

SpotInst - Terms and Conditions of Service

Please read these Terms and Conditions of Service (“TOS” or “Terms”) before using or accessing in any form any of the services or any of the products available through or in connection with the SpotInst (Company) website, ([www.https://spotinst.com](https://spotinst.com)) and/or the SpotInst products, e.g. elastigroup or elastitute (hereinafter the “Products and Services” or “Services”). These Terms also apply if such Products and Services are accessed through the CloudCheckr website (<https://app.cloudcheckr.com>). These Terms constitute a binding agreement between Customer (as such term is defined in an applicable order form and if no such order form is in effect, the user of and customer for the Products and Services), CloudCheckr Inc. and SpotInst INC. and its affiliates (“Company” or “SpotInst”).

By either: (i) executing any agreement between yourself and either CloudCheckr or the Company including but not limited to agreements in the nature of a work order, insertion order, order form, subscription, purchase order, license agreement or any other agreement for rendering Company's Service or providing Company's Products including any digital copy of an agreement to which Customer agrees online (the "Purchase Order") or (ii) using any of the Products and Services in any form and manner or (iii) actively agreeing to these Terms by clicking the I Accept Button on the site; Customer agrees to abide, and agrees that it is bound, by these Terms. These Terms and the use of the terms “you” or “users” are applicable to all types of users of the Products and Services, including users who initially set up the Products and Services and/or are granted pseudo ownership privileges by the initial owner(s), administrators, who manage and run a team, channel, or group and users who are invited to join an existing group and/or team that has already been created. If you are entering into these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity, its affiliates and users to this Terms. In that case, the terms “you” or “your” shall also refer to such entity, and its affiliates, as applicable. If you do not have such authority, or if you do not agree with this Terms, you may not use the Products and Services. These Terms and all Purchase Orders or subscriptions thereunder represent the parties’ entire understanding regarding the Products and Services and shall control over any different or additional terms of any Purchase Order or other non-SpotInst ordering document, and no terms included in any such purchase order or other non-SpotInst ordering document shall apply to the Product and Services unless explicitly agreed by all Parties in writing. In the event of a conflict or discrepancy between these Terms and an accepted Purchase Order, the terms of the Purchase Order shall control and prevail.

A. Use of the Products and Services

1 **Scope of the Service.** Company shall make commercially reasonable efforts to render and provide the Products and Services agreed in the Purchase Order or chosen by the Customer as part of its registration on either CloudCheckr’s or the Company's website , all in accordance with these Terms.

Company implements reasonable security measures in accordance with is security policy available at: <https://spotinst.com/security> as shall be amended from time to time and its privacy policy available at: <https://spotinst.com/privacy> as shall be amended from time to time (the "Privacy Policy") attached by reference to these Terms, to protect Customer Data (as defined below) during the Term (defined below).

Company shall provide its standard support and maintenances services subject to the terms and conditions specified in the SLA attached hereto.

Customer acknowledges that the Products and Services: (i) does not operate as an archive or file storage service and Company does not store all of the Customer Data (as defined below) that Customer may Provide during the Term, and therefore Customer is solely responsible for the backup of its Customer Data, and (ii) may be subject to export control laws applicable to Customer or in Customer's jurisdiction.

2 **Login Credentials to Service.** In order to use the Products and Services, Customer will need to open an account (“Account”). As part of the registration process Customers are required to provide certain information and create a password. All information provided by Customer shall be retained in accordance with Company's privacy policy. Customer will be able to edit Customer’s Account information at any point by adding or removing any information. Customer must provide accurate and complete information during the registration process. Customer may choose to authorize Customer’s employees, contractors, clients, affiliates or other agents (“Users”) to access Customer’s Account. Each such user shall have their own user identifications and passwords. Customer will be responsible for all Users added to Customer Account as well as their compliance with these Terms, and all applicable laws and regulations. Customer hereby acknowledges and agrees: (i) to keep, and ensure that the Users will keep the Account login details and credentials including passwords confidential and secured at all times, and otherwise comply with the terms of these Terms; (ii) to remain solely responsible and liable for the activity that occurs in the Account and for any breach of these Terms by User(s); (iii) not to share password or other account access information with any other party, temporarily or permanently; and (iv) to promptly notify Company in writing if Customer becomes aware of any unauthorized access or use of the Account.

