

By accessing or using <https://serverberry.com> (the “Website”) or its associated services (the “Services”), you agree to the terms and conditions (“Terms”, “Terms of Service”) within this agreement (the “Agreement”). Please read the Agreement carefully before accessing or using the Website or the Services operated by It Factory Ltd. (“Serverberry”, “us”, “we”, or “our”), a company registered in Plovdiv, Bulgaria, and operating at the registered address bul.6-ti Septemvri 104, floor 2, office 2, Plovdiv, Bulgaria.

1. APPLICATION OF THE TERMS

Depending on your use of the Website and the Services, the Terms may apply to you differently. We reserve the right, at our sole discretion, to update these Terms from time to time. We aim to provide at least 30 days’ notice regarding any material changes prior to any new Terms taking effect. What constitutes a material change will be determined at our sole discretion. By continuing to access or use our Service after the Terms are updated, you agree to be bound by the revised Terms.

If you do not agree with the Terms at any time, you must cease to access or use the Website immediately, you must notify us with your intention to terminate the Agreement, and if you are obligated in accordance with the law to comply with any Terms after termination of the Agreement, then we reserve our rights to enforce compliance with the Terms.

2. PRIVACY, SECURITY & YOUR ACCOUNT

By entering into this Agreement, you understand that our Website and Services operate in accordance with our Privacy Policy. We store data relating to the Services within the following locations: Bulgaria, United Kingdom and Germany. We have put in place adequate measures required to safeguard personal data that we collect from you. However, you are responsible for any personal data that you provide while using the Services if they are neither required nor actively collected by us.

You are responsible both for safeguarding the credentials that you use to access the Services and for the activities or actions carried out under your credentials, whether your credentials are associated with our Services or those of a third party. You agree not to disclose your password to any third party.

You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account, so that we are aware of the next steps that should be taken. You must, without delay, mitigate any damage or loss that may extend from any breach of security or unauthorized use of your account.

You are responsible for and shall at all times maintain your data on your own local or remote backup system separate from our equipment or servers. You acknowledge that access to the internet may be interrupted at any time and that hardware is mechanical and prone to failure,

without warning. We offer backup services and, if so subscribed, backups are performed on a best-effort basis, but in no event, with backup subscription or otherwise, shall we be responsible to you for any lost files, data, damages or other information further to our Disclaimers & Limitation of Liability section.

When you create an account with us, you must provide us information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of the Terms, which may result in immediate termination of your account on our Service.

3. ORDERS, PAYMENTS, CANCELLATIONS, TERMINATION & REFUNDS

3.1 – ORDERS

If you wish to carry out a purchase of any product or service made available through the Services (an “Order”), you may be asked to supply certain information relevant to your Order, such as your name, email address, and contact details. In the event payment to us is initiated via a third party (such as Skrill, PayPal, or other providers with whom we choose to work), you will be providing such payment details through a third party.

You represent and warrant that: (i) you have the legal right and permission to use any credit card(s) or other payment method(s) in connection with any Purchase; and that (ii) the information you supply to us is true, correct and complete.

By submitting such information, you grant us the right to provide the information to third parties for purposes of facilitating the completion of Orders.

We reserve the right to refuse or cancel your order at any time for certain reasons including but not limited to: product or service availability, errors in the description or price of the product or service, error in your order or other reasons. We reserve the right to refuse or cancel your order and account if fraud or an unauthorized or illegal transaction is suspected.

3.2 – PAYMENTS

All invoices are generated on the 1st of every month, and such invoices specify the amount payable to us by you for your use of Services in the previous month. For example, if you used our Services in the month of January, then we would issue you an invoice for your use of Services in January on the 1st of February. All invoices must be paid within 14 days of the invoice date. Failure to complete payment within this period can result in automatic suspension of Services, and failure to complete payment after 27 days will render all Services to you terminated. We are not obligated to preserve your data following failure to pay within 27 days, and we strongly recommend you make payments on time accordingly.

3.3 – CANCELLATIONS

We have the right to cancel an account without any notification and without any reason, but we may provide a refund on a pro-rata basis in the event you did not breach any Terms at the time of cancellation, and such refund may be provided within 90 days of cancellation.

You may can cancel specific products and services that are not Service Level Agreements (“SLAs”) (e.g., virtual private servers (VPSs), Software Licenses, Control Panels, and Backups) included in the Services at any time, and these products and services will be canceled directly and without a notice period, which means you will pay only for the duration you use of a specific subscription duration (pro-rata basis). Regarding SLAs, these can be canceled at any time only by providing us 30 days’ notice.

3.4 -TERMINATION & REFUNDS

We may terminate or suspend your account immediately, without prior notice or liability, for any reason whatsoever, including without limitation if you breach the Terms. If for any reason your account is suspended or deactivated due to a breach of our Terms, you will not be eligible for any refund including your balance.

Upon termination, your right to use the Services will immediately cease. If you wish to terminate your account, you must notify us and await our confirmation, and then you may simply discontinue using the Services.

