

# Master Products and Services Agreement

This Master Products and Services Agreement is by and between ServerCentral, LLC (“**Summit**”), a Delaware company, and the individual or entity purchasing Products and/or Services from Summit (“**Customer**”), pursuant to one or more Orders. Summit and Customer may be collectively referred to as “**Parties**” or, individually, as “**Party**.”

## 1. Definitions

- “**Affiliate**” means any Person that, directly or indirectly, controls, is controlled by, or is under common control with, a specified Person.
- “**Agreement**” means this Master Products and Services Agreement, together with all Orders and Supplements.
- “**Commencement Date**” means the date upon which Summit provisions an ordered Product or Service, as set forth in the applicable Order.
- “**Datacenter Facility**” means a location where Summit maintains a presence for the physical housing of computer and/or network equipment.
- “**Effective Date**” means the date upon which this Agreement has been executed by both Summit and Customer.
- “**Malicious Code**” means any computer virus, Trojan horse, worm, time bomb, or other similar code designed to disable, damage, or disrupt the operation of, permit unauthorized access to, erase, destroy, or modify any software, hardware, network or other technology.

- “**Person**” means an individual or a partnership, corporation, limited liability company, trust, joint venture, association, unincorporated organization, government agency or political subdivision thereof, or other entity.
- “**Products**” means the products ordered by Customer, as set forth in one or more Orders.
- “**Recurring Charges**” means any recurring charges set forth in an Order.
- “**Summit Network**” means collectively, the fiber optic network, system capacity and related facilities owned or controlled by Summit.
- “**Summit Website**” means Summit’s website, published at <https://summithq.com>.
- “**Service Level or SLA**” means performance target for specific Services provided by Summit, as set forth in an applicable Supplement.
- “**Services**” means the services ordered by Customer, as set forth in one or more Orders.
- “**Supplement**” means setting forth the description, terms and conditions and SLAs applicable to any Products and/or Services to be provided under this Agreement, which is posted on the Summit Website and may be amended from time to time by Summit in its sole discretion.
- “**Term**” means the period of time in which Summit provides Products and/or Services to Customer, as set forth in the applicable Order.

## 2. Products and Services

### 2.1 Orders

#### 2.1.1 General

Any and all Products and Services to be provided by Summit under this Agreement shall be set forth in individual order forms, each of which will



describe the Products and/or Services to be provided and the Fees to be charged therefor, the applicable Commencement Date and Term, and other relevant terms agreed upon by the Parties.

## 2.1.2 Change Requests

Any change(s) to the nature or scope of any Products or Services must be agreed in an amended Order signed by authorized representatives of both Parties.

## 2.1.3 Order Terms

The initial Term of each Order shall begin on the Commencement Date and shall remain in effect until the expiration of the initial Term specified in the Order. If the Order specifies a Term of longer than one (1) month, the Term will automatically renew for successive twelve (12) month terms unless either Party provides written notice of non-renewal at least ninety (90) days prior to the end of the then current Term.

## 2.1.4 Monthly Terms

Each Order for a one (1) month Term shall automatically renew for consecutive one (1) month Terms, unless either Party provides the other Party at least thirty (30) days prior written notice of non-renewal.

## 2.1.5 Third Party Providers

If Summit is required to procure from a third party any of the Products or Services listed on an Order, Customer agrees to comply with any and all terms and conditions specified by such Third Party Provider.

## 2.1.6 Data Center Facilities

Customer shall comply with any and all security and facility policies, rules and regulations of Summit and/or any Third Party Provider in connection with the use of any Data Center Facility.

## 2.2 Supplements

### 2.2.1 General

Each Supplement is incorporated into, and subject to, the terms of this Agreement. No SLA for any Services is applicable during any trial period or during initial configuration or implementation of such Services.

### 2.2.2 Credits

In the event of a failure by Summit to meet any SLA, Summit shall issue to Customer a credit to be applied against future Fees payable by Customer in respect of the Services to which such SLA pertains, subject to the terms and conditions of this Section 2.2 and the relevant Supplement.

### 2.2.3 Credit Request

To receive a Credit, Customer must notify Summit within five (5) business days from the time Customer becomes eligible to receive such Credit and provide Summit any such information as Summit may request regarding the qualifying event.

### 2.2.4 Remedy

UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ANY CREDITS AWARDED BY SUMMIT SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY



FOR ANY FAILURE BY SUMMIT TO MEET ANY SLA AND ANY OTHER FAILURE, UNAVAILABILITY, DEGRADATION OR NONPERFORMANCE OF ANY SERVICES.

## 2.2.5 Exclusions

Customer shall not receive any Credit to the extent Summit's failure to meet the applicable SLA is caused by: a Force Majeure Event; failure of local access circuits not caused solely by Summit; scheduled or emergency maintenance; failure of any equipment owned by Customer; acts or omissions of Customer; or modification, suspension or discontinuation of the relevant Services in accordance with the terms of this Agreement.

## 2.3 Scope of Use

The Products and Services are provided only for Customer's internal use. Customer may not market, sell, license, lease, provide or make available to a third party, or otherwise distribute, directly or indirectly, any Products or Services, except as expressly set forth in this Agreement.

## 2.4 Suspension

Summit may suspend its provision to Customer of any or all Products and Services immediately upon notice to Customer in the event of a material breach of the Acceptable Use Policy, repeated violations, failure to cooperate with any inspection or audit, suspected violation of applicable laws or regulations, or material breach of other obligations under this Agreement.

## 2.5 Security



Summit shall use commercially reasonable efforts to employ measures it deems appropriate to endeavor to mitigate security risks with respect to its Products and Services, but does not guarantee that any Products or Services will be secure.

## 3. General Obligations of Customer

### 3.1 Access Methods

Summit shall use commercially reasonable efforts to employ measures it deems appropriate to endeavor to mitigate security risks with respect to its Products and Services.

### 3.2 Acceptable Use

Customer shall at all times comply with Summit's Acceptable Use Policy, as set forth on the Summit Website, as such requirements may be amended by Summit from time to time.

### 3.3 Products

Customer shall have the right to use any Products provided by Summit solely during the Term of the applicable Order, provided that all Fees owed in respect thereof are paid when due. Customer agrees not to copy, modify, decompile,



reverse engineer, or otherwise reduce to a humanly perceivable form any Software provided by Summit.

## 3.4 Purchased Hardware

Summit warrants Purchased Hardware shall be free from defects for a period of thirty (30) days from the date of delivery to Customer. Purchased Hardware may not be returned to Summit for any reason except in the event a material defect is reported within the Summit Hardware Warranty Period and Summit is unable to provide an identical or reasonably equivalent product.

## 3.5 Customer Data

As between Summit and Customer, Customer shall own, and shall be and remain wholly responsible for, all data, information and other content used, generated, uploaded, stored and/or transmitted in connection with any Products or Services (“Customer Data”), including ensuring the integrity and security of such Customer Data, backing up and retaining archival copies, and ensuring such Customer Data complies with all applicable laws and regulations.

## 3.6 Use of Summit IP Addresses

Any IP Addresses assigned to Customer by Summit remain the sole property of Summit, and may be used only in connection with and for the duration of the Services purchased.

## 3.7 Customer Insurance

Customer shall have, and maintain at its own expense throughout the term of this Agreement, insurance coverage acceptable to Summit, which shall at a minimum include the Required Insurance categories specified in the applicable Supplements.

## 3.8 Malicious Code

Customer shall use commercially reasonable efforts not to upload any Malicious Code on any Products or Services or other property of Summit.

## 3.9 Connectivity

Except as expressly set forth in the Order, Customer shall be responsible for all hardware, networks, communication devices, and other technology necessary to enable Customer to access and/or use any Products or Services provided hereunder.

## 3.10 Audit

Summit shall have the right, upon at least five (5) business days' notice, to inspect and audit all books and records and other documentation relevant to ascertaining Customer's compliance with the terms and conditions of this Agreement.

# 4. Invoicing and Payment

## 4.1 Fees



In consideration of Summit's provision of Products and/or Services, Customer shall pay to Summit all fees and expenses as specified in the applicable Order(s). Fees set forth on any Order will remain in effect for one (1) year from the Order Effective Date, after which they are subject to change upon at least sixty (60) days' prior written notice.

## 4.2 Credit Check

Customer shall cooperate in good faith with any requests by Summit to assess Customer's creditworthiness, including by providing financial documentation reasonably requested for such purposes.

## 4.3 Payment

All invoices must be paid in accordance with the terms set forth in the applicable Order, without setoff or deduction of any kind. Late payments will accrue interest at the lesser of the highest legal rate permitted in the State of Illinois and one and one-half percent (1.5%) per month.

## 4.4 U.S. Dollars

Unless otherwise specified in an Order, all payments must be made in United States dollars.