3 **Cloud Account Information.** By providing SpotInst with information, data, passwords, usernames PINs and any other login information or other information regarding Customer’s cloud services accounts (“Cloud Account Information”) Customer is

expressly authorizing SpotInst to store and use the Cloud Account Information only for the purpose of providing Customer with the Products and Services. Customer is responsible for the accuracy, integrity and completeness of Customer's Cloud Account Information and for authorizing and enabling SpotInst to use Customer's Cloud Account Information (including submitting Customer's username and passwords) to third party cloud services, websites or APIs that Customer will designate for the purposes of providing Customer with the Services. Customer acknowledges and agrees that when SpotInst is using the Cloud Account Information SpotInst is using such information per Customer's request and on Customer's behalf.

4 License Grant. If so elected by Customer, Customer may install an agent on Customer's premises for the purpose of permitting Company to interact with Customer's cloud provider on behalf of Customer (the "Software Agent"). Subject to the terms and conditions of this Agreement and as part of providing the Services hereunder, SpotInst hereby grants Customer, and Customer accepts, a limited, non-exclusive, non-sub-licensable, non-transferable and revocable license to access and use the Products and Services in the manner specified herein, during the Term (as defined below), solely for (i) Customer's internal business purposes and (ii) providing access to use the Products and Services to its Users as part of its ongoing business activities only, subject to the restrictions detailed in these Terms.

5 Grant of License to Company in Order to Provide the Services. Company may not and shall not access any Customer Data (as defined below) stored in Customer's cloud service unless authorized in advance and in writing by Customer or unless required by applicable law (and in such case shall make reasonable efforts to inform the Customer prior to any such activity as reasonably possible and allowed under such applicable law). Subject to the aforementioned, while using the Products and Services, Customer may provide, upload, import, transmit, post, or make accessible (collectively, "Provide") to Company certain data, software and/or information (the "Customer Data"). To the extent that the Customer has any intellectual property rights in the Customer Data, Customer grants Company a non-exclusive license to use, process and, to the extent requested by the Customer, store the Customer Data in order to provide the Services hereunder.

6 Restrictions. Customer shall only access the Products and Services for the Purpose and in connection with its Account. Except as specifically permitted herein, without the prior written consent of SpotInst, Customer must not, and shall not allow any User or any other third party to, directly or indirectly: (i) modify, incorporate into or with other software, or create a derivative work of any part of the Products and Services; (ii) sell, license (or sub-license), lease, assign, transfer, pledge, or share Customer's rights under this Agreement with or to anyone else; (iii) disclose the results of any testing or benchmarking of the Products and Services to any third party, or use such results for Customer's own competing activities or use the Products and Services in order to build or support, and/or assist a third party in building or supporting, products or services which are competitive to SpotInst business; (iv) modify, disassemble, decompile, reverse engineer, revise or enhance the Products and Services or attempt to discover the source code or the underlying ideas or algorithms; (v) use the Products and Services in a manner that violates or infringes any rights of any third party, including but not limited to, right of privacy, proprietary rights or intellectual property rights of any third parties, including without limitation copyright, trademarks, designs, patents and trade secrets; (vi) to send unsolicited bulk commercial email ("Spam") of any kind, regardless of the content or nature of such messages (vii) use the Products and Services for purposes or in a manner that would violate applicable data privacy laws or for any other unlawful or inappropriate purpose; (viii) interfere or attempt to interfere with the integrity or proper working of the Products and Services; (ix) use the Products and Services in any other unlawful manner or in any manner not expressly authorized by these Terms.

B. Representations and warranties

Each Party represents and warrants (a) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization or if Customer is a person, Customer declares he/she is over the age of 18 (eighteen); and (b) that the execution and performance of this Agreement will not conflict with or violate any provision of any applicable law.

Customer represents that: (i) it has a full power to execute any agreement between the itself and Company (ii) the Customer will use the Products and Services in compliance with any applicable laws, including without limitation privacy protection laws, including any applicable laws relating to the collection of information from Customer's Users, as applicable and necessary under applicable law, it has the full right, authority, permissions, approvals and consents to permit the Company to use in accordance with the Company's Privacy Policy, pursuant to which Company may collect non-personal information and personally identifiable information of Customer's Users. Customer shall remain solely responsible and liable for, and release the Company and CloudCheckr from, any and all liability arising from, the Company's authorized use of the Customer Data as permitted herein.

C. Term and Termination

1. Nothing in this Agreement shall be considered as an obligation of the Customer to use the Products and Services. Customer may cease the use of the Products and Services at will without giving any notice to Company, even if these Terms are still in full force and effect, unless agreed otherwise by the Customer and Company.

