

Terms of Service

Introduction

This Term of Service (TOS) is provided by Wowrack in order to protect Wowrack's customer as well as to provide Wowrack the ability to operate a fast and high availability Hosting Service.

Policy Modification

This Terms of Service is not an all inclusive exhaustive list. Wowrack reserves the right to make changes to our Terms of Service at any time as deemed necessary. Changes to the Terms of Service take effect 30 days upon the new TOS revision being posted in our website at <http://www.wowrack.com> in the policies section. Any customer who does not contest to the new policy by emailing to sales@wowrack.com within 30 days of newly published version of the TOS, has tacitly agreed to abide by the updated TOS.

Customer that disagrees with the updated terms of service must email sales@wowrack.com with their disagreement. If a mutual agreement of the newly published TOS cannot be established after 30 days, customer may cancel service with Wowrack without incurring any penalty by emailing to sales@wowrack.com to request the cancellation. Pending the mutual agreement, the previous TOS will prevail.

Reseller relationship to Wowrack

All resellers are independent entities that have no relationship with Wowrack other than to resell Wowrack product and services.

Prohibited Content

All services provided by Wowrack may only be used for lawful purposes. All illegal contents are prohibited from Wowrack network. This includes, but is not limited to: distribution of copyrighted material, material we judge to be threatening or obscene, or material protected by trade secret and other statute. Customer agrees to indemnify and hold harmless Wowrack from any claims resulting from the use of the service that damages the subscriber or any other party.

Examples of unacceptable content, activities or links:

- . Pirated software
- . Wares sites
- . Hacking activity
- . Port scanning
- . Irc Bots
- . Hate Sites
- . Hacking Programs and archives
- . Bit torrent
- . Child Pornography
- . Adult content
- . Email bombing
- . Email Spammers
- . Spoofing
- . Forging packet headers/routing information
- . Flood pings

- . Introducing malicious programs into Wowrack's network or server
- . Spamvertised Site

Policing server content

Wowrack does not police the content of any server that is in our network. If you know anyone hosting prohibited content in our network, please report it to abuse@wowrack.com. Wowrack will immediately investigate the complaint.

3rd party mass mailers

WOWRACK DOES NOT ALLOW 3RD PARTY MASS MAILERS IN OUR NETWORK. Definition of 3rd party mass mailer is a company or a person that does mass mailing for other companies other than sending emails to their own customers. Any customer who uses their server and/or accounts for 3rd party mailing will have their account terminated immediately. All fees and pre-paid services will not be refunded.

MASS Mailers

We take great care in keeping our IPs clean from being blacklisted by organizations such as spamhaus. This is the only way we can guarantee that your email recipient receives the email you send from your server inside Wowrack's network. If you plan to do mass mailing (sending out lots of emails on an ongoing basis), you must let us know before using our network for mass mailing purpose. You must comply with CAN-SPAM Act of 2003. All of the email in your list must be confirmed opt-in. You must maintain complete and accurate records of all consents and opt-ins information and must be able to provide Wowrack with such records upon request at any time. If you are not able to provide this information when requested, we may immediately block your server's ability from sending out email and possibly terminate your account completely.

We will NOT provide any service to anyone or company that is listed in the ROKSO list (<http://www.spamhaus.org/rokso>) or any list that shows that you have been spamming. We DO NOT ALLOW SPAMMING and take the SPAMMING issue seriously. We will also not provide service to company or person that often gets listed in spamhaus or any other blacklisting organizations. If we receive spam complaints regarding your server on a consistent basis and Wowrack's IP are negatively affected because of your server's action, we will give you 48 hours notice to move your server to another hosting provider. Please refer to our "Zero Tolerance Spam Policy" located at <http://wowrack.com> in the policies section.

Network Abuse

Network abuse is strictly prohibited. This includes, but is not limited to: port scanning, denial of service, network penetration, unauthorized access, sniffing, spoofing, virus deployment, hack attempts and vulnerability scanning. If any customer is found to be performing any kind of network abuses, customer's account may be permanently terminated.

