party service. No warranty or support is provided for these services unless specifically written in the scope of work.

Email Management

The act of insuring email is correctly setup and configured to work from a "web mail" interface. This does not include support for third-party applications used for email services. No warranty or "uptime" guarantees are made when utilizing third-party solutions for email service. Unless otherwise noted, standard email service is powered by a third-party service and 360 PSG assumes no responsibility past correctly configuring the account as specified by third-party service guidelines. Email management may include administration of user accounts or specific mailing lists, additional details of service may or may not be included in the recurring scope of work, if applicable.

Company Obligation

Any action required by Company in order to complete the scope of work. These may include (but are not limited to) access credentials for third-party services, delivery of material content, acknowledgement or receipt of contact from 360 PSG, timely response to requests for information, other such items noted in the scope of work or timeline that are noted as Company Obligations. Company Obligations will be either defined in the Agreement and/or additionally defined by presenting reasonable notice to Company and receiving acknowledgement via a Valid Form of Acknowledgement.

Company Material - (Content/Images/etc)

Includes text, imagery, documents, videos, files, or other such collateral provided by Company directly. This original material is not guaranteed to be kept on file at 360 PSG, but Company retains their original rights to those sources of this material and 360 PSG does not claim to change the ownership rights. Any content, imagery, or graphic design produced and subsequently paid for in full, specifically for use on a Company project is able to be utilized for any purpose by either party so as long as it is not used in a way to intentionally harm or damage the other party.

Engineering Service

Services related to the physical servers, data center or domain names. These services include (but are not limited to) anything related to the operating system, file system, software, hardware, or configuration of physical or virtual servers in a 360 PSG data center or any other location. Also included are software installations, FTP or server access configuration, building or installing new servers, any physical access to the data center(s), any action related to the

procurement, management or configuration of domain names, DNS hosting and management, any service related to email in any regard (from setup to management).

Programming Service

Services that change, enhance, remove, or modify functionality of a system. These include (but are not limited to) server-side coding, client-side coding (ajax, javascript, etc), actionsript (Flash Programming Languages), database design, database integration (or population or modification), third-party software integration.

Graphic Service

Services performed in relation to imagery, graphics, design, style, or other such services requiring a digital artist. Graphic services usually are (but are not required) to related to image editing software, cascading stylesheets, website design, identity or branding, photos, stock imagery, Flash (or other such animation tools), creative direction.

Content Service

Services related to the management, editing, updating, or changing of information that appears on a website or as a standalone deliverable document. Content services relate specifically to actions that can be performed by using the Fission system License as assigned to the specific project. Content services also include (but are not limited to) creative writing, spell and grammar checking, copy and pasting text,

SEO Service

Services related to the optimization or enhancement of a website, web page, or other type of Internet asset in regards to the attempt at improving its quality score among search engine services and other such Internet archiving/directory systems. No guarantees are made for specific ranking results as these search engines and Internet sites are third-party services that have the right to accept or reject the SEO services as they see fit.

Support Service

Services related to activity of Company when engaged in a scope of work with 360 PSG. These services include (but are not limited to) taking Company calls, receiving help requests, recording bug reports, responding to questions, training, basic education, and other such reactionary actions. Specific included support services may also be outlined in the scope of work.

Authorized Agent

A person certifies they are authorized by the signing party to enter into a legal and binding agreement on behalf of the signing party or entity. By accepting responsibility as an authorized agent, person presents themselves as a legally binding representative of the required party as it pertains to this agreement. Any failure or revocation of actual authority of this person within the signing party entity does not nullify or revoke any Agreements approved by this Authorized Agent and represented signing party is expected to complete the agreement as specified. Any payment made or undisputed invoice made toward the fees associated with an authorized agent's signature on any agreement is a secondary and non-disputable acceptance of Company to recognize the authority of said signing party.

New Project Agreement

Document that specifies all scope of work, compensation, Definitions, Terms and Conditions and proposed timeline related to a new project in its entirety. This document is agreed to by Company and 360 PSG and it is agreed that modifications will only be made upon a properly executed Addendum Agreement.

Addendum or Addendum Agreement

A formal agreement to amend, modify, add, delete or change anything agreed to in a specific New Project Agreement. Requires a Method of Authorization by Company to be acceptable.

