

Terms of Service

www.20C.com

These Terms of Service (the “Agreement” or “TOS”) apply to the Services 20C, LLC (“Vendor”) agrees to provide. The Agreement governs the rights and responsibilities between Vendor and the entity purchasing or using the Services (“Customer,” “You,” or “Your”). You agree to be bound by this Agreement regardless of the manner in which You have contracted with Vendor (whether electronically, in hard copy, or otherwise), and the parties agree that Your continued use of the Services, and Vendor’s continued provision of the Services, represent continued agreement to be bound by the Agreement. The “Effective Date” will be the date on which Vendor initially provisions Services to You or, if You are a continuing customer of Vendor, the date on which this Agreement is posted to Vendor’s website. This Agreement includes Vendor’s AUP, Privacy Policy, Service Descriptions, and any other documents that are incorporated into, attached to or specifically reference this TOS. Vendor reserves the right to update the TOS from time to time, and any updates shall take effect as of the date on which notice of such updates is emailed to customer.

1 Definitions

- 1.1 **“20C Switching Fabric”** means the infrastructure operated by 20C consisting of private networks that facilitate traffic exchange between parties connected thereto for the location as specified in the Connection Agreement.
- 1.2 **“Confidential Information”** means any business, technical, financial or other information disclosed by one party to the other pursuant to this Agreement that is identified as confidential at the time of its disclosure. Confidential Information is the confidential information of and proprietary to the party disclosing the information. Without limiting the foregoing, 20C and Customer understand and agree that the material terms of this Agreement, and any functional limitations of, or errors in, the Services are 20C Confidential Information, and all data transmitted by Customer and stored within the 20C systems (if applicable) is the Confidential Information of Customer.
- 1.3 **“Documentation”** means the official user or operator documentation for the Software published by 20C, as may be updated from time to time by 20C. Such Documentation identifies the specific product features and functionality of the Software (and each component thereof).
- 1.3 **“Error”** means programming or other errors in the Software that prevent the Software from functioning in accordance with the Documentation or specifications.
- 1.4 **“Error Category”** means the severity class for Errors as further defined in this SMA.

- 1.5 **“General Support”** means technical support services, bug fixes, patches, security fixes, and other necessary fixes.
- 1.6 **“Minor Issue”** means work requested by Customer that requires less than 1 hour of work by Vendor.
- 1.7 **“Minor Upgrade”** means a functional enhancement, extension, or addition to the Software other than an Update requested by Customer that requires up to four hours of development work by Vendor.
- 1.8 **“Major Upgrade”** means a functional enhancement, extension, or addition to the Software other than an Update requested by Customer that requires over four hours and up to ten hours of development work by Vendor. Collectively, Minor Upgrades and Major Upgrades are referred to as **“Upgrades.”**
- 1.9 **“Network Outage”** means an instance in which no traffic can pass in or out of the selected point of presence (PoP) through which Customer connects to the 20C backbone for more than 15 consecutive minutes. Network Outages exclude Scheduled Maintenance and emergency maintenance, and any unavailability or outage resulting from a) issues with Customer’s applications, equipment or facilities; (b) any negligence or willful misconduct of Customer; (c) any entity or connection other than 20C; or (d) any force majeure as set forth in Section 13.
- 1.10 **“Packet Loss”** means the average percentage of IP packets transmitted between selected PoPs during a calendar month that are not successfully delivered, as measured by 20C.
- 1.11 **“Scheduled Maintenance”** refers to any upgrades or modifications to the 20C Switching Fabric, any 20C datacenter, or any software and services supported by 20C. Scheduled Maintenance may temporarily degrade the quality of service or include short interruptions of service. 20C will use commercially reasonable efforts to ensure that any interruption of service is kept to a minimum and performed between the hours of 12:00am & 5:00am (local time of the 20C POP to which Customer is connected). Except in the case of an emergency, 20C will use commercially reasonable efforts to provide the Customer with at least seven (7) days advance notice of any Scheduled Maintenance. 20C may undertake emergency maintenance (which may include a total interruption of service) at any time deemed necessary by 20C.
- 1.12 **“Service Request”** means any written or electronically written request for any Support Services by Customer.
- 1.13 **“Severity”** is a measure of the impact an Error, issue, or outage, as reported in a Service Request, has on the use of the Software, as reasonably determined by Customer based on the criteria set forth in subparts 1.9.1 through 1.9.4 below:

1.13.1 **“Severity One”** means Customer’s production server or other mission critical system(s) are down and no workaround is immediately available and (i) all or a substantial portion of Customer’s mission critical data is at a significant risk of loss or corruption; or (ii) Customer has had a substantial loss of service.

