



Servstra Terms of Service – last updated 6th December 2009

IMPORTANT NOTICE: *All Payments To Servstra Are Non-Refundable*

Servstra ("The Company") agrees to furnish services to the Subscriber, subject to the following **Terms of Service** (TOS).

Use of Servstra Service constitutes acceptance and agreement to Servstra's **Acceptable Usage Policy** (AUP) as well as Servstra's **Terms of Service** (TOS).

All provisions of this contract are subject to the **Terms of Service** (TOS) of Servstra and **Acceptable Usage Policy** (AUP). The AUP may be changed from time-to-time at the discretion of the Company. Subscriber understands that change to the AUP by the Company shall not be grounds for early contract termination or non-payment.

This Agreement shall be construed in all respects in accordance with the laws of the state of Illinois, county of Cook applicable to contracts enforceable in that state. Venue will be Cook County, Illinois.

1. **Disclosure to Law Enforcement:** The AUP specifically prohibits the use of our service for illegal activities. Therefore, Subscriber agrees that the Company may disclose any and all subscriber information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the Subscriber. In addition, Servstra shall have the right to terminate all service set forth in this Agreement.
2. **Service Rates:** Subscriber acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to Subscriber. Subscriber is aware that the Company may prospectively change the specified rates and charges from time-to-time. The promotional offer is contingent upon Company achieving and maintaining its cost of service goals including but not limited to rates charged to company by its suppliers.
3. **Payment:** Establishment of this service is dependent upon receipt by the Company of payment of stated charges. Subsequent payments are due on the anniversary date of the month for that month's service.
4. **Payments and Fees:** Service will be interrupted on accounts that reach 5 days past due. Service interrupted for nonpayment is subject to a \$100.00 reconnect charge. Accounts not paid by due date are subject to a \$25.00 late fee. Accounts that are not collectible by Servstra may be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay the company a "Processing and Collection" Fee of no less than \$50.00 nor more than \$150.00. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this TOS.
5. **Refund and Disputes:** All payments to Servstra are nonrefundable. This includes the one time setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred.



6. **Failure to Pay:** The Company may temporarily deny service or terminate this Agreement upon the failure of Subscriber to pay charges when due. Such termination or denial will not relieve Subscriber of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.
7. **Account Cancellation:** Requests for canceling accounts must be submitted by following the steps as outlined at <http://my.servstra.com/knowledgebase.php?action=displayarticle&id=9>. A minimum of 5 days notice before your next renewal date is required if you server is in either the Scranton DC or the Chicago DC, whilst a minimum of 20 days notice before your next renewal date is required if you server is in the Frankfurt DC. Contact our Sales department at sales@servstra.com to find out which DC your server is in.
8. **Subscriber acknowledges that the service provided is of such a nature that service can be interrupted for many reasons other than the negligence of the Company and that damages resulting from any interruption of service are difficult to ascertain. Therefore, subscriber agrees that the Company shall not be liable for any damages arising from such causes beyond the direct and exclusive control of the Company. Subscriber further acknowledges that the Company's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by subscriber for services during the period damages occurred. In no event shall the Company be liable for any special or consequential damages, loss or injury.**
9. **Support Boundaries:** Servstra, provides 24x7 technical support to our subscribers. We limit our technical support to our area of expertise. The following is our guidelines when providing support: Servstra provides support related to your server or virtual site physical functioning. Servstra does not offer technical support for application specific issues such as cgi programming, html, or any other issue. Servstra does not provide technical support directly to **YOUR** customers. To obtain technical support, you need to submit a support ticket by logging into the my.Servstra client portal at <https://my.servstra.com>.
10. **SPAM and Unsolicited Commercial Email (UCE):** Servstra takes a zero tolerance approach to the sending of Unsolicited Commercial Email (UCE) or SPAM over our network. Very simply this means that customers of Servstra may not use or permit others to use our network to transact in UCE. Customers of Servstra may not host, or permit hosting of, sites or information that is advertised by UCE from other networks. In addition, it is not acceptable to transmit bulk email through remote SOCKS, HTTP or other similar proxies who in turn make a SMTP (TCP port 25) connection to the destination mail servers. This technique may result in account suspension or termination. Violations of this policy carry severe penalties, including termination of service. In order to prevent unnecessary blacklisting due to spam, we reserve the right to occasionally sample bulk email being sent from servers.
 1. Violation of Servstra's SPAM policy will result in severe penalties. Upon notification of an alleged violation of our SPAM policy, Servstra will initiate an immediate investigation (within 48 hours of notification). During the investigation, Servstra may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our SPAM policy, Servstra may, at its sole discretion, restrict, suspend or terminate customer's account. Further, Servstra reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. Servstra will notify law enforcement officials if the violation is believed to be a criminal offense.



2. First violations of this policy will result in an "Administrative Fee" of \$250.00 and your account will be reviewed for possible immediate termination. A second violation will result in an "Administrative Fee" of \$500.00 and immediate termination of your account. Users who violate this policy agree that in addition to these "Administrative" penalties, they will pay "Research Fees" not to exceed \$175.00 per hour that Servstra personnel must spend to investigate the matter. **PLEASE, DO NOT SPAM** from your account.
 3. As our Customers are ultimately responsible for the actions of their clients over the Servstra network, it is advisable that Customers develop a similar, or stricter, policy for their clients.
11. **Internet Relay Chat (IRC):** Servstra does **NOT** IRC to be ran on any servers. There are no exceptions to this policy. Violation of this policy may result in account suspension and/or termination.
12. **Open or "Anonymous" Proxy:** Servstra does not permit use of Open or "Anonymous" proxy servers. There are no exceptions to this policy. Violation of this policy may result in account suspension and/or termination.

