

**Solution Guidance Corporation - Managed Hosting Service
SERVICE LEVEL AGREEMENT**

1. AGREEMENT AND TERMS

- 1.1. This **SERVICE LEVEL AGREEMENT** (the "Agreement") between Solution Guidance Corporation ("SGC") and Client ("Customer") is made effective as of Agreement Date (shown on page 4). The service will become active within 7 days of Agreement Date. The Term of Service is 12 months. The Rate of Service and set-up fee will be in accordance with the Proposal.
- 1.2. *Agreement.* This entire Agreement consists of the Proposal, Terms and Conditions, and the Service Level Agreement.
- 1.3. *Term Commencement.* The term for each Service will commence on the date the service is activated by SGC.
- 1.4. *Renewal Term(s).* Each Service will continue automatically for additional terms equal to the Initial Term unless Customer notifies SGC in writing at least thirty (30) days prior to the end of the Initial Term or a Renewal Term, as applicable, that it has elected to terminate such Service. Notwithstanding the foregoing, SGC may change or increase the prices it charges Customer for any Service at any time after the Initial Term effective thirty (30) days after providing notice to Customer.

2. FEES AND BILLING

- 2.1. *Fees and Expenses.* Customer will pay all fees due according to the prices and terms provided herein. The prices will remain in effect during the Term of Service and will continue thereafter, unless modified in accordance with Section 1.2.
- 2.2. *Payment Terms.* On the Term Commencement Date, Customer will be billed an amount equal to the Rate of Service and setup fees as indicated above. Monthly fees for all other months will be billed in advance of the provision of services. All other charges for Services received and expenses incurred during a month (e.g., customization consulting) will be billed at the beginning of the next month in which the Services were provided. Payment for all fees is due upon receipt of each SGC invoice.
- 2.3. *Late Payments.* Any payment not received within thirty (30) days of the invoice date are in default and will accrue interest at a rate of one and one-half percent (1 ½%) per month. If Customer is delinquent in its payments, SGC may, upon written notice to Customer, modify the payment terms to require full payment before the provision of all Services or require other assurances to secure Customer's payment obligations hereunder. If a check payment is returned to SGC unpaid, Customer is immediately in default and subject to a returned check charge of \$25 from SGC. Accounts unpaid thirty (30) days after date of invoice may have service interrupted or terminated. Such interruption does not relieve Customer of the obligation to pay the Rate of Services and may be construed by SGC as a Termination Without Cause.
- 2.4. *Taxes.* SGC may invoice and Customer shall pay all taxes, fees or assessments and other charges imposed on or required to be collected by SGC by any governmental agency that may result from this Agreement, or any of the activities contemplated hereunder.

3. INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS

- 3.1. *Intellectual Property.* This Agreement does not transfer from SGC to Customer any SGC Technology, and all right, title and interest in and to SGC Technology will remain solely with SGC. Except for the rights expressly granted herein, this Agreement does not transfer from Customer to SGC any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with

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Customer. Each Party agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

- 3.2. *License Grants.* SGC hereby grants to Customer a nonexclusive, royalty-free license, during the term of this Agreement, to use the SGC Technology solely for purposes of using the SGC Service(s) provided for under this Agreement.

4. REPRESENTATIONS AND WARRANTIES

- 4.1. *General.* SGC represents and warrants that it has the legal right to enter into this Agreement and perform its obligations hereunder.

- 4.2. *Service Level Warranty.* In the event that Customer experiences any of the service performance issues defined in this Section 4.3 as a result of SGC failure, SGC will, upon Customer request in accordance with paragraph 4.2.2 below, credit Customer account as described below. The Service Level Warranty shall not apply to performance issues (i) caused by factors outside of SGC reasonable control; or (ii) that resulted from any actions or inactions of Customer or any third parties applications or equipment.

- 4.2.1. SGC guarantees to Customer 99.99% uptime on its internal network excluding network unavailability during SGC scheduled maintenance of the Internet Data Centers, network and Service(s). PTSI has the option to perform system maintenance on the first Saturday of every month from 12:01am EST until 3:00am EST without prior client notification. Client is guaranteed notification at least 48 hours prior to scheduled maintenance commencement.