1.13.2 **“Severity Two”** means that major functionality is severely impaired such that: (i) operations can continue in a restricted fashion, although long-term productivity might be adversely affected and a temporary workaround is available; or (ii) a major milestone is at risk, ongoing and incremental installations are affected, and a temporary workaround is available.

1.13.3 **“Severity Three”** means a partial, non-critical loss of functionality of the software such that: (i) the operation of some component(s) is impaired but allows the user to continue using the Software; or (ii) initial installation milestones are at minimal risk.

1.13.4 **“Severity Four”** means general usage questions and cosmetic issues, including errors in the Documentation.

1.14 **“Support Services”** means General Support, Updates, Minor Upgrades, Major Upgrades, and Technical Support.

1.15 **“Technical Support”** means the provision of telephone or web-based technical assistance by Vendor to Customer’s technical contact(s) with respect to Service Requests.

1.16 **“Term”** means the Initial Term together with any applicable renewal period(s).

1.17 **“Third Party Products”** means any software or hardware that (i) is manufactured by a party other than Vendor and (ii) has not been incorporated into the Software by Vendor. Minor Issue.

1.18 **“Update”** means a modification, correction or addition to the Software or Documentation, including patches and technical updates to correct bugs, security issues, or other problems.

2 Services

2.1 The “Services” referred to in this Agreement are defined as the Services described on web pages or attached schedules describing the particular service that you have purchased from Vendor (each, a “Service Description”), as described on the Service Description on the Effective Date. Vendor shall have the right but not the obligation to modify the products and

Services it offers from time to time. Should the Service Description change after the Effective Date, Vendor shall have no obligation to change the Services provided to You to reflect such a change.

- 2.2 Certain aspects of the Services may be provided by third parties (“Third-Party Services”), who may have reserved the right to make changes, including material changes, to the services that they provide. Vendor will use commercially-reasonable efforts to notify you of any such changes, and you may terminate this Agreement if such a change materially affects the Services.

3 Term

- 3.1 This Agreement will take effect on the Effective Date and continue for the term set out on the Service Description (the “Initial Term”). After the expiration of the Initial Term, this TOS will renew for successive periods of equal length (each, a “Renewal Term”). If the Service Description does not contain an Initial Term, the Initial Term shall be one month.

4 Termination

- 4.1 Either party may terminate the TOS by providing written notice to the other no later than thirty days before the expiration of the Initial Term or any Renewal Term.
- 4.2 Vendor reserves the right to terminate this TOS immediately, and to suspend or cancel the Services in the event of: (i) a violation of any of Vendor’s policies, including those incorporated by reference; and/or (ii) any failure to pay Fees when due. This right of termination is without prejudice to any other rights Vendor may have. You are not entitled to any type of notice or protest should Vendor exercise these rights.
- 4.3 A party may also terminate this TOS in the event of a material breach by the other party (the “Breaching Party”) that has not been cured by the Breaching Party within ten days of its receipt of written notice of the breach; provided that a material breach of Vendor’s obligations under this TOS is defined within Vendor’s Service Level Agreement. Notices of material breach must contain sufficient detail for Breaching Party to identify the breach and attempt to take corrective action.

5 Payment

- 5.1 You are responsible for the fees and charges set out on the Service Description, according to the terms set out on that page (Fees). The date on which Fees are due is the Due Date.

If the Service Description does not set out a Due Date, the Fees will be due monthly. Set up fees are not refundable for any reason.

- 5.2 Vendor's obligation to provide the Services is contingent on your payment of the Fees by the Due Date. You must pay the Fees without set off or deduction. It is Customer's responsibility to ensure that Vendor receives payment of the Fees. Fees will be considered paid on the date Customer's financial institution makes funds available to us. Should your account be suspended for any reason other than Vendor's breach of this Agreement, Fees will continue to accrue.
- 5.3 If we suspend or terminate your use of the Services because you have violated this TOS, or any of the agreements, policies or regulations incorporated into it, we will not provide you with a credit. Our Service Level Agreement does not apply to disruptions to your use of the Services because of such a violation. You agree to hold Vendor harmless from any claims that such a disruption has caused damage to you or a third party, regardless of whether you informed Vendor of the possibility of such damage.
- 5.4 If the Fees are not paid by your financial institution, your account will be considered delinquent. To reinstate your account if Services are suspended or canceled, you will be required to pay, depending on the reason for the delinquency: (i) a returned check fee in the amount of \$50; (ii) interest in the amount of 1.5% per month, or the maximum amount allowed by law, whichever is less; (iii) collection charges, including attorney's fees; and/or (iv) any fees levied on us by our financial institution.
- 5.5 You may choose to purchase certain Third-Party Services through us. Fees for the Third-Party Services may not appear on our invoices on the month on which they are delivered. You agree to pay for these Third-Party Services regardless of the length of time elapsed between their delivery date and the date on which you are charged.
- 5.6 If you believe there is an error in invoice particular Fee, you must contact us in writing. Our obligation to consider your claim is contingent on your providing us with written notice of this dispute, and including sufficient facts for us to investigate your claims. We must receive this notice at least five days prior to the Due Date (Dispute Deadline). You waive your right to dispute any charges or Fees if you fail to meet the Dispute Deadline. If we find that your claim is valid, we agree to credit your account on your next invoice.

