

Terms of Services

Serventus Inc. (www.serventus.com)



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The following terms of service (these "Terms of Service" or this "Agreement") govern the provision by SERVENTUS.COM. ("Serventus") to the customer executing this online transaction ("Customer"), of the products and services described in (i) the Order Form submitted in connection with this online transaction (the "Order Form"), (ii) the Service Level Agreement (as in effect from time to time and set forth on The Serventus's website, the "SLA") governing the Customer's limited right to recover certain service credits and (iii) Serventus's technical support descriptions (collectively clauses (i) through (iii), the "Products and Services"). These Terms of Service shall be effective as of the date that Customer executes its online transaction and thereby accepts these Terms of Services (the "Effective Date"). These Terms of Service hereby incorporate by reference the SLA, Serventus's Acceptable Usage Policy (as in effect from time to time as set forth on Serventus's website, the "AUP") and the Order Form each of which is made a part of these Terms of Service and collectively referred to herein as the "Agreement." Customer's use of Serventus's website, Serventus Network, and the Products and Services is also subject to Customer's acceptance and compliance with these Terms of Service, the AUP, the SLA and the Order Form. Capitalized terms used herein without being defined herein shall have the meaning ascribed to such capitalized term in the SLA or AUP, as applicable. SERVENTUS HEREBY RESERVES THE RIGHT TO AMEND, ALTER, MODIFY, REPLACE OR SUSPEND, FROM TIME TO TIME IN ITS SOLE DISCRETION, ALL OR ANY PORTION OF THE SLA, THE AUP AND ITS PRIVACY POLICY (AS IN EFFECT FROM TIME TO TIME AS SET FORTH ON SERVENTUS'S WEBSITE, THE "PRIVACY POLICY"). CURRENT COPIES OF SERVENTUS'S SLA, AUP AND PRIVACY POLICY MAY BE REVIEWED OR PRINTED BY CUSTOMER AT THE LEGAL SECTION OF SERVENTUS'S WEBSITE. CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THE SLA, AUP AND PRIVACY POLICY.

By submitting an Order Form online or by using Serventus's website, Serventus Network (as defined in the SLA), products or services, Customer hereby agrees to the terms and conditions of the Agreement.

Services and Monthly Commitments

Serventus agrees to provide Serventus and Services in accordance with the terms and conditions of this Agreement beginning on the Effective Date. Serventus may perform additional technical, supplemental, or professional services (other than the Products and Services) for Customer at either Serventus's published pricing rates or at rates mutually agreed to in writing between Customer and Serventus. Also, Serventus may perform remedial services as provided for in the AUP at the pricing set forth therein and without obtaining Customer's consent in advance. If a Customer subscribes for any Product and Service for a term other than on a month-to-month basis, then each month of such term Customer shall pay Serventus the greater of (i) the actual fees and expenses payable by Customer for the Products and Services for which Customer has subscribed for such term (based on all actual licensing and usage of such Products and Services on a monthly basis) and (ii) the Minimum Monthly Commitment. For purposes of this Agreement, "Minimum Monthly Commitment" shall be determined each month and shall mean with respect to each Product and Service subscribed for by Customer other than on a month-to-month basis, the greater of (A) the amount specified as the "Minimum Monthly Commitment" in the Order Form associated with the subscription for such Products and Services and (B) the highest aggregate monthly amount paid or payable by Customer with respect to all Products and Services subscribed to for a term other than on a month-to-month basis, during the current term for which Customer subscribed for such Products and Services. If for any month Customer's aggregate monthly fees and expenses actually paid or payable by Customer for the Products and Services for which Customer has subscribed for such term (based on all actual licensing and usage of such Products and Services on a monthly basis) does not exceed the Minimum Monthly Commitment, then Customer shall pay the Minimum Monthly Commitment in lieu of the charges that would otherwise be due with respect to such Products and Services. All payments made by Customer with respect to such Products and Services shall be credited first towards the Minimum Monthly Commitment.