2. These Terms shall commence as of the Effective Date (which shall be the Effective Date agreed by the Parties or if no Effective Date was agreed, upon the acceptance of these Terms by Customers and acknowledgment of such acceptance by the Company) and shall remain in full force and effect until earlier terminated as set forth below.
3. Notwithstanding the aforementioned, Customer may terminate these Terms or any Purchase Order upon 30 (thirty) days prior written notice unless agreed otherwise in writing by the Company and the Customer.
4. Company may terminate any engagement with the Company upon 60 (sixty) days prior written notice unless agreed otherwise in writing by the Customer and the Company.
5. In addition, Company and Customer may terminate this Agreement with immediate effect if the other party materially breaches this Agreement and such breach remains uncured (to the extent that the breach can be cured) fifteen (15) days after having received written notice thereof. In the event that either Party becomes liquidated, dissolved, bankrupt or insolvent, whether voluntarily or involuntarily, or shall take any action to be so declared, the other Party shall have the right to immediately terminate this Agreement.
6. If Company believes that Customer is using the Products and Services in a manner that may cause harm to Company or any third party, then Company may, without prejudice to any other Company right, to terminate this Agreement for any breach hereof, suspend Customer's access to and use of the Products and Services until such time as Company believes the threat of harm, or actual harm, has passed. Any suspension by Company of the Services under this paragraph shall not excuse Customer from its obligation to make payments under this Agreement, provided that following any suspension lasting more than 30 days caused by factors outside the control of Customer, Customer shall have the right to terminate any agreement, Terms or Purchase Order.
7. In any event of termination of this Agreement all licenses, and rights granted hereunder shall immediately expire and any and all use and/or exploitation by Customer of the Products and Services, and any part thereof, shall immediately cease and expire. Provisions contained in this Agreement that are expressed or by their sense and context are intended to survive the termination of this Agreement shall so survive the termination.

D. Changes to Products and Service

Company may change the Products' and Services' layout and design and the availability of the content and functions included therein or may change the form, features or nature of the Products and Services from time to time, and will use commercially reasonable efforts to notify Customer of any material modifications. Notifying the Customer by sending email to the email address provided to Company and/or informing of any change on Company's website shall be considered as sufficient commercially reasonable efforts under this section. In the event that Company modifies the Products and Services in a manner which adversely affects the performance or functionality of the Products and Services, Customer shall have the right to terminate the Service (including the Purchase Order). Customer hereby agrees and acknowledges that Company shall not be liable for any errors or malfunctions that may occur in connection with the performance of such changes.

E. Payments and Fees

CloudCheckr charges based on the actual costs savings Spotinst generated to your workload. The calculation is based on the difference between the actual costs of the instances Spotinst chooses to run and the current cloud On-Demand pricing for those same instances.

In consideration for the rights and services granted and/or to be provided under this Agreement, you shall pay to the fees specified under the applicable Purchase Order or (if no Purchase Order is in force) the pricing plan you chose on the CloudCheckr website and in accordance with the payment and other terms specified. All fees are exclusive of taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties (excluding taxes based on SpotInst income), even if such amounts are not listed on a Purchase Order. Customer shall pay all fees in U.S. Dollars or in such other currency as agreed to in writing by the parties. All amounts invoiced hereunder are due and payable within thirty (30) days of the date of the invoice, unless otherwise set forth in the Purchase Order. All fees and other amounts paid by the Customer under this Agreement are non-refundable. After the first twelve months that a service is provided pursuant to a Purchase Order, SpotInst may, modify its prices and fees and apply new fees upon thirty (30) day prior written notice; provided that Customer may terminate the Services with written notice within 15 days of receipt of fee modification notice from Company.

F. Intellectual Property

1. The Products and Services are not for sale and are and shall remain Company's sole property (As between the parties). All right, title, and interest, including any intellectual property rights evidenced by or embodied in, attached, connected, and/or related to the Products and Services and any and all derivative works thereof are and shall remain owned solely by Company or its licensors. These Terms do not convey to Customer any interest in or to the Products and Services but only, as aforesaid, a limited revocable right to use the Products and Services, in accordance with the terms of these Terms, and nothing herein constitutes a waiver of the Company's intellectual property rights under any law. If Customer contacts Company with feedback data (e.g., questions, comments, suggestions or the like) regarding the Products and Services (collectively, "Feedback"), such Feedback shall be deemed to be non-confidential, and the Company shall have a non-exclusive, royalty-free, worldwide,

perpetual license to use or incorporate into the Products and Services any such Feedback. Customer is under no obligation to provide Company with any Feedback.