Valid Form of Acknowledgement

Requests made that do not require a formal Method of Authorization can be submitted using one of the following methods unless specifically noted as not acceptable for a specific request. Email, Traditional USPS, Fax, 360 PSG system tools (if available) or third-party delivery services. Any costs associated with method chosen are the responsibility of the responding party utilizing the specific means of communication. No phone, text messages, voicemail, or verbal discussions can ever be used as a Valid Form of Acknowledgement.

Method of Authorization

Authorization of New Project Agreements or Addendum Agreements requires a written signature from both an Authorized Agent of 360 PSG and Authorized Agent of Company. Faxed, ink-stamped signatures or duplicated copies of original signatures are acceptable for recording of authorization assuming the signature was placed directly on the Agreement by an Authorized Agent of the authorizing party. If services are rendered without an addendum agreement, any deposit or partial payment of invoices reflecting the service in question will be construed as acceptance in full.

Final Non-Recurring Payment Event (FNRPE)

This point is defined as the sooner of any one or more of the following actions taking place unless otherwise noted in the Scope of work.

- Triggered on or anytime after the maximum project days as indicated within unless timeline delays by 360 PSG have adjusted the original dates.
- Company is given access or user credentials related to their Scope of work licenses
- Scope of work is complete from deliverable required of 360 PSG
- Company fails to meet a Company Obligation by 30 or more days

Content

Content may be comprised of various amounts of information, text, imagery, videos, photography, graphic items, documents, or other such collateral used within the Scope of work.

- A standard "page of content" is deemed to be one standard page of a word-processing application as formatted for an 8.5" by 11" sheet of paper with no less than 1/2" margins around the entire document and a 12 pt. Arial font. This is approximately 500 to 1000 words and may or may not contain a few images.
- A standard "web page" is the sum total of content on a single web URL or address. A web page may be made up of one or more pages of content as defined within.
- A standard "product" for population of a catalog or commerce system is to be deemed as no more than one page of content with no more than two attributes and up to 5 values for each attribute (for example "size" is an attribute with values "small", "medium", "large" and "color" is another attribute with values "red", "blue", and "green"). Attributes are choices a shopper makes in selecting the product or if the shopper cannot make the choices, they are combined to create an individual item SKU (for example product X has a sku-item created for the large size attribute value and the Blue color attribute). This implies that no more than 25 possible combinations for sku-items exist in one standard product if maximum number of attributes is utilized with maximum number of values. A product will have no more than 3 images for the base product and up to one additional image for each combination sku-item (for example 1 picture can be provided for that large blue item)
- An image file (unless otherwise noted) is a single file with a file extension of .jpg, .jpeg, .gif, or .png.
- A document file (unless otherwise noted) is a single file with a file extension of .doc, .pdf, .txt, .xls, or .ppt.
- A video file (unless otherwise noted) is a single file with a file extension of .mpg, .avi, or .mov.
- A flash file (unless otherwise noted) is a single file with a file extension of .swf.

Company is responsible for all content published on the Internet that was not specifically created by or provided by 360 PSG directly. 360 PSG will be held harmless of any infringement or violation of criminal or civil law related to content provided or made available online in anyway as provided in this Agreement.

AGREEMENT DETAILS

Each party represents and warrants to the other party

- It is duly organized, validly existing and in good standing under the laws of the State of its incorporation, organization or formation and has the power and authority to enter into and perform its obligations under this Agreement.
- This Agreement has been duly executed and delivered by each party to this Agreement and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership or similar law. Neither the execution nor delivery of this Agreement, nor the performance of it by each party to this Agreement will cause any party to this Agreement to (a) violate its organizing documents, (b) violate any law to which it is subject, (c) result in a breach of, or constitute a default under any contract, agreement or license to which it is a party or is otherwise bound, or (d) result in the creation of any lien upon any property of 360 PSG.
- No consent, authorization, order, or approval of, or filing or registration with any governmental agency or authority or any other person is required for, or in connection with, the execution and delivery of this Agreement by it or the performance by it of the transactions contemplated hereby.

