

GENERAL TERMS OF USE CLOUDTIMER AND RACEGORILLA



PLEASE READ THESE TERMS OF USE CAREFULLY

Article 1 | Applicability and agreement Terms of Use

- (1) The mobile app and web services that you (the “User” or “you”) have downloaded or used are offered to you by Fair Sport Solutions B.V., Dennenstraat 105, Nijmegen, The Netherlands, registered with the Trade Register under number 71111379 and its partners, suppliers or other affiliates, if any (referred to below as “FSS” or “we”). FSS’s mobile apps and web services (the “App”) are intended to be used to keep records of sports event results, to live-track speed and split times, to keep track of location of participants and to share the position of participants in a competition and split times with other persons (live tracking).
- (2) These Terms of Use for the App (“Terms of Use”), in combination with our [privacy-and cookie policy](#), govern every use of our App. By using the App and opening an account in the App (“Account”), you acknowledge that you have read and understood and agree to be bound by these Terms of Use. If you do not accept these terms of use, you cannot use the App and you must discontinue your use immediately.
- (3) These Terms of Use shall remain in full force and effect while you use the App and continue to apply also if FSS at any time blocks an Account.
- (4) The applicability of any general conditions of the User is expressly excluded.

Article 2 | License mobile App

- (1) We grant you a revocable, non-exclusive, non-transferable, limited right to install and use the App on wireless electronic devices owned or controlled by you, and to access and use the App on such devices strictly in accordance with these Terms of Use.

Article 3 | User representations

- (1) By using the App, you represent and warrant that: **1)** all registration information you submit will be true and complete; **2)** you will maintain the accuracy of such information and promptly update such registration information as necessary; **3)** you have the legal capacity and you agree to comply with these Terms of Use; **4)** you are not a minor in the jurisdiction in which you reside, or if a minor, you have received parental permission to use the App.

Article 4 | User Registration

- (1) To make use of the App you must open an Account of your own via the App. An Account is strictly personal.
- (2) You agree to keep your password confidential and will be responsible for all use of your account and password. If you become aware that your username or password has been lost or stolen, or if you believe that third parties have gained unauthorized access to your Account, you must immediately inform FSS accordingly and change your password as soon as possible.
- (3) FSS may block or remove an Account at its discretion if FSS considers that necessary. If your Account is blocked or if you can no longer use your Account for any other reason, you no longer have access to your Contributions (as defined hereinafter) and are not entitled to any compensation or damages. FSS is under no obligation to give you access to the Contributions again. FSS is under no obligation towards its Users to make a backup of the Contributions or to otherwise save it for the benefit of the Users. FSS recommends that you create your own backup.

Article 5 | User generated contributions and license

- (1) The App may provide you with the opportunity to create, submit, display, publish, distribute, or broadcast content and materials to us or on the App, including but not limited to personal information or other material (collectively “Contributions”). Contributions may be viewable by other users of the App. As such, any Contributions you transmit may be treated as non-confidential and non-proprietary. When you create or make available any Contributions, you thereby represent and warrant that: **a)** the creation, distribution, transmission, public display, or performance, and the accessing, downloading, or copying of your Contributions do not and will not infringe the proprietary rights, including but not limited to the copyright or moral rights of any third party; **b)** you are the creator and owner of or have the necessary licenses, rights, consents, releases, and permissions to use and to authorize us, the App, and other users of the App to use your Contributions in any manner contemplated by the App and these Terms of Use; **c)** you have the written consent, release, and/or permission of each and every identifiable individual person in your Contributions to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of your Contributions in any manner contemplated by the App and these Terms of Use; **d)** your Contributions are not false, inaccurate, or misleading; **e)** your Contributions do not violate any applicable law, regulation, or rule; and **f)** your Contributions do not violate the privacy or publicity rights of any third party. Any use of the App in violation of the foregoing violates these Terms of Use and may result in, among other things, termination or suspension of your rights to use the App.
- (2) By posting your Contributions to any part of the App you automatically grant, and you represent and warrant that you have the right to grant, to us an unrestricted, unlimited, irrevocable, perpetual, non-exclusive, transferable, royalty-free, fully-paid, worldwide right, and license to host, use, copy, reproduce, disclose, publish, broadcast, retitle, archive, store, cache, publicly display, reformat, translate, transmit, excerpt (in whole or in part), and distribute such Contributions for the intended purpose of the App and the related web services,

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and to prepare derivative works of, or incorporate into other works, such Contributions, and grant and authorize sublicenses of the foregoing.

- (3) If you publish Contributions via the App in FSS's digital environment, you accept that that information and those files, data and materials may be used, stored or copied by FSS in a manner and for the purposes described in FSS's privacy policy. You also agