



## Terms of Service

*Last Updated 03/02/2017*

This Terms of Service, or TOS, is a contract between you (the client or customer) and ProKM Networks, LLC. (ProKM Networks, ProKM, we, us, or our) [ThunderCloud Technology is a division of ProKM Networks and is represented as the same]. All clients of ProKM Networks agree to abide by these policies. All clients of ProKM Networks also warrant that they are at least 18 years of age, and that they have the right and authority to bind themselves, or the company that they represent, to the terms of this TOS. This TOS, may be modified from time-to-time. All clients of ProKM Networks agree to be bound by these modifications. The most recent version of this TOS can always be found here.

While we facilitate your business on the Internet, we are an independent contractor. We only have control of the products and services we provide directly, and are not liable for your actions, the actions of our third party service providers, or the actions of individuals who use your products and services (End Users).

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## 1. Services

ProKM Networks provides a number of services to its customers. The services and products provided to you by ProKM Networks, as set out on our website, are referred to as the Services. We provide the Services to you based on the description of them on our website as of the Effective Date. Should our website change subsequent to the Effective Date, we have no obligation to modify the Services to reflect such a change.

The Services may be provided by third parties. These third parties may have reserved the right to make changes, including material changes, to the services provided by them. We will use commercially reasonable efforts to inform you of those changes. However, you may not terminate this TOS based on such a change by a third party.

### Domain Name Services

We resell domain names. When you apply to register a domain name, your request is transmitted to our Registrars, which are currently eNom and NameCheap. You are bound by the respective registrars domain name registration policies and procedures. These policies and procedures are available here. Because there is often a period of time between your registration request and the actual registration of the domain name, we do not guarantee that your registration domain name will be registered.

We will use commercially reasonable efforts to register or update domain names. However, circumstances beyond our control, such as billing issues, may result in your domain name failing to register, or to lapse. Our liability in such a case is limited by paragraph 12 below. For this reason, it is your obligation to ensure that your domain name does not lapse.

cPanel

Please review paragraph 2.1.1 of the cPanel End User License Agreement (<http://cpanel.com/legal-store.html>). It is expressly incorporated into this TOS by reference.

## 2. Contact Information

You are required to provide us with accurate information when setting up your account, during the course of our relationship, and when corresponding with us. On occasion, we may need to communicate with you by e-mail about the Services. You agree to maintain a working e-mail address that is monitored daily. We have no responsibility, or liability, for interruptions in the Services, or damages of any sort, based on communications that are misdirected as a result of your failure to provide us with updated contact information.

## 3. Term

All prospective customers are subject to screening for potential fraud. We are not bound by this TOS until these procedures are completed to our satisfaction.

The “Effective Date” of this TOS will be the day on which we receive payment from you.

This TOS will begin on the Effective Date and continue for the term set out on the page describing the Services (Initial Term). After the expiration of the Initial Term, this TOS will renew for successive periods of equal length (Renewal Term). If the page describing the Services does not contain an Initial Term, the Initial Term shall be one month.

## 4. Payment

Your invoice is generated 10 days prior to its due date. The due date is the day of the month you signed up (Due Date). Your credit card or preferred payment method will be charged on the Due Date. You are responsible for the fees and charges set out on the page describing the Services you have purchased, according to the terms set out on that page. In addition, certain aspects of the Services may be billed by third parties to you, through us. All of these are referred to collectively as “Fees.”

## 5. Termination

Either party may terminate the services by providing written notice to the other no later than 25 days from the expiration of the Initial Term or Renewal Term.

We reserve the right to immediately terminate this TOS, and suspend or cancel the Services: (i) for a violation of any of our policies, including those incorporated by reference; and/or (ii) your

failure to pay any amounts due. This right of termination is without prejudice to any other rights we may have. You are not entitled to any type of notice or protest should we exercise these rights.

Upon termination, your account will be closed. We have no responsibility to forward e-mail, 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 e-mail or other communications.

One party may also terminate this TOS upon the occurrence of a material breach, which has not been cured by the other party within 10 days of their receipt of written notice of the breach. For the purposes of defining a material breach, materiality shall be determined from the perspective of a reasonable business person with significant experience in Internet business. Notices of material breach must contain sufficient detail for the party against whom the assertion of material breach is directed to identify the breach and attempt to take corrective action.

## 6. Cancellation

You may cancel this Agreement at any time by providing written notice to us as provided in the paragraph entitled "Termination" We only accept cancellations through our online cancellation form found in at MyThunder.com. It is important to note that if the Order Form contains a term commitment, you will be responsible for all termination charges based on your cancellation. The fact that you cancel this Agreement does not relieve you of responsibility for these charges. If you have a term agreement with us, we strongly suggest you contact us prior to canceling to determine what your cancellation obligations will be.

## 7. Money Back Guarantee

Hosting services carry an unconditional 30 day satisfaction guarantee. To cancel your hosting services and receive a refund, you must contact us within 30 days from the Effective Date of the particular Services you wish to cancel. Only your monthly fees are refundable. Set up, domain name registration, SSL Certificate, and other one-time fees are not refundable. If you paid us by credit card we will credit the card on file, Paypal payments will be refunded on-line. Payments made by check are not refundable. Any custom orders or configuration setups are non-refundable.

## 8. Use of the Services

Your use of the Services are governed by our Acceptable Use Policy (AUP) and Privacy Policy which are incorporated into this TOS 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 or Privacy Policy shall govern.

The terms “unlimited” and “unmetered” are defined by our experience with similarly situated customers. This means that your use of our resources may not exceed that of similarly situated customers. Examples of primary purposes for an account that are not allowed include, but are not limited to:

Audio/Video streaming (other than that which is incidental to a site's operation)

Very large photo galleries

Storage of a large amount of uncompressed or full-size digital images

Online file (FTP) serving

Distribution of large audio or video content such as MP3 files

Online backups (i.e. backup of desktop/laptop computer, files, or anything not directly related to the website)

You may not place excessive burdens on our CPUs, servers or other resources, including our customer support services. You understand that bandwidth, connection speeds and other similar indices of capacity are maximum numbers. Consistently reaching these capacity numbers may result our need to place restrictions on your use of the Services. You agree that we may place restrictions on your use of the Services or customer support services to the extent that they exceed the use of these resources by similarly situated customers.

Shared web hosting accounts are allowed to use a maximum of 600,000 inodes and 35 concurrent HTTP connections to the server. Backups older than 30-days in a customer account may be removed from the server at our discretion. Complimentary Server Rewind for shared web hosting backups are limited to a 50GB quota. If you exceed 50GB of disk usage in your account, your account will no longer be backed up. Please download any cPanel backups and store them locally.

You agree to cooperate with us to facilitate your use of the Services. This cooperation includes, but is not limited to, providing us with correct contact and billing information and ensuring that you, your employees, and/or agents have sufficient technical expertise to understand how to implement the Services.

You are responsible for all long distance and/or connection charges associated with the Services. You are responsible for the Fees once our Services are made available to you. It is your responsibility to ensure that you can connect with us to use the Services.

You have read and agree to the policies outlined in the ProKM Networks Support Policy, which is incorporated into this TOS by reference.

## 9. Licenses and Intellectual Property

ProKM Networks grants to you a non-exclusive, non-transferable, worldwide, royalty free license to use technology provided by ProKM Networks solely to access and use 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 ProKM Networks technology shall remain with ProKM Networks, or ProKM Networks

licensors. You are not permitted to circumvent any devices designed to protect ProKM Networks, or its licensors', ownership interests in the technology provided to you. In addition, you may not reverse engineer this technology.

We may provide technical support, implementation, customer service or administrative information to you. This information is not confidential. We may use this information, as well as aggregate information gleaned from the operation of our business in general, to improve, or create new products and services. We shall be the exclusive owners of this intellectual property. You waive any rights you may in this intellectual property, and assign all right, title and interest in it to us.

You grant ProKM Networks, and any third parties used by ProKM Networks 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, End Users, 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.

