

Terms of Service

Terms of service for High Speed Rails

High Speed Rails incorporated. ("High Speed Rails") agrees to furnish services to the Subscriber, subject to the following TOS (Terms of Service).

Use of High Speed Rails's Service constitutes acceptance and agreement to its AUP and TOS (Terms of Service).

All provisions of this contract are subject to the TOS (Terms of Service) and AUP (Acceptable Use Policy). The AUP may be changed from time to time at the discretion of High Speed Rails. Subscriber understands that changes to the AUP by High Speed Rails shall not be grounds for early contract termination or non-payment.

1. SUPPORT

Support is provided via e-mail with unique support ticket identification for each separately filed support request. Support is available generally between 08:00 - 20:00 US Pacific Standard Time Monday through Saturday. High Speed Rails guarantees a response time of 2 business daytime hours (defined as 1 hour between 8am and 6pm M-F) or less but endeavors to respond to support requests within 0.25 - 1 hours of the initial support request during the general support coverage period with response time inversely proportional to the priority of the support request. Emergency support for hardware, network or critical software failure is available 24 hours/day, 7 days/week, 365 days/year.

2. UPTIME GUARANTEE

High Speed Rails.net guarantees its servers will be available 99.99% of the time as measured by ping. Our servers have a much higher historical uptime.

3. REFUND POLICY

Please see our separate Refund Policy.

4. CONTACT INFORMATION

Customers are responsible for maintaining their contact information such that their is at least one email address that is always reachable even in the event of their High Speed Rails services being lost or shut down.

5. DATA INTEGRITY AND AVAILABILITY

- a. Security: The Client is responsible for all use of the Client's account(s) and confidentiality of password(s), including choosing safe passwords and ensuring file protections are set correctly. High Speed Rails will suspend access or change access to Client's account(s) immediately upon notification by Client that Client's password has been lost, stolen or otherwise compromised. High Speed Rails is not liable for any usage and or charges prior to High Speed Rails making the necessary account alteration. The Client is reminded that no computer network can ever be

considered completely safe from intrusion. We do not guarantee the privacy of your e-mail communications.

- b. In the event that High Speed Rails suspects that server security has been breached, High Speed Rails reserves the right to disable the server in order to facilitate investigation and recovery in coordination with the Client.
- c. Backup Strategy: High Speed Rails makes a best effort to keep one backup of your website updated per the hosting plan previously agreed on. We make no guarantees of the availability of your backups.
- d. Excess Bandwidth Usage: Service will not be interrupted by bandwidth usage in excess of the Quote limits, but rather charged \$2/1GB of Data Transfer over the limits. Billing for excess bandwidth usage will be made by separate invoice, payment due 15 days from notification.

6. PAYMENT AND INVOICES

High Speed Rails does not extend credit to the Client. All services must be paid for in advance of service delivery. All fees must be paid in U.S. currency. For monthly payments, payment is due at the beginning of each monthly period. Annual payment is due at the beginning of each annual period.

For payment via Bank Transfer it is the responsibility of the Client to ensure that full fees are paid to High Speed Rails recognizing that failure to do so could cause service interruption.

Billing for excess bandwidth usage will be made by separate invoice, payment due 15 days from notification.

7. OWNERSHIP OF DATA, SOFTWARE, HARDWARE AND IP ADDRESSES

Any software owned by High Speed Rails, all hardware and all IP addresses provided by High Speed Rails are leased to the Client and remain the property of High Speed Rails. The Client will provide and transmit to the system software, data and content to be uploaded to the servers and accessed by the general public via the Internet. Upon termination of this agreement, The Client agrees to remove all uploaded software, data and content prior to the termination date of the contract. High Speed Rails will not be responsible for providing access or copies of the software, data or content stored on the system after the final termination date.

8. COMPLIANCE WITH ALL LAWS

Client agrees to use the service in a manner consistent with any and all applicable laws and regulations of the United States of America, the state of Washington, and the Client's locality. Reproduction or transmission of any material in violation of any local, state, U.S., or international law or regulation is prohibited. The Client agrees that any material to be reproduced or transmitted on High Speed Rails's service through Client 's account(s) does not violate or infringe any copyright, trademark, patent, statutory, common law or proprietary rights of others, or contain anything obscene, libelous or threatening. Software intended to facilitate any such violations or infringements may not be stored on High Speed Rails. The Client shall defend, indemnify and hold harmless High Speed Rails from and against any claims, liabilities and expenses, including attorney fees, resulting from any Client's use of the High Speed Rails service or a Client's account in an unlawful manner or otherwise in violation of or contrary to the Client's Agreement with High Speed Rails or High Speed Rails's Acceptable Use Policies. At High Speed Rails's discretion, High Speed Rails may revoke any Client's access to High Speed Rails services or accounts for inappropriate usage without the chance of refund.

Client represents and warrants to High Speed Rails that Client owns or otherwise has the right to display and disseminate the information and content provided on the Client's Internet page, and that such information and content does not infringe on the intellectual property rights of any third party. Client represents and warrants that it has obtained, and currently has, any and all grants of rights from third parties which may be required to display text, graphics or other materials in the information contained on Client's Internet page.

9. MONITORING/PRIVACY

High Speed Rails reserves the right to monitor any and all communications through or with High Speed Rails facilities. Client agrees that High Speed Rails is not considered a secure communications medium for the purposes of the Electronic Communications Privacy Act, and that no expectation of privacy is afforded. It may become necessary for High Speed Rails employees to examine system accounting logs and other records to determine if privacy violations or other network unfriendly activities have occurred. High Speed Rails also reserves the right to access a Client's mailbox or other files stored on High Speed Rails systems to resolve system problems or mail system errors.