Server Security

Customers are responsible in protecting their own server and password. If for any reason the network security is breached because of customer's server vulnerability, customer will be responsible for the cost of Wowrack's security team to restore the network operation to normal condition.

DDOS or any other Attack

Any server that initiates an attack to other servers within Wowrack's network or to any network outside Wowrack, will immediately be suspended. Customer will be notified upon any service suspension. Any IP in Wowrack's network that gets DDOS attacked which adversely affect Wowrack's network will IMMEDIATELY be null routed. When this happens, customer's server will be inaccessible to and from the Internet. Customers will be notified upon any IPs being null routed. IPs will be un-null routed when the attack subsides. Customer must investigate the cause of the attack and inform Wowrack support that the cause of the problem has been taken care off. Owner of the IP that was attacked will be billed for the network technician time to deal with the DDOS attack. Any bandwidth overage dues to DDOS attack will be billed to the customer.

Hardware Maintenance

Wowrack is responsible for hardware failure of our dedicated servers. We will replace your malfunctioning hardware as soon as possible. For more info regarding hardware replacement, please refer to our Service Level Agreement (SLA) policy located at <http://wowrack.com> in the policies section.

Data Content and Protection

Since all servers are constantly connected to the Internet, please be aware that the content on the servers might be exposed to hacker attacks, viruses or other adverse attack outside of our control. For these and many other reasons, customer may loose the whole content of his/her server(s). Customers are thus advised to backup data to an external server and/or off-site location. We back-up our virtual hosting servers on a daily basis. However, Wowrack will not be liable for lost data even if backups were created.

Server Uptime

Wowrack is committed to provide the best uptime possible for all dedicated and colocated servers in Wowrack facility. However, due to many factors that may be out of our control, customers are thus advised that their service may be down (cease functioning) for many reasons beyond Wowrack's control. Wowrack will not be responsible for any damages/loss caused by customer's server being down. For more information about uptime guarantee, please refer to Wowrack's 'Service Level Agreement' (SLA) policy located at <http://wowrack.com> in the policies section.

IP address

Wowrack follows strict ARIN guidelines in the distribution of IP addresses. Customer has the option of acquiring additional IP addresses with justification. All IPs assigned to customers must be returned back to Wowrack after cancellation/termination of account/service. For more information, refer to Wowrack's 'IP Address Policy' located at <http://wowrack.com> in the policies section.

Power usage for co-location

Customer shall not use more than 80% utilization on their power circuit. This means that if customer is given 20 Amp of power circuit, customer may only use up to 16 amps. Customer that uses more than 80% utilization will be required to purchase an additional 20 amp circuit and move the excess power utilization to the new circuit. Customer may request a power reading on their power circuit at anytime during normal business hours. (one free power reading per 30 days period)

Cabinet and Isle way Security

Customer must close their assigned cabinet at all times. Equipment that sticks out of the racks are not allowed. We will notify customer to close the cabinet door completely and customer must complete our request within a 48 hour period. Failure to comply within the requested time will result in your device being taken offline in order to close the door. Wowrack will not be responsible if there is any problem that arises from shutting down the hardware by unplugging the power cord or if your equipment does not come back up after moving your hardware to close the cabinet door. Customer will be invoiced for the work done by Wowrack's tech.

Data Deletion in Dedicated server and Virtual hosting and VPS

Upon cancellation or termination of service, all of customer's data in Wowrack's hosting servers will be deleted. This includes cancellation and termination due to non-payment.

No Data Deletion for co-located hardware

Wowrack will not delete any data in any collocated hardware even if we need to sell the hardware due to non-payment.

Complaints

All complaints will be promptly investigated. In the case that any account is being investigated, Wowrack reserves the right to suspend, restrict or terminate the account(s) in question. We will deactivate customer's account(s) if Wowrack policies are violated. Please report any violations to abuse@wowrack.com

Customer Support

For fastest response, please send your technical support request to support@wowrack.com. You can also request support by submitting a support ticket located at <https://esupport.wowrack.com>. Our ticketing system is monitored 24/7 to provide rapid response. Phone support is also available during standard business hours. Emergency support such as service outage is available 24/7 by phone.

