

Terms of Service

These Terms of Service ("Agreement"), together with any and all invoices, including all amendments or modifications to any of them, along with any policies, guidelines or amendments that may be presented to you from time to time, constitute the sole and entire Agreement between you, your employees and agents (collectively "Customer") and Now Media Group, Inc. (collectively "Now Media Group"), a Delaware corporation, with respect to the matters covered hereby and govern your use of the Now Media Group website, materials, products and services (collectively "Services"). This Agreement supersedes any prior discussions, negotiations and agreements between Customer and Now Media Group ("the parties") with respect to the subject matter hereof. Customer agrees to all of the provisions contained or referred to in this Agreement.

Now Media Group reserves the right to update or change the Agreement, in whole or in part, at any time in its sole discretion without notice. Your continued use of the Services after such changes are posted to the web site also constitutes your acceptance of the changes. The Agreement may not be amended or modified by Customer except by means of a written document signed or expressly assented to by Now Media Group.

1. **Services** – Now Media Group agrees to provide to Customer the Services according to the plan selected by Customer upon submitting the order form and in exchange for payment of fees and full compliance with the Agreement.

Customer agrees to be at least 18 years of age. Customer agrees to provide real, current and accurate information, including a valid and current email address, at all times. You are responsible for maintaining the confidentiality and security of your account and password. You are solely responsible for all activities that occur under your account and for any loss, theft or other destruction of any data as the result of any access to your account via the use of your account information, whether or not actually or expressly authorized by you. You may not use the Service for any illegal or unauthorized purpose. You must not, in the use of the Service, violate any laws in your jurisdiction, including, but not limited to, copyright laws.

2. **IP Addresses** – Internet Protocol addresses assigned or provided by Now Media Group remain the property of Now Media Group, and the right to use the IP addresses belongs solely to Now Media Group.
3. **Term, Fees and Payment** – The initial term of the Agreement shall commence on the date the Customer signs an invoice with Now Media Group. The term of the Agreement shall be one (1) year and will be automatically renewed for successive calendar years unless terminated, in writing, by either Party. For a cancellation by customer to be effective, it must be given at least thirty (30) days prior to the expiration of any contract year.

Establishment of this service is contingent upon receipt of payment from Customer to Now Media Group.

Fees for Service(s) ordered by Customer shall begin on the date of the initial order. All monthly billings will begin on the first of the next month after the initial payment is made. Payment is due on the defined monthly recurring billing date of each month. Credit cards that are declined for any reason are subject to a 10% declination fee. Accounts that reach 7 days past due will be suspended and the Service will be interrupted. Service interrupted for non-payment is subject to a \$50.00 reconnect charge. Accounts not paid by due date are subject to a 1.0% per month interest charge. Now Media Group is not responsible for any additional bank fees, interest charges, finance charges, over draft charges, or other fees resulting from charges billed by Now Media Group. Currency exchange settlements will be based on agreements between Customer and the provider of Customer's credit card.

One Time Fees: One time fees, such as setup fees, administrative fees, bandwidth overages and late fees are due and payable at the time they are incurred, and agreed upon in writing or via ticket with approval.

Refunds & Disputes: All services rendered by Now Media Group are non-refundable. This includes, but is not limited to: setup fees, one time fees, monthly service fees, upgrade fees, additional service fees, administrative fees, and late fees. Customer agrees not to chargeback any credit card payments for services rendered. A chargeback of payment for services rendered will result in an additional charge of 10% of the amount due and will be subject to collection by an authorized collection agency.

4. **Uptime Guarantee** – Now Media Group guarantees network and server uptime of 99.9% during any 12-month period. Guarantee is not applicable in cases where downtime is the result of (1) scheduled maintenance, (2) customer behavior or customer applications, or (3) circumstances where Now Media Group has no influence or control. Exceptions to the guarantee, in which no credits will be made, include, but are not limited to, (1) backbone provider failures, (2) restoration of backups, (3) movement of accounts, (4) issues at the fault of Customer or third party, (5) fiber-optic main line cuts, (6) DNS or Registrar issues with the Customer's domain name, (7) routing issues between the Customer's location and the data center, (8) issues with Customers's local ISP, (9) Denial of Service attack, (10) suspension of an account per our TOS, and (11) external issues such as acts of God, war, governmental bodies, insurrection, embargo, fire, strike, sabotage, flood and any other natural or unnatural events.
5. **SSH** – Now Media Group allows SFTP/SCP access only. Complete SSH access is not allowed.

