

STANDARD TERMS AND CONDITIONS OF SERVICE:

- 1. Term and Termination of Service:** Customer agrees that contracted services shall automatically renew for successive terms (the "Renewal Term") thereafter unless either party shall give written notice of termination thirty (30) days prior to the termination of the initial term or Renewal Term. If Customer is on a month to month contract, per the Service Order Form, then a five (5) day written notice of cancellation is required. Written notice of cancellation is required through an email to support@ServerIntelligent.com. ServerIntelligent may terminate the Agreement upon non-payment as set forth in Paragraph 3 below. At its sole discretion, ServerIntelligent may terminate this Agreement if Customer violates any terms and conditions of ServerIntelligent's AUP.
- 2. Service Activation:** Maximum time to activate services from the date of contract execution is 14 days unless Customer requests a specific time in writing or as stated in the Service Order Form. Under this agreement, service is upon Customer receipt of connectivity, logins to server and/or IP's, and shall continue for the period specified in the Service Order Form.
- 3. Service Fees:** Fees for service(s) ordered by the Customer shall be paid to ServerIntelligent in the total amount shown or stated as due or payable to ServerIntelligent. All Service Fees are due in advance of services and are billed on a monthly basis unless otherwise noted in the Service Order Form. Customers may be billed on a calendar month cycle or service schedule cycle. Bills will include the service period covered and the Due Date for payment. It is possible that Service Fees are billed as one time charges (NRCs) or ongoing monthly charges (MRCs) and may be billed on a prorated basis. NRCs such as setup fees, administrative fees, bandwidth overages and late fees may be billed in service arrears.
- 4. Technical Support Services:** Technical Support Services will be billed in thirty (30) minute increments and no breakdown further shall be permitted. Unless otherwise specifically stated in the Service Order Form, Customers who request Technical Support Services agree to all terms and conditions, including but not limited to the ServerIntelligent's Master Service Agreement including the Terms of Service and Acceptable Use Policy.
- 5. Non-Payment:** Payment must be received by ServerIntelligent on or prior to the payment Due Date. The payment Due Date can be found on the Customer's Bill or Service Order Form. Failure to remit payment for services by the Due Date is a violation of the Terms of Service. Failure to remit payment for ten (10) consecutive days, including the Due Date, shall result in a termination of access and services shall be reclaimed. A late fee of 10% of the total Bill amount will be incurred.
- 6. System-Level Support:** ServerIntelligent is not responsible for repairs necessitated by Customer alteration of the operating system. ServerIntelligent shall not be liable for delay in furnishing or failure to furnish service if forces beyond the reasonable control of ServerIntelligent cause such delay.
- 7. Taxes:** Customer is responsible for paying all foreign, federal, state and local sales, use, value added, excise duty and any other taxes assessed with respect to any services, other than for taxes based on ServerIntelligent's net income.
- 8. Service Credits:** Service Credits will be issued to your Customer account and shall be used to offset future billable services. Service Credits shall not be issued as cash back to the Customer nor shall the Service Credits be transferrable to other Customers. Service Credits shall expire if Customer's account is fully terminated.
- 9. Refunds & Disputes:** All services rendered by ServerIntelligent are non-refundable. This includes, but is not limited to: setup fees, one time fees (NRCs), monthly service fees (MRCs), upgrade fees, additional service fees, administrative fees and late fees. In the event that Customer disputes any amount stated in any Bill and intends to withhold payment of the amount, Customer must give ServerIntelligent a written notice via an email to support@ServerIntelligent.com of such dispute before the Due Date of the Bill and must state in such notice the grounds and reasons for such dispute. ServerIntelligent shall provide a written response to Customer within thirty (30) days of its receipt of such written notice. The parties agree that ServerIntelligent has the sole final determination of the dispute. If ServerIntelligent determines the dispute is valid, an adjustment to client's bill shall be made. If ServerIntelligent determines the dispute is not valid, Customer shall remit payment within five (5) days of notification by ServerIntelligent of its final determination.
- 10. Charge Backs:** Customer agrees not to chargeback any credit card payments for services rendered. A chargeback of payment for services rendered will result in an additional charge of a minimum of 10% of the amount charged back or \$150, whichever is greater, and will be subject to collection by an authorized collection agency. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorney's fees, court costs and collection agency fees) incurred by ServerIntelligent in enforcing collection.