Wowrack EMERGENCY contact procedure (15 minute response time guarantee):

1. Call our main Phone: 206.522.4402 option 88 (this option is not offered in the initial greeting, but press 88 anyways)
2. A better option it to submit a trouble ticket using this form: <http://noc.wowrack.com/emergency>. This way we can avoid any mistake due to voice recognition/clarity issue.

IMPORTANT: If you get a voicemail, it is VERY important that you leave a message that describes your problem in the voicemail. By doing so, the voicemail will trigger a continuous call to our staff on duty until someone responds to the voicemail. By using the emergency form, it will also trigger continuous calls to our staff on duty.

Automatic email notification

Customer are not allowed to automatically send the alert of their server monitoring to any of Wowrack's email address without prior authorization from Wowrack. Example: if you have a 3rd party monitoring service that pings your server every 5 minutes, the alert should not be sent to support@wowrack.com or any other wowrack's email address.

Start of Service

Online Dedicated server orders are normally setup between 24 - 72 hours after payment is received and verified. In the event that an order shall take longer than 72 hours to setup, we will inform you of the estimated setup time. Start of service for custom dedicated sever may vary due to custom hardware or software availability.

Virtual Hosting orders will be setup within 24 hours after the receipt of full payment. Co-location provisioning time varies depending on availability of the colo space.

Payments

All setup fees and monthly fees are due in advance before any work is started. Wowrack will not activate any unpaid accounts for any reasons. Customer agrees to pay all calculated fees according to customer's order form submission or according to what has been agreed via email. Support fees are billed at hourly rate and may require advance payment.

If you are a current customer without any past due balance, we may immediately setup additional order without having the need to verify your order from our billing department.

Prorated Payments

Wowrack will prorate all payments to the first of each month. We will charge the full monthly payment on your first invoice and prorate your payments on your second invoice. By your third invoice period, your billing cycle should start on the first of the month.

For instance, if you start your service on March 16th for a monthly payment of \$100, your payments will be as follows:

First Month: \$100 (March 16 - April 15)

Second Month: \$46.67 (April 16 - April 30)

Third month and the months forward: \$100 (May 1 - May 31)

Recurring Payments

All credit card payments are charged automatically on the 1st of each month. Our automated system will charge your credit card that has been submitted in the order form and will notify customers of the charge status through e-mail. It is customer's duty to ensure up-to-date credit card information is in our system.

To update your information, please use the payment update form in the support section of Wowrack.com. In the event of declined credit card transaction, a \$10 billing convenience fee will be applied to the next credit card transaction. Wowrack billing team will notify you of your failed credit card transaction and work with you to resolve your payment issue. If you do not respond within the next 72 hours after the failed charges notification, we may suspend your service.

All monthly payment is due on the 1st of each month of the service month.

Example: For the service rendered in March (March 1st to March 31st), the payment due date is March 1st.

All non credit card payments are due on the 1st of each month.

Payment Methods

Wowrack accepts Visa (Preferred), MasterCard, American express, Discover, personal / business check, cashier's check, money order, wire transfer, international money order and paypal. Make checks payable to: Wow Technologies, Inc. Send the check to: 2001 6th Ave, suite 2008 Seattle WA 98121 USA For Wire transfer information: Please request wire transfer info by emailing billing@wowrack.com for this request.

Invoices

All invoices are sent electronically via email in a pdf format. A \$5 per month fee will be added to customer's invoice that requires a hard copy to be sent to their physical address via snail mail.

Bandwidth Usage and overage fees

All accounts have a set allotment of bandwidth available for use. Any bandwidth usage that is over the limit of the monthly allotment will be charged according to the terms that are set forth in the order agreement or as listed in wowrack.com website. Unused bandwidth may not be carried over to the following month. Wowrack will provide MRTG reading for every dedicated/co-location server/hardware. It is your sole responsibility to monitor bandwidth usage on your equipment.