6. **CGI Scripts** – All accounts have a cgi-bin. You can use any CGI scripts, but Now Media Group reserves the right to disable any script that affects normal server operation or service to other customers. Now Media Group is not responsible for your scripts and their functionality. Our support team cannot troubleshoot your scripts or third party scripts that you use on our servers.
7. **Automatic Updates** – Some plans include automatic updates to WordPress and other installed software enabled by default. Now Media Group is not responsible for any failures resulting from automatic upgrades made to Customer's account or website. If Customer's website relies on outdated plugins, themes, or any other legacy software, Customer should disable automatic updates.
8. **Backups** – Account data is backed up nightly, but Now Media Group does not make any guarantees, either expressed or implied, as to data availability, data validity or backup regularity. Now Media Group is not responsible for the loss or recovery of your data, even if due to the negligence of Now Media Group. We suggest you make your own backups periodically.
9. **Bandwidth/Disk Usage** – Customer agrees not to exceed the maximum amount of bandwidth or disk space allotted for his or her hosting account. Now Media Group shall have the right to take corrective action if Customer's bandwidth or disk usage exceeds the allotted amount. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken is in Now Media Group's sole and absolute discretion. Now Media Group may, at its sole discretion, restrict, suspend or terminate Customer's account. Customer shall not be entitled to a refund of any fees paid in advance prior to such action. Bandwidth and disk space overage is billed at \$2.00 per gigabyte over the allotted amount.
10. **Server abuse/System resources** – Now Media Group has the right to suspend or terminate any account that utilizes an excessive or unacceptable amount of system resources, unless customer upgrades the account or significantly reduces resource usage. Now Media Group has sole discretion in determining what constitutes an excessive or unacceptable amount of system resources.
11. **Copyright Infringement DMCA** – Now Media Group will respond to all reports of infringement that are formatted in accordance with the Digital Millennium Copyright Act and any other applicable copyright laws. Notices of infringement that do not comply with this act will not be processed. We will act in accordance with the DMCA when handling infringement reports.

If you believe that your work has been copied and posted on the Now Media Group Services without your permission or in any way that constitutes copyright infringement, please provide Now Media Group with the following information: a description of the copyrighted work that you claim has been infringed; a description of where the material you claim is infringing is located on the Now Media Group Service; your address, telephone number, and email

address; and a written statement by you stating that you have a good faith belief that the disputed use is not authorized by you, your agent, or the law; and a statement by you, made under penalty of perjury, that you own the claimed infringing material together with any evidence of such ownership. Please contact Now Media Group at the following address:

Now Media Group

Attn: Copyright Infringement

7777 Alvarado Rd. Suite 706, La Mesa, CA 91942

12. **Intellectual Property** – Customer acknowledges that Now Media Group owns all right, title and interest in and to the Now Media Group Services, including without limitation all intellectual property rights (“Now Media Group Rights”), and such Now Media Group Rights are protected by U.S. and international intellectual property laws. The Now Media Group Rights include rights to: (a) the Now Media Group Services developed and provided by Now Media Group and all trademarks and other intellectual property associated therewith; and (b) all software associated with the Now Media Group Services. You agree that you will not copy, reproduce, alter, modify, or create derivative works from the Now Media Group Services or any content placed on the Now Media Group Services by Now Media Group or any third party.
13. **Disclaimer of Warranties** – Now Media Group does not monitor or control content sent through its facilities. Customer acknowledges and agrees that all use of the Services and information obtained through use of Services is at customer’s sole risk. Customer is solely responsible for any damage to Customer’s computer system or other device or loss of data that results from the use of Services.

Customer acknowledge that the Services are provided on an “as is” and “as available” basis. To the extent permitted by applicable law, Now Media Group is not responsible for and hereby expressly disclaims all warranties and conditions of any kind, whether express or implied, including, but not limited to the implied warranties and conditions of merchantability, fitness for a particular purpose and non-infringement.

No advice or information, whether oral or written, provided to Customer by Now Media Group or through or from the Services shall create any warranty.

Now Media Group does not warrant that (1) the Services will meet your requirements, (2) the Services will be uninterrupted, timely, secure or error-free, (3) the results may be obtained from the use of the Services will be accurate or reliable, (4) the quality of any products, services, information or other material purchased or obtained by Customer through the Services will meet your expectations, and (5) any errors in the Services will be corrected.

Now Media Group shall not be responsible for any delays, errors, loss of data, failure to perform, interruptions or disruptions in the Services caused by or resulting from acts of God, acts of third parties, omissions or conditions beyond Now Media Group’s reasonable control.

14. Limitation of Liability – You expressly understand and agree that Now Media Group shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Now Media Group has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Service; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Service; (iii) unauthorized access to or alteration of your transmissions or data; (iv) statements or conduct of any third party on the Service; (v) or any other matter relating to the Service.

Notwithstanding anything else in the Agreement to the contrary, the maximum aggregate liability of Now Media Group and any of its employees, agents or affiliates, under any theory of law (including breach of contract, tort, strict liability, and infringement) shall be a payment of money not to exceed the amount payable by customer for three months of service.

Some jurisdictions prohibit the exclusion or limitation of liability for consequential or incidental damages, and in such jurisdictions, Now Media Group's liability shall be limited to the greatest extent permitted by law.

15. Indemnification – Customer agrees to defend, indemnify, save and hold Now Media Group, its directors, investors, employees, officers, attorneys, agents, affiliates, sponsors, subsidiaries, advertisers, partners and co-branders and their respective officers and employees harmless from and against any and all liabilities, causes of action, lawsuits, penalties, obligations, losses, damages, fines, punitive damages, amounts in interest, claims, demands, expenses and disbursements of any kind and natures whatsoever, including reasonable attorneys' fees and court costs, ("Liabilities") asserted against Now Media Group, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify, save and hold harmless Now Media Group against Liabilities arising out of:

- any injury to person or property caused by any products sold or otherwise distributed in connection with Now Media Group's Server;
- any material supplied by Customer infringing or allegedly infringing on the proprietary rights of a third party;
- copyright infringement;
- any defective product which Customer sold on Now Media Group Server.