## 4.5 Taxes

The Fees are exclusive of all taxes, levies, duties or similar charges. Customer shall be responsible for all such Taxes as may be assessed against Summit, excluding any Taxes based on the net income of Summit.

## 4.6 Disputes

If Customer wishes to dispute any charges, Customer must pay the undisputed portion of the applicable invoice and submit a good faith claim regarding the disputed amount within ninety (90) days of Customer's receipt of the initial invoice.

## 5. Term of Agreement

The term of this Agreement commences on the Effective Date and continues until the last effective date of expiration or termination of all Orders hereunder, unless earlier terminated as provided herein.

## 6. Termination

### 6.1 For Convenience

Customer may terminate this Agreement, in whole or in part, for any or no reason, upon at least ninety (90) days prior written notice to Summit; provided that Customer pays the applicable Early Termination Charge.

### 6.2 Material Breach

Either Party may terminate this Agreement immediately upon written notice to the other Party, if the other Party commits a breach of any of its material

obligations and fails to remedy such breach within five (5) days (for payment failures) or thirty (30) days (for all other breaches) following written notice.

## 6.3 Insolvency

Either Party may terminate this Agreement immediately upon written notice if the other Party becomes insolvent, files for bankruptcy, makes an assignment for the benefit of its creditors, or appoints a receiver or trustee for a substantial portion of its property or assets.

## 6.4 Discontinuation

Summit may terminate Orders pertaining to discontinued Products and Services and, if reasonably feasible, shall provide Customer at least thirty (30) days prior written notice of such discontinuation. Summit shall refund to Customer any prepaid funds for the time period associated with the discontinued Product and/or Service.

# 7. Consequences of Termination

## 7.1 Cessation

By no later than the effective date of expiration or termination, Customer shall cease using any and all Products and Services provided under this Agreement.

## 7.2 Early Termination Charge



In the event Customer terminates any Order other than pursuant to Section 6.2 or 6.3, Customer shall pay to Summit an Early Termination Charge comprising all Recurring Charges due in respect of the then current Term of the Order.

## 7.3 Repossession

In the event of termination pursuant to Section 6.2, Summit may disconnect, repossess and/or distraint any Products or Services that are the subject of the terminated Order(s), as well as any Customer equipment and other Customer property located in any Datacenter Facility.

## 7.4 Survival

The expiration or termination of this Agreement will not affect the accrued rights of the Parties. Customer shall remain liable to pay to Summit all Fees and other amounts due or accruing on or prior to the effective date of such expiration or termination.

# 8. Representations and Warranties

## 8.1 By Summit

Summit represents and warrants that it is duly organized and validly existing, has all requisite power and authority to enter into and perform its obligations



under this Agreement, and will comply with all applicable laws, rules and regulations in connection with the provision of the Products and Services.

## 8.2 By Customer

Customer represents and warrants that it is duly organized and validly existing, has all requisite power and authority to enter into and perform its obligations under this Agreement, and will comply with all applicable laws, rules and regulations, including any applicable export control laws and regulations.

## 8.3 Disclaimer

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. SUMMIT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

# 9. Confidentiality; Publicity; Non-Solicitation

## 9.1 Confidential Information

Each Party shall treat as confidential all confidential or proprietary information, data and materials the receiving Party may receive from the disclosing Party,

including trade secrets and other non-public information, business plans and strategies, pricing and financial information, proprietary technologies and processes, software programs, and databases.

## 9.2 Non-Disclosure

The receiving Party shall not use Confidential Information for any purpose other than the performance of the receiving Party's obligations under this Agreement, or divulge such Confidential Information without the disclosing Party's prior written consent.

## 9.3 Notice

The receiving Party shall promptly notify the disclosing Party of any actual or reasonably suspected unauthorized use or disclosure of any Confidential Information.

## 9.4 Publicity

Neither Party may release a public statement announcing this Agreement or any individual Order without the prior written consent of the other Party.

## 9.5 Non-Solicitation

During the term of this Agreement and for a period of twelve (12) months following expiration or termination, each Party agrees not to knowingly employ or solicit any employee, contractor or consultant of the other Party without prior written consent; provided that general advertisements of employment shall not constitute a violation.

## 10. Proprietary Rights

As between Customer and Summit, all rights, title and interest in and to all Products and Services, all Confidential Information of Summit, and all technology, data, information and other materials utilized by or on behalf of Summit to provide any Products and/or Services, together with all patents, copyrights, trade secrets and other intellectual property rights in or to the foregoing, shall be and remain vested in Summit (or its third party licensors or service providers).