Customers agree to pay for any extra bandwidth overage fees that their servers/equipment uses. When you have exhausted your allotted bandwidth transfer, Wowrack may immediately issue an invoice for the Bandwidth overage fee which will be due immediately. Failure to make immediate payment on bandwidth overage fee may result in your bandwidth to be throttled/limited or even suspended.

Bandwidth Calculation

Bandwidth is calculated by the following formula:

1. For bandwidth that is calculated as "per Gigabyte of data transfer", For example 1000 Gig, the calculation is as follows:
 - a. Total monthly B/W usage = (Monthly average in + Monthly average out)/8 bits x 60 seconds x 60 minutes x 24 hours x number of days in a month.
 - b. For instance a server that has a monthly average of 312 kb/s "IN" & a monthly average of 933 kb/s "OUT" in the month of April will be calculated as follows:
 - c. Total monthly B/W usage = (933+312)/8 x 60 seconds x 60 minutes x 24 hours x 30 days = 404 GB
2. For bandwidth that is calculated as "X" Mbps (95%tile), then there is no calculation involved. The MRTG graph will tell you exactly what your monthly 95%tile is.

Server/service ownership transfer

Wowrack allows customer to transfer ownership of your server to another entity. There is a \$75 one time administrative fee for doing this. Please contact sales@wowrack.com to request ownership transfer.

Billing and Customer Information updates

Customers are responsible for updating their own information including address changes, email address changes, server owner changes and billing information changes. To update

your information, you can either contact your account manager, email billing@wowrack.com or use the "payment update form" located at Wowrack.com in the support section. Failure to update your information can hinder Wowrack contacting you in case of problems which can lead to interruption of your service.

Price changes

Wowrack reserves the right to change the price of any services at any time. Current customers will not be affected by the price change. In the event that current customers will be affected by the price change, Wowrack will give a 30 days notice to current customers to either agree or cancel their service with Wowrack. Customers with a term contract will not be affected by the price change throughout the contract period.

Cancellation

You may cancel your month to month contract hosting services with 20 days advance notice. You must use the cancellation request form located at <http://Wowrack.com/support>. Any other method of cancellation submission will not be honored and is deemed invalid. Wowrack will not reimburse/refund or pro-rate any fees should you decide to cancel your service(s) before the end of a prepaid term, regardless of the reason for cancellation.

Wowrack will not refund setup fee(s) for the cancellation of any accounts. Cancellation of contract agreement is subject to 50% of the remaining value of the contract. Some contracts may not be cancelled early regardless of the reasons. Please consult your account manager to determine if your contract qualifies for early cancellation.

Co-location hardware shipment

Before customer ship any hardware to Wowrack facility for collocation, customer must open a ticket to track the shipment. Once the hardware has arrived in Wowrack facility, wowrack will store it up to 1 week free of charge. If you need Wowrack to store it for a longer duration, there will be a storage fee charged to your account.

Co-location Non Payments

In addition to Wowrack standard non-payment procedure, Wowrack will not return co-location customer's equipment(s) until all outstanding balance has been fully paid. If an outstanding balance is not settled after 30 days, Wowrack reserves the right to sell or discard co-location equipment.

All sales of customer's equipment will go towards the payment of the balance. If the sale of the equipment is not enough to cover the outstanding balance owed to Wowrack, Wowrack will turn over the outstanding balance to a collection agency. When this happens, customer's credit history may be negatively affected. From the time customer cancels their server or after Wowrack terminate your collocation account, customer will be billed for the storage of their equipment that is left in Wowrack's space at a fee of \$10/U/month. Additionally, Wowrack will also charge customer for the disposal fee of customer's equipment.

Wowrack will not delete any of the data in customer's equipment that is put up for sale or discarded due to non-payment.