IMPORTANT NOTICE:

BEGINNING IMMEDIATELY, anyone hosting websites or services on their server that support spammers or cause any of our IP space to be listed in any of the various Spam Databases will have their server immediately removed from our network. The server will not be reconnected until such time that you agree to remove **ANY** and **ALL** traces of the offending material immediately upon reconnection and agree to allow us access to the server to confirm that all material has been **COMPLETELY** removed. Severe violations may result in immediate and permanent removal of the server from our network without notice to the customer. Any server guilty of a second violation **WILL** be immediately and permanently removed from our network without notice.

13. **Network:**

1. **IP Address Ownership:** If Servstra assigns Customer an Internet Protocol address for Customer's use, the right to use that Internet Protocol address shall belong only to Servstra, and Customer shall have no right to use that Internet Protocol address except as permitted by Servstra in its sole discretion in connection with the Services, during the term of this Agreement. Servstra shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by Servstra, and Servstra reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion. Our allocation of IP addresses is limited by ARIN's new policies. These new policies state that use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to you is that you **MUST use name-based hosting where possible**. We will periodically review IP address usage, and if we find that clients are using IP addresses where name-based hosting could be used, we will revoke authorization to use those IP addresses that could be used with name-based hosting.



2. **Bandwidth and Disk Usage:** Customer agrees that bandwidth and disk usage shall not exceed the number of megabytes per month for the Services ordered by Customer on the Order Form (the "Agreed Usage"). Servstra will monitor Customer's bandwidth and disk usage. Servstra 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 Services, or termination of this Agreement, which actions may be taken is in Servstra's sole and absolute discretion. If Servstra takes any corrective action under this section, Customer shall not be entitled to a refund of any fees paid in advance prior to such action. **In the event that a customer exceeds the included allocation, a fee of \$0.75 per gigabyte over will be charged.**

3. **System and Network Security:** Users are prohibited from violating or attempting to violate the security of the Servstra Network. Violations of system or network security may result in civil or criminal liability. Servstra will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation:
 1. Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.
 2. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.
 3. Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".
 4. Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.
 5. Taking any action in order to obtain services to which such User is not entitled.

14. **Notification of Violation:**

1. Servstra is under no duty to look at each customer's or user's activities to determine if a violation of the AUP has occurred, nor do we assume any responsibility through our AUP to monitor or police Internet-related activities.



2. First violation: Any User, which Servstra determines to have violated any element of this Acceptable Use Policy, shall receive an email, warning them of the violation. The service may be subject at Servstra's discretion to a temporary suspension pending a User's agreement in writing, to refrain from any further violations.

 3. Second Violation: Users that Servstra determines to have committed a second violation of any element of this Acceptable Use Policy shall be subject to immediate suspension or termination of service without further notice.

 4. We reserve the right, to drop the section of IP space involved in Spam or Denial-of-Service complaints if it is clear that the offending activity is causing great harm to parties on the Internet. In particular, if open relays are on your network or a customer's network, or if denial of service attacks are originating from your network. In certain rare cases, we may have to do this before attempting to contact you. If we do this, we will contact you as soon as is feasible.
-
15. **Suspension of Service or Cancellation:** Servstra reserves the right to suspend network access to any customer if in the judgment of the Servstra network administrators the customer's server is the source or target of the violation of any of the other terms of the Aup or for any other reason which Servstra chooses. If inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. The customer will not be credited for the time the customer's machines were suspended.

 16. Servstra reserves the right to amend its policies at any time. All Sub-Networks, resellers and managed servers of Servstra must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation. You will be held responsible for the actions of your clients in the matter described on these Terms and conditions. Therefore, it is in your best interest to implement a similar or stricter Terms and conditions or otherwise called Acceptable Terms of use policy.

 17. **Indemnification:** Servstra wishes to emphasize that in agreeing to the Servstra Acceptable Use Policy (AUP) and Terms of Service (ToS), customer indemnifies Servstra for any violation of the Acceptable Use Policy (AUP) and Terms of Service (ToS) that results in loss to Servstra or the bringing of any claim against Servstra by any third-party. This means that if Servstra is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against Servstra, plus all costs and attorney's fees.

 18. **Miscellaneous Provisions:** You must provide us with, and keep current, good contact information for you. E-mail, fax, and telephone contacts are used, in that order of preference.



1. A waiver by the Company of any breach of any provision of this Agreement by Subscriber shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.

 2. Subscriber shall not transfer or assign this Agreement without the prior written consent of the Company. Company may assign Agreement at anytime without consent from or notice to Subscriber. Company reserves right to cancel customers rights under this contract at anytime without further obligation.

 3. Servstra takes no responsibility for any material input by others and not posted to the Servstra Network by Servstra. Servstra is not responsible for the content of any other websites linked to the Servstra Network; links are provided as Internet navigation tools only. Servstra disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy.

 4. Servstra is not responsible for any damages your business may suffer. Servstra does not make implied or written warranties for any of our services. Servstra denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Servstra.
19. **Responsibility for Content:** You, as Servstra's customer, are solely responsible for the content stored on and served by your Servstra server.
20. **Denial of Service:** We reserve the right to refuse service to anyone at any time for any reason.