



TERMS OF SERVICE

This agreement is entered into between The ServInt Corporation (“ServInt,” “we” or “us”) and the person or entity purchasing or using our services (“customer,” “you” or “your”). It is effective on the date set out below. This agreement, together with all other agreements and policies incorporated by reference, including the Acceptable Use Policy (“AUP”), Privacy Policy, any applicable Data Transfer Agreement, and any Statement of Work or other ordering document (each, a “Statement of Work”) will be referred to as the “Terms of Service” or the “Agreement.” ServInt shall have the right to unilaterally modify or amend these Terms of Service at any time, in its sole discretion. We will make commercially reasonable efforts to notify you of such changes by making them available in the Portal (as defined below). However, any use of the Service after the date such changes have been made available in the Portal shall constitute your conclusive agreement thereto. If you do not agree to the changes, you must immediately discontinue use of the Service.

1. Services.

- a. Throughout this Agreement, our products and services are referred to as “Service” or “Services.”
- b. The pricing, features and term of the products and services you purchase from us are set out in one or more Statements of Work. The Effective Date is the date service is initiated. ServInt offers Customers the ability to upgrade the Services. At the time your upgrade order is processed, you are bound by the terms and conditions of that particular Service, for the Term of that Service.
- c. The pricing, features and term of the products and services you purchase from us are set out in one or more Statements of Work. The Effective Date is the date service is initiated. ServInt offers Customers the ability to upgrade the Services. At the time your upgrade order is processed, you are bound by the terms and conditions of that particular Service, for the Term of that Service. We reserve the right to modify the Services, or the way in which we provide them to you, in the event that:
 - i. A third-party vendor ceases making a critical aspect of the Services available to us;
 - ii. The Services are or become prohibited by law or regulation; and/or
 - iii. It becomes uneconomical for us to continue to provide them to you.
- d. The Services may contain software, hardware or services provided by third parties (the “Third Party Vendors”). Third Party Vendors may have reserved the right to make changes to the way they provide their products. These changes may materially affect the Services. You may not terminate this Agreement because of such changes.
- e. The Services are provided to you in a standardized manner. Should you wish to use the Services in a particular manner, it is your responsibility to configure the Services. Any custom configuration may not affect our operation of the network, our provisioning of the Services of other customers, and is otherwise subject to our approval. You represent and warrant that you have the experience and knowledge needed to carry out such custom configuration, if approved by ServInt.
- f. Software: The Services may come pre-configured with software owned by a Third Party (the “Third Party Software”).



- i. If you represent to us that you already have a license to use the Third Party Software, we may require you to provide us with evidence of this license. You agree to comply with your license agreement while using the Third Party Software.
 - ii. If you do not have a license to use the Third Party Software, you agree to comply with the terms of any license that is required for you to use the Third Party Software.
- g. Patching. Licensors of Third Party Software sometimes offer software updates, upgrades, bug fixes, or enhancements (“Patches”). ServInt reserves the right to determine in its sole judgment whether it will apply such Patches and to apply Patches in accordance with that determination. It is your sole and exclusive responsibility to determine whether installation of the Patches will damage your data or otherwise affect the operation of the Services as provided to, or used by, you. You must inform ServInt in writing of any request not to apply Patches, which ServInt may decline to honor if, in ServInt’s judgment, not applying the Patches poses any threat or risk to the security or reliability of ServInt’s overall platform. Given the inherent risk of applying Patches to live systems, ServInt disclaims liability for, and you agree to hold ServInt harmless from, any adverse consequences resulting from installation of, or any attempt to install, Patches.
- h. IP Address. The Services may include an IP Address. This IP Address is leased to you by us and shall at all times remain the property of ServInt. We may change this IP Address at any time. The IP Address is not transferable. Upon the Termination of this Agreement, you must cease using the IP Address.
2. Term of Service.
- a. “License Term” is the period of time (i) specified on the Statement of Work pursuant to which Customer agreed to purchase the Services or (ii) to the extent no such period is specified on the Statement of Work, a one-year period of time, in each case commencing on the Effective Date, together with all subsequent renewals and extensions thereof effected in accordance with the terms of this Agreement.
 - b. At the end of the License Term, and of each Renewal Term, this Agreement and the Services will automatically renew for another time period of like duration (each, a Renewal Term”) The License Term together with all Renewal Terms under this Agreement will be referred to as the “Term.” If you purchase multiple Services, the Term of this Agreement is for the length of time during which we agree to provide the individual Services to you.
3. Fees.
- a. Fees for Services are stated on the applicable Statement of Work or during the ordering process (the “Fees”), and are due periodically as described thereon (the “Due Date”). Unless mutually agreed upon and documented within these Terms of Service, Fees are due monthly.
 - b. Fees are not refundable for any reason, other than in the case of our breach.
 - c. We are only obligated to provide the Services to you upon payment of the Fees. If you have not paid the Fees by the Due Date, we may terminate this Agreement (and the Services), or suspend the Services, without notice, at our sole and exclusive discretion. If you fail to pay the Fees on or before the Due Date, we may charge you interest in the amount of 2.0% per month (or the highest