3.5 – REFUNDS

We operate on a 7-day money back guarantee. If you are not satisfied with the Services for any reason during the first 7 days from the start of the subscription of the Services, you may submit a request for a cancellation and a refund to billing (at) serverberry.com. If we are unable to address your concerns, then we will issue you a refund. Please note that handling costs per refund may reach up to \$10. Refunds are available only for the first purchase you make under your account with us.

Dedicated servers have strictly a NO REFUND condition due to investment made when order. Under no circumstances REFUNDS will be PERMITTED on Dedicated Servers product.

4 – Use of our services

You agree to our fair and legal use of our services by agreeing to our Terms. Our fair and legal use of our services exists to protect you, us, and third parties from any malicious or unsafe environments. Additionally, it exists to promote fair and acceptable use of our services.

No illegal activity of any kind is permitted on our servers including, but not limited to: unauthorized storage or distribution of copyrighted software, trademark infringement, warez

sites, violations of any state or federal laws or any jurisdiction under which the Terms are governed, and selling or distributing contraband. It is your responsibility to verify compliance with the law.

Some more examples of prohibited content or links include (but are not limited to):

- Pirated software/videos
- Hacking sites, programs or archives
- DDoSing, scanning or probing other internet devices
- Warez, Warez Linking, Nulled Scripts Sites
- Distribution of music files or any other material in which the account holder does not own the copyright.
- SPAM and Unsolicited Commercial Email
- Currency mining or any other form of mining

You will take all reasonable steps to maintain adequate data protection legal compliance in your use of our Services, and you must not carry out any activities that in our opinion are in violation of this terms. You must not misuse our system resources, this includes network capacity, CPU usage and storage.

To protect our servers, IP addresses and to ensure an enterprise and professional platform, we have put in place a block on port 25 and a limitation of bandwidth for VM. The limitations can be removed based on a request and audit from ServerBerry.

5. AVAILABILITY, UPTIME & SUPPORT

5.1 – AVAILABILITY

We frequently update our offerings of products and services included in our overall Services. The Services may be mispriced, described inaccurately, or unavailable, and we may experience delays in updating information on the Service and in our advertising on other websites. Accordingly, we cannot and do not guarantee the accuracy or completeness of any information, including prices, product images, specifications, availability, and services. We reserve the right to change or update information and to correct errors, inaccuracies, or omissions at any time without prior notice. Please note our refund policy.

5.2 – UPTIME

While we aim to provide 100% uptime, we will utilize our best and reasonable efforts to achieve this.

5.3 – SUPPORT

Our support department can be reached via Website chat or via email. We do not offer managed services, and our support team work to address only hardware and network-related matters. If you order a specific SLA through us, then our team will address your technical questions related to the SLA. To contact our support department by email, you may fill in the contact form on our Website or send an email to support (at) serverberry.com. You can reach us 24 hours per day, 7 days a week, 365 days a year.

6. CODE OF CONDUCT

You agree to our Code of Conduct by agreeing to our Terms. Our Code of Conduct exists to protect you, us, and third parties from any malicious or unsafe environments. Additionally, it exists to promote fair and acceptable use of our Services.

No illegal activity of any kind is permitted on our servers including, but not limited to: unauthorized storage or distribution of copyrighted software, trademark infringement, warez sites, violations of any state or federal laws or any jurisdiction under which the Terms are governed, and selling or distributing contraband. It is your responsibility to verify compliance with the law.

No internet abuse of any kind is allowed including, but not limited to: spam, mass email programs, cross-posting unsolicited message to online groups, posting obscene or inflammatory messages, threatening internet users, mail bombing, denial of service attacks, and running packet sniffers or port scanners – we operate on a strict anti-spam and anti-abuse policy and will carry out investigations into such activity in order identify and tackle such abuse.

You will take all reasonable steps to maintain adequate data protection legal compliance in your use of our Services, and you must not carry out any activities that in our opinion are in violation of the spirit of our Code of Conduct. You must not use our Services, whether web servers, email servers, or any other servers or applications on our Services in any abusive manner. You must not misuse our system resources, this includes network capacity, CPU usage and storage.

You will take all reasonable steps to use our Services fairly towards us and our other customers, and you will not take any steps that violate acceptable usage defined within the Code of Conduct. You take full responsibility of all scripts and material uploaded through our Services.

Should a service abuse violation occur in our opinion and via our monitoring of Services, which may include inspection of your account and usage of Services, then in addition to all other legal and equitable remedies, we may terminate the account without notice and without any refunds. In such event, you shall be responsible for any and all damages caused to us, and we may charge you an amount equal to the cost associated with repairing any damages done.

7. DISCLAIMERS & LIMITATION OF LIABILITY

TO THE EXTENT ALLOWED UNDER LAW, WE (AND THOSE THAT WE WORK WITH TO PROVIDE THE SERVICES) (A) DISCLAIM ALL IMPLIED WARRANTIES AND REPRESENTATIONS (E.G. WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF DATA, AND NONINFRINGEMENT); (B) DO NOT GUARANTEE THAT THE SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS, AND (C) PROVIDE THE SERVICE (INCLUDING CONTENT AND INFORMATION) ON AN “AS IS” AND “AS AVAILABLE” BASIS. SOME LAWS DO NOT ALLOW CERTAIN DISCLAIMERS, SO SOME OR ALL OF THESE DISCLAIMERS MAY NOT APPLY TO YOU.