## 11. Limitation of Liability

### 11.1 General Limitation

IN NO EVENT SHALL SUMMIT OR CUSTOMER BE LIABLE UNDER THIS AGREEMENT TO ANY PERSON FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA OR TECHNOLOGY, GOODWILL, CONTRACTS OR LOST BUSINESS OPPORTUNITIES.

### 11.2 Monetary Cap

IN NO EVENT SHALL THE LIABILITY OF SUMMIT UNDER THIS AGREEMENT EXCEED, IN THE AGGREGATE, ONE POINT FIVE TIMES (1.5X) THE TOTAL FEES PAYABLE BY CUSTOMER, WITH RESPECT TO THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY, DURING THE FIRST YEAR OF THE TERM SET FORTH IN THE APPLICABLE ORDER (THE "CAP").

## 11.3 Exclusions

The limitations set forth in this Section 11 shall not apply to any liability caused by the willful misconduct or gross negligence of a Party, any liability arising from breach of Section 9, or Customer's indemnification obligations set forth in Section 12.2.

## 11.4 Time Limitation

Customer may not bring any claim against Summit arising out of or in connection with this Agreement more than one (1) year after the effective date of expiration or termination of the Order relating to the Products or Services giving rise to such claim.

# 12. Indemnification

## 12.1 By Summit

Summit agrees to indemnify, defend and hold Customer and its officers, directors, employees, agents and contractors harmless from and against all losses arising out of any third party claim based upon: (i) bodily injury or death caused by Summit's gross negligence or willful misconduct; and/or (ii) any allegation that any Products or Services owned by Summit infringe any patent, copyright, trade secret or other intellectual property right.

## 12.2 By Customer



Customer agrees to indemnify, defend and hold Summit and its Third Party Providers and its officers, directors, employees, agents and contractors harmless from and against all losses arising out of any third party claim based upon: (i) bodily injury or death caused by Customer's gross negligence or willful misconduct; (ii) any breach by Customer of any provision of this Agreement; (iii) any use by Customer of any Products or Services; (iv) any End User Agreement; and/or (v) any Customer Data.

## 12.3 Procedures

The indemnified Party shall notify the indemnifying Party of any Claim for which indemnification is sought as soon as possible after becoming aware of the Claim. The indemnifying Party shall be entitled, in its discretion, to have sole conduct and control of all legal proceedings in connection with such Claim.

## 13. Force Majeure Events

Neither Party will be considered in breach of this Agreement nor liable for any delays or failures to perform caused by or attributable to any cause beyond the reasonable control of the Party claiming relief, including governmental action, labor disputes, flood, earthquake, fire, lightning, epidemic, war, act of terrorism, riot, civil disturbance, act of God, sabotage, or fiber cuts caused by a third party.

## 14. Dispute Resolution

### 14.1 Escalation



In the event of any Dispute, such Dispute shall be referred to senior officers of each Party who must, within fourteen (14) days following such referral, use good faith efforts to attempt to resolve the Dispute. If the Parties cannot resolve any Dispute within fourteen (14) calendar days, the Parties may seek judicial resolution.

## 14.2 Limitations

Customer may not seek judicial resolution and remedy of any Dispute until the Parties have complied with the procedures set forth in Section 14.1.

## 14.3 Contravention of Performance

Each Party shall continue performing its obligations under this Agreement while any Dispute is being resolved, unless otherwise agreed by the Parties or ordered by a court of competent jurisdiction.

## 15. Notices

Except as otherwise set forth in this Agreement, all notices must be in writing and will be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with a nationally renowned overnight delivery service, or (iii) five (5) business days after deposit in the United States mail, postage prepaid, registered or certified mail. Notices to Summit shall be sent to Summit, 2200 Busse Road, Elk Grove Village, IL 60007.

## 16. Miscellaneous

## 16.1 Entire Agreement

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior representations, agreements, negotiations and discussions.

## 16.2 Amendments

Summit may modify, supplement and/or otherwise amend this Agreement from time to time upon written notice to Customer. Customer's continued use of any Products and/or Services following such notice will be deemed to constitute Customer's acceptance of such amendment.

## 16.3 Assignment

Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party, except that either Party may assign this Agreement to an Affiliate or to a Person into which it is merged or consolidated.

## 16.4 Governing Law and Venue

The validity and effectiveness of this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Illinois. Any legal action or proceeding shall be brought exclusively in the Federal or state courts located in Chicago, Illinois.