rate allowed by law, whichever is less) and collection charges (including, but not limited to attorney's fees).

- d. If we suspend the Services for a reason within your control, the Fees will continue to accrue.
- e. Your use of the Services may be contingent on payment of fees to Third Parties. If you fail to pay these fees when due, your use of the Services may be suspended, disrupted or terminated.
- f. If you dispute a Fee charged by us to you, you must contact us prior to the Due Date. Upon your presentation to us of written documentation supporting your view of the dispute, we will temporarily suspend the Fees in dispute. You remain responsible for any Fees not reasonably within the scope of the dispute. If we disagree with your view of the dispute, we will provide you with evidence of our view within 30 days of receiving your evidence. If, within 15 days of our presentation of our evidence, you continue to dispute your obligation to pay the Fees, with our agreement you may place the Fees in escrow with a reputable escrow company, and pursue your available rights. We are only obligated to continue to provide the Services to you during a Fee dispute, if you place the disputed Fees in escrow, and provide us with written evidence of this escrow. You may not dispute Fees due a Third Party.

4. Termination.

- a. Either of us may terminate this Agreement by providing the other with written notice of intent to terminate (a "Termination Notice") as provided in this section. You must provide us with a Termination Notice no less than thirty (30) days prior to the renewal of your Service.
 - i. Customer may terminate these Terms of Service by sending a Termination Notice to ServInt; provided, however that Customer shall not be entitled to a refund of any amounts paid or a release from or cancellation, waiver or novation of any amount payable, and all such amounts payable or promised to be paid through the Term shall automatically accelerate and be immediately due and payable and shall survive such termination of this Agreement.
 - ii. ServInt shall have the right, but not the obligation, to terminate these Terms of Service and/or the Services, if Customer ceases to do business, becomes insolvent, goes or is put into receivership or liquidation, passes a resolution for its winding up (other than for the purpose of reconstruction or amalgamation) or for any of the foregoing, makes an arrangement for the benefit of its creditors, enters into bankruptcy, suspension of payments, moratorium, reorganization or any other proceeding that relates to insolvency or protection of creditors' rights or takes or suffers any similar action in consequence of debt.
- b. Either of us (the "Non Breaching Party") may terminate this Agreement by providing the other (the "Breaching Party") with written notice of the Breaching Party's material breach. The written notice must contain sufficient facts from which the Breaching Party may identify the alleged cause of the breach, and take steps to cure such a breach. Upon delivery of the notice of material breach, the Breaching Party shall have ten calendar days during which the breach may be cured. If the material breach is incapable of cure, the Non-Breaching Party may terminate this Agreement immediately.
- c. We may also suspend or terminate this Agreement, or a particular Service, immediately upon your violation of any of the policies incorporated into this Agreement, including the Acceptable Use Policy; your violation of any licenses with Third Parties; or any public disparagement by you of ServInt.



