

SERVER GENERAL MASTER TERMS AND CONDITIONS  
Server General™ (All Editions) (v2014.1)

These Master Terms and Conditions, together with any Orders, and any other materials attached or incorporated by reference, constitute the entire agreement (the "Agreement") between Server General, Inc., having its current principal place of business at 865 Merrick Road, Suite 204, Baldwin, NY 11510 ("Server General") and the customer set forth in the Order ("Customer"), and apply to the Server General software, delivered as a service, set forth in the Order, including the On-Premises SGL appliance (defined below), Server General Agent, code, object code, scripts, files, and any software-related files or code as made available by Server General, and any subsequent update Customer receives of the foregoing, together with any included documentation (collectively, the "Software").

This Agreement is divided into four parts: Part I: Terms and Conditions Applicable to Free Licenses; Part II: Terms and Conditions Applicable to Subscription Licenses; Part III: Terms and Conditions Applicable to the Provision of Key Storage Materials; and Part IV: General Terms and Conditions. ALL RIGHTS GRANTED TO CUSTOMER UNDER PARTS II AND III WILL BE SUBJECT TO PAYMENT OF APPLICABLE SERVICE SUBSCRIPTION FEES.

PART I: TERMS AND CONDITIONS APPLICABLE TO FREE LICENSE

**1. Free License.**

Customer may enter into a Free License (as defined below) for the Software subject to the terms and conditions of this Agreement by placing an order ("Free Order"). Pursuant to the Free Order, Server General hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive, royalty-free license to use the Software in accordance with the accompanying documentation solely for Customer's internal evaluation, development and testing purposes ("Free License") for a period defined in the Free Order and commencing on the effective date of the Free Order ("Free Period"). Once the Free Period has expired, Customer will have the option to continue use of the Software through a purchased Subscription Service License (as defined below) or the Free License shall expire and this Agreement shall terminate and the terms of Part IV, Section 10 below shall apply with respect to such termination.

**2. Warranty Disclaimer.** DURING THE FREE PERIOD, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

**3. Limitation of Remedies and Damages.** DURING THE FREE PERIOD, NEITHER SERVER GENERAL NOR ITS THIRD PARTY SUPPLIERS WILL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER RELATING TO THE SOFTWARE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (A) FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR (B) FOR ANY DIRECT,

INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF REVENUES AND LOSS OF PROFITS. NOTHING IN THIS PART I WILL LIMIT SERVER GENERAL'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY SERVER GENERAL'S NEGLIGENCE OR SERVER GENERAL'S LIABILITY FOR FRAUD.

4. **No Indemnity.** During the Free Period, Server General will not be liable to Customer under any claim, suit or action, under any theory of or related to indemnity arising from the Software.

## **PART II: TERMS AND CONDITIONS APPLICABLE TO Server General SUBSCRIPTION LICENSES**

1. **Applicability.** The terms and conditions of this Part II will supersede the terms and conditions of Part I for Customer's orders of Service Subscription Licenses, and the terms and conditions of Part IV will continue to apply.

2. **Orders.** Customer shall place orders for Subscription Service Licenses pursuant to a mutually executed order form between the parties (each, an "Order").

3. **License Grant.** Subject to the terms and conditions of this Agreement, Server General grants Customer a non-sublicensable, non-transferable, non-exclusive license ("Subscription License") for a limited term as set forth on the Order ("Subscription Term") to use the Software provided hereunder for internal use only in accordance with the documentation provided with the Software for the number of Servers (each, a "Server License") set forth in an Order. Other license rights, terms and restrictions specified in the applicable Order are incorporated by reference.

4. **Payment.** All rights granted to Customer and obligations of Server General under this Part II and Part III will be subject to payment of applicable Subscription License Fees due upon the effective date of the Order ("License Fees"). Except as set forth in Section 5 and 7 of this Part II, all fees due hereunder are nonrefundable. All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Customer will pay all such taxes and duties, except for taxes payable on Server General's net income. Except for invoices disputed in good faith, all past due amounts will incur interest at a rate equal to the lower of 1.0% per month or the highest rate permitted by law, beginning as of 15 days after the applicable due date. If at any time Customer is delinquent (including during any grace periods) in the payment of License Fees, Server General may, in its discretion, disable any Server Licenses related to such unpaid License Fees. If an executed order contains different payment terms, those terms will apply.

5. **Limited Warranty.** Server General warrants for a period of 30 days from Customer's first installation of the Software ("Warranty Period") that the Software will materially conform to Server General's then-current user documentation for such Software. This warranty covers only

problems reported to Server General during the Warranty Period. Any liability of Server General for a breach of the foregoing warranty will be limited exclusively to Software repair or replacement or, if repair or replacement is commercially impractical, refund of the License Fee paid for the Software. EXCEPT FOR THE FOREGOING, ALL SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, SERVER GENERAL DOES NOT WARRANT RESULTS OF USE OR THAT THE SOFTWARE IS BUG Free OR THAT ITS USE WILL BE UNINTERRUPTED.