Term and renewal

Unless Customer agrees to a one-year term or unless otherwise stated in an Order Form or any service description, the initial term (“Initial Term”) of this Agreement shall be month-to-month, commencing on the Effective Date and shall automatically renew (A) in the case of a month-to-month term, the first day of each month for successive one-month periods unless cancelled or terminated earlier pursuant to the express terms of this Agreement or (B) in the case of a one-year term, each yearly anniversary of the Effective Date for successive one-year periods unless cancelled or terminated earlier pursuant to the express terms of this Agreement (in each case, a “Renewal Period”). Customer agrees to be bound by the service term selected on the Order Form or via applicable promotional codes. Serventus may cancel or elect not to renew the Products and Services for any reason or no reason at all by delivering to Customer a written notice of non-renewal at least five (5) days prior to the expiration of the Initial Term or the then-current Renewal Period, as applicable.

Customer Cancellation or Non-Renewal

In order to cancel or elect not to renew any Product or Service, Customer must either (i) submit an online service cancellation by contacting Serventus Support Center at least thirty (30) days prior to the actual date of cancellation.

Termination

Serventus may immediately terminate this Agreement at any time, and without liability, upon the occurrence of any of the following events (“Serventus Termination”): (i) Customer’s failure to pay any overdue amount within ten days after written notice by Serventus is given to Customer or (ii) Customer’s material breach or violation of any provision of this Agreement (other than such violations set forth in clauses (iii), (iv) and (v) below) that is not cured within ten (10) days of Customer’s receipt of written notice from Serventus referencing such breach or violation; (iii) Customer ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) calendar days, or making an assignment for the benefit of its creditors; (iv) Customer’s violation of the AUP or the Privacy Policy; or (v) Serventus determines in its sole discretion that Customer continues to host content that may subject Serventus to legal liability (in which case, Serventus may terminate or modify the Products and Services to avoid such liability).

Customer may terminate this Agreement with respect to all, and not less than all, of the Products and Services without liability (except for Charges due through the effective date of such termination) upon the occurrence of a material breach by Serventus of its obligations to provide the Products and Services according to the terms of this Agreement that is not cured within ten (10) business days after written notice from Customer describing such breach in detail is received by Serventus (“Customer Termination”). In the event of a Customer Termination, Customer shall pay (1) all outstanding amounts payable through the effective date of such termination and (2) if the Products and Services include software for which Serventus does not then provide general customer support, Customer shall pay to Serventus an amount equal to The Serventus's cost of such software for the entire Initial Term and any applicable Renewal Periods.

If Customer terminates this Agreement for any reason other than a Customer Termination, Customer shall pay to Serventus an amount equal to all unpaid Charges through the effective date of such termination and (A) in the case of any Product and Service subscribed for on a month-to-month basis, all Charges for the Products and Services through the remainder of the Initial Term or the then-current Renewal Term, as applicable and (B) in the case of any Product and Service subscribed for other than on a month-to-month basis, all Charges for the Products and Services through the remainder of the Initial Term or the then-current Renewal Term, as applicable, calculated based upon the then-current Minimum Monthly Commitment payable by Customer upon the date of termination. CUSTOMER ACKNOWLEDGES THAT CUSTOMER WILL NOT BE ENTITLED TO ANY REFUND OR CREDIT IN THE EVENT THAT ANY PRODUCT OR SERVICE THAT IS PROVIDED ON THE BASIS OF A ONE-YEAR TERM IS TERMINATED, WITH OR WITHOUT CAUSE, PRIOR TO THE EXPIRATION OF THE ONE-YEAR TERM. CUSTOMER HEREBY WAIVES ALL RIGHTS TO ANY SUCH REFUND OR CREDIT.

Upon termination of this Agreement, Serventus and Customer shall have no obligations to each other, except as provided for in this Agreement. Upon termination of this Agreement, Customer shall (i) pay all Charges and other amounts due and owing to Serventus under these Terms of Service, (ii) immediately remove from Serventus's premises all property owned by Customer, including, but not limited to, immediately removing all of Customer's data from Serventus Network (including all servers owned or operated by Serventus), and (iii) return to Serventus all software, access keys, and any other property provided to Customer by Serventus under this Agreement. Any physical property of Customer not removed from The Serventus's premises within forty-five (45) days after such termination shall become the property of Serventus, which may, among other things, dispose of such property without the payment of any compensation to Customer. Sections 4, 5, 6, 7 and 8 shall survive the expiration, cancellation and termination of this Agreement for any reason.