11. **Data:** ServerIntelligent agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data integrity, retention, security, backup, and ownership. In the event that ServerIntelligent handles Customer data, i.e., when replacing hard drives, ServerIntelligent will act in accordance with PCI guidelines to ensure data is securely handled.
12. **Limitations of Liability:** Except as described in the ServerIntelligent's SLA, ServerIntelligent shall not be liable to Customer for harm caused by or related to Customer's services or inability to utilize the services unless caused by gross negligence or willful misconduct. ServerIntelligent shall not be liable to Customer for lost profits, indirect, special or incidental, consequential or punitive damages. Notwithstanding anything else in this Master Service Agreement, the maximum aggregate liability of ServerIntelligent and any of its employees, agents or affiliates, under any theory of Law shall not exceed the amount paid by the Customer for services for the previous month's service prior to the occurrence of the event(s) giving rise to the claim.
13. **Indemnification:** Customer agrees to indemnify and hold harmless ServerIntelligent, ServerIntelligent's affiliates, and its respective officers, directors, attorneys, agents and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorney's fees) brought by a third party under any theory of legal liability arising out of or related to Customer's content, illegal activity and/or actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.
14. **Identity Use and Trademarks:** Customer agrees to use ServerIntelligent's logo, information, and related services in accordance with ServerIntelligent's approved marketing guidelines. ServerIntelligent may include Customer's name and contact information in directories of ServerIntelligent's service subscribers for the purpose of promoting the use of the service by additional potential clients. However, ServerIntelligent is not authorized to use or print Customer's name, trademarks or any other identifying information in any other advertising or promotional materials without prior written consent of Customer.
15. **Laws:** Agreement shall be subject to and construed in accordance with the laws of the State of California, without reference to its conflicts of law provisions. Customer hereby submits to the exclusive jurisdiction of the state and federal courts of the State of California with respect to any and all claims and disputes between ServerIntelligent and Customer relating to or arising from this Agreement and waives any and all objections to such requirements.
16. **Waiver:** Either party's waiver of, or failure to exercise any right provided for in this Agreement, should not be deemed a waiver of any future right of this Agreement.
17. **Best Efforts:** The Customer and ServerIntelligent agree to use their best efforts to cooperate in the performance of this Agreement.
18. **Agency:** The Customer and ServerIntelligent agree that this Agreement is not intended to create any agency relationships of any kind; and both agree not to contract any obligations in the name of the other party and not use each other's credit in conducting any activities under this Agreement.
19. **Captions:** The captions of each paragraph of this Agreement are inserted solely for the reader's convenience, and are not to be construed as part of the Agreement.
20. **Confidentiality and Non-Disclosure:** Each party will take all proper steps to keep confidential all confidential information of the other which is disclosed to or obtained by it pursuant to or as a result of this Agreement, and will not divulge the same to any third party without the prior written consent of the party to whom such confidential information belongs and will allow access to the same to its own staff only on a "need to know" basis, except to the extent that any such information becomes public through no fault of that party or is required to be disclosed pursuant to Law, including any requirements of a regulatory authority or administrative agency. Upon termination or expiration of this Agreement, each party will return to the other party any such confidential information, equipment and written data (without retaining copies thereof) provided for the purposes of this Agreement. Notwithstanding the termination or expiration of this Agreement for whatever reason the obligations and restrictions in this Section shall be valid for a period of two (2) years from the date of expiration or termination.

21. **Legal Compliance:** By accepting this Master Service Agreement, Customer represents and warrants that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties. Customer further represents and warrants that he/she has full authority and power to execute this Agreement on behalf of the Company he/she represents, if any. Additionally, Customer warrants that he/she is at least 18 years of age or older and are not otherwise legally incapacitated to execute this Agreement.
22. **Arbitration; Applicable Law and Jurisdiction:** Any controversy or claim arising from service or related to this Master Service Agreement or breach therein in excess of \$500.00 shall be settled by arbitration. Any dispute, controversy or claim (individually and collectively, a "Dispute") arising out of or related to this Agreement (other than any Default by Customer that is not cured within a commercially reasonable period of time, not to exceed thirty (30) days, unless extended by mutual agreement of the parties), parties will resolve such Dispute through negotiations between senior management of the parties. Any Dispute between the parties arising out of or related to the Agreement that cannot be settled amicably through the procedures outlined above shall be finally settled by arbitration in Los Angeles, California, administered by the JAMS/Endispute under its commercial arbitration rules of the American Arbitration Association. The venue and jurisdiction requirements set forth above apply to any arbitration proceedings. The cost of the arbitration, including the fees and expenses of the arbitrator or arbitrators, and the administrative and other fees of the Association, shall be shared equally by the parties unless the award otherwise provides; provided, however, that the prevailing party in the arbitration shall in all events be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.
23. **Successors and Assigns:** This Agreement shall be binding on the parties, and on their successors and assigns, without regard to whether it is expressly acknowledged in any instrument of succession or assignment.
24. **Notices:** Notices required by this Agreement to ServerIntelligent shall be in writing and shall be delivered either by mail or email. If delivered by mail, notices shall be sent by any mail service or by USPS mail with all postage and charges prepaid to the address listed below. If delivered by email, notices must be sent to legal@ServerIntelligent.com. All notices and other written communications under this Agreement shall be addressed as indicated below, or as specified by subsequent written notice.

All mailed notices shall be sent to:

ServerIntelligent
Attention: Legal Department
1821 South Bascom Ave.
Campbell CA 95008