

Terms of Service

Terms of service for HSP PERFOHOST, IXVAR INC., located in 32–2 Hudson ave., Montréal, Québec, Canada, H3R 1S6 registered with the Ministère du Revenu du Québec, Direction du registre des entreprises under number 1165251449.

1. Definitions

- 1.1. Account: the customer name allowing CUSTOMER access to PERFOHOST's system.
- 1.2. Annex: appendix with the agreement and / or Terms and Conditions.
- 1.3. Bandwidth: the amount of bits transferred through a connection per time unit.
- 1.4. Bit: Binary digit. The smallest possible unit in a computer. The value of a bit is 0 or 1.
- 1.5. Bps: Bytes per second.
- 1.6. bps: bits per second.
- 1.7. Byte: The unit representing the data size. A character takes up 1 byte (or 8 bits) of space. Among other things this unit is used to represent disk space and data traffic.
- 1.8. Data Traffic: all traffic which is generated by CUSTOMER's website or server. Incoming and outgoing, with the exception of backup traffic, measured in Mb or Gb.
- 1.9. Service: The specified service agreed upon by PERFOHOST and CUSTOMER as documented in the Agreement.
- 1.10. Email address: an address code in the CUSTOMER's name in order to exchange electronic messages via the Internet.
- 1.11. Gigabyte (Gb): 1,000,000,000 bytes.
- 1.12. Gigabit (GB): Gbit 1,000,000,000 bits. Among other thing his unit is used to represent bandwidth.
- 1.13. Hardware: computer- and related equipment.
- 1.14. Hosting: placing and administrating data on a server.
- 1.15. Dial up Number: the telephone number PERFOHOST uses to allow CUSTOMER access to the system and the Internet.
- 1.16. Internet Connectivity: the connection to the internet used by CUSTOMER's website and / or equipment, hosted by PERFOHOST. Internet Connectivity can occur as a data traffic or bandwidth package.
- 1.17. Kilobyte (Kb): 1,000 bytes.
- 1.18. Kilobit (KB): Kbit, 1,000 bits. Among others this unit is used to represent the bandwidth.
- 1.19. Log-In Procedure: the procedure determined by PERFOHOST allowing CUSTOMER to gain access to the system and the Internet.
- 1.20. Megabyte (Mb): 1,000,000 bytes.
- 1.21. Megabit (MB): Mbit, 1,000,000 bits. Among others this unit is used to represent the bandwidth.
- 1.22. Modules: components which are placed in a website. Modules consist of a combination of programming language (scripts), databases and regular website pages.
- 1.23. Netiquette: the generally accepted code of conduct on the Internet as noted in RFC 1855 (<ftp://tp.ripe.net/rfc/rfc1855.txt>) and future adaptations of said document.

1.24. Network: the equipment used for transferring and (if applicable) routing as well as other technical means enabling signal to be transferred between connection points via cables, radio waves, optical means and other electro magnetic means and for the part where these are controlled by PERFOHOST.

1.25. Agreement: the agreement between PERFOHOST and CUSTOMER, which is the basis for the service supplied by PERFOHOST.

1.26. Server: a computer which is hooked up to the Internet and used to exchange and store data.

1.27. Service Level: This is a predetermined level of support binding PERFOHOST to a service package, which is specified in the Agreement.

1.28. Disk Space: the amount of space on the PERFOHOST server allocated for CUSTOMER to store data, depicted in Mb or Gb.

1.29. Spam: bulk sending of large amounts of unsolicited emails with similar contents and / or posting in large amounts of news groups on the Internet of messages with similar contents. These include Opt-Out mailings.

1.30. System: computer equipment and peripherals enabling PERFOHOST to allow CUSTOMER access to the Internet and Hosting services.

1.31. Usage: the amount of data traffic and / or bandwidth used by CUSTOMER during a period of one month.

1.32. Website: one or more integrated Internet pages, preceded by a home page.

2. General

2.1. These Terms and conditions are applicable to all offerings and agreements in which PERFOHOST provides goods or services of any kind to a third party - from here on to be called CUSTOMER, along with goods or services which are not (in detail) specified in these agreements. Deviation of these Terms and Conditions is only legal if these have been agreed upon in writing.

2.2. Applicability of possible purchase, or other conditions by CUSTOMER is explicitly denied. At the time of the actualization of the agreement CUSTOMER is relied upon to have agreed with the explicit applicability of these Terms and Conditions. This also goes for additional orders placed by CUSTOMER, either spoken, by telephone, by fax, by email or by any other means conveyed to PERFOHOST, making a written confirmation by PERFOHOST not (still) obligatory.