Payment

Customer agrees to pay all charges, fees, penalties, early cancellation charges, reconnection fees, service interruption fees, installation fees and other amounts due under this Agreement (collectively "Charges") in US dollars. Each Customer that is a Texas resident agrees to pay all taxes applicable to its account. Except as otherwise provided for herein, all Charges for the Products and Services, and for any additional services described herein, shall be invoiced to the Customer and paid in advance of the Initial Term and each Renewal Term (but may include any applicable pro-rated amounts for partial months of for Products and Services provided on a month-to-month basis) and shall be due and payable upon receipt. Any additional one-time charges, including early cancellation charges, accrued interest, late fees, service reinstatement fees, and any usage-based charges (installation or set-up fees) shall be invoiced in arrears and appear on either regular monthly invoices or separate invoices. Server rental charges are incurred immediately at signup and are prorated by 3 days to allow for server provisioning and delivery. Customer also shall pay to Serventus all expenses incurred by Serventus in exercising any of its rights under this Agreement or applicable law with respect to the collection of a payment default, including attorneys' fees, court costs, and collection agency fees. If Customer fails to pay any past due amount within five (5) days after written notice by Serventus is given to Customer, Serventus may suspend performance under this Agreement and if such past due amounts remain unpaid for an additional five (5) days thereafter, Serventus may terminate this Agreement. usurious rate under applicable law. Customer shall be deemed to have accepted as conclusively accurate any invoice that it has not disputed in a writing delivered to Serventus within sixty (60) days of the invoice date.

Customer may withhold the disputed portions of payments that are properly and timely disputed hereunder as long as it timely pays all undisputed charges that are outstanding. The parties shall work together in good faith to resolve any such disputed charge. In the event that this Agreement is terminated by Serventus for any reason constituting “Serventus Termination” (as defined above) or by Customer for any reason other than “Customer Termination” (as defined above), all Charges under the Agreement, including all remaining monthly or yearly fees due for the remaining portion of the Initial Term and each applicable Renewal Period, shall accelerate and are immediately due and payable. All set-up fees, monthly service fees and usage fees are non-refundable. Customer shall not be entitled to any refunds or credits, pro-rated or otherwise, in the event of early termination of this Agreement by Serventus according to the terms herein.

Indemnification

Customer agrees to indemnify and hold harmless Serventus, its subsidiaries, their affiliates and each of their respective directors, officers, employees, shareholders and agents (each an "Indemnified Party") against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, or any and all costs thereof (collectively, "Losses") to which an Indemnified Party may become subject and which Losses arise out of, or relate to the Agreement, Customer’s use of the Products and Services, breach of any confidentiality obligation or any alleged infringement of any trademark, copyright, patent or other intellectual property right and will reimburse an Indemnified Party for all legal and other expenses, including reasonable attorneys' fees incurred by such Indemnified Party, in connection with investigating, defending, or settling any Loss, whether or not in connection with pending or threatened litigation in which such Indemnified Party is a party.

Disclaimers; Limitation on Company Liability

THE SERVENTUS SHALL NOT BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE RESULTING FROM THE USE OF THE PRODUCTS AND SERVICES BY THE CUSTOMER OR ANY THIRD PARTIES OR ANY FAILURE OF THE PRODUCTS AND SERVICES OR (ii) ANY LOSS OF DATA OR CORRUPTION OF DATA, INCLUDING LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS, FAILURE OF SERVENTUS NETWORK, RECLAMATION OF SERVERS BY SERVENTUS, FAILURE OF SERVERS, THE RELOADING OF AN OPERATING SYSTEM OR OTHER SOFTWARE ON A SERVER OR THE NEGLIGENCE OF SERVENTUS. CUSTOMER IS SOLELY RESPONSIBLE FOR SAFEGUARDING, BACKING UP AND ARCHIVING ALL DATA OWNED, CONTROLLED OR TRANSMITTED BY CUSTOMER THAT RESIDES ON SERVENTUS NETWORK OR ANY SERVER OWNED OR OPERATED BY SERVENTUS.

IN NO EVENT SHALL SERVENTUS’S AGGREGATE LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY CUSTOMER TO SERVENTUS IN THE BILLING CYCLE IMMEDIATELY PRECEDING SUCH CLAIM.

