



# ACCEPTABLE USE POLICY

V5 Technologies, LLC, dba Cobalt Data Centers (“Cobalt”) provides Colocation Services, Network Services and Professional Services (collectively or individually, “Services”) and use of its network, computers, communications systems, programs, software applications, and computing devices (“System”) to its customers subject to the terms and conditions of this Acceptable Use Policy (“AUP”). Cobalt has agreed to provide certain Services to the undersigned Customer (“you” or “your”), as described in one or more Service Order(s) and a Master Services Agreement between you and Cobalt (“MSA”). Terms used and not defined herein have the meaning given them in the MSA. This AUP describes the guidelines for the use by anyone of the Cobalt System and Services. By using the Services and/or Cobalt System, you are acknowledging that you have read, understand and agree to comply with this AUP. If you do not agree to comply with the terms of this AUP, you should not use the Services or Cobalt System. This AUP is not exhaustive, and it may be amended, updated or changed by Cobalt at any time. Your continued use of the Services and/or Cobalt System after any changes constitutes your acceptance of such changes. The person signing this AUP on your behalf hereby represents and warrants that he or she has the authority to bind you to the terms and conditions of this AUP. This AUP applies not only to you but also to all of your Customer Parties, and you will be liable to Cobalt for any and all Claims arising from violations of this AUP by you or any Customer Party.

## USE OF COBALT SYSTEM AND SERVICES

In addition to any other requirements of this AUP, you and the Customer Parties shall comply with the following when using the Cobalt System and the Services:

Your use of the Services and the Cobalt System (the “use”) must be for lawful purposes and comply with all applicable federal, state and local laws, rules, regulations, statutes and ordinances, including export and encryption laws or regulations (collectively, “Law”).

The use must comply with this AUP, the Policies and the MSA.

The use must not provide access to the Cobalt System or the Services to any third party without the prior written permission of Cobalt.

The use must not assist, encourage, facilitate or promote any person’s violation of this AUP.

The use must not interfere with or adversely affect the Services or the Cobalt System or the use of the same by others.

The use must not violate the security or integrity of the Services and the Cobalt System.

You are responsible for maintaining the security and confidentiality of your account and credentials used to access the Services and the Cobalt System.

You must be of legal age to use the Services and the Cobalt System (or if you are not a natural person, then your representatives must be of legal age to use the Cobalt System and Services).

## NO ILLEGAL, HARMFUL, OR OFFENSIVE USE OR CONTENT

You are solely responsible for (i) any and all content, material, information and data created, published, maintained, transmitted, downloaded, viewed, posted, distributed, accessible, delivered or stored on Cobalt’s System or otherwise made available on the Internet using Cobalt’s System and/or Services, by you or any Customer Party (“Content”), (ii) any Claims arising from or relating to such Content, and (iii) ensuring that all Content complies with all applicable Laws and this AUP and the Policies. Cobalt is in no way responsible for any Content. Cobalt has no obligation to monitor, verify, warrant, vouch for, review, edit, censor or exercise editorial control over any Content, but Cobalt reserves the right to do so. Cobalt makes no warranty or guarantee as to any Content. You must exercise your best judgment in relying on Content obtained from the Internet.

You and the Customer Parties shall not engage in any activities prohibited by this AUP, including without limitation, using the Services or Cobalt’s System to engage in any of the following prohibited activities:

Creating, downloading, distributing, storing, transmitting or otherwise using in any manner Content or other computer technology, including without limitation, any virus, Trojan horse, worm, time bomb or cancelbot, that may damage, interfere with, surreptitiously intercept, or expropriate any System, website, Equipment, or data of Cobalt, any Cobalt customer or any third party.

Trafficking in illegal drugs or in any other products or services that are prohibited under applicable Law.

Utilizing the Services or Cobalt System to export encryption software to points outside the United States in violation of applicable export control Laws.

Creating, downloading, distributing, storing, transmitting or otherwise using in any manner Content that is or may be, or engaging in activities that are or may be, defamatory, libelous, threatening, harassing, abusive, harmful or hateful, or that advocate violence, or that threaten the health of others, including without limitation, false, fraudulent, deceptive or misleading statements, claims, representations, goods, services, schemes, or promotions (e.g., make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming), or offers for the same, or engaging in any other deceptive practices.

Disseminating, promoting or facilitating Content that is obscene or that contains child pornography, bestiality, or non-consensual sex acts. Please be aware that Cobalt is required by Law to notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through Cobalt’s System.

Attempting to disrupt, degrade, impair, disable, interfere with or violate the integrity or security of any System, website, Equipment, or data of Cobalt, any Cobalt customer or any third party (including, without limitation, "hacking," "denial of service" attacks, mail bombing, news bombing, broadcast attacks, “crashing” or flooding



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techniques etc.), including any activity that typically precedes attempts to breach security or authentication without proper authorization, such as scanning, probing or other testing, or any vulnerability assessment or information gathering activity, or engaging in or permitting any network or hosting activity that results in the blacklisting or other blockage of Cobalt internet protocol space.

Creating, downloading, distributing, storing, transmitting or otherwise using in any manner Content that Cobalt determines may be harmful to Cobalt's operations, reputation, goodwill, System, or customers or to third parties, or that may be harmful to Cobalt's provision of the Services to you or to any other Cobalt customer.

Violating any charters, policies, rules or agreements promulgated by any search engines, subscription Web services, chat areas, bulletin boards, Web pages, USENET or other services accessed via the Services ("Usenet Rules"), including, without limitation, any cross postings to unrelated news groups, continued posting of off-topic messages and disrupting newsgroups with materials, postings or activities that are inappropriate (as determined by Cobalt in its discretion), unless such materials or activities are expressly allowed or encouraged under the Usenet Rules. Regardless of Usenet Rules, you may not (a) post the same message, or a series of similar messages, to one or more newsgroups (excessive cross-posting or multiple-posting, also known as "Usenet spam"), (b) cancel or supersede posts not originally posted by you unless you do so in the course of your duties as an official newsgroup moderator, (c) post any message with forged packet header information, or (d) post messages that are excessive and/or intended to annoy or harass others, including, without limitation, chain letters.

Violating the applicable acceptable use policies of other ISPs when data, content or other communications are carried across the networks of such ISPs.

Creating, downloading, distributing, storing, transmitting or otherwise using in any manner Content that is discriminatory based on gender, race, or age and/or that promotes hate or violence.

Engaging in unauthorized monitoring of data or traffic on any System without permission of the System owner or operator.

Forging TCP-IP packet headers or any part of the header information in newsgroup posting or emails, e-mail headers, or any part of a message describing its origin or route. This prohibition does not include the use of aliases or anonymous remailers.

Making network connections to any users, hosts, or networks unless you have permission from them to communicate with them.

Monitoring or crawling of any System that impairs or disrupts the System being monitored or crawled, without permission of the System owner or operator.

Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.

Operating network services like open proxies, open mail relays, or open recursive domain name servers.

Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

Transmitting an electronic mail message to any recipient in violation of any policy governing the use of the equipment of a provider of Internet access service for transmission, including SMTP Relay Service.

Using the Services to accept, transmit or distribute unsolicited bulk data (which includes email, bulletin boards, newsgroups, software, and files). The only circumstances in which the Services may be used to send unsolicited data of an advertising or promotional nature is where the unsolicited data is sent to persons with whom the sender has a pre-existing business, professional or personal relationship or to persons who have previously indicated their consent to receive data from the sender from time to time. You must also provide an unsubscribe function (and make this function known to recipients in the relevant data) which allows those recipients to be removed from that mailing list.

Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP.

Violating or attempting to violate the security of the Cobalt System, including, without limitation, (a) accessing data not intended for you or logging into a server or account which you are not authorized to access, (b) impersonating Cobalt personnel, (c) taking any action in order to obtain Services to which you are not entitled, (d) attempting to utilize another user's account name or persona without authorization from that user, or (e) attempting any action designed to circumvent or alter any method of measuring or billing for Services. Please be aware that violations of Cobalt's System security may result in civil or criminal liability.