2. As between Company and Customer, the intellectual property rights and all other rights, title and interest of any nature in and to the Customer Data, which may be stored on Company's database, are and shall remain the exclusive property of Customer and its licensors, and except as explicitly stated in writing, nothing in this Agreement shall be construed as transferring any rights, title or interests thereto to Company or any third party. Customer controls access to the Customer Data and has full administrative control over such data, including by its right to view or modify it.

3. The Company and CloudCheckr may collect, disclose, publish and use in any other manner any anonymous and non-identifiable information which derives from the use of the Products and Services (for example, anonymous and non-identifiable information which is part of the Customer Data, aggregated and analytics information about the use of the Products and Services, etc.), in order to provide and improve Company's Products and Services. Customer agrees that Company may identify Customer as a user of the Products and Services and use Customer's trademark and/or logo (i) in sales presentations, promotional/marketing materials, and press releases, and (ii) in order to develop a brief customer profile for use by Company on Company's website for promotional purposes.

G. Indemnification.

1. Customer shall defend, indemnify, and hold harmless CloudCheckr, the Company and all licensors, affiliates, distributors and resellers, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses costs and expenses (including reasonable attorney's fees) arising out of or relating to any third party claim concerning: (a) Customer's or a User's use of the Services; (b) breach of this Agreement or violation of applicable law by Customer or any Customer User; (c) any claim involving alleged infringement or misappropriation of third-party rights by Customer Company shall promptly provide Customer with a written notice regarding such claim, however, failure to provide such prompt notice shall not relieve Customer from its indemnification obligations, unless and to the extent such failure to notify prejudiced Customer's ability to defend the claim.

2. Company shall defend, indemnify, and hold harmless the Customer, its licensors, affiliates, distributors and resellers, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses costs and expenses (including reasonable attorney's fees) arising out of or relating to any third party claim (a) that the software or any Services or Customer's use thereof, infringe, misappropriate or violate a third party's intellectual property rights,; or (b) concerning a breach of this Agreement or violation of applicable law by Company. Customer shall promptly provide Company with a written notice regarding such claim.

H. LIMITATION OF WARRANTY; LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY APPLICABLE LAW, OTHER THAN AS EXPLICITLY STATED UNDER THIS AGREEMENT THE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS. CLOUDCHECKR AND THE COMPANY DO NOT WARRANT THAT THE PRODUCTS AND/OR THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE PRODUCTS AND SERVICES' OPERATION AND THE SERVICES WILL BE SECURED AT ALL TIMES, UNINTERRUPTED, ERROR-FREE, FREE OF VIRUSES, BUGS, WORMS, OTHER HARMFUL COMPONENTS OR OTHER PRODUCTS AND SERVICES LIMITATIONS. TO THE EXTENT ALLOWED BY APPLICABLE LAW, COMPANY EXPRESSLY DISCLAIMS ALL EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF THE PRODUCTS AND/OR THE SERVICES, RELIABILITY, SYSTEM INTEGRATION, NON-INTERFERENCE, AND/OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY WILL NOT BE LIABLE OR RESPONSIBLE FOR: (a) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (b) ANY ISSUE THAT IS ATTRIBUTABLE TO CUSTOMER'S HARDWARE OR SOFTWARE OR CUSTOMER'S INTERNET OR DATA SERVICE PROVIDER. COMPANY AND CLOUDCHECKR DO NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT, REPORTS, INFORMATION, OR RESULTS THAT CUSTOMER OBTAINS THROUGH USE OF THE PRODUCTS AND SERVICES (COLLECTIVELY, "REPORTS"), OR THAT THE REPORTS ARE COMPLETE OR ERROR FREE. COMPANY SHALL NOT BE RESPONSIBLE FOR UNAUTHORIZED ACCESS TO OR ALTERATION TO THE CUSTOMER DATA TO THE EXTENT THAT SUCH ACCESS OR ALTERATION IS NOT DUE TO COMPANY'S WILFUL MISCONDUCT OR GROSS NEGLIGENCE.

NO PARTY, NOR ITS LICENSORS, AFFILIATES, DISTRIBUTORS AND RESELLERS, SHALL BE LIABLE WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, TO CUSTOMER OR ANY THIRD PARTY (INCLUDING THE CUSTOMER'S USERS) FOR ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOST PROFITS OR GOODWILL AND LOST OR DAMAGED DATA OR DOCUMENTATION), SUFFERED BY ANY PERSON, ARISING FROM, RELATED WITH, AND/OR CONNECTED TO, ANY USE OF OR INABILITY TO USE THE PRODUCTS AND/OR THE SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES. OTHER THAN IN EVENTS OF WILFULL MISCONDUCT

(INCLUDING FAILURE TO PAY ANY AMOUNTS PAYABLE TO COMPANY HEREUNDER), IN NO EVENT SHALL ANY PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO COMPANY UNDER THE APPLICABLE PURCHASE ORDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. INASMUCH AS SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OR LIMITATIONS AS SET FORTH HEREIN, THE FULL EXTENT OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY.