SERVENTUS PROVIDES ALL PRODUCTS AND SERVICES “AS IS,” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE PRODUCTS AND SERVICES AND SERVENTUS SHALL HAVE NO LIABILITY THEREFORE.

Miscellaneous Terms.

Bandwidth and Disk Usage. Customer agrees that bandwidth and disk usage shall not exceed the number of megabytes per month for the Products and Services ordered by Customer on the Order Form (the "Agreed Usage"). Serventus will monitor Customer's bandwidth and disk usage. Serventus shall have the right to take corrective action if Customer's bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Products and Services, or termination of these Terms of Service, which actions may be taken by Serventus in its sole and absolute discretion. If Serventus takes any corrective action under these Terms of Service, Customer shall not be entitled to a refund of any fees paid in advance prior to such action. Bandwidth usage is measured on a calendar month basis. Both incoming and outgoing traffic is counted and applied towards the Agreed Usage.

Notices. Unless otherwise specified herein, all notices, requests and other communications hereunder shall be sufficiently sent via

<http://serventus.com/contact.php>

Waiver. It is agreed that no waiver by any party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

Severability. If one or more of the provisions contained in this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected.

Force Majeure. Neither party shall lose any rights hereunder or be liable to the other party for damages or losses on account of failure of performance by the defaulting party if the failure is occasioned by any occurrence or contingency beyond its reasonable control, including war, strike, fire, Act of God, earthquake, flood, lockout, embargo, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party; provided that such party shall use commercially reasonable efforts to promptly mitigate any damages or losses.

The Serventus's Use of Customer's Name. Customer agrees that Serventus may, upon written consent by Customer, publicly disclose that Serventus is providing services to Customer and may include Customer's name in any promotional materials, such as press releases or Serventus's web site. Neither party may publicly use the other party's logo or other trade or service mark without that party's written consent.

Non-Solicitation. During the term of this Agreement and for twelve (12) months following termination of this Agreement, Customer agrees that it shall not solicit for employment with Customer (or with any other party) any employee of Serventus or interfere in the employment relationship between Serventus and any of its employees with whom Customer has had contact in connection with this Agreement.

Ownership. Serventus shall be the sole owner of all intellectual property, and all derivatives thereof, that Serventus may develop in the course of providing the Products and Services. Each party to this Agreement retains exclusive ownership and rights in its trade secrets, inventions, copyrights, and other intellectual property. Upon termination of the Agreement, Customer agrees to promptly release any Internet protocol numbers, addresses, or address blocks assigned to Customer in connection with the Products and Services.

Customer Hardware. Serventus acknowledges and agrees that the hardware provided by Customer to Serventus to be used in connection with any Products and Services (the “Customer Hardware”) is the property of Customer and shall be tagged and identified as such. Serventus shall not pledge, hypothecate or otherwise encumber the Customer Hardware in any way and upon demand by Customer shall surrender the Customer Hardware to Customer, unless Customer fails to remove such Customer Hardware as provided for in Section 4 above.

Third-Party Beneficiaries. There shall be no third party beneficiaries to the Agreement, including customers, employees, agents, or insurers.

Assignment. This Agreement shall not be assignable by Customer without Serventus’s prior written consent. Serventus may assign the Agreement in whole or in part upon written notice to Customer. This Agreement shall be binding upon and accrue to the benefit of any permitted assignee, and any such assignee shall agree to perform the obligations of the assignor. SERVENTUS TERMS OF SERVICE

Governing Law, Jurisdiction, Venue. THIS AGREEMENT AND ANY DISPUTE ARISING FROM THE PERFORMANCE OR BREACH HEREOF SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO CONFLICTS OF LAWS PRINCIPLES AND EXCLUDING ANY APPLICATION OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. CUSTOMER (I) HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS LOCATED IN HARRIS COUNTY AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BROUGHT BY THE CUSTOMER OR SERVENTUS OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, (II) HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH SUITS, ACTIONS OR PROCEEDINGS MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS AND (III) TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF THE ABOVE-NAMED COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT. A FINAL JUDGMENT OBTAINED IN RESPECT OF ANY ACTION,