2.3. Deviating Terms and Agreements only apply if and when PERFOHOST has accepted these explicitly and in writing.

2.4. All offers made by PERFOHOST are without obligation. Only after an acceptance in writing by PERFOHOST an Agreement is established. An invoice sent by PERFOHOST is equal to a written acceptance. PERFOHOST reserves the right to refuse a would-be customer for reasons left to her discretion.

2.5. A representative wishing to come to an agreement on behalf of a legal entity may be requested by PERFOHOST to produce their authorization in the matter.

2.6. Transactions will be made based on pricing at the time the Agreement was established. Prices are in US Dollars (\$) and not including VAT, feasible tolls, rights and / or telephone bills, unless agreed upon otherwise.

2.7. Some of PERFOHOST's services are outsourced to third parties. PERFOHOST accepts no responsibility for services provided by third parties.

2.8. CUSTOMER hereby authorizes PERFOHOST to add his or her personal details to her database needed for administrative and operational tasks. This database is only accessible to PERFOHOST and is not passed on to third parties, unless PERFOHOST is obligated to by law or court order. CUSTOMER is to notify PERFOHOST as soon as possible in case of alterations in relevant data.

2.9. CUSTOMER will convey all changes to his or her contact details by mail or fax to PERFOHOST. PERFOHOST will only communicate with known contacts provided by CUSTOMER. CUSTOMER will ensure the contacts are available for telephone and email.

2.9. Only PERFOHOST's legal partners are allowed to enter agreements on behalf of PERFOHOST.

3. Delivery

3.1. Delivery means placing a website on the Internet, connecting for usage of the Internet connection and / or the computer equipment and or realizing other services or transferral of products.

3.2. Delivery periods can only be estimated. Exceeding the delivery time never entitles CUSTOMER to be payed damages or cancellation of the order.

3.3. If, due to circumstances, even in case they have a cause within PERFOHOST itself, PERFOHOST is temporarily or permanently unable to fulfill the order partially or completely, PERFOHOST reserves the right to partially or completely cancel or decline the order. PERFOHOST will notify CUSTOMER of such decisions.

3.4. Complaints concerning fulfillment of the agreement, functioning of the system, performance of the website have to be issued in writing. These complaints are regularly inventoried and subsequently action is taken to improve on the situation. PERFOHOST cannot be expected to answer complaints via email personally. Conventional (to be called for) mail will be personally responded to.

3.5. CUSTOMER is expected to allow PERFOHOST to investigate and correct the complaints. In the event of not living up to the letter of the previous article CUSTOMER waives all claims.

3.6. Complaints have no effect on CUSTOMER's payment obligations.

3.7. The ownership of products passes from PERFOHOST to CUSTOMER only when underlying invoice has been completely payed.

4. Payment

4.1. All payments have to be made in advance, unless otherwise agreed upon in writing. Services are invoiced each month in advance, unless otherwise agreed upon in writing. Services will be paid via direct debit, unless otherwise agreed upon in writing.

4.2. Invoices are only payable to PERFOHOST for completion.

4.3. In case of payment more than fourteen (14) days after receiving the invoice, CUSTOMER will owe two (2) percent interest per month over the total amount without a notification or court order.

4.4. In case of late payment PERFOHOST reserves the right to suspend or cancel the services to CUSTOMER without notification or announcement until all unpaid invoices have been paid, despite the payment deadline.

4.5. In case of late payment PERFOHOST will be allowed to claim the in court and out of court costs with CUSTOMER. Out of court costs will be set at fifteen (15) percent of the amount payable, with a minimum of \$500. PERFOHOST is not obligated to show the costs that have in fact been made.

4.6. PERFOHOST is allowed to deduct PERFOHOST's claims with CUSTOMER from the debts owed to CUSTOMER by PERFOHOST, even if these claims prove not to be admissible.

4.7. PERFOHOST is authorized to change the tariffs. These changes will be announced to CUSTOMER at least one (1) month in advance through usual channels.

PERFOHOST is allowed, at all times, to change pricing of payment or other costs.

These changes will be announced at least one (1) month in advance on the news pages of PERFOHOST's website. If CUSTOMER does not wish to submit to these changes, he or she is authorized, deviant from these Terms and Conditions, up until the time of the actuation of the change, to cancel the service per the date of the change.

5. Website

5.1. PERFOHOST designs, develops and administrates new and existing websites.

5.2. The website, in its totality, is property of PERFOHOST. PERFOHOST is legal owner to all rights of industrial and intellectual property among others in the case of content, design, texts, source code, and the form of the website. The other party only reserves the right to use the website. PERFOHOST is authorized to mark each page "© Copyright PERFOHOST <date>" with a link to PERFOHOST's website.

5.3. If an existing website forms the basis of a website developed by PERFOHOST, the original design remains property of CUSTOMER. CUSTOMER will store this website by his or her own means. From the moment PERFOHOST further develops the existing website, it becomes property of PERFOHOST which then reserves all rights. If CUSTOMER is to cancel the agreement, he or she is then only authorized to use the original website.

5.4. CUSTOMER is not authorized to make changes to or copy the website, or place it elsewhere on the Internet.

5.5. CUSTOMER guarantees that no rights by third parties dispute the making available of equipment, software, text, video or audio material to PERFOHOST and bringing about changes to the material and CUSTOMER assumes full responsibility for any action taken based on violation of rights of third parties.

5.6. All source material needed for the design of the website need to be made available to PERFOHOST in digital format within 14 days after the agreement is made.

5.7. PERFOHOST will, depending on the size of the website, place the website on the Internet within 12 weeks after receiving all source material. As soon as CUSTOMER signs off on the concept, the lease period will commence. This period will commence at the latest in 4 weeks after presenting the website.

5.8. Every invoiced website is entitled to one adaptation per year free of charge within a margin specified by PERFOHOST. CUSTOMER will be billed for each time per year the amount noted above is exceeded or for considerable changes compared to the work agreed upon.

6. Modules

- 6.1. PERFOHOST designs, develops and administrates modules.
- 6.2. The module in its totality is property of PERFOHOST. PERFOHOST is legal owner to all rights of industrial and intellectual property among others in the case of content, design, texts, source code, and the form of the module. The other party only reserves the right to use the website. PERFOHOST is authorized to mark each module “© Copyright PERFOHOST <date>” with a link to PERFOHOST’s website.
- 6.3. Modules cannot be handed down, unless agreed upon otherwise in writing.

7. Server hosting

- 7.1. In PERFOHOST’s cabinets PERFOHOST places servers PERFOHOST administrates herself and / or which are leased out to PERFOHOST’s customers. In addition to leasing the space and the server CUSTOMER is able to obtain a Service Level.
- 7.2. Despite the Service Level, CUSTOMER remains responsible for the functioning of the server at all times.
- 7.3. PERFOHOST cannot be held legally accountable for CUSTOMER's equipment. Among other things this means hardware, software, data and/or applications.
- 7.4. If CUSTOMER wishes to place or remove his/her quipment from PERFOHOST CUSTOMER will notify PERFOHOST in writing at least two days in advance. PERFOHOST reserves the right to deny CUSTOMER access to her own equipment in case CUSTOMER does not meet her current or future obligations, flowing from the server hosting agreement between PERFOHOST and CUSTOMER.
- 7.5. CUSTOMER will place his / her equipment in the manner described by PERFOHOST. If CUSTOMER does not occupy the conformed space, PERFOHOST is authorized to use this space temporarily. At CUSTOMER's request PERFOHOST will clear this space within two working days, so CUSTOMER can place his / her equipment.

8. Usage

- 8.1. PERFOHOST supplies internet connections through third parties. Websites are placed on PERFOHOST’s own servers or those of third parties. Servers are placed in leased locations.
- 8.2. CUSTOMER is authorized to utilize the help desk for support during regular office hours.
- 8.3. CUSTOMER supplies the needed hardware and software, peripherals and connections to make access to the system possible.
- 8.4. CUSTOMER is bound by the amount of disk space as described in the agreement. CUSTOMER is responsible for exceeding this amount. If the allocated amount is exceeded, PERFOHOST is authorized to remove (file) information without any legal obligations concerning PERFOHOST.
- 8.5. CUSTOMER will refrain from hindering or damaging other customers, Internet users or the PERFOHOST system. It is specifically prohibited to engage processes or applications -be it through the system or not- if CUSTOMER can suspect within reason this will cause hindrance or damage to PERFOHOST, other customers and Internet users. CUSTOMER is only authorized to run processes or applications if a direct connection, engaged or specifically authorized by PERFOHOST, with the system exists.

8.6. It is prohibited to utilize the connection with PERFOHOST, the system and the disk space for illegal demeanor, actions and or demeanor conflicting with applicable legislation, the netiquette, the agreement or these Terms and Conditions. Among other things, but not exclusively this implies the following actions and demeanors: spamming: the unsolicited sending of bulk amounts of email with similar content and / or unsolicited posting of bulk amounts of messages with similar content on news groups on the Internet; violation of legally protected works or other demeanor conflicting with intellectual property rights held by third parties; publication or distribution of child pornography; sexual intimidation or any other kind of harassment; hacking: gaining access to computers or computer systems on the Internet without permission.