6 Licenses; Intellectual Property

- 6.1 Vendor grants to you a non-exclusive, non-transferable, worldwide, royalty-free license to use technology provided by Vendor, solely for the purpose of accessing and using the Services. This license terminates on the expiration or termination of this TOS. Except for the license rights set out above, this license does not grant any additional rights to you. All right, title and interest in Vendor's technology shall remain with Vendor or its licensors, as applicable. You are not permitted to circumvent any devices designed to protect the

ownership interests of Vendor or its licensors, as applicable, in the technology provided to you. In addition, you may not reverse engineer this technology.

- 6.2 You grant us, and any third parties used by us to provide the Services, a non-exclusive, non-transferable, worldwide, royalty free license to use, disseminate, transmit and cache content, technology and information provided by you and, if applicable, your customers, in conjunction with the Services. This license terminates on the expiration or termination of this TOS. All right, title and interest in your technology shall remain with you, or your licensors.

7 Use of the Services

- 7.1 Your use of the Services is governed by Vendor's Acceptable Use Policy ("AUP") and Privacy Policy, both of which are incorporated into this document by reference. In the event of inconsistencies between this TOS and the AUP, on the one hand, or the Privacy Policy, on the other, the AUP, then Privacy Policy shall govern, in that order. If you have selected Services that are subject to additional terms, a copy of such additional terms will be (or has been) provided to you and will also govern your use of the Services.
- 7.2 The Services are designed for lawful use only. It is your responsibility to fully understand and appreciate the laws of the United States of America and the state set out in the paragraph entitled "Choice of Law" when using the Services. You agree not to access or use, or permit any third party to access or use, the Services (i) in violation of any U.S. law or regulation, including customs and export regulations.
- 7.3 Your use of the Services must be reasonable. You may not place excessive burdens on Vendor's CPUs, servers or other resources or interfere with the services Vendor provides to other customers. You may not use excessive bandwidth. You agree that Vendor may place restrictions on your use of the Services to the extent that they exceed the use of the Services by other, similarly-situated customers.
- 7.4 You agree to cooperate with Vendor to facilitate your use of the Services. This cooperation includes, but is not limited to, providing Vendor with correct contact and billing information, designing material that is "server ready" and ensuring that you, your employees and/or agents have sufficient technical expertise to understand how to implement the Services.
- 7.5 Upon termination or expiration of the TOS, your account will be closed. Vendor will have no responsibility to forward email or other communications for you once your account is closed. You are encouraged to keep the Service active during a transition period should you seek to forward your email or other communications.

8 Representations and Warranties

- 8.1 You represent and warrant to Vendor that: (i) you have the experience and knowledge necessary to use the Services; (ii) you will provide Vendor with material that may be implemented by Vendor to provide the Services without extra effort on Vendor's part; and/or (iii) you have sufficient knowledge about administering, designing and operating the functions facilitated by the Service to take advantage of the Service.
- 8.2 You expressly warrant that you own the entire right, title and interest to, or have an appropriate license to use, all materials provided to Vendor, or which may be accessed or transmitted using the Services. You also warrant that to the extent you do business with other parties using the Services, that they have the same ownership interests in the materials provided to you, or accessed via you, that are set out in this paragraph.

9 Disclaimers

- 9.1 ALL SERVICES ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. OTHER THAN AS EXPRESSLY SET OUT IN THIS AGREEMENT, VENDOR HAS NOT MADE, AND DOES NOT MAKE, ANY WARRANTIES, EITHER EXPRESS OR IMPLIED. VENDOR'S DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO, THE WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND TITLE. VENDOR DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SECURE OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. VENDOR IS NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR, THE CONTENT OF ANY DATA TRANSFERRED TO OR FROM YOU OR STORED BY YOU OR ANY OF YOUR CUSTOMERS VIA THE SERVICES PROVIDED BY US. VENDOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING THIRD-PARTY SERVICES, 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.
- 9.2 THIS WARRANTY DISCLAIMER EXTENDS TO ANY ORAL OR WRITTEN INFORMATION YOU MAY HAVE RECEIVED FROM VENDOR, ITS EMPLOYEES, THIRD PARTIES, AGENTS OR AFFILIATES. YOU MAY NOT RELY ON SUCH INFORMATION.
- 9.3 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.

