RACKEND

Terms of Service

This is a sub-agreement as part of a Master Service Agreement (MSA) that establishes and regulates the relationship between RACKEND and its customers. All customers ordering and/ or using RACKEND services must agree to be bound by the MSA. The MSA can be found at:

http://www.rackend.com/pdfs/RE_MSA.pdf

1. **Term and Termination:** A RACKEND customer agrees to a month-by-month contract term for services unless otherwise agreed to in writing. The month-by-month contract for services is automatically renewed each month in perpetuity subject to written cancellation by the Customer. Please carefully review the RACKEND cancellation policy set forth in Paragraph 8 below. RACKEND may terminate this Agreement upon non-payment as set forth in paragraph 10 below. At its sole discretion, RACKEND may terminate this Agreement if Customer violates any terms and conditions of RACKEND's AUP or this agreement.

2. **Monthly Service Fees:** The fees for any service(s) ordered by the Customer shall begin on the date of the initial order and that date shall serve as the monthly anniversary date ("Anniversary Billing Date") for all future billings including one time fees, upgrades, additional services, cancellations and service credits. The Monthly Service Fees are due in advance of the monthly service cycle and will be billed on the anniversary date of each month.

3. **Upgrade Fees:** Any and all upgrades that are ordered on the Anniversary Billing Date will be billed for a full month service and will perpetually continue each month on the Anniversary Billing Date. Any and all upgrades ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one-time pro-rata charge; subsequently, any scheduled future charges will appear as full monthly fees added to your existing Anniversary Billing Date.

4. **Additional Service Fees:** When any additional services are ordered, the Anniversary Billing Date will be billed for the full month service and will perpetually continue each month on the Anniversary Billing Date. Furthermore, any additional services ordered after the regular Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one-time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.

5. **One Time Fees:** One time fees, including but not limited to: setup fees, administrative fees, and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket. One time fees, such as bandwidth overages are due and payable upon an invoice following the billing cycle in which they are incurred, and are based on standard rates, or as otherwise agreed upon in writing or via ticket.

   RACKEND's standard rate for bandwidth overages are: USD .10 per GB Used.

6. **Taxes:** Any and all customers who are located in The Republic of Panama are, responsible for the necessary sales tax.

   Currency Value Changes: RACKEND reserves the right to raise or lower the monthly costs of services provided to our customers based on severe changes in the exchange rates between the United States Dollar, and other major currencies (Such as the European Euro, and Swiss Frank). RACKEND will give the customer 30 days notice of the price change. In the event that the customer does not agree to the price change, the service will be cancelled at the next billing cycle. As a convenience to our customers, we provide all services to our customers priced in USD. However, when providing services, RACKEND's purchases several components from vendors (Bandwidth Connectivity, Collocation services, etc.) which are prices in alternate currencies than the United States Dollar.

7. **Service Credits:** In the event that service credits are issued to your Customer account, the service credits shall be used to offset future billable services. Service credits shall not be issued as cash back to the Customer nor shall the service credits be transferable to other account holders. Service credits shall expire if customer's account is fully terminated.

8. **Cancellation:** In the case of a cancellation, RACKEND requires a written notice via email to billing@rackend.com, a minimum of 3 days prior to Anniversary Billing Date for discontinuance or downgrades of month-by-month services. Failure to supply the requisite 3-day written notice of cancellation will result in a full billable monthly cycle prior to cancellation. Any server cancellation prior to the minimum deadline will remain online until the automated process reclaims your server on the Anniversary Billing Date.

9. **Server Data:** Any and all Customer data remaining after the cancellation date will be destroyed for privacy and security reasons.

10. **Shared Web Hosting:** This section refers to our shared web hosting products (cPanel Accounts).
    Customers may not:

    a) Use more than 25 percent of the system resources for longer than 90 seconds.
    b) Run any type of web spider or indexer
    c) Run any software that interfaces with IRC
    d) Run any bit torrent application
    e) Participate in any file sharing / peer to peer activities
    f) Run any gaming software
    g) Run CRON entries with intervals of 15 seconds or less
    h) Run any MYSQL queries lasting longer than 15 seconds

    Any accounts violating the above conditions will be terminated without notice without refund.

11. **Virtual Private Servers**: This section of the sub-agreement refers to our virtual private servers (VPS Servers) products.
    Customers may not:

a) Run any MYSQL queries lasting longer than 15 seconds
b) Maintain a container load average of 10 or above for a period of 30 minutes or longer.
c) Run any software that interfaces with IRC
d) Run any "jail-breaking" software that circumvents the restrictions placed on the container by the parent node.
e) Run any MYSQL queries lasting longer than 15 seconds
f) Run CRON entries with intervals of 15 seconds or less

Any customer account violating the above conditions will be suspended without notice, and can be terminated at the management's discretion without refund.

12. **Non-Payment**: All payments are due in full on the Anniversary Billing Date. Failure to remit payment for five (5) consecutive days, including the Anniversary Billing Date, shall result in a termination of access to Customer services. Failure to remit payment for services within ten (7) consecutive days, including the Anniversary Billing Date, shall result in complete termination and all services shall be reclaimed. A late fee of $25 may be incurred for failure to remit payment for services on or before the monthly Anniversary Billing Date.

13. **Data:** RACKEND agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data integrity, retention, security, backup, and ownership.

14. **Laws:** RACKEND is incorporated in the country of Panama, and provides services from the countries of Switzerland and Panama. Customer agrees to abide by all laws pursuant to services delivered in The Republic of Panama and Switzerland depending on the location that the service is delivered. Regardless of service location, this agreement is made under and will be construed in accordance with the laws of the Republic of Panama without regard to conflict of the law principals. Exclusive venue and jurisdiction for any and all legal remedies arising out of or related to this agreement shall be in the Republic of Panama. Each party irrevocably consents to the foregoing jurisdiction and venue requirements and waives any and all objections to such requirements.

15. **Indemnification:** Customer agrees to indemnify and hold harmless RACKEND, RACKEND's affiliates, and its respective officers, directors, attorneys, agents and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorney's fees) brought by a third party under any theory of legal liability arising out of related to customers content, illegal activity and/or actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.

16. **Limitation of Liability:** Except as described in the SLA, RACKEND shall not be liable to

the customer for harm caused by or related to customer's services or inability to utilize the services unless caused by gross negligence or willful misconduct. RACKEND shall not be liable to customer for lost profits, indirect, special or incidental consequential or punitive damages. Notwithstanding anything else in this agreement, the maximum aggregate liability of RACKEND and any of its employees, agents or affiliates, under any theory of law shall not exceed the amount paid by the customer for hosting services for the three months prior to the occurrence of the event(s) giving rise to the claim.

17. **Legal Compliance**: Customer further represents and warrants that he/she has full authority and power to execute this Agreement on behalf of the Company he/she represents, if any. Additionally, Customer warrants that he/she is at least 18 years of age or older and are not other wise legally incapacitated to execute this Agreement.

18. **Electronic Signature:** Acceptance by Customer of the Agreement incorporating the Terms of Service, Acceptable Use Policy, Service Level Agreement and Privacy Agreement hereby initiates billable services and is deemed complete by agreement to the terms as described on the online signup form(s) and completion of the ordering process.