8.7. If PERFOHOST feels CUSTOMER has engaged in any of the above mentioned demeanor, CUSTOMER will be disconnected from the system without restitution of the already payed usage fee and the agreement is terminated. PERFOHOST reserves the right to claim any damages flowing from the issue with CUSTOMER.

8.8. CUSTOMER is not authorized to pass on his or her account or any other rights flowing from the agreement to third parties or allow third parties to use them, unless PERFOHOST has specifically authorized this action in writing.

8.9. Staff from or on behalf of PERFOHOST will not gain knowledge of CUSTOMER's personal electronic mail or monitor CUSTOMER's actions on PERFOHOST's system or other systems on the Internet, unless PERFOHOST has a strong suspicion that CUSTOMER is using the PERFOHOST system to either hack other computers or is using PERFOHOST's services for any other illegal or otherwise illegitimate demeanor.

9. Access

9.1. PERFOHOST is authorized to block CUSTOMER's access to the website, his and / or her email and / or Internet access temporarily if CUSTOMER has failed or partially to meet a commitment or if he or she is acting in a way conflicting with the applying Terms and Conditions.

9.2. Reinstating of CUSTOMER's privileges will occur if and when CUSTOMER has met his or her commitments within a time frame specified by PERFOHOST.

9.3. PERFOHOST is authorized to deny or limit CUSTOMER's access to PERFOHOST if customer exceeds his or her monthly allocated data traffic quota. The suspension or limitation is only lifted after CUSTOMER has met or proven his or her willingness to meet the applying payment requirements to PERFOHOST's satisfaction.

9.4. PERFOHOST reserves the right to assert limiting measures in case of extreme data traffic.

9.5. PERFOHOST cannot be held accountable for any damages flowing from the suspension or limiting mentioned in this article. Suspension or limiting of access does not free CUSTOMER of their payment obligation.

9.6. Lifting a suspension or limitation requires payment of € 500.— by CUSTOMER

10. Domain names

10.1. PERFOHOST provides the registration of domains with third party domain registration organizations on behalf of CUSTOMER for a fee. The choice of the domain name is at the cost and the risk of CUSTOMER. PERFOHOST accepts no responsibility in the matter of choice and use of the domain name.

10.2. Domain names can only be registered if they are still available and CUSTOMER has the right of use.

10.3. Should CUSTOMER be denied the right to use the domain name by the authorized organization, under no circumstances PERFOHOST can be held accountable for the direct and indirect consequences. Nor will PERFOHOST have to take action to restore the right to use the domain name.

11. Administration

11.1. PERFOHOST is authorized to shut down the system (temporarily) or limit its use without prior notice as needed in order to perform reasonably urgent maintenance without this bringing about an obligation to pay damages for PERFOHOST to CUSTOMER.

11.2. PERFOHOST is authorized at all times to make alterations to dial up numbers, to the login procedures, to the account and to the email addresses without this bringing about an obligation to pay damages for PERFOHOST to CUSTOMER. In such a case PERFOHOST will notify CUSTOMER of the changes at the earliest possible convenience.

11.3. PERFOHOST provides the availability of the PERFOHOST systems, and PERFOHOST efforts the utmost to provide optimal availability. However PERFOHOST cannot be held accountable for outages or limited availability of the PERFOHOST systems due to circumstances not to be foreseen within reason. Among other things, but not exclusively this implies discontinuations of the connection to the Internet, outages in the telephone network, outages with third parties, complete occupation of the dial up lines with third parties, disruptions in the electrical network or any other outages outside the power of PERFOHOST. Nor can PERFOHOST be held accountable for damages flowing from necessary maintenance by or due to PERFOHOST.

12. Accountability

12.1. CUSTOMER will be held accountable for any damages to PERFOHOST in case of action or inaction by CUSTOMER in violation of the obligations flowing from these Terms and Conditions.

12.2. CUSTOMER will be held accountable for any damages to PERFOHOST in case of the illegitimate or wrongful use of any service by PERFOHOST. For each day CUSTOMER is in violation, he or she forfeits an immediate claim of \$150.— for each violation or for each day as PERFOHOST chooses.

12.3. Customer clears PERFOHOST of all claims made by third parties in case of damages caused by the use of or because of CUSTOMER's use of PERFOHOST's services.

12.4. PERFOHOST cannot be held accountable for security and / or storage of any data stored.

12.5. PERFOHOST accepts no responsibility whatsoever in case of any damages which, as a result of late or incorrect placement or relocation of a website, email, equipment and / or any other Internet application, might occur to CUSTOMER.