SCOPE OF WORK

- If relevant to this agreement, non-recurring services and fees will be defined as such in the Scope of Work details
- If relevant to this agreement, recurring service and fees will be defined (with intervals) in the Scope of Work details
- Entirety of this agreement is contained in the attached Scopes of work and at no time should assumptions of inclusion or exclusion be made as to items discussed, talked about, transmitted in email or other forms of communication, ideas, meetings, personal expectations and experience, or other such expectations not specifically and directly identified in the scope documents.
- All services are tracked and recorded in rounded-up, 15 minute intervals with a 15 minute minimum per service request or performance action including but not limited to design, engineering, programming, content, and support services.

TIMELINE

- If relevant to this agreement, a proposed timeline may be attached as a "Scope of Work - Proposed Timeline"
- The timeline is only valid if this agreement is executed prior to or on the required execution date. Failure to meet execution date will result in the ability of 360 PSG to adjust, and submit in writing, an adjusted timeline which may or may not include shifting the herein included start date, end date, or other milestone dates.
- If the presented timeline contains items flagged as milestones, those milestones, once completed cannot be returned to without being considered out of scope and may result in additional service charges.

SERVICE LEVEL AGREEMENT

If relevant to the project, an additional section will be attached to include the entire Service Level Agreement for the data center environment(s)

RELATIONSHIP OF PARTIES

- 360 PSG, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. 360 PSG shall be solely responsible for and shall hold Company harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax, FICA, and workmen's compensation.
- No Agency. Company does not undertake by this Agreement or otherwise to perform any obligation of 360 PSG, whether by regulation or contract. In no way is 360 PSG to be construed as the agent or to be acting as the agent of Company in any respect, any other provisions of this Agreement notwithstanding.

INTELLECTUAL PROPERTY

- Company will own all Company Material provided to 360 PSG or uploaded by Company for use during their Fission License terms. Any request to compile, zip, return, download, export, or otherwise deliver this content, in a manner not available via their license, to Company may require hourly or additional service charges.
- 360 PSG will own the software rights related to the Fission web system and any derivatives or modifications of this system. Company may have certain rights afforded to them based on the included services of their License access.
- Any and All Software used to render the website and or perform the services of delivering the website content in it's final format to the world will remain the sole property of 360 PSG
- If used, Fission (or the application framework used to deliver the scope of work), will remain the sole property of 360 PSG. License rights to specific tools (either standard or custom developed for this scope) will be defined in the Scope of work.

- At no time does a Fission License assume to grant access or rights to anything not covered by the License definition or not specifically granted additionally in the Scope of work.

INDEMNIFICATION / HOLD HARMLESS

Company agrees to indemnify and hold harmless 360 PSG and its assigns, subcontractors, principals, employees and agents from any and claims, demands, liabilities, damages, judgments, assessments and all other forms of damage and/or relief brought against 360 PSG by any third party arising out of, or in any way related to the illegal or improper use of any hardware, software, goods, services or any other item provided by 360 PSG pursuant to this Agreement. This paragraph shall apply to all such items set forth above as well as all costs, attorney fees, disbursements and other sums expended in defense or indemnification of 360 PSG for the foregoing and shall be paid by Company on demand.

CORRECTIVE ACTION

360 PSG has the right, at its sole discretion, to make repairs to remedy any Scope of work deemed by 360 PSG to be incomplete or incorrect.

COMPENSATION

- All fees are to be paid prior to or on the date required by its respective invoice. The net terms identified in this agreement will be used to calculate any invoice due dates unless otherwise written and agreed to by an Authorized Agent of 360 PSG. The net term will simply be a calculated date of due payment specified by a number of days after the date of invoice as per the term defined for this agreement.
- Payment schedule identified on this agreement is to be met regardless of state of (or perceived state of) scope of work or deliverable unless otherwise written and approved by an Authorized Agent of 360 PSG.
- If milestones are adjusted due to fault of 360 PSG, payment schedule will be adjusted as described in timely delivery.
- Invoice Disputes must be made prior to invoice due date or within 30 days of issuance of invoice whichever is less.
- 360 PSG reserves the right to charge past due accounts 1.5% interest per month from due date. Annual Percentage Rate of 18%. Customer agrees to pay all costs associated with the collection of any past due balances, including reasonable attorney fees.
- 360 PSG reserves the right to immediately discontinue any & all services (or access) being performed (or scheduled to be performed) on past due accounts. These services include, but are not limited to Graphic Service, Content Service, Programming Service, Engineering Service, Website Hosting, Email Management, License Access, and Fission Access.