- 4.2.2. If Customer notifies SGC Customer Support immediately upon failure to access Customer's Server and SGC determines in its reasonable commercial judgment the Server is unavailable due to a Server outage caused solely by the items of the service managed exclusively by SGC, the following will apply. If SGC so determines that the Server was unavailable for one or more (but fewer than four) consecutive hours during such calendar month, SGC, upon Customer's request, will credit Customer's account for such month the pro-rated charges for one day's service. Or if SGC so determines that the Server was unavailable for four (4) or more consecutive hours during any calendar month, SGC, upon Customer's request, will credit Customer's account for such month for the pro-rated charges for one week's service. A Server shall be deemed to be unavailable if the server is not responding to HTTP requests issued by SGC monitoring software. Scheduled maintenance shall not be deemed to be Server unavailability. This Section shall not apply if unavailability is caused by unavailability outside of the SGC Network or events of force majeure. Customers with multiple Servers will not receive credits pursuant to this Section for Servers which were unaffected by the outage. Customer's account shall not be credited more than once per month pursuant to this Section.

- 4.2.3. The Service Level Warranty set forth in this section 4.2 shall only apply to the service(s) provided by SGC and, does not apply to any Service(s) other than Service(s) included as a part of the monthly fee, such as Professional Services.

- 4.3. *No Other Warranty.* Except for the express warranties set forth in this section 4, the services are provided on an "as is" basis, and customer use of the services is at its own risk. SGC does not make, and hereby disclaims, any and all other express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any

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warranties arising from a course of dealing, usage, or trade practice. SGC does not warrant that the services will be uninterrupted, error-free, or completely secure.

- 4.4. *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* SGC does not and cannot control the flow of data to or from SGC network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by Third Parties. At times, actions or inactions of such Third Parties can impair or disrupt Customer connections to the Internet. Although SGC will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, SGC cannot guarantee that such events will not occur. Accordingly, SGC disclaims any and all liability resulting from or related to such events.

5. LIMITATIONS OF LIABILITY

- 5.1. *Consequential Damages Waiver.* In no event will SGC be liable or responsible to Customer for any type of incidental, punitive, indirect or consequential damages, including but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data or interruption or loss of use of services or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort, strict liability or otherwise.
- 5.2. *Indemnification.* Customer will indemnify, defend and hold SGC harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") resulting from any claim, suit, action, or proceeding (each, an "Action") brought by any third party against SGC alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or use of the Service(s); (ii) personal injury caused by the negligence or willful misconduct of Customer; and (iii) any violation of or failure to comply with the Rules and Regulations.

6. TERMINATION

- 6.1. *Termination For Cause.* Customer may terminate this Agreement at any time if such termination is for Cause, pursuant to Section 6.3.
- 6.2. *Termination Without Cause.* In the event of termination without "cause," Customer will be required to pay any outstanding balance owed to SGC and 75% of the amount remaining in the Term Commitment.
- 6.3. *Cause Defined.* Cause shall be defined as any performance related issue readily attributable to SGC, in which Customer has complied with the procedures delineated in Section 4 and SGC has failed to cure such issues within thirty (30) days. In the event of termination for cause, the set-up fee will be fully earned by SGC and will not be refunded.

7. MISCELLANEOUS PROVISIONS

- 7.1. *Force Majeure.* Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of SGC).
- 7.2. *Marketing.* Customer agrees that during the term of this Agreement SGC may publicly refer to Customer, orally and in writing, as a Customer of SGC. Any other reference to Customer by SGC requires the written consent of Customer.

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- 7.3. *Non-Solicitation.* During the Term of this Agreement and continuing through the first anniversary of the termination of this Agreement, Customer agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by SGC or contracted by SGC to provide Services to Customer.
- 7.4. *Governing Law; Dispute Resolution.* This Agreement is made under and will be governed by and construed with the laws of the Commonwealth of Virginia (except that body of law controlling conflicts of law). The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any dispute resolution concerning any controversy, claim, or dispute arising under or relating to this Agreement shall finally be settled in Fairfax County, Virginia.
- 7.5. *Relationship of Parties.* SGC and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between SGC and Customer.
- 7.6. *Entire Agreement; Counterparts; Originals.* This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by Customer shall be deemed objected to by SGC without need of further notice of objection, and shall be of no effect or in any way binding upon SGC. SGC reserves the right to modify this agreement.

AUTHORIZED REPRESENTATIVES OF CUSTOMER HAVE READ THE FOREGOING AND ALL DOCUMENTS INCORPORATED THEREIN AND AGREE AND ACCEPT SUCH TERMS EFFECTIVE AS OF THE DATE FIRST ABOVE WRITTEN.

CUSTOMER

Signature: _____
Print Name: _____
Title: _____
Agreement Date: _____
Today's Date _____
Phone: _____