Taking any action, intentional or unintentional, which will negatively impact Cobalt's multi-customer environment as a whole, such as cloud or network services.

Engaging in activities, whether lawful or unlawful, that Cobalt determines may be harmful to its customers, operations, reputation, System, goodwill or customer relations, or that may be harmful to third parties.

Any other use, activity or Content that Cobalt determines to be inappropriate, prohibited or harmful.

## PRIVACY

In the course of providing Services to you, Cobalt creates, receives, stores, and/or transmits data that may be private or sensitive, such as your personal name, business name, email addresses, phone numbers, credit card information, logs of account activity, and service information. In general, Cobalt does not disclose personal or account information unless Cobalt believes, in good faith, that disclosing such information is necessary to identify, make contact with, bring legal action against, or otherwise protect against someone who may be causing harm to or interfering with the property of Cobalt, the Services, Cobalt's System, Cobalt's customers, or any third parties, or who may be violating this AUP. Cobalt may also disclose personal



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or account information as necessary, in its discretion, to provide Services to you.

## INFRINGEMENT

In accordance with all applicable Laws, Cobalt respects the intellectual property rights of its customers, suppliers, partners, end users and third parties. Such intellectual property rights include, without limitation, copyrights, trademarks, service marks, trade secrets, patents, and other proprietary information and domain names (collectively, "IP Rights"). Cobalt prohibits the use of the Cobalt System or Services to engage in any activity that infringes or misappropriates the IP Rights of others, or to make any use of any Content protected by IP Rights of others without proper authorization.

In addition to your other responsibilities under this AUP, you are responsible for any Content or activities of you and the Customer Parties that infringe upon or misappropriate the IP Rights of others. Creating, downloading, distributing, storing, transmitting or otherwise using in any manner Content that infringes, dilutes, misappropriates or otherwise violates any privacy, intellectual property, publicity or other personal rights of Cobalt, any Cobalt customer or any third party, including, without limitation, IP Rights, without proper authorization, is a violation of this AUP. Please be aware that Cobalt may be required by Law to remove or block access to Content upon receipt of a proper notice of infringement. Without limiting Cobalt's rights and remedies hereunder, Cobalt maintains and enforces a policy whereby it will terminate Services to any customer or end user guilty of intentional or repeat infringement of IP Rights.

## VIOLATION OF AUP; RIGHTS OF COBALT

It is your responsibility to immediately take action to prevent, and to report to Cobalt immediately, any known or suspected violations of this AUP by you or any Customer Party. To report any violation of this AUP, please follow Cobalt's abuse reporting process by sending an email stating the concern to [abuse@cobaltnap.com](mailto:abuse@cobaltnap.com) or by contacting the President of Cobalt.

Cobalt reserves the right, but does not assume the obligation, to investigate fully any violation of this AUP or misuse of the Services or Cobalt's System. You shall cooperate with Cobalt in investigating and correcting any violation of this AUP by you or any Customer Party. In addition to any other rights of Cobalt set forth in this AUP or in any agreement between you and Cobalt or under applicable Law, Cobalt reserves the right to take any of the following actions or any other action that Cobalt deems appropriate, in its sole discretion, in the event of a violation of this AUP or to prevent any violation of this AUP:

Cobalt may monitor its Services at any time to determine that its facilities are operating satisfactorily and being utilized consistent with the purposes of this AUP.

Cobalt may disclose Content (i) concerning you or any Customer Party, or a transmission made using Cobalt's System or Services, or the identity and IP address of you or any Customer Party, which Cobalt believes is responsible for a violation of this AUP, or (ii) as required to comply with a court order, subpoena, summons, discovery

request, warrant, Law, or governmental request, or (iii) where necessary to protect Cobalt and/or others from harm, or (iv) where such disclosure is necessary to the proper operation of the Cobalt System or Services. Cobalt assumes no obligation to notify you or anyone that such Content has been disclosed and, in some cases, Cobalt may be prohibited by Law from giving such notice.

At any time, Cobalt may implement technical mechanisms to prevent AUP violations.

Cobalt may temporarily or permanently block IRC and/or common Windows file-sharing ports in an effort to head off DDoS attacks.

