

NAK Systems

Terms of Service for Virtual Server Space

- **Changes to Terms of Service.** In some cases, we will notify you in advance, and your continued use of the Service after the changes have been made will constitute your acceptance of the changes. Please therefore make sure you read any such notice carefully. If you do not wish to continue using the Service under the new version of the Agreements, you may terminate the Agreements by contacting us through the support@naksystems.ca
- **Parties.** This agreement is between NAK Systems Inc. (PROVIDER) and the party as specified in the application \ Invoice (CLIENT).
- **Virtual Server Space (VSS).** This agreement covers the following VSS services only. Other Internet services by the same PROVIDER are available at www.naksystems.ca. and maybe subject to additional agreements.
- **Space usage.** PROVIDER will allow the specified per plan VSS storage space to be used by the CLIENT as long as the use is in compliance with the policies set below.
- **Bandwidth usage.** PROVIDER will not restrict the bandwidth used by the CLIENT as long as the use is in compliance with the policies set below.
- **Policies.** CLIENT agrees to comply strictly with PROVIDERS "Acceptable use policy" and "Copyright infringement policy". In addition to these CLIENTS agrees not to run any kind of 'blacklisted server applications'. Every program/script that opens a port on the VSS is considered a 'server application'. These include but are not limited to IRC servers, proxies, botnets, crypto mining. CLIENT understands that the services are subject to immediate termination without compensation for non-compliance with the policies. Further, CLIENT will be responsible for the full amount of any tangible and intangible damages this may cause. PROVIDER reserves the right to change the policies from time to time to reflect the dynamic nature of the Internet. Both policies are available on-line any time or as a hard copy by request only.
- **Account sharing.** Account sharing is only permitted when used in conjunction with our VSS plans. Account sharing is not allowed with any other services. PROVIDER will terminate immediately and without compensation accounts, which share the VSS space with others or subdivide and resell the VSS space. Subdivision of the VSS space into two or more spaces is not allowed unless the approve in writing by NAK Systems Inc.
- **Excluded Services.** Provider will not provide services and will terminate existing services immediately without compensation if the CLIENT's VSS is involved in any of the following: adult sites, copyrights violation, pirated software (warez), pirated music and web sites hosting, or whose primary business is web advertisement.
- **On-line subscription.** CLIENT makes an on-line, paperless subscription for the services. CLIENT acknowledges that all the information he/she submits on-line is true and correct to the best of his/her knowledge. CLIENT agrees that the act of submitting his subscription form on-line is equivalent to his/her signature. PROVIDER will bill according to the billing period unless a cancellation in writing is received.
- **Price change.** PROVIDER has the right to change the price of the services to reflect a change in the cost of the service, or other reasons. In case of price change, PROVIDER will send a 30 day advanced notice by email only.
- **Start of services.** Services will typically start on the same business day on PROVIDER's systems(s). Domain registration changes may take longer.
- **Quality of Services.** Although the PROVIDER will make the best efforts to provide quality and uninterrupted services this is not guaranteed. PROVIDER will not be responsible for any damages a service interruption may cause to the Client. Furthermore PROVIDER will not censor any content on INTERNET. It will be CLIENT's responsibility for the usage of his account and any consequences of this usage.
- **Fees.** CLIENT agrees to pay for the services setup fee, monthly fee, heavy traffic fee (if any) and excessive space fee (if any). The setup fee and first month fee is due upon the receipt of this agreement. PROVIDER will notify CLIENT in advance if any heavy traffic fee and/or excessive space fee are due.
- **Domain name registration.** PROVIDER will register the domain name(s) as submitted in the subscription forms. First year registration fee for one domain is included in the plan. CLIENT agrees to pay the registration fees for

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the domain(s) thereafter. CLIENT agrees to pay the registration fee for the first year in case he cancels the service before the expiration of the first year.

