



JELASTIC TERMS OF SERVICE

This Cloud Services Agreement and all other agreements and policies incorporated by reference (together the “Cloud Services Agreement”) is entered into between The ServInt Corporation (ServInt, we or us) and the person or entity purchasing or using our services (Customer, you or your). It is effective on the date set out below. You understand and agree that by using the on-line process and consenting to the terms of this Cloud Services Agreement, you have made a binding selection of the type of Services to be provided and all associated specifications, prices, policies and documentation related to the delivery of the Services.

1. Services

- a. The pricing, features and term of the ServInt Cloud Services you purchase from us are set out on the Cloud services product web page (the “Description Page”) and are referred to as the “Service” or “Services.” The Services are provided to you based on the Description Page as of the Effective Date. The Effective Date is the date your Service is initiated. The Description Page may change during the Term. We are only obligated to provide to you the Services as set out on the Description Page on the Effective Date. ServInt offers Customers the ability to upgrade the Services. At the time your upgrade order is processed, you are bound by the terms and conditions of that particular Service, for the Term of that Service.
- b. As you use the Services, your incoming and outgoing bandwidth will be monitored, combined and you will be charged the Fees described on the Description Page as set out in this Cloud Services Agreement.
- c. You will have the ability to adjust your use of the services either vertically or horizontally (Orientation). Adjusting the Services vertically means that you can adjust the Services’ image resources up and down as set out on the Description Page. Adjusting the Services horizontally means that you can duplicate the Services’ instance and load balance it. Any Orientation adjustment is subject to the Fees set out in this Cloud Services Agreement and on the Description Page.
- d. We will use commercially reasonable efforts to make the Services available to you. We reserve the right to modify the Services, or the way in which we provide them to you.
- e. The Services may contain software, hardware or services provided by third parties (Third Party Vendors). Third Party Vendors may have reserved the right to make changes to the way they provide their products. These changes may materially affect the Services. You may not terminate this Agreement because of those changes.
- f. You agree that ServInt may modify this Cloud Services Agreement or any policy or other terms referenced in this Cloud Services Agreement at any time by



posting a revised version at the websites displaying the policy and/or posting a revised version of this Cloud Services Agreement. Unless otherwise set forth in this Cloud Services Agreement, or in ServInt's change of terms notice, the revised terms shall be effective fifteen days after posting and/or notifying you. By continuing to use or receive the Services after the effective date of any revisions, you agree to be bound by the revised policies or this Cloud Services Agreement. It is your responsibility to check the websites listed herein regularly for changes to the policies and this Cloud Services Agreement. If you disagree with any modifications to the policies or this Cloud Services Agreement prior to the expiration of the fifteen-day period, your sole and exclusive remedy shall be to stop using the Services.

2. Configuration and Support

- a. The Services are provided to you in a standardized manner. Should you wish to use the Services in a particular manner, it is your responsibility to configure the Services. Any custom configuration may not affect our operation of the network, our provisioning of the Services of other customers, and is otherwise subject to our approval.
- b. We only provide support for our listed standard supported configurations set out on the Description Page. You acknowledge that should you use operating systems or configurations other than our standard ones, we are not obligated, and in fact do not, provide support of those other operating systems and/or configurations.
- c. Our standard SLA shall apply to this Cloud Services Agreement. You agree that the standard SLA is your sole and exclusive remedy for instances in which the Services are inaccessible or inoperable. The standard SLA does not cover instances when the Services are not available because we are maintaining or upgrading them (Scheduled Downtime) or because of a Force Majeure Event. Whenever possible, we will provide you at least 48 hours advance notice of any Scheduled Downtime.
- d. You agree to provide information and/or other materials related to this Cloud Services Agreement as reasonably requested by us to verify your compliance with it. You also agree that we may access the Service, crawl, or otherwise monitor your use of the Service for the purpose of verifying your compliance with it.