Cobalt may remove, disable access to, or modify any Content or resource that violates this AUP or any other agreement Cobalt has with you regarding the Services or the Cobalt System.

Cobalt may report any activity that Cobalt suspects violates any Law to appropriate law enforcement officials, regulators, or other appropriate third parties. Cobalt's reporting may include disclosing information about you or any Customer Party. Cobalt also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct.

Cobalt may shut down a website, implement screening software designed to block offending transmissions, deny access to the internet, or take any other action Cobalt deems appropriate, upon a violation of this AUP by you or any Customer Party.

Cobalt may suspend or terminate any affected Service immediately and without notice or refund, or impose fees, and/or pursue civil remedies in response to a court order or governmental notice that certain conduct engaged in by you or any Customer Party must be stopped. Also Cobalt may suspend or terminate any affected Service immediately and without notice or refund, or impose fees, and/or pursue civil remedies, if Cobalt determines (i) that you or any Customer Party have misused the Services or Cobalt's System and violated this AUP, or (ii) that your or any Customer Party's conduct (a) may expose Cobalt to sanctions, prosecution, civil action or other liability, (b) may interfere with another customer's use of the Services or Cobalt System, (c) violates any applicable Law or court order, or (d) otherwise presents an imminent risk of harm to or interference with Cobalt, its customers, the Cobalt System, or third parties. Upon any such cancellation, Content may be permanently deleted immediately.

Cobalt may remove or block access to Content upon receipt of a proper notice of infringement of IP Rights.

Cobalt may take any other action permitted under any agreement between you and Cobalt or under applicable Law or under this AUP.

Nothing in this AUP shall limit in any way Cobalt's rights and remedies at law or in equity. All remedies of Cobalt are cumulative.

## INDEMNIFICATION

You agree to indemnify, defend (with counsel acceptable to Cobalt) and hold harmless Cobalt and the Cobalt Parties against any and all Claims that may arise from (i) a violation of this AUP by you or any



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of the Customer Parties; (ii) a violation by you or any of the Customer Parties of any third party right, including without limitation any infringement of the IP Rights of any person; (iii) any Claim that use by you or any Customer Party of Cobalt's System or Services caused damage to a third party or to a Cobalt customer; or (iv) any Claim that use of Cobalt's System or Services, or participation in any program offered by Cobalt, creates a legal nexus between Cobalt and any jurisdiction other than Clark County, Nevada, USA. This defense, hold harmless and indemnification obligation will survive your use of Cobalt's System and Services.

## RESALE OF SERVICES

If you resell or provide the Services to anyone, you must contractually pass on the restrictions of this AUP to such person and take steps to ensure compliance by such person with this AUP. You are responsible to Cobalt for all violations of this AUP by any person to whom you resell the Services

## IP ADDRESSES

Any IP addresses assigned for your use remain under the ownership and/or control of Cobalt. Your right to use them will always terminate with the cancellation of the associated Service. IP address assignments are subject to ARIN's policies, as changed from time to time.

By executing this Acceptable Use Policy, you hereby acknowledge that you have read and understand this AUP, and that you will comply with this AUP at all times during your use of the Services and/or Cobalt's System.

## THIRD PARTY CHARGES

Any charges you incur from third-parties while using Cobalt's System and Services are your sole responsibility. These include, but are not limited to, phone, text messaging, bandwidth, internet access, and currency conversion charges.

## LIMITATION OF LIABILITY

In addition to the limitations of liability provided in the MSA:

Cobalt shall not be liable for damages of any nature that may result from a violation of this AUP.

Cobalt shall not be held liable under any Law for any action it takes in good faith following non-compliance with this AUP by you or any Customer Party.

## QUESTIONS? COMPLAINTS?

You should send any questions or complaints under this AUP, to abuse@Cobaltnap.com. Please include all applicable information that will assist Cobalt in investigating the complaint or answering the question.

[Insert Customer's legal name with the Secretary of State and DBA if any]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Name of Customer]

Attn: \_\_\_\_\_

[Address of Customer]

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_