## 10. ProKM Networks Representations and Warranty

ProKM Networks warrants that it will perform the Services in accordance with other similarly situated companies. To make a warranty claim, you must notify ProKM Networks in writing within 30 days of the date ProKM Networks alleged breach. Your exclusive remedy, and ProKM Networks sole obligation, in the case of a breach of warranty is, at ProKM Networks option, to (i) reperform the Services; or (ii) issue you a credit based on the amount of time the Services were not in conformity with this warranty, subtracted (“pro-rated”) by the amount of time they were in conformance. For the purposes of ProKM Networks warranty, the following issues shall not constitute services within the definition of “similarly situated companies”: up-time, “up-time guarantees” or other items for which ProKM Networks provides a service level agreement, regardless of whether a service level agreement is, or was, available for the Services.

Services provided by third parties are expressly excluded from this warranty.

## 11. Your Representations and Warranties

You represent and warrant to ProKM Networks that: (i) you have the experience and knowledge necessary to use the Services; (ii) you understand and appreciate the risks inherent to you, your business and your person, that come from using the Services in particular, and doing business on the Internet in general; (iii) you will provide us with material that may be implemented by us to provide the Services without extra effort on our part; and/or (iv) you have sufficient knowledge about administering, designing and operating the functions facilitated by the Service to take advantage of the Service.

## 12. Disclaimers

THE SERVICES ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. OTHER THAN AS EXPRESSLY SET OUT HEREIN, PROKM NETWORKS HAS NOT, AND DOES 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. PROKM NETWORKS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SECURE OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. PROKM NETWORKS IS NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO, OR FROM, YOU OR STORED BY YOU OR ANY OF YOUR CUSTOMERS VIA THE SERVICES PROVIDED BY US. PROKM NETWORKS SPECIFICALLY DISCLAIMS 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 PROKM NETWORKS SHALL BE PASSED THROUGH TO YOU, NOR SHALL YOU CLAIM TO BE A THIRD PARTY BENEFICIARY OF SUCH WARRANTIES.

THIS WARRANTY DISCLAIMER EXTENDS TO ANY ORAL OR WRITTEN INFORMATION YOU MAY HAVE RECEIVED FROM PROKM NETWORKS, ITS EMPLOYEES, THIRD-PARTY VENDORS, AGENTS OR AFFILIATES. YOU MAY NOT RELY ON SUCH INFORMATION.

SOME STATES DO NOT ALLOW PROKM NETWORKS TO EXCLUDE CERTAIN WARRANTIES. IF THIS APPLIES TO YOU, YOUR WARRANTY IS LIMITED TO 90 DAYS FROM THE EFFECTIVE DATE.

## 13. Limitation of Liability

It is your obligation to ensure the accuracy, integrity, title or ownership, and security of anything you receive from the Internet. You agree that ProKM Networks has no liability, of any sort, for content you or your customers access from the Internet.

ProKM Networks provides no guarantee that the Services will be uninterrupted, or continuous, that you will be able to access ProKM Networks network at a particular time, that any data transmitted by ProKM Networks is accurate, error free, virus free, secure, or inoffensive. You acknowledge that it is your responsibility to keep back-up copies of your data. ProKM Networks is not responsible for any loss of data, for any reason. ProKM Networks is 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 its network.

IN NO EVENT WILL PROKM NETWORKS LIABILITY HEREUNDER EXCEED THE AGGREGATE FEES ACTUALLY RECEIVED BY PROKM NETWORKS FROM YOU FOR

THE 3 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. FOR THE PURPOSES OF THIS PARAGRAPH ONLY, THE TERM PROKM NETWORKS SHALL BE INTERPRETED TO INCLUDE PROKM NETWORKS EMPLOYEES, AGENTS, OWNERS, DIRECTORS, OFFICERS, AFFILIATES, AND THIRD PARTIES PROVIDING SERVICES TO YOU THROUGH US.

YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU WILL NOT UNDER ANY CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, HOLD PROKM NETWORKS 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 PROKM NETWORKS HAS 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 EXTENT PERMITTED BY LAW.

## 14. Indemnification

You agree to indemnify, defend and hold harmless ProKM Networks and its 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 attorney's 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 ProKM Networks 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 Agreement. 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.