3. Backup Services

- a. The Description Page describes the Backup Services that may be purchased separately from the Services. While we have designed the Backup Services in a general manner, it is your responsibility to configure the Backup Services to serve your unique needs.

- b. Backup Services are provided on an as-is and as-available basis, as a supplement to, and not in lieu of, your own backup programs. While we will use commercially reasonable efforts to ensure the effective operation of our Backup Services, you expressly agree that no backup program or service is error-free or fail-safe.
 - c. If purchased by you, Backup Services may be used to restore your data. However, restoring your data does not always result in the data retaining the same or a similar configuration it had in the past. When we restore your data, it may be necessary for you to make changes to it.
 - d. Backup Services are designed for disaster recovery. Should you, or a third party, request that the data held by us as a result of the Backup Services be used for a purpose other than disaster recovery, for example in litigation, we have no obligation to provide the data to you. Should we determine, in our sole and exclusive judgment, to provide the data to you, or should your data be subpoenaed, or disclosure of it otherwise compelled, it will be provided at our convenience and you will be charged our prevailing hourly rate. You will also be responsible for any attorneys' fees we incur in reviewing, responding to, or producing your data. You may also be required to pay us a retainer to secure your obligations.
4. Fees
- a. This is a pre-paid service and all Fees are required to be provided in advance of service. The amount of your Fees are set out on the Description Page (Fees). Fees are calculated as follows:
 - i. Customer will fund their account as set out on the Description Page.
 - ii. These funds will be converted into units used to measure their use of the Services (Cloudlet Hours). The conversion rate for the funds into Cloudlet Hours is set out on the Description Page. Other periodic charges, such as (but not limited to) disk space consumption, bandwidth utilization, and backup services require periodic charges also deducted in a pre-paid fashion as outlined on the Description Page.
 - iii. When the number of Cloudlet hours reaches a number that is insufficient to continue to fund the Services, Customer's account will either (X) have additional funds added to it based on the amount and threshold chosen by Customer in its control panel; (Y) if chosen in the control panel, receive an email that the number of Cloudlet Hours will soon be insufficient to continue to provide the Services to Customer; or (Z) suspended. When/or if Customer depletes its Cloudlet Hours (and does not replenish its credits prior to depletion), we will suspend service. Customer may fund its account to reinstate Service. Should an account remain suspended for 60 days due to insufficient funds, we will consider this a notice of intent to terminate by Customer. At any time after this



termination, we reserve the right to destroy the account (i.e. permanently delete all data and delete the account).

- iv. All billed services will be deducted from Customer's Cloudlet Hours balance as consumed/utilized as described on the Description Page.
 - b. Should Customer have a Cloudlet Hour balance upon termination of its account, the balance will be refunded to Customer using the original form of payment, in the original currency. ServInt is not responsible for any charges assessed by Customer's payment provider, or currency fluctuations.
 - c. If we suspend the Services for a reason within your control, you will not have access to your data stored on the Services during a suspension or following termination for that reason.
 - d. Your use of the Services may be contingent on payment of fees to Third Party Vendors. If you fail to pay these fees when due, your use of the Services may be suspended, disrupted or terminated.
5. Term

The term of this Agreement is the time period in which you use the Services (Term). If you purchase multiple Services, the Term of this Cloud Services Agreement is the length of time during which we agree to provide the individual Services to you.

6. Termination

- a. Either of us may terminate this Cloud Services Agreement by providing the other with written notice of intent to terminate (Termination Notice). In addition, you may terminate this Cloud Services Agreement by not using the Services, and providing us with notice that, by ceasing to use the Services, you have terminated this Cloud Services Agreement. It is your obligation to transfer your data from our servers when you terminate this Cloud Services Agreement in this manner. We have no obligation to secure, preserve or assist you with the transfer of your data after that point.
- b. If you do not have a Cloudlet Hour credit in your account for a period of 60 days, we will consider this as your termination of this Cloud Services Agreement. We have no obligation to secure, preserve or assist you with the transfer of your data after this 60-day period.
- c. We may terminate this Cloud Services Agreement, or a particular Service, immediately upon your violation of any of the policies incorporated into this Cloud Services Agreement; your violation of any licenses with Third Parties; or your bankruptcy.
- d. Upon termination of this Cloud Services Agreement, your data will be deleted at our convenience. Any data present on our backup servers or purchased by you using the Backup Services will be purged at our convenience. We shall have no



obligation whatsoever to provide data to you upon termination of this Cloud Services Agreement.

7. Warranties

- a. Mutual Warranties: each party has the power, authority, and legal right to enter into this Cloud Services Agreement; each party has the power, authority, and legal right to perform their obligations under this Cloud Services Agreement.
- b. We warrant that we will perform in a competent manner.
- c. You represent and warrant to us that:
 - i. you have the experience and knowledge necessary to use the Services;
 - ii. you will comply with the terms of any licenses required for your use of Third Party Vendors;
 - iii. you will draft agreements with your customers having terms that are no less protective of our interests than the terms of our Acceptable Use Policy (AUP);
 - iv. you own the entire right, title and interest to, or have an appropriate license to use, all materials provided to us, or which may be accessed or transmitted using the Services; and
 - v. your customers have warranted that they own the entire right, title and interest to, or have an appropriate license to use, all materials provided to you, or which may be accessed or transmitted using the Services, and have agreed to indemnify us if they do not.

8. Disclaimers

THE SERVICE IS PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. OTHER THAN AS EXPRESSLY SET OUT IN PARAGRAPH 7, WE HAVE NOT, AND DO NOT, MAKE ANY WARRANTIES WHETHER EXPRESS OR IMPLIED. THIS DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO, THE WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF MERCHANTABILITY AND TITLE. WE DO NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. WE ARE NOT LIABLE, AND EXPRESSLY DISCLAIM ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO, OR FROM, YOU OR STORED BY YOU OR A USER VIA THE SERVICE PROVIDED BY US. WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES REGARDING SERVICES PROVIDED BY THIRD PARTIES, 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. 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.

9. Limitation of Liability



10. WE ARE NOT LIABLE TO YOU, OR ANY THIRD PARTIES, FOR HARM CAUSED BY OR RELATED TO THE SERVICES, OR YOUR, OR A THIRD PARTY'S, INABILITY TO UTILIZE THE SERVICES, UNLESS IT IS CAUSED BY OUR SOLE AND EXCLUSIVE GROSS NEGLIGENCE.
11. WE ARE NOT LIABLE TO YOU, OR ANY THIRD PARTIES, FOR LOST PROFITS, WHETHER DIRECT OR INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE, OR DAMAGES OF ANY KIND. THIS PARAGRAPH APPLIES WHETHER OR NOT SUCH POTENTIAL LIABILITY WAS KNOWN TO US, OR SHOULD HAVE BEEN KNOWN.
12. OUR MAXIMUM AGGREGATE LIABILITY FOR ANY CLAIMS MADE BASED ON THIS AGREEMENT, UNDER ANY THEORY OF LAW, IS THE AMOUNT PAID BY YOU FOR THE SERVICES FOR THE MONTH PRIOR TO THE OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE CLAIM.
13. Indemnification
 - a. Each party agrees to indemnify and hold harmless the other, its affiliates and their officers, directors, attorneys, agents and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, and expenses, of any kind, brought by a third party under any theory or finding of liability arising out of, or related to, the indemnifying party's actual or alleged infringement or misappropriation of a third party's copyright, patent, trademark or other proprietary right.
 - b. You agree to indemnify, defend and hold us harmless, including, but not limited to our parent, subsidiary and affiliated companies, 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 fled 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 the AUP; (iii) any breach of any of your representations, warranties or covenants contained in this Cloud Services Agreement; or (iv) any acts or omissions by you. The terms of this section shall survive any termination of this Cloud Services Agreement. For the purpose of this paragraph only, the terms used to designate you in subparagraphs (i), (ii) and (iv) include you, your customers, visitors to your website, and users of your products or services, the use of which is facilitated by us.
14. Licenses and Intellectual Property
 - a. You may be required to agree to Third Party Vendor licenses in order to use the Services. You agree to preserve and not obscure trademark, copyright and other indications of intellectual property ownership placed on any software, hardware provided to you, or displayed during your use of the Services.