- d. Upon termination of this Agreement, your data will be deleted. Any data present on our backup servers will be overwritten. We shall have no obligation whatsoever to (i) preserve your data or (ii) provide data to you upon termination of this Agreement.
- e. If the Services are suspended or terminated based on your failure to pay the Fees when due, a breach of any of our Agreements, or for any other reason, we may charge you a reconnection fee or cancellation fee, as applicable.

5. Warranties.

- a. Mutual Warranties: each party has the power, authority, and legal right to enter into this Agreement; each party has the power, authority, and legal right to perform its obligations under this Agreement.
- b. We warrant that we will perform in a competent manner.
- c. You represent and warrant to us that:
 - i. you have the experience and knowledge necessary to use the Services;
 - ii. you will comply with the terms of any licenses required for your use of Third Party Software;
 - iii. you will draft end user agreements with terms that are no less restrictive than the terms of our AUP to your customers;
 - iv. you own the entire right, title and interest to, or have an appropriate license to use all materials provided to us, or which may be accessed or transmitted using the Services;
 - v. your end users have warranted that they own the entire right, title and interest to, or have an appropriate license to use all materials provided to you, or which may be accessed or transmitted using the Services, and have agreed to indemnify us if they do not.
 - vi. if and as needed, you will obtain consent, by means of your end user agreements, for the transfer of any personal data as required by a) the laws of the European Union or b) other applicable laws, and/or will otherwise comply with all such laws.

- 6. Disclaimers. THE SERVICE IS PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. OTHER THAN AS EXPRESSLY SET OUT IN PARAGRAPH 5, "WARRANTIES." WE HAVE NOT, AND DO NOT, MAKE ANY WARRANTIES WHETHER EXPRESS OR IMPLIED. THIS DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO THE WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND TITLE. WE DO NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. WE ARE NOT LIABLE, AND EXPRESSLY DISCLAIM ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO, OR FROM, YOU OR STORED BY YOU OR AN END USER VIA THE SERVICE PROVIDED BY US. WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES REGARDING SERVICES PROVIDED BY THIRD PARTIES, REGARDLESS OF WHETHER THOSE SERVICES APPEAR TO BE PROVIDED BY US. NO WARRANTIES MADE BY THESE THIRD PARTY ENTITIES TO US SHALL BE PASSED THROUGH TO YOU, NOR SHALL YOU CLAIM TO BE A THIRD PARTY BENEFICIARY OF SUCH WARRANTIES. SOME STATES DO NOT ALLOW US TO EXCLUDE



CERTAIN WARRANTIES. IF THIS APPLIES TO YOU, YOUR WARRANTY IS LIMITED TO 90 DAYS FROM THE EFFECTIVE DATE.

7. Limitation of Liability.

- a. We are not liable to you, or any third parties, for harm caused by or related to the Services, or your, or a third party's, inability to utilize the Services, unless it is caused by our sole and exclusive gross negligence.
- b. We are not liable to you, or any third parties, for lost profits or damages of any kind, whether direct or indirect, special or incidental, consequential or punitive. This paragraph applies whether or not such potential liability was known to us, or should have been known, and even if we have been advised of the possibility of such damages.
- c. Our maximum aggregate liability for any claims made pursuant to or based on the Services or by Third Party Vendors, under any theory of law, is the amount paid by you for the Services for the month prior to the occurrence of the event or events giving rise to the claim.

8. Indemnification.

- a. Each party agrees to indemnify and hold harmless the other, its affiliates and their 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, and expenses, of any kind, brought by a third party under any theory or finding of liability arising out of, or related to, the indemnifying party's actual or alleged infringement or misappropriation of a third party's copyright, patent, trademark or other proprietary right.
- b. You agree to indemnify, defend and hold us harmless, including, but not limited to our parent, subsidiary and affiliated companies, and each of their respective officers, directors, employees, shareholders and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to (i) your use of the Services (ii) any violation by you of the AUP; (iii) any breach of any of your representations, warranties or covenants contained in this Terms of Service (TOS); or (iv) any acts or omissions by you. The terms of this section shall survive any termination of this TOS. For the purpose of this paragraph only, the terms used to designate you include you, your customers, visitors to your website, and users of your products or services, the use of which is facilitated by us.