Now Media Group shall be the sole judge of what violates this Policy. The customer agrees to limit the liability of Now Media Group to the amount paid for service.

16. **Non-Solicitation** -- Customer will not hire or offer employment to, or otherwise directly or indirectly use the services of, on a full-time, part-time or temporary basis, 1.) Any consultant or employee of Now Media Group who has provided services for Customer hereunder until the expiration of one (1) year after termination of the Agreement; or 2.) Any consultant, employee, or prospective consultant or employee who has been introduced to, recommended to or interviewed by Customer through the services of Now Media Group until the expiration of one (1) year after termination of the Agreement.

If Customer **breaches** this section, it will pay Now Media Group as a conversion fee an amount equal to 25% of the gross annual compensation (including salary and bonus (guaranteed or discretionary)) of the consultant/employee at issue. If the Customer breaches this section by having a consultant/employee provide services to the Customer in a capacity other than that of employee (i.e., on a consulting and/or hourly basis), then Customer will pay Now Media Group an amount equal to the consultant's/employee's last Now Media Group bill rate multiplied by the total number of hours worked by the consultant/employee for the Customer in the twelve (12) month period following the breach of this section.

17. **Relationship of Parties** – Now Media Group, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. Customer does not undertake by this Agreement, or otherwise, to perform any obligation of Now Media Group, whether by regulation or contract. In no way is Now Media Group to be construed as the agent or to be acting as the agent of Customer in any respect, any other provisions of this Agreement notwithstanding.

18. **Governing Law and Choice of Venue** – The Terms of Service and the relationship between you and Now Media Group shall be governed by the laws of the State of California without regard to its conflict of law provisions. Customer agrees to submit to the personal and exclusive jurisdiction of the courts located within the County of San Diego, California.

19. **Survival** – All terms and conditions of this Agreement that should by their nature survive termination of this Agreement shall so survive.

20. **Severability** – In the event that any provision of this agreement is deemed invalid or unenforceable in court, such invalidity and unenforceability shall not affect the validity of any other provisions of the agreement, and such invalid provision will be considered severed from the agreement. However, if the court finds that limiting such an invalid provision would make it valid and enforceable, then such provision shall be deemed to be written, interpreted and enforced as so limited. Such provision may be amended or replaced with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of the parties as reflected in the original provision.

21. **Cancellation** – Now Media Group requires a thirty (30) day written cancellation notice prior to the anniversary billing date for discontinuance or downgrades of month to month services. Failure to supply the requisite thirty (30) days written notice of cancellation will result in a full billable monthly cycle prior to cancellation. Notice of written cancellation is required on company letterhead. Email will not be accepted as a means of cancellation. Notice of cancellation can also be mailed to Now Media Group, 7777 Alvarado Rd. Suite 706, La Mesa, CA 91942. All customer data remaining after the cancellation date will be destroyed for security and privacy reasons.
22. **Termination/Suspension** – Now Media Group may suspend Services to Customer without notice and without liability at any time for any reason, including, but not limited to, (1) violations of the Agreement, (2) failure of Customer to cooperate with any reasonable investigation of any suspected violation of the Agreement, (3) as necessary to protect its network and its other customers, (4) default on payment, or (5) as requested by a law enforcement or regulatory agency.
23. **No Waiver** – The failure of Now Media Group to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.
24. **No Agency** – No part of this Agreement shall be interpreted as creating any agency, partnership or other form of joint enterprise between you and Now Media Group.
25. **Force Majeure** – Now Media Group shall not be in default of any obligation under the Agreement if the failure to perform the obligation is due to any event beyond Now Media Group's control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.
26. **Notices** – Notices to Customer shall be given via email. Notices to Now Media Group under the Agreement shall be given via postal mail to Now Media Group, 7777 Alvarado Rd. Suite 706, La Mesa, CA 91942. Notices are deemed received on the day transmitted, or if that day is not a business day, on the first business day following the day delivered. You agree that Now Media Group may provide you with notices, including those regarding changes to the Agreement, by email, postal mail or via the Now Media Group web site.
27. **Assignment** – Customer may not transfer or assign this Agreement or your rights hereunder, without the express written consent of Now Media Group. Now Media Group may assign all or part of its rights, benefits, interest, obligations and liabilities in connection with all or parts of the Agreement to any party.
28. **No third party beneficiaries** – Customer agrees that there shall be no third party beneficiaries to this agreement.

29. **Agreement Binding on Successors** – The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.
30. **No Inference Against Author** – No provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.
31. **Promotional Materials** – During the term of this Agreement, Now Media Group may use Customer's name and logo for the purpose of referring to Customer as a Now Media Group customer on Now Media Group's website and in its other promotional materials.