12.6. PERFOHOST accepts no responsibility whatsoever in case of any damages which, as a result of outages or unavailability of a website, email, equipment and / or any other Internet application, might occur to CUSTOMER.

12.7. Should PERFOHOST be responsible for any damages, this responsibility is always limited to compensation of direct damages up to the amount agreed upon for that particular agreement, with a maximum of \$10,000.— If the agreement mainly is one with a contract length of more than one year, the agreed amount is set to the total of the compensations agreed upon for one year.

12.8. CUSTOMER will refrain from publicly making negative statements about PERFOHOST if a disagreement has occurred between CUSTOMER and PERFOHOST. For each day that CUSTOMER is in breach, he or she forfeits a fine of \$100.— each breach or each day the breach lasts, such to PERFOHOST's choice.

13. Duration

13.1. An agreement is made for a duration of 12 months, unless an other duration has been agreed upon in writing. The agreement is extended automatically and silently annually for a similar term.

13.2. Cancellation notice of the contract is two (2) calendar months, taking into account CUSTOMER can only cancel contracts per the first day of the month. Cancellation is only possible at the end of the term set in these conditions.

13.3. A cancellation needs to be made using the completely filled out cancellation form by PERFOHOST. This form should be requested from PERFOHOST via regular mail or fax. The cancellation needs to be sent via regular mail or fax.

14. Termination

14.1. If CUSTOMER fails to comply with an agreement made with PERFOHOST or these terms and conditions, in time or in order, or if PERFOHOST has serious doubts about CUSTOMER's ability to meet contract requirements towards PERFOHOST, PERFOHOST is authorized, without notification or legal intervention, either to suspend the agreed PERFOHOST services or partially or completely terminate the agreement without PERFOHOST being accountable for any damages not taking into account PERFOHOST's further due rights.

14.2. PERFOHOST is authorized to partially or completely terminate the agreement - effective immediately - without prior notice if CUSTOMER: provides PERFOHOST with false and / or incorrect personal data; has neglected to submit correct or altered personal data; has entered the agreement under false pretenses; acts in ways conflicting with these terms and conditions; has been declared bankrupt or has filed for bankruptcy herself; has filed for suspension of payment; is being curated or annulled; is being liquidated or if any executorial impound is made from CUSTOMER.

14.3. PERFOHOST reserves the right to cancel the contract without reason but with restitution of the unused usage fee, if CUSTOMER commits unacceptable behavior; such to the judgment of PERFOHOST.

14.4. Cancellation by PERFOHOST on account of articles 14.1 and / or 14.2 do not free CUSTOMER of his / her payment obligations. CUSTOMER will pay the subscription fees for all current services from the actual cancellation date up to the end date in the contract within three (3) working days.

14.5. Should one or more of these terms listed here be declared invalid in court, this has no consequences for the other terms.

15. Force Majeure

15.1. Force majeure shall be deemed to refer to all external causes which were not reasonably foreseeable and as a result of which PERFOHOST is not able to fulfill its obligations towards the customer. These include, but not exclusively, faults in the connection to the internet, faults in the telecommunications infrastructure and faults in networks.

15.2. PERFOHOST reserves the right to invoke force majeure if the circumstance which prevents (further) fulfillment occurs after PERFOHOST was required to fulfill its obligation.

15.3. During the period of force majeure the delivery and other obligations of PERFOHOST shall be suspended. If The period in which PERFOHOST is unable to fulfill its obligations as a result of force majeure lasts longer than two (2) weeks, each of the parties shall be authorized to dissolve the agreement without recourse to the court, without the other party having any right to compensation.

16. Disputes

16.1. All agreements between PERFOHOST and the customer shall be governed by the law of the Canada. The court of Montréal shall have exclusive jurisdiction in the event of disputes resulting from or relating to agreements between PERFOHOST and the customer.

16.2. If the customer, not acting in the exercise of a profession or business, does not agree with the election of jurisdiction in article 16.1, he or she shall be authorized, no later than one (1) month after PERFOHOST has made use of article.

16.1, to elect to have the dispute settled by the legally competent court.

16.3. If one or more provisions of these general terms and conditions is/are declared invalid or voidable, the validity of the remaining provisions shall be unaffected. In the event of invalidity of one or more provisions of these terms and conditions, the parties shall be bound by rules which are as far as possible of equivalent import and are not liable to be declared invalid.

17. Workings

17.1. PERFOHOST is authorized at all times to alter these terms and conditions. Changes will be final one (1) month after publication on the website.

17.2. In case of conflicting interests between articles in the agreement, the terms and conditions or the annexes the following order applies: The agreement, the annexes, the terms and conditions.

17.3. These terms and conditions render all previous ones obsolete.