3. MISCELLANEOUS. These Terms represents the complete agreement concerning the subject matter hereof and may be amended only by a written agreement executed by CloudCheckr, the Company, and the Customer. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. No party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, any Party may assign the Agreement without the consent of the other in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets related to this Agreement or similar transaction. This Agreement shall be governed by and construed under the laws of the State of New York, without reference to principles and laws relating to the conflict of laws. The competent courts of New York shall have the exclusive jurisdiction with respect to any dispute and action arising under or in relation to this Agreement. This Agreement does not, and shall not be construed to create any relationship, partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between the Parties. CloudCheckr and the Company will not liable for any delay or failure to provide the Services resulting from circumstances or causes beyond the reasonable control of the Company (i.e., force majeure events). This Agreement may be executed in electronic counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement

EXHIBIT B

SPOTINST SLA TERMS

- Except for terms defined herein, capitalized terms used and not defined herein shall have the meanings as set forth in the Agreement.
- During the term of the Agreement, SpotInst will provide Customer access to the SaaS production application on a twenty-four hour, seven days a week (24x7) basis at a rate of 99.9% (“**SaaS Services Uptime Metric**”). The SaaS Services Uptime Metric shall commence on the Effective Date (as defined in the Terms).
- The following definitions apply to this SLA:

“**Downtime Event**” means the time in which a SpotInst Service is unavailable to the Customer as measured and determined solely by SpotInst based on its servers. Downtime Events shall exclude: planned downtime events announced in-advance by SpotInst, including without limitation, for periodic upgrade and maintenance; and/or any time where SpotInst is awaiting information from the Customer or awaiting Customer confirmation that the Service has been restored.

“**Downtime Period**” means the number of minutes in a calendar month during which SpotInst Service is unavailable to the Customer due to Downtime Event(s).

“**Uptime**” means the total number of minutes in a calendar month minus the Downtime Period, divided by the total number of **minutes** in a calendar month and multiplied by 100.

“**Service Credit**” monetary credit due to the Customer as a result of Downtime Period, applied to future use of the Services and will be deducted from Customer's next billing cycle/invoice, as detailed in the following table:

Uptime	SaaS service credit Percentage
Between 99.0% - 99.9%	10%
Below 99.0%	30%

- Service Credit Eligibility
If the Uptime is less than 99.9%, then the Customer will be eligible to receive a Service Credit as detailed in the table above. In order to receive any of the Service Credits described above, the Customer must notify Spotinst technical support team within thirty (30) days from the time on which the Customer becomes eligible to receive Service Credits. Failure to comply with this requirement will forfeit such Customer’s right to receive Service Credits.
- Maximum Service Credits
The aggregate maximum number of Service Credits to be issued by Spotinst to Customer for any and all Downtime Periods that occur in a single calendar month shall not exceed 30% of the amount due by Customer for the Services provided to it during the applicable month. THE CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT ITS RIGHT TO RECEIVE SERVICE CREDITS AS SPECIFIED ABOVE CONSTITUTES ITS SOLE AND EXCLUSIVE REMEDY FOR ANY DOWNTIME EVENTS.
- Customer Support
Customer may contact Customer support via email or phone in accordance with SpotInst policy which may be amended from time to time.
- Other SLA Exclusions:

THIS SLA DOES NOT APPLY TO ANY DOWNTIME EVENTS THAT: (I) ARE EXPLICITLY EXCLUDED UNDER THIS SLA; OR (II) ARE CAUSED BY FACTORS BEYOND SPOTINST REASONABLE CONTROL; OR (III) RESULTED FROM CUSTOMER’S SOFTWARE OR HARDWARE, AS WELL AS ANY EVENTS CAUSED BY THE CUSTOMER’S OWN MANAGEMENT OR MISUSE OF THE SERVICES/SPOTINST SOFTWARE; OR (IV) RESULTED FROM ABUSES OR OTHER BEHAVIORS ON BEHALF OF THE CUSTOMER OR UNRELATED THIRD PARTIES THAT VIOLATE THE AGREEMENT. (V) RESULTED FROM DOWNTIME OF THE CLOUD SERVICE PROVIDER