- **Termination of Services.** PROVIDER reserves the right to refuse services to anyone and to terminate existing services with 14 days advance notice for any or no reason; and without advance notice if the CLIENT violates the clauses of this agreement. CLIENT has the right to terminate the services at any time with a written notice sent by email to support@naksystems.ca. Both parties agree that there will be no monetary compensation for terminated services regardless of the reason. No refunds. No pro-rate.
- **Automatic account upgrade.** PROVIDER may upgrade with email notice all VSS accounts, which do not comply with the restrictions of p.5 and p.7 above to metered plans with traffic charges and/or storage space charges.
- **Payments.** CLIENT agrees to pay by cheque, company purchase order. CLIENT agrees to provide updated information on-line as may be requested. CLIENT understands that non-payment will result in automatic "hold" on his/her account. During the hold period the VSS will not be accessible. The account will be "reactivated" after payment in full is received. Accounts will be automatically renewed unless notified prior to expiration date of service.
- **Late Payment.** CLIENT agrees to pay a one time penalty of 6% of the amount due plus \$10 per month for delayed payments.
- **Lawful use of INTERNET.** CLIENT agrees to use INTERNET in accordance with the law and with the ethical rules established or to be set up in the future.
- **No solicitation.** CLIENT agrees not to approach PROVIDER's employees with proposals to hire them as his own employees or contractors. If CLIENT were to hire any of REGISTRAR's employees, CLIENT agrees to pay PROVIDER for each employee thus hired the greater amount of: three years salary for that employee as CLIENT is to pay such employee or \$200,000.00
- **LIMITED LIABILITY.** PROVIDER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE PRODUCT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA, PHONE BILLS, COMMUNICATION LINES BILLS, LOSS OF PRIVACY, DAMAGES TO THIRD PARTY EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER ANY CLAIMS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE. FURTHER, PROVIDER WILL NOT CENSOR ANY CONTENT ON THE INTERNET. IT WILL BE CLIENT'S RESPONSIBILITY FOR THE USAGE OF HIS ACCOUNT AND ANY CONSEQUENCES OF THIS USAGE.
- **Indemnification.** CLIENT shall indemnify, defend by counsel reasonably accepted by PROVIDER, protect and hold PROVIDER harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, or judgments directly or indirectly arising out of or related to the web hosting and other services provided by PROVIDER to the CLIENT.
- **Security and Integrity of Information.** Although PROVIDER implements the latest technology for information protection there is no guarantee that the information on Internet is absolutely secured or never may be destroyed. CLIENT agrees to keep the PROVIDER harmless in case of loss of information or loss of privacy.
- **Entire Agreement.** This Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings and agreements between the parties with respect to the subject matter hereof, all of which representations, communications, understandings and agreements are hereby canceled to the extent they are not specifically merged herein. The parties acknowledge and agree that neither of the parties is entering into this Agreement on the basis of any representations or promises not expressly contained herein.
- **Modification.** This Agreement shall not be modified, amended, canceled or in any way altered, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and signed by both of the parties hereto.
- **Waiver.** Performance of any obligation required of a party thereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described

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therein. The waiver by either party hereto of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this Agreement.

- **Severability.** If any provision of this Agreement shall be unlawful, void, or for any reason, unenforceable, it shall be deemed severable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Agreement, which shall remain valid and enforceable according to its terms.
- **Governing Law.** This Agreement was entered into in the Province Of Alberta and its validity, construction, interpretation and legal effect shall be governed by the laws and judicial decisions of the Province Of Alberta applicable to contracts entered into and performed entirely within the Province Of Alberta.
- **Authority to Execute.** Each of the parties to this Agreement represents and warrants that it has full power to enter into this Agreement and that it hasn't assigned, encumbered, or in any manner transferred all or any portion of the claims covered by this Agreement.
- **Benefit of Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and except as otherwise provided herein, their respective legal successors and permitted assigns.
- **Cumulative Remedies.** Except as specifically provided herein, no remedy made available to either party hereunder is intended to be exclusive of any other remedy provided hereunder or available at law or in equity.
- **No Partnership or Agency.** Nothing in this Agreement shall be construed as creating a joint venture, partnership, agency, employment relationship, franchise relationship or taxable entity between the parties, nor shall either party have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other party hereto, it being understood that the parties are independent contractors vis-a-vis one another.
- **No Third Party Beneficiaries.** Nothing contained in this Agreement, express or implied, shall be deemed to confer any rights or remedies upon, nor obligate any of the parties hereto, to any person or entity other than such parties, unless so stated to the contrary.
- **Excused Performances.** Provider shall not be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of the Services, resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, war, strikes or other labor disputes and disturbances, fire, transportation contingencies, shortages of facilities, fuel, energy, labor or materials, or laws, regulations, acts or order of any government agency or official thereof, other catastrophes, or any other circumstances beyond Provider's reasonable control. In the event of any such delay or failure, performance of the Services shall be deferred to a date and time mutually agreeable by the parties.
- **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- **Captions.** The section headings and captions contained herein are for reference purposes and convenience only and shall not in any way affect the meaning or interpretation of this Agreement.
- **Gender.** Where the context so requires, the masculine gender shall include the feminine or neuter, and the singular shall include the plural and the plural the singular.
- **Recitals.** The recitals above set forth are incorporated herein by reference.
- **Arbitration.** Any dispute arising under this agreement shall be resolved by binding arbitration in the city of Grande Prairie, Alberta and under the rules of the Canadian Arbitration Association.

Last revised – January 2, 2018

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Acceptable Use Policy

NAK Systems Inc. and its affiliates provide to business and consumer users several information technology related services, including such services as Internet access, various electronic mail (email) packages and services, Virtual Server Space(VSS) hosting arrangements, server collocation and other online and Internet-related services.

NAK Systems Inc. reserves the right to refuse service to any individual, company or corporation. In addition, we reserve the right to suspend or terminate service to a client whose activities may be deemed detrimental to our client base. As a courtesy, we will always attempt to contact our clients to determine if other NAK Systems Inc. plans may better suit their needs.