TAXES

Customer agrees to pay any and all Federal, State and local sales taxes and similar charges, now in effect or enacted in the future that may be levied upon the goods and/or services that are subject of this Agreement.

REFUNDS / CREDITS

There are no refunds at any time.

Any credits issued for service are to be used for new, non-recurring services only unless agreed upon specifically by 360 PSG on a case-by-case basis.

New services for use of credit will be those requested or agreed to at a date later than the date of credit request, these credits are not to be used toward existing, already approved, or in progress work unless 360 PSG authorizes that use prior to redemption attempt.

CANCELLATION / TERMINATION

- Any recurring service that has met its minimum term can be terminated with at least 2 business days notice prior to the start date of the next recurring scheduled iteration. Termination of any license or Fission use will result in an immediate discontinuation of services on or after the day preceding the next scheduled recurring iteration.
- Upon submission of this executed agreement to 360 PSG, Company acknowledges it has engaged in the complete scope of work and understands that there are no refunds or cancellation of the scope of work unless written and agreed to by both parties.
- In the case where changes to the scope of work on an addendum agreement negates incomplete aspects of this scope of work, an agreed upon amount of credit may or may not be made at 360 PSG's sole discretion for use on future 360 PSG scopes of work or a new addendum agreement.
- If a project is cancelled due to Company inactivity and a shutoff notice or disconnection notice is served and executed upon the project by 360 PSG for Company failure to meet Company Obligations. 360 PSG is entitled to the entire remaining and outstanding fees due as per the agreement.

TIMELY DELIVERY

- 360 PSG shall deliver the Scope of work, in a timely manner without unreasonable delay based on the timeline set forth in this agreement.
- Failure for company to perform actions deemed as Company Obligations may affect the timeline milestones in a way not simply one-for-one days and will reflect the current capacity and operating queue at the time Company Obligations are finally performed. This type of Company Obligation milestone failure does not affect the payment schedule which will still reflect the original timeline.

- All timing is based on working business days of 360 PSG unless otherwise noted.
- Failure by 360 PSG on their milestone dates (not caused by prior delays of Company Obligations and milestones) will result in a one-for-one day delay on remaining milestones, Company Obligations, and payment schedule that would be affected by said milestone movement.

CHOICE OF LAW

This agreement shall be governed by and construed in accordance with the substantive law of the State of New York, without regard to its conflicts of laws principles.

ARBITRATION

If any dispute shall arise between the parties to this Agreement, such dispute shall be resolved pursuant to a final and binding arbitration, conducted before a single arbitrator who shall be appointed by and act in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration shall be held in Erie County, New York. Notwithstanding the foregoing, 360 PSG may seek relief from a court of competent jurisdiction to seek equitable relief, where, in its sole discretion, 360 PSG deems said equitable relief necessary or desirable. The Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

360 PSG may engage the services of a third party collection firm or firms to collect any past due balance, including interest, late fees and other applicable costs of collection.

DISPUTE RESOLUTION

Any dispute to claims of failure on delivery of the scopes of work will require a letter sent via mail service signed by an Authorized Agent of the company stating specific areas of dispute, including reasons for said dispute with desired actions to remedy the dispute. This notice must be postmarked within 7 calendar days of receipt of notice from 360 PSG representing that the work in dispute was completed. This notice of completion of service from 360 PSG may be in the form of an email, traditional mail, invoice being issued as per the payment schedule and/or timeline, or other such recorded form indicating that the status of the scope of work was done. Failure to receive notice as per this term indicates acceptance of work as delivered. Any failure to come to a mutually agreeable resolution may result in use of Arbitration as per the agreement.

AGREEMENT BINDING ON SUCCESSORS

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and permitted assigns.

FORCE MAJEURE

Neither party shall be liable for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by fire, flood, war, utility outage, embargo, riot or the intervention of any government authority or any other factor beyond the reasonable control of either party ("Force Majeure"), provided that the party suffering such delay immediately notifies the other party of the delay.

ASSIGNMENT

Company may not assign this Agreement or the rights and obligations thereunder to any third party, without the express written permission of 360 PSG, which permission may be withheld for any reason or no reason at all.

360 PSG may assign its rights and obligation pursuant to this Agreement so long as the service is rendered by the assignee to the same scope as provided herein. 360 PSG will not be restricted in using sub-contractors in any way unless specifically required by law or government regulation.