ProKM Networks shall indemnify and hold you harmless from, and at its own expense agrees to defend, or at its option to settle, any claim, suit or proceeding brought or threatened against you so far as it is based on a claim that a product or service provided by ProKM Networks hereunder infringes any patent, copyright, or trademark. This indemnification provision is expressly limited to products or services which are fully owned by ProKM Networks. It does not extend to products or services provided by third parties. If set out in its agreements with third-party suppliers, ProKM Networks shall flow down similar intellectual property indemnification

provisions to you. This paragraph will be conditioned on your notifying ProKM Networks promptly in writing of the claim and giving ProKM Networks full authority, information, and assistance for the defense and settlement thereof. You shall have the right to participate in the defense of the claim at your expense. If such claim has occurred, or in ProKM Networks opinion is likely to occur, you agree to permit ProKM Networks, at its option and expense, either to: (i) procure for you the right to continue using the product or service; (ii) replace with a product or service, regardless of manufacturer, performing the same or similar function as the infringing product or service, or modify the same so that it becomes non-infringing; or (iii) if neither of the foregoing alternatives is reasonably available, immediately terminate ProKM Networks obligations (and your rights) under this TOS with regard to such product or service, and, refund the Fee charged by us for the period in which the Services were unavailable.

## 15. Notices

Notices will be sent to you at the address you provide to us. It is your obligation to ensure that we have the most current address for you.

Please refer to our website, <http://www.thundercloudtechnology.com>, for contact information for most issues, including technical support and billing. Notices regarding this TOS and other ProKM Networks policies should be directed to:

ProKM Networks, LLC  
P.O. Box 1423  
Walled Lake, MI 48390

## 16. Maintenance Policy

ProKM Networks offers a 99.9% uptime guarantee. This guarantee excludes scheduled maintenance periods as outlined in the Maintenance Policy of our server management provider. Their policy is available at <https://www.a2hosting.com/about/policies/server-maintenance>.

## 17. 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, bandwidth interruptions, earthquake, labor disputes, shortages of supplies, riots, war, fire, epidemics, 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.

## 18. Choice of Law, Jurisdiction and Venue

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 Michigan, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. You agree that jurisdiction and venue are proper in the state courts located in Walled Lake, Michigan, or the U.S. District Court for the Eastern District of Michigan located in Ann Arbor Michigan. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.

## 19. All Claims

All claims you bring against us must be resolved in accordance with this TOS. Without limiting the previous sentence, this includes claims based on service outages which are expressly covered by our SLA. All claims filed or brought contrary to this TOS will be considered to be improperly filed and a breach of this TOS. If you file a claim contrary to this TOS, we may recover attorneys fees and costs. Attorney's fees include any fees charged by our in-house, or virtual in-house, attorneys.

## 20. No Waiver

No waiver of rights under this TOS, or any ProKM Networks policy, or agreement between you and ProKM Networks shall constitute a subsequent waiver of this or any other right under this TOS.

## 21. Assignment

This TOS may be assigned by ProKM Networks. It may not be assigned by you. This TOS shall bind and inure to the benefit of the corporate successors and permitted assigns of the parties.

## 22. Severability

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 Agreement shall remain in full force and effect.

## 23. Survival

Sections 11, 12, 13, 14, 15, 18, 19, 22 and 23 shall survive the termination of this Agreement.

## 24. Conditional Services

### IP Address

We will provide, at no cost to you, one shared IP address by default, which will be subject to change at any time. You may use this address only in association with the Services, it shall not be transferred. Additional IP Addresses made available to you are for your exclusive use and shall not be transferred.

### Access

You will have no physical access to the Server.

### Use

While the services you receive may appear to be dedicated solely to your use, the server it is on will be shared with other ProKM Networks customers. You will take no actions to limit the use of the Equipment by our other customers or other entities in general. You will not alter, or attempt to alter mechanisms, including software, implemented by us to facilitate the sharing of a server. You understand that certain aspects of a shared service are designed to facilitate use by multiple parties may affect your use and administration of the service. You may not terminate this Agreement based on the implementation of these features.