9. Licenses; Intellectual Property.

- a. You may be required to agree to Third Party Vendor licenses in order to use the Services. You agree to preserve and not obscure trademark, copyright and other indications of intellectual property ownership placed on any software, hardware provided to you, or displayed during your use of the Services.
- b. You must have a valid license to use the software you place on our equipment. You agree to provide us with evidence of this license upon our request.



- c. If we license software to you, that license terminates upon the Termination or expiration of this Agreement.
 - d. You are responsible to us for any unauthorized installation, use, copying, access or distribution of the Services if you fail to: include in your customer agreements terms and conditions that are similar to but no less restrictive than those set out herein, or incorporated by reference; and, if your customers resell our Services, require your resellers to include in their customer agreements, terms and conditions that are substantially similar to but no less restrictive than those set out herein, or incorporated by reference.
 - e. Any information provided to us in connection with your use of the Services shall be provided by you on a non-confidential basis. Such information shall be considered non-confidential and our property. By submitting any such information to us you agree to a no-charge assignment to us of all worldwide rights, title, and interest in copyrights and other intellectual property rights to the information. We shall be free to use such information on an unrestricted basis. This paragraph is expressly limited to information you provide to us to troubleshoot and/or enhance the Services provided to you. It excludes any information you place on our equipment using the Services ("Your Information"). We shall have no ownership interest in Your Information, and between ServInt and you, you shall be the exclusive owner of Your Information.
10. Notices. ServInt will communicate with you using your posted address or your email address or by means of ServInt's online portal (the "Portal"). You agree to ensure that ServInt has your current postal and email addresses on file at all times by updating that information through the Portal. You must send all notices, claims, demands, and other communications hereunder in writing. Such communications shall be deemed given upon (i) confirmation of receipt by the addressee by a standard overnight carrier, or (ii) the expiration of five (5) Business Days after the day when mailed by registered or certified mail (postage prepaid, return receipt requested), addressed to: The ServInt Corporation, 12001 Sunrise Valley Drive, Suite 350, Reston, VA 20191, Fax: 703 -847-1383
11. Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, fire, epidemics, interruptions of telecommunications providers, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay. Notwithstanding the above, in the event Force Majeure has prevented us from performing our obligations under this Agreement for one month, you shall be entitled to terminate this Agreement at no additional cost. The party affected by the Force Majeure shall notify the other party as soon as possible, but in no event less than ten days from the beginning of the Force Majeure event.
12. Choice of Law, Jurisdiction and Venue. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the Commonwealth of Virginia, United States of America, as if performed wholly within the state and without giving effect to its principles of conflict of law. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. The parties agree that jurisdiction and venue shall be proper before the U.S. District Court for the Eastern District of Virginia in Alexandria, Virginia ("District Court"). Should venue before the District Court not be proper, or should the District Court not have jurisdiction over the matter, the parties agree that venue and jurisdiction shall be proper before the court of the Commonwealth of Virginia located in Fairfax County Virginia, having both venue and jurisdiction. The parties agree not to contest notice from either the District Court, or the relevant court of the Commonwealth of Virginia.



13. Waiver. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement.
14. Assignment. You may not assign or otherwise transfer (whether by operation of law or otherwise) either this Agreement or any rights under this Agreement without our prior written consent, which we may withhold in our sole and absolute discretion. We may assign or transfer this Agreement or any of our rights under this Agreement to any successor as part of any merger, consolidation, sale (whether of stock or assets), divestiture, or other corporate reorganization. This Agreement shall bind and inure to the benefit of the parties' permitted successors and assigns.
15. Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect, and such provision shall be enforced to the fullest extent consistent with applicable law.
16. No Agency. This Agreement does not create any agency, partnership, joint venture, or franchise relationship. Neither party has the right or authority to, and shall not assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.
17. Survival. Sections 6, 7, 8, 9(d), 10, 12, 13, and 15 shall survive the termination of this Agreement.