360 PSG STAFF AND REPRESENTATIVES

Customer acknowledges that 360 PSG has expended considerable effort and expense in training their employees and agents with respect to the products and services provided pursuant to this Agreement and that said employees and agents have been provided with confidential and proprietary information regarding 360 PSG's services and products. Customer further acknowledges that if it were to hire any such individual, 360 PSG would suffer great and irreparable harm. Therefore, Customer agrees not to employ, nor to solicit for employment or engagement of any work as an employee, independent contractor or agent, any individual who is an employee or agent of 360 PSG at any time during the term of this Agreement or for a twenty-four month period following the expiration or termination of this Agreement.

WAIVER

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

SEVERABILITY

Should any one or more provisions of this Agreement be determined to be invalid, illegal or unenforceable, such provision or provisions shall be deemed severed from this Agreement and the validity of the, legality, enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

CONFLICTING PROVISIONS

Typewritten or handwritten additions or deletions, initialed by both parties to this Agreement, shall supersede any pre-printed provisions of this Agreement. In the event that any provision of any addendum or schedule hereto is inconsistent with the provisions of this Agreement, the provisions in such Addendum or schedule shall control. Subject to the foregoing, each Addendum hereto, whether executed concurrently herewith or subsequent hereto, shall be deemed to be incorporated herein and shall be governed by the terms of this Agreement.

NOTICE

Any notice to be given by either party to the other may be given in person or by facsimile transmission or by first class letter sent to the last known address or place of business of the other party and the notice will be deemed to have been given at the expiration of two business days from the date of the facsimile or five business days from the date the letter is deposited with the U.S. Postal Service unless actual receipt at an earlier date is established, and proof that the facsimile was sent or that the letter was properly addressed and deposited will be sufficient evidence of service. Until further advised by an Authorized Agent of the respective party, all notices will be sent to the principal place of business for each party as written in this agreement.

ENTIRE AGREEMENT; MODIFICATIONS; WAIVERS

This Agreement, including the Definitions and Terms and Conditions sections and any Addendum, Addenda or Schedules hereto together comprise the complete and entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior proposals, agreements, statements, representations, oral or written, and any other communications between the parties relating to the subject matter hereof. References to "this Agreement", "Agreement" and the words "hereof", "hereto", "herein" and words of similar import shall be deemed to refer to this Agreement and all Addenda or Schedules hereto now existing or subsequently executed. No amendment, supplement or modification to this Agreement or Addenda or Schedule hereto shall be binding unless in writing and signed by each party's authorized representative. The failure or delay of any party at any time to require performance of any provision of this Agreement or any Addenda or Schedule hereto shall not, in any manner, affect such party's right to enforce that provision at that time or in the future. No single or partial waiver by any party of any condition of this Agreement or of the breach of any term, provision, covenant, representation or warranty of this Agreement, whether by conduct or otherwise, in any one or more instances shall be construed or deemed to be a further or continuing waiver of any such condition or breach.

HEADINGS

The headings used in this Agreement are for convenience only and shall not be used to construe or interpret this Agreement.

LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL 360 PSG BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOSSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR A BREACH THEREOF. 360 PSG'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER OR ANY OTHER PERSON ARISING OUT OF OR RELATED TO A BREACH OF THIS AGREEMENT SHALL BE THE LESSER OF (A) \$5,000.00, OR (B) THE TOTAL AMOUNT THAT CUSTOMER HAS PAID TO 360 PSG FOR THE SERVICES AND/OR PRODUCTS PURSUANT TO THIS AGREEMENT. WITHOUT LIMITING THE APPLICABILITY OF THE FOREGOING, IN NO EVENT SHALL 360 PSG BE LIABLE TO CUSTOMER FOR ANY DAMAGES RESULTING FROM OR RELATED TO (A) ANY FAILURE OR DELAY IN THE DELIVERY OR INSTALLATION OF ANY HARDWARE AND/OR SOFTWARE OR (B) ANY FAILURE OF HARDWARE AND/OR SOFTWARE, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF SALES OR ANY FAILURE IN THE PERFORMANCE OF SERVICES PURSUANT TO THIS AGREEMENT AND ANY ADDENDA HERETO.