Late or Non Payment

Any account/service that is unpaid by the 5th day after the due date will result in notice of service suspension. Re-activation fee is \$25 per dedicated server; per individual hosting account and per co-location account. Wowrack will not be responsible for any damages caused by the suspension of your service due to non-payment and/or late payment. Wowrack will permanently delete any account that is 15 days past due. This includes reformatting of hard disk in dedicated server account. Wowrack will invoice any outstanding balance to the customer. Wowrack will submit customer's account to a collection agency if necessary in order to redeem any outstanding balances. When this happens, customer's credit history may be negatively affected.

Suspension of Service

Should you violate any part of Wowrack TOS, we reserve the ultimate right in the decision to suspend your service and launch a thorough investigation. Customers may be billed for additional charges should our investigation finds that you have indeed violated Wowrack's TOS. Investigation rate is billed at an hourly rate of a 2nd Level Support Engineer.

Collection Agency

Any charges that remain outstanding for more than 60 days will be turned to collection agencies for collection. Should this occur, customer will be charged with the applicable collection fee(s) from the Collection Agency. When this happens, your credit rating will be negatively affected.

Limited access to co-located equipment

Wowrack reserves the right to refuse, cancel, suspend, provide limited access to co-located equipment and requires customer to be escorted at all times to access customer's co-located equipment at Wowrack's sole discretion.

No access to co-located equipment

Wowrack reserves the right to not allow customer to take out customer's equipment if we know that customer is attempting/contemplating to bail out of customer's contract without officially cancelling the contract first.

Refusal of Service

Wowrack reserve the rights to refuse service, cancel, suspend or provide limited access to anyone at Wowrack's sole discretion.

Complaints

All complaints will be promptly investigated. In the event your account is being investigated, Wowrack reserves the right to suspend, restrict or terminate the account(s) in question. We may deactivate customer's account(s) if Wowrack deems that this TOS is violated. Please report violations to abuse@wowrack.com.

Typographical error in website and agreement

Wowrack will not be held responsible for any typographical error in any of Wowrack's agreement or website. We will make every effort to correct known errors as quickly as possible. Please email sales@wowrack.com to report any typographical error.

Business Hours

9:00 am to 6:00 pm P.S.T Monday thru Friday (excluding holidays)

Holidays

New Years Day - January 1

Martin Luther King Day - 3rd Monday of January

Memorial Day - May 29

Independence Day - July 4

Columbus Day - October 10

Veteran's Day - November 11

Thanksgiving Day - November 24

Christmas Eve - December 24

Christmas Day - December 25

New Year's Eve - December 31

Support Request:

Support that is requested during business hours is calculated in 30 minutes increments. Support that is requested after business hours and on holidays is calculated in 1 hour increments with a 2 hours minimum. If you have prior arrangements such as if you subscribe to our "managed services" then you will not be billed for your support request unless you have depleted your allotted support quota. For support fee information, please refer to our website or your contract.

Wowrack will act as the sole arbiter as to what constitutes a violation of the condition/s stated in this TOS.

'Server down' Procedure (Emergency note)

By default, all of Wowrack's dedicated servers (not co-located servers) are monitored by our monitoring server which pings the main IP of each of your dedicated servers.

When our NOC is alerted by our monitoring server that your server is down, we will look at the "emergency note" in omega (omega is Wowrack's customer portal which you will have access as soon as your account is ready) and follow the instruction that is in the emergency note in omega.

If customer has not updated their "emergency note", then we WILL AUTOMATICALLY REBOOT YOUR SERVER and send an email to notify you of what we did. If the server still does not come up after 15 minutes, our data center staff will be dispatched to take a look at the server physically to make sure the hardware is ok. If the problem turns out to be hardware related, Wowrack will fix the hardware asap and customer will not be billed for any support fees.

However, if the server does not come back up because of software issue or OS issue and the server is not managed by Wowrack, then Wowrack will attempt to get the server back up and running and customer will be billed an hourly fee for this support incident. (Wowrack will only spend up to 1 hour working on your server if your server is down and you have not contacted us to request us to continue working on troubleshooting your server) In case the server fix requires a password and we don't have the needed password, we will try to contact you via telephone and email and wait for further instruction from you.