**6. Limitation of Remedies and Damages.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, NEITHER SERVER GENERAL NOR ITS THIRD PARTY SUPPLIERS WILL BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE LICENSE FEES PAID TO SERVER GENERAL BY CUSTOMER WITH RESPECT TO THE SOFTWARE (AS EQUITABLY DETERMINED IN THE EVENT THE SOFTWARE IS BUNDLED WITH OTHER SOFTWARE DURING THE SIX MONTH PERIOD BEFORE THE CAUSE OF ACTION AROSE), (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY. NOTHING IN THIS AGREEMENT WILL LIMIT SERVER GENERAL'S LIABILITY FOR (I) FRAUD OR LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY SERVER GENERAL'S NEGLIGENCE OR (II) WITH RESPECT TO SECTION 7, INDEMNIFICATION. The provisions of this Agreement allocate the risks between Customer and Server General.

Server General's pricing reflects this allocation of risk and the limitations of liability specified herein.

**7. Indemnification.** Server General will defend and hold Customer harmless from claims by third parties resulting from infringement by the Software of any United States patent or copyright or any misappropriation of any trade secret, provided Server General is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Server General will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to Software or portions or components thereof (i) not supplied by Server General, (ii) that are modified by Customer, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of

modifications that would have avoided the alleged infringement, or (v) where Customer's use of such Software is not strictly in accordance with this Agreement. This provision will not survive the termination of this Agreement. If Customer's use of any of the Software is, or in Server General's opinion is likely to be, enjoined due to the type of infringement specified in this Section 7, or if a claim is brought against Customer due to the type of infringement specified in this Section 7, then Server General may, at its sole option and expense: (a) procure for Customer the right to continue using such Software under the terms of this Agreement, (b) replace or modify such Software so that it is non-infringing and substantially equivalent or better in function to the enjoined Software, or (c) if options (a) and (b) above cannot be accomplished despite Server General's efforts, then Server General may terminate Customer's rights and Server General's obligations hereunder with respect to such Software and remit to Customer a pro-rata refund of the pre-paid License Fees for such Software corresponding to the portion of the then-current Subscription Term for such Software after the date of such termination.

8. Support and Maintenance. At no additional charge, Server General will provide Software maintenance and support services in accordance with Server General's standard Software Maintenance Program, set forth at <http://www.servergeneral.com/> during Server General's business hours.

### **PART III: TERMS AND CONDITIONS APPLICABLE TO THE PROVISION OF Server General LOCKER FOR STORING KEYS**

1. Server General will provide key storage in accordance with the key locker product, if any, ordered in an Order, as set forth in this Part III.

2. Server General Locker™ Appliance (On-Premises). If On-Premises Server General Locker Appliance ("On-Premises SGL") is ordered hereunder, the terms of Part II and Part IV shall apply to such Subscription Licenses, as applicable. In addition, the following terms and conditions shall apply:

A. The license grant set forth in Part II Section 3 above shall be modified to limit use of the On-Premises SGL to the number of Encryption Keys ordered under an Order, for access by employees and consultants of Customer only. The On-Premises SGL will be only for use with the Server General Software.

B. The On-Premises SGL key storage system is offered as a managed appliance to store Customer's keys in a secure manner. The Customer will have no access to the On-Premises SGL appliance. Server General will not have direct access to Customer's On-Premises SGL but such access will be granted as reasonably required to comply with this Agreement or upon request by the Server General technical staff to render technical support to the Customer. Server General staff will have no access to encryption keys stored in this appliance and will not be unable to assist the Customer in recovering any Encryption Keys if Customer loses the Encryption keys.

C. The On-Premises SGL appliance will be installed by Server General technical staff remotely.

**3. Cloud Server General Locker.** Subject to the terms and conditions of the Agreement, if a Cloud Server General Locker (“Cloud SGL”) is ordered hereunder, the terms of this Part III, Section 3, and Part IV shall apply to such Order. Upon receipt of the Order, Server General will make Cloud SGL available to Customer only (i) during the limited term as set forth on the Order, (ii) by employees and consultants of Customer, and (iii) for Customer’s internal business purposes and solely for use with the Server General Software, as set forth in Server General’s documentation.

In addition, the following terms and conditions shall apply:

A. Server General will provide support 24 hours a day, 7 days a week to resolve emergency operational outages associated with the Cloud SGL infrastructure, including server hardware and software, firewalls, load balancer and routers, systems administration, co-location services, and bandwidth provision, and critical, production-stopping errors in the Cloud SGL.

B. Server General will operate an information security program designed to protect Customer data and utilizing industry standard policies and technologies. Server General will use third party hosting providers (“Third Party Hosting Providers”) to host the Cloud SGL. Server General shall ensure that any such third party hosting provider will have a current SSAE #16 report (or industry recognized successor report) consisting of a comprehensive internal controls assessment report covering the internal controls and information security related to its hosting services, prepared by a third party auditor (“Security Report”). In the event the Security Report is not reissued at least annually to the Third Party Hosting Provider being used for Customer data, Server General agrees to replace such Third Party Hosting Provider as soon as practicable with another hosting services provider which has a current Security Report.

C. The Server General Agent software will access the Cloud Server General Locker. All such access requests are programmed into the Server General Agent software and they will require the user of encryption keys. Only Customer’s Server General administrators who have properly registered and received a login ID and password will be able to access issue such requests. Customer will be solely responsible for administering, safeguarding and monitoring the use of the Server General Agent software and passwords and encryption keys. Upon the termination of employment of any personnel with access to Server General Agent software and encryption keys, Customer will immediately terminate access of the login ID of that individual to the Server General Agent software and encryption keys. Server General will not recover any encryption keys if Customer loses and is unable to recall any such encryption keys.

#### **PART IV: GENERAL TERMS AND CONDITIONS**

1. **Confidentiality.** Each party acknowledges on its own behalf and on behalf of its officers, directors, employees, agents and consultants, and those of its affiliates (“Personnel”), that, during the term of this Agreement, it (“Receiving Party”) may receive from or on behalf of the other party (“Disclosing Party”) confidential and proprietary information relating to Disclosing Party (“Proprietary Information”). The Software and the documentation will be considered Server General’s Proprietary Information. Business information, strategy, keys, operations information and related information disclosed by Customer to Server General will be considered Customer’s Proprietary Information. During and after the term of this Agreement, Receiving Party will use the same degree of care to protect the Disclosing Party’s Proprietary Information as it uses for its own Proprietary Information of like importance but in no event less than a reasonable standard of care. Proprietary Information will not include information that: (i) becomes public without breach of this Agreement by Receiving Party or its Personnel; (ii) was previously in the Receiving Party’s possession (in written or other recorded form) with no obligation to maintain confidentiality; (iii) was received from a third party not under any obligation of confidentiality to Disclosing Party; or (iv) was developed by Receiving Party independently of, and without reference to, any Proprietary Information. Receiving Party will only permit access to Proprietary Information to those of its Personnel (a) who require access thereto for a purpose authorized by the Agreement and (b) who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein.

2. **Server.** The term “Server” means a single computing system, including but not limited to a primary network server, a failover server, or a virtual (or otherwise emulated) server, on which the Software is installed.

3. **Encryption Key.** The term “Encryption Key” means each unique encryption key generated by Customer using the Server General Agent software.

4. **Reserved.**

5. **Restrictions.** Except for one copy made solely for backup purposes, Customer may not copy the Software. Customer must reproduce and include the copyright notice and any other notices that appear on the original Software on any copies and any media therefore. Customer will not (and will not allow any third party to): (i) decompile, disassemble, or otherwise reverse engineer (except to the extent that applicable law prohibits reverse engineering restrictions) or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the Software by any means whatsoever; (ii) remove any Software identification, copyright or other notices; (iii) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Software to or for the benefit of third parties; (iv) modify, incorporate into or with other software or create a derivative work of any part of the Software; (v) attempt to circumvent, disable or otherwise alter the reporting functionality for any use restrictions with respect to the Software; (v) disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software; or (vi) remove or export from the United States or allow the export or

re-export of any part of the Software or any direct Software thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. If a user of the software is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the software, manuals, or any technical specifications, or any related documentation of any kind, including technical data, licensed in this Agreement, is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies. The Software and documentation licensed in this Agreement are commercial computer software and commercial computer software documentation. The use of the Software and documentation licensed under this Agreement is further restricted in accordance with the terms of this Agreement, or any modification thereto. The Software and documentation are licensed on the open market at market prices, and were developed entirely at private expense and without the use of any U.S. Government funds. Contractor/Manufacturer is Server General Networks, Inc., 865 Merrick Road, Suite 204, Baldwin, NY 11510.

**6. Ownership.** Notwithstanding anything else, as between Customer and Server General, Server General retains all title to, and, except as expressly and unambiguously licensed herein, reserves all rights in the Software, all copies and derivative works thereof (by whomever made) and all related documentation and materials. Customer acknowledges that Server General's third party licensors will be intended third party beneficiaries of this Agreement and will have the right to directly enforce against Customer any Customer obligations hereunder with respect to the Software to the extent the Software include licensed materials of such third party suppliers.

**7. High Risk Activities.** Customer acknowledges that the Software is not intended for use in connection with any high risk or strict liability activity (including, without limitation, air travel, space travel, firefighting, police operations, power plant operation, military operations, rescue operations, hospital and medical operations which could result in death or injury or the like) and Customer agrees not to use or allow the use of the Software for or in connection with any such activity.

**8. Assignment.** Customer may not assign or otherwise transfer in whole or in part or in any manner any rights, obligations, or any interest in or under this Agreement without Server General's prior written consent and any attempted assignment will be void. A merger or other acquisition by a third party will be treated as an assignment. Server General may at any time and without Customer's consent assign all or a portion of its rights and duties under this Agreement. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**9. Open Source Licenses.** Any open source software provided hereunder will be provided pursuant to such open source software license terms and conditions. Upon reasonable notice to Customer, Server General has the right to replace software provided to Customer as part of

open source software with software that has similar functionality. The license terms associated with open source software require that Server General provide copyright and license information to Customer. A list of the open source software included in the Software or otherwise provided to Customer and applicable license terms is available at <https://www.servergeneral.com>. Any provisions in this Agreement which differ from any open source software license are offered by Server General alone and not by any other party. In no event will the third party open source providers be liable for any special, direct, indirect, or consequential damages or any damages resulting from loss of use, data, or profits, whether in an action of contract, negligence, or other tortious action, arising out of or in connection with the use or performance of the open source software even if Server General or these providers have been advised of the possibility of such damages and whether or not such losses or damages are foreseeable.

**10. Term and Termination.** This Agreement is effective from the date Customer signed the Free Order or the Order and will remain in force until terminated. The term of this Agreement with respect to a Free License is determined by the Free Order. However, in no event will the term of the Free License be more than 30 days from the date of installation without express written approval from Server General. With respect to a Subscription License under Part II above, the term of the Agreement will be for the agreed upon Subscription Term as set forth in the applicable Order (normally, one year). Unless otherwise set forth in an Order, the Subscription Term will automatically renew at then-current License Fees, provided that if Customer fails to pay the License Fees for such renewed Subscription Term on the renewal date or when due, if otherwise set forth in an Order, Server General may terminate this Agreement without notice. This Agreement will terminate immediately without notice from Server General if Customer breaches this Agreement and fails to cure such breach within 30 days of notice from Server General. Upon termination of this Agreement, Customer will destroy all copies of the Software and documentation, and upon request, Customer will certify such destruction to Server General. Part I Sections 2, 3, and 4, Part II Sections 4 and 6, and Part IV Sections 1, 5, 6, 7, and 10 of this Agreement will survive any termination hereof.

**11. Records and Inspection.** Customer will conduct such internal audits as are reasonably required to verify continuing full compliance with this Agreement and maintain records with respect to Servers, and upon Server General's request from time to time, as specified by Server General, either certify compliance with any use restrictions (numbers of Repositories, Servers, etc.) under the applicable Order, or generate a built-in report based upon instructions from Server General (which shall be able to be accomplished with minimal effort on the part of Customer) which sets forth numbers of Servers, number of repositories and/or related metrics solely with respect to Customer's use of the Software and provide such report to Server General within ten (10) business days of such request. Server General shall, either itself or through its designated representative, have the right to conduct annual audits of the Customer's use under this agreement. In the event that any such audit shows any misuse of the Software, then the Customer will pay the cost of the audit, and the Termination section above will apply.



**12. Miscellaneous.** This Agreement will be governed by, and interpreted in accordance with, the laws of the State of New York (U.S.A.) exclusive of its choice of law provisions. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods. This Agreement sets forth the entire understanding and agreement between Customer and Server General with respect to the subject matter hereof. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALESPERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT ABOUT THE SOFTWARE OR ANY SERVER GENERAL SERVICES. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of Server General. Any modifications of this Agreement must be in writing and signed by both parties hereto. Each party will be and act as an independent contractor and not as an agent or partner of the other party for any purpose related to this Agreement. Neither party will have the authority to legally bind the other to any contract, proposal or other commitment or to incur any debt or create any liability on behalf of the other. Any notice required or permitted hereunder will be in writing and will be deemed to have been effectively given: (i) immediately upon personal delivery or facsimile transmission to the parties to be notified, (ii) one business day after deposit with a commercial overnight courier with tracking capabilities, or (iii) three days after deposit with the United States Postal Service, by registered or certified mail, postage prepaid to the respective addresses of the parties as set forth in the related electronic order. If any provision in this Agreement is held invalid or unenforceable, then that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected. Any pre-printed, additional or conflicting terms stated on purchase orders or acknowledgements of Customer will be void and of no effect. English is the controlling language of this Agreement.