DISCLAIMER OF WARRANTIES

360 PSG DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO ANY HARDWARE, SOFTWARE OR SERVICES PROVIDED BY 360 PSG PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

Service Level Agreement

All 360 PSG Co-Location and Hosting Services include:

- Bandwidth (Amount to varied by plan)
- Redundant Bandwidth (Level 3 Sonnet Ring)
- Redundant Power (UPS Batteries supported by the Diesel Engine Generator)
- Redundant Cooling (Facility Temperature Control System)
- Secure Physical Server Access Restrictions
- 24 / 7 Network Monitoring for Emergency Support
- Access limitations based on plan

Availability

It is the goal of 360 PSG to provide 100% guaranteed network "uptime" for all servers and network appliances hosted at the 360 PSG data center(s) excluding scheduled maintenance.

Network

Through circuit redundancy with our Tier 1 service provider, all network service levels are directly derived from the Level 3 service level agreement which guarantees 100% "uptime". 360 PSG guarantees 100% network availability in a given month. Upon experiencing downtime, 360 PSG will refund 1/30th of the monthly fees related to licenses and datacenter services for each hour of unscheduled downtime.

Backup Power

360 PSG employs an advanced Uninterrupted Power System with battery and generator backup. This ensures service during a power outage.

Maintenance

Scheduled Maintenance shall mean any maintenance in the 360 PSG data center at which the Company's server(s) is located (a) of which Company is notified at least 48 hours in advance or (b) that is performed during a standard maintenance window.

360 PSG reserves four possible maintenance windows every month. These windows are on the first and third Monday and Tuesday of every month from 12:00AM EST to 4:00AM EST. Any routine maintenance or upgrade that is necessary will occur during these windows. Nothing in this paragraph shall prevent 360 PSG from conducting emergency maintenance as necessary.

Exceptions

Company shall not receive any credits under this SLA in connection with any failure or deficiency caused by or associated with:

- Any form of Force Majeure including but not limited to acts of any government body, natural disasters, war, insurrection, terrorist acts, armed conflict, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software (including but not limited to, ecommerce software, payment gateways, chat, statistics, free scripts, or free software), any failure by Level 3, or any general Internet failure which is beyond the control of 360 PSG;
- Attacks by viruses or hackers, including Distributed Denial of Service (dDos) attacks against the 360 PSG network;
- Scheduled maintenance and system upgrades, or emergency maintenance;
- Any DNS or Domain Registry issues outside the direct control of 360 PSG including DNS and Registry propagation issues and expiration;
- Company's acts or omissions (or acts or omissions of others engaged or authorized by the Company), including but not limited to custom scripting or coding (e.g., CGI, PHP, Perl, HTML, Java, J2EE, shell scripting, C++, etc), server or software administration by the Company, any negligence, willful misconduct, or use of the Company's account in illegal activities;
- Issues with 3rd party email systems, including refusal or rejection of email by third party mail systems (or client-side email software);
- Delays in email delivery;
- False SLA breaches reported as a result of outages or errors of any 360 PSG measurement system;
- Outages elsewhere in the Internet that hinder access to your account or server. 360 PSG is not responsible for browser, DNS, or other caching that may make your web site or application or email appear inaccessible when others can still access it. 360 PSG will guarantee only those areas of the Internet considered under the control of 360 PSG: 360 PSG servers' links to the Internet, 360 PSG's routers, and 360 PSG's servers themselves;
- 360 PSG reserves the right to separate any server or network appliance from the 360 PSG hosting network if said server or network appliance is deemed to have been compromised or is disabling the network in any way. This does not apply to Company that has dedicated bandwidth or a dedicated network. In this case the Company's network bandwidth is their own and will not affect the standard 360 PSG hosting network. If a server or network appliance is separated from the network then immediate Company notification and troubleshooting of the problem will begin. Once the Company is notified steps will begin to return the server or network appliance to its normal state;

Credit Request and Payment Procedures

In order to receive a credit related to the service level agreement, a Company must:

- submit the request for credit within ten (10) days of the alleged outage;
- submit a full report containing all relevant details that the Company possesses either by mail or electronic mail;

Notwithstanding anything to the contrary herein, the total amount credited to the Company in a particular month under this SLA shall not exceed the total recurring fees paid by the Company for said month for the affected service(s). Credits are exclusive of any applicable taxes charged to the Company.