TO THE EXTENT PERMITTED UNDER LAW (AND UNLESS WE HAVE ENTERED INTO A SEPARATE WRITTEN AGREEMENT THAT SUPERSEDES THIS AGREEMENT), WE (AND THOSE THAT WE WORK WITH TO PROVIDE THE SERVICES) SHALL NOT BE LIABLE TO YOU OR OTHERS FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF DATA, OPPORTUNITIES, REPUTATION, PROFITS OR REVENUES, RELATED TO THE SERVICES (E.G. OFFENSIVE OR DEFAMATORY STATEMENTS, DOWN TIME OR LOSS, USE OR CHANGES TO YOUR INFORMATION OR CONTENT).

IN NO EVENT SHALL OUR LIABILITY (AND THOSE THAT WE WORK WITH TO PROVIDE THE SERVICES) EXCEED, IN THE AGGREGATE FOR ALL CLAIMS, AN AMOUNT THAT IS THE LESSER OF (A) FIVE TIMES THE MOST RECENT MONTHLY OR YEARLY FEE THAT YOU PAID FOR A PREMIUM SERVICE, IF ANY, OR (B) USD 5,000.

THIS LIMITATION OF LIABILITY IS PART OF THE BASIS OF THE BARGAIN BETWEEN YOU AND US AND SHALL APPLY TO ALL CLAIMS OF LIABILITY (E.G. WARRANTY, TORT, NEGLIGENCE, CONTRACT, LAW) AND EVEN IF WE HAVE BEEN TOLD OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF THESE REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

SOME LAWS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY, SO THESE LIMITS MAY NOT APPLY TO YOU.

8. EXTERNAL LINKS

Our Services may contain links to external websites or services that are not owned or controlled by us.

Further to the Disclaimers & Limitation of Liability section, we have no control over, nor do we assume any responsibility for, the content, privacy policies, or practices of any external websites or services. You further acknowledge and agree that we are not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such web sites or services.

We strongly advise you to read the terms & conditions, privacy policies, and any other terms of any external (third party) websites or services you access or use.

9. INTELLECTUAL PROPERTY

The Services and its original content, features and functionality are and shall remain our exclusive property unless otherwise transferred. The Service is protected by copyright, trademark, and other laws of Gibraltar, the United States, the United Kingdom, the Netherlands, and applicable provisions of EU law. Our trademarks and trade dress may not be used in connection with any product or service without our prior written consent.

10. DMCA NOTICES

Under the Digital Millennium Copyright Act (“DMCA”) it is possible to notify a service provider such as ourselves of a violation of the DMCA. In a DMCA Notice, a copyright owner can request us to remove any copyrighted material hosted on servers controlled by us.

You may submit DMCA Notices to abuse (at) serverberry.com with the following information:

- Full name, telephone number, address, and email address
- Proof of ownership or authorization to act on behalf of the owner of copyrighted material
- Specific website or IP address where the content is hosted
- Reason for notification

If we interpret that the notification provided to us is sufficient for taking action, then we will do so first by notifying the suspected infringer of copyright (the “subject”) of the DMCA Notice, and should the subject not take reasonable action further to our notification, we will suspend the subject’s Services.

11. GENERAL

You agree to comply with all rules, regulations, and laws applicable to you in addition to these Terms.

11.1 – GOVERNING LAW & JURISDICTION:

The agreement is governed by Bulgarian law. Any potential disputes occurring between ServerBerry and the Client will be settled amicably, failure which the disputes are referred for settlement to the Bulgarian courts of jurisdiction.

11.2 – NO WAIVER

Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights.

11.3 – FORCE MAJEURE

We will not be responsible for our availability, uninterrupted uptime, or data backups and integrity in the event of any change in or new laws, rules or regulations, or any act of a government, central bank, monetary authority or other entity in any country relating to, without limitation, exchange controls, restrictions on convertibility, freezes, moratoria, expropriations, requisitions, changes in a country's currency for any reason whatsoever (including countries part of any monetary union), involuntary transfers of any kind; force majeure, natural disaster, industrial action, acts of war, acts of terrorism, civil strife, riots or a state of political or economic chaos in any country; or any other circumstances beyond our control.

11.4 – SEVERANCE

If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect.

11.5 – ENTIRE AGREEMENT

These Terms constitute the entire agreement between us regarding our Service, and supersede and replace any prior agreements we might have between us regarding the Service.

11.6 – CONTACT & NOTICE

Please contact support (at) serverberry.com with any questions you may have, and we aim to respond to you in a timely manner. All notices shall be communicated in writing by you or by ourselves through email except where we determine providing notice is reasonable by publishing an announcement on the Website.