High Speed Rails reserves the right to cooperate with law enforcement and other authorities in investigating claims of illegal activity including, but not limited to, illegal transfer or availability of copyrighted material, postings or e-mail containing threats of violence or other illegal activity.

High Speed Rails will not release a Client's personal subscriber information, nor a Client's billing information, to any third party except upon presentation of a valid court order of a government or entity within our jurisdiction. Client agrees that High Speed Rails's judgment as to the validity of any court order of subpoena shall be considered proper and final.

10. HIGH SPEED RAILS' RIGHT TO SUSPEND OR CANCEL ACCOUNT

High Speed Rails reserves the right to suspend or cancel service or any future business relationship to a Client at any time and without notice, for any reason, including, but not limited to, refusal or failure to pay for services provided or by sole judgment of High Speed Rails that the Client may be performing activities harmful to High Speed Rails or its Clients, employees, vendors, business relationships or any other users of the Internet.

11. RIGHT TO DAMAGES

High Speed Rails reserves the right to collect damages (software, hardware and man hours) if any harm is done to High Speed Rails which requires repair or reconfiguration of any kind.

12. OTHER REMEDIES/NON-WAIVER

Nothing contained in these policies shall be construed to limit action High Speed Rails may take or remedies available to High Speed Rails in any way with respect to any of the described conduct. High Speed Rails reserves the right to take any additional actions High Speed Rails may consider appropriate with respect to such conduct, including without limitation taking action to recover the costs and expenses of identifying offenders and removing them from the High Speed Rails service, and levying cancellation charges to cover High Speed Rails's costs in the event of disconnection of dedicated access for the causes outlined above. In addition, High Speed Rails reserves at all times all rights and remedies available to High Speed Rails with respect to such conduct at law or in equity. Non-enforcement of any policy or rule herein does not constitute consent or waiver, and High Speed Rails reserves the right to enforce such

policy or rule at its sole discretion.

13. HIGH SPEED RAILS' RIGHT TO CHANGE SERVICE

High Speed Rails reserves to right to change without notice the High Speed Rails service, including, but not limited to, access procedures, hours of operation, menu structures, commands, documentation, vendors and services offered.

14. HIGH SPEED RAILS' RIGHT TO MODIFY ITS POLICIES

High Speed Rails may modify its Policies upon notice published online via High Speed Rails. Client's use of High Speed Rails services after such notice shall constitute Client's acceptance of the modifications to these policies.

15. TERM OF AGREEMENT

This Agreement will begin on the Effective Date and, unless earlier terminated as provided herein, shall continue indefinitely. This Agreement shall be automatically renewed at the end of the initial term for successive payment periods (either monthly or annually depending upon selected payment option), unless either party gives the other party written notice of non-renewal of this Agreement at least 30 days prior to the commencement of the initial or any succeeding renewal term.

16. TERMINATION OF AGREEMENT

- a. High Speed Rails does not issue refunds except for balances on quarterly and annual payments as specified below.
- b. Service may be cancelled with 30 days notice.
- c. All annual plans can be cancelled with the standard 30 days notice. Client will be refunded the difference between what the Client has paid and what the Client would have paid under the High Speed Rails Quote monthly payment terms.

17. WARRANTIES AND REPRESENTATIONS

High Speed Rails is not responsible for data or content maintained and distributed by High Speed Rails facilities. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND CLIENT'S USE OF THE SERVICES IS AT ITS OWN RISK. HIGH SPEED RAILS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. HIGH SPEED RAILS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

18. INDEMNIFICATION

Client agrees to defend, indemnify and hold harmless High Speed Rails and its owners, officers, shareholders, directors, employees, affiliates and subsidiaries from and against any and all claims, demands, liabilities, proceedings, damages, injuries, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to:

- a. Any acts or omissions by Client undertaken in connection with the Internet page, including, without limitation, those arising out of or related to any branch of:
 - i. any Client warranties, representations, or covenants hereunder;
 - ii. inaccuracy of any information, including false advertising claims and unfair competition claims
 - iii. claims and investigations made by any Federal or State agency arising out of information contained on the Client's Internet page.
- b. Violations of any third-party intellectual property rights, or any claim of infringement, misappropriation or violation of a right of a third party (including, without limitation, a trade secret claim, a defamation or libel claim, or an obscenity claim).

19. NOTICES

All notices, demands or consents required or permitted under this Agreement shall be in writing or via signed email. Notice shall be considered effective on the earlier of actual receipt or: (a) the day following transmission if sent by facsimile or email if followed by written confirmation; (b) one (1) day (two (2) days for international addresses) after posting when sent via an express commercial courier; or (c) five (5) days after posting when sent via certified United States mail. If utilized, posted notice shall be sent to the address for each party set forth below, or at such other address as shall be given by either party to the other in writing:

High Speed Rails incorporated
701 Fifth Avenue, Suite 4200
Seattle, Washington 98104

20. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Client except with High Speed Rails' prior written consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. This Agreement may not be modified except in writing signed by Client and a duly authorized representative of High Speed Rails. The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Illinois, excluding conflicts of law principles that would cause the law of another jurisdiction to be used to construe, interpret, or enforce this Agreement. Exclusive jurisdiction and venue for all disputes arising under this Agreement shall be in the state and federal courts residing in Seattle, Washington. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

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