It is contrary to NAK Systems Inc. policy for any user of any of these services to effect or participate in any of the following activities through an NAK Systems Inc.- provided service:

1. To post ten (10) or more messages similar in content to Usenet or other newsgroups, forums, email mailing lists or other similar groups or lists;
2. To post to any Usenet or other newsgroup, forum, email mailing list or other similar group or list articles which are off-topic according to the charter or other owner-published FAQ or description of the group or list;
3. To send unsolicited emailings to more than twenty-five (25) email users, if such unsolicited emailings could reasonably be expected to provoke complaints;
4. To falsify user information provided to NAK Systems Inc. or to other users of the service in connection with use of an NAK Systems Inc. service; and
5. To engage in any of the foregoing activities by using the service of another provider, but channeling such activities through an NAK Systems Inc. account, re-mailer, or otherwise through an NAK Systems Inc. service or using an NAK Systems Inc. account as a mail-drop for responses or otherwise using the services of another provider for the purpose of facilitating the foregoing activities if such use of another party's service could reasonably be expected to adversely affect an NAK Systems Inc. service.
6. To use NAK Systems Inc. services for illegal activities and activities harmful to others' computers, data, software or networks including but not limited to hacker activities, virus creation and distribution, denial of services attacks, email bombs, etc.
7. To use NAK Systems Inc. services to post the following on the Internet
 - 7.1. Copyright, trademark, patent, trade secret or other intellectual property infringement, including but not limited to offering pirated computer programs or links to such programs, serial or registration numbers for software programs, copyrighted music, copyrighted images; copyrighted texts etc.
 - 7.2. Displaying material that exploits children under 18 years of age;
 - 7.3. Displaying material containing nudity or pornographic material of any kind;
 - 7.4. Providing material that is offensive to the online community, including but not limited to profanity, bigotry, prejudice, racism, hatred, etc.
 - 7.5. Promoting or providing information about illegal activities, promoting physical harm or injury against any group or individual, or promoting any act of cruelty to animals;

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- 7.6. Defaming any person or group;
- 7.7. Promoting or soliciting for participation in multilevel marketing or pyramid schemes;
- 7.8. Gathering personally identifiable information for unlawful purposes.

Furthermore, it is contrary to NAK Systems Inc.'s policy to send unsolicited emails to the NAK Systems Inc. provided addresses of NAK Systems Inc. customers, unless the sender has a business or personal relationship to these NAK Systems Inc. customers. This rule applies regardless of whether the sender is NAK Systems Inc. customer, or has used a NAK Systems Inc. account to send these emails.

NAK Systems Inc. considers the above practices to constitute abuse of our service and of the recipients of such unsolicited mailings and/or postings, who often bear the expense. Therefore, these practices are prohibited by NAK Systems Inc.'s terms and conditions of service. Engaging in one or more of these practices will result in termination of the offender's account and/or access to NAK Systems Inc. services. NAK Systems Inc. reserves the right to redirect the homepage of any customer who uses their NAK Systems Inc. service to send spam to an anti-spam page, until the offender stops sending unsolicited email, cancels their account or has their account terminated by NAK Systems Inc.

In addition, NAK Systems Inc. reserves the right, where feasible, to implement technical mechanisms which block multiple postings as described above before they are forwarded or otherwise sent to their intended recipients.

In addition to these activities, NAK Systems Inc.'s terms and conditions of service also prohibit other forms of abuse such as harassment and the posting of illegal or unlawful materials, and NAK Systems Inc. will respond as appropriate to these other activities as well.

NAK Systems Inc. is located in Alberta and most of its equipment (including equipment used to provide mail services) is outside of Canada. This is a policy on unsolicited mail advertising, among other things. At the time of writing this text Canadian law requires adherence to such a policy in certain circumstances. Canadian law also provides for liquidated damages, in the event that such policy is not complied with. These damages start at \$25,000 per day.

Nothing contained in this policy shall be construed to limit NAK Systems Inc.'s actions or remedies in any way with respect to any of the foregoing activities, and NAK Systems Inc. reserves the right to take any and all additional actions it may deem appropriate with respect to such activities, including without limitation taking action to recover the costs and expenses of identifying offenders and removing them from the NAK Systems Inc. service, and levying cancellation charges to cover NAK Systems Inc.'s costs in the event of disconnection of dedicated access for the causes outlined above. In addition, NAK Systems Inc. reserves, at all times, all rights and remedies available to it with respect to such activities at law or in equity.

Changes to this policy. In some cases, we will notify you in advance, and your continued use of the Services after the changes have been made will constitute your acceptance of the changes. Please therefore make sure you read any such notice carefully. If you do not wish to continue using the Service under the new version of the Agreements, you may terminate the Agreements by contacting us through the support@naksystems.ca

If you have any questions regarding this Policy, please contact support@naksystems.ca

Rev. January 2, 2018

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