10 Limitation of Liability

- 10.1 IN NO EVENT WILL VENDOR'S LIABILITY HEREUNDER EXCEED THE AGGREGATE FEES ACTUALLY RECEIVED BY VENDOR FROM YOU FOR THE THREE-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. FOR THE PURPOSES OF THIS PARAGRAPH ONLY, "VENDOR" SHALL BE INTERPRETED TO INCLUDE

VENDOR'S EMPLOYEES, AGENTS, OWNERS, DIRECTORS, OFFICERS, AFFILIATES, AND THIRD PARTIES PROVIDING SERVICES TO CUSTOMER THROUGH VENDOR.

- 10.2 YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU WILL NOT UNDER ANY CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, HOLD VENDOR OR ITS LICENSORS, AGENTS, EMPLOYEES, OFFICERS AND/OR THIRD-PARTY VENDORS LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, COST SAVINGS, REVENUE, BUSINESS, DATA OR USE, OR ANY OTHER PECUNIARY LOSS BY YOU, ANY OF YOUR END USERS OR ANY OTHER THIRD PARTY. YOU AGREE THAT THE FOREGOING LIMITATIONS APPLY WHETHER IN AN ACTION IN CONTRACT OR TORT OR ANY OTHER LEGAL THEORY AND APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES; YOU AGREE THAT IN THOSE JURISDICTIONS OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 10.3 You acknowledge that it is your responsibility to keep back-up copies of your data. We are not responsible for any loss of data, for any reason. We are not liable for unauthorized access to, or any corruption, erasure, theft, destruction, alteration or inadvertent disclosure of, data, information or content, transmitted, received, or stored on our network.

11 Indemnity

- 11.1 You agree to indemnify, defend and hold harmless us and our parent, subsidiary and affiliated companies, third-party service providers 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 attorneys' 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 any of our policies; (iii) any breach of any of your representations, warranties or covenants contained in this TOS; and/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

12 Feedback

- 12.1 Any suggestion or idea for modifying any of Vendor's products or services, including without limitation all intellectual property rights in any such suggestion or idea, shall be referred to in this Agreement as "Feedback."
- 12.2 Customer hereby grants Vendor a perpetual, irrevocable, worldwide license to use any Feedback Customer communicates to Vendor during the Initial Term or any Renewal Term, without compensation, without any obligation to report on such use, and without any other restriction. Vendor's rights granted in the previous sentence include, without limitation, the right to exploit Feedback in any and every way, as well as the right to grant sublicenses.
- 12.3 Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer provides to Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer.

13 Notices

- 13.1 Notices will be sent to you at the address you provide to us. It is your obligation to ensure that we have Your most current address.
- 13.2 Please refer to Vendor's website for contact information for most issues, including technical support and billing. Notices regarding this TOS and other policies should be directed to Vendor at the address set out on the website.

14 Force Majeure

- 14.1 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, failure of telecommunication carriers, 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. The party affected by such an occurrence shall notify the other party as soon as possible, but in no event less than ten days from the beginning of the event.

15 Choice of Law; Jurisdiction; Venue

- 15.1 The validity, interpretation, and performance of this TOS, and of the agreements and policies that apply to the Services, shall be controlled by and construed under the laws of the State of Illinois, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. You agree that jurisdiction and venue are proper in the state courts located in Chicago, Illinois, or the U.S. District Court for the District of Illinois located in Chicago. If neither of these courts has venue and/or jurisdiction, any dispute shall be brought before the state courts of Illinois. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.

16 Waiver

- 16.1 No waiver of rights under this TOS, or any policy of ours, and no agreement between us and you shall constitute a subsequent waiver of this or any other right under this TOS.

17 Assignment

- 17.1 This TOS may be assigned by us. It may not be assigned by Customer. This TOS shall bind and inure to the benefit of the corporate successors and permitted assigns of the parties.

18 Severability

- 18.1 In the event that any of the terms of this TOS become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this TOS. All remaining terms of this TOS shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph becomes applicable and, as a result, the value of this TOS is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this TOS by written notice to the other.

19 No Agency

- 19.1 This TOS does not create any agency, partnership, joint venture, or franchise relationship. Neither party has the right or authority to, and neither party shall, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.