- b. You must have a valid license to use the software you place on the Services. You agree to provide us with evidence of this license upon our request.
- c. If we license software to you, that license terminates upon Termination or expiration of this Cloud Services Agreement.
- d. You are responsible to us for any unauthorized installation, use, copying, access or distribution of the Services if you fail to: include in your customer agreements terms and conditions that are similar to but no less protective of our interests than those set out herein, or incorporated by reference; and, if your customers resell our Services, require your resellers to include in their customer agreements, terms and conditions that are substantially similar to but no less restrictive than those set out herein, or incorporated by reference.
- e. From time-to-time we may ask to use certain information for marketing purposes. We agree to secure your consent prior to doing so, and, upon receipt of this permission, we agree to use this information for the limited purposes set out in our request.

15. General

a. Notices

- i. All legal notices, claims, demands, and other communications hereunder shall be in writing and shall be deemed given upon (i) confirmation of receipt by the addressee by a standard overnight carrier, or (ii) the expiration of 5 business days after the day when mailed by registered or certified mail (postage prepaid, return receipt requested), addressed to the respective parties at the following address:

The ServInt Corporation
12001 Sunrise Valley Drive
Suite 350
Reston, VA 20191
Fax: 703-847-1383

Routine correspondence, other than legal notices, may be communicated by the parties by email. We will use the email addresses you have provided to us when registering, or through your control panel. We provide specific addresses for certain types of communications such as billing. If you provide notification to us by email, you agree to use the email addresses. If you fail to use addresses we designate, your communication will not be considered received by us.

b. Force Majeure



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, interruptions of telecommunications providers, or delays of common carriers or other circumstances beyond its reasonable control (Force Majeure Event). 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. Notwithstanding the above, in the event a Force Majeure Event has prevented us from performing our obligations under this Cloud Services Agreement for one month, you shall be entitled to terminate this Cloud Services Agreement at no additional cost and receive a refund of any Cloudlet Hours in your account. The party affected by the Force Majeure Event shall notify the other party as soon as possible, but in no event less than 10 days from the beginning of the Force Majeure Event.

c. Choice of Law, Jurisdiction and Venue

The validity, interpretation, and performance of this Cloud Services Agreement shall be controlled by and construed under the laws of the Commonwealth of Virginia, United States of America, as if performed wholly within the Commonwealth and without giving effect to its principles of conflict of law. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. The parties agree that jurisdiction and venue shall be proper before the U.S. District Court for the Eastern District of Virginia in Alexandria, Virginia, and not to contest notice from that court.

d. Waiver

No waiver of rights under this Cloud Services Agreement by either party shall constitute a subsequent waiver of this or any other right under this Cloud Services Agreement.

e. Assignment

Neither this Cloud Services Agreement nor any rights under this Cloud Services Agreement shall be assigned or otherwise transferred by you (by operation of law or otherwise) without our prior written consent. This Cloud Services Agreement shall bind and inure to the benefit of the corporate successors and permitted assigns of the parties.

f. Severability



If any provision of this Cloud Services Agreement, or the application thereof to any person, place, or circumstance, shall be held by an arbitrator or a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Cloud Services Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect, and such provision shall be enforced to fullest extent consistent with applicable law.

g. No Agency

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

h. Survival

Sections 3(d), 7(a), 8, 9, 10, and 12 (a, c, e, f and h) shall survive the termination of this Cloud Services Agreement.