If the event of hardware failure, Wowrack will only reinstall the OS and control panel (if control panel was initially installed before the hardware failure). There will be a support fee charged to your account incase an OS reinstall is needed. Data restoration will be customer's responsibility. In case of hard drive failure, Wowrack will not attempt to recover the data from the failed HD.

This box only applies to customers with unmanaged dedicated server. If you have a managed server, disregard this box. Initial here to acknowledge that you agree to pay an hourly support fee for Wowrack to troubleshoot your unmanaged server as soon as Wowrack finds that your server is down. If this box is not initialized, Wowrack will not monitor your unmanaged dedicated server. The only way we will perform any support for your server is if you request support from us. Initials: _____

SLA requirement

In order for Wowrack SLA policy to be enforceable, you must agree to allow Wowrack to monitor your server and respond to the server alert as soon as possible when an alert goes off. This is the only way we can provide the uptime that we promise in our SLA. If you don't allow Wowrack to monitor your server, you will not be able to request any SLA Credit.

Rights to Damages

Wowrack has the right to claim economic damages from customer if customer violates Wowrack's Terms of Service and causes Wowrack an economic loss.

Indemnification

Customer agrees that customer shall not hold Wowrack liable of any claims, liabilities, losses, costs, damages, expenses, including attorneys' fees and court costs that arise from any judgments directly or indirectly created by the services of Wowrack to the customer.

Limited Liability

Wowrack shall not be liable under any circumstances for any damages the customer's businesses may suffer for any reason, even if Wowrack has been advised of the possibility of such damages. If a problem occurs that is within Wowrack's control, we will issue credits based on the length of the downtime according to the customer's service plan. For more information on service credit and uptime guarantee, please refer to Wowrack's SLA at <http://wowrack.com> in the policies section. As the Internet is unpredictable, customers are aware that network availability is not guaranteed to be 100% available. Wowrack shall not be liable for any claims resulting from downtime, corruption or deletion of any website or data and loss of revenue.

Governing Law

This Agreement shall be governed in the State of Washington. Any litigation will be settled in King County, Washington.

Cooperation of Authorities

Wowrack will fully cooperate with any law officials for any illegal activity that customer attempts/performs using Wowrack services.

Excused Performances

Wowrack shall not be responsible for any delay resulting directly or indirectly from natural disaster such as fire, shortages of facilities, act of civil or military authority, catastrophes, or any other circumstances beyond Wowrack's reasonable control. In case this happens, the customers will have to make arrangements with Wowrack to defer the service to a mutually agreed date and time.

Severability

If any of the provision in this Terms of Service is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the other remaining provisions shall not be affected.

Entire Agreement

This Agreement supersedes all prior and current, oral or written understandings and agreements between Wowrack and the customer involved. Any prior statements that are not written in this agreement, even if they are promised orally or written are deemed void. Customers hereby acknowledge and will abide by all the rules set forth in this agreement.

Additional Policies

The following policies below should be read in conjunction to Wowrack's Terms of Service (TOS):

- 1) Billing Policy
- 2) IP Address Policy
- 3) Service Level Agreement Policy (SLA)
- 4) Privacy Policy
- 5) Zero Spam Tolerance Policy

These policies can be found at Wowrack.com's website under the policies section. Customer hereby represents and warrants that customer has read, understood and agreed to Terms and conditions set forth in the above policies which can be found at wowrack.com website under the policies section.

These terms and conditions also applies to ALL party that uses Wowrack's service directly or indirectly including wowrack's reseller's clients and Wowrack's customer's users. Resellers should not make policy or any kind of agreement for/to their clients that would contradict the policies set forth here.

Mailing Address:
Wow Technologies, Inc
Wowrack.com
2001 6th Ave
Suite 2008
Seattle WA 98121
USA

Phone: 206.522.4402
Fax: 866.969.8878

I have read, understand and agree to abide by Wow Technologies, Inc. (also known as wowrack and wowrack.com) Terms of Service.

Customer Name and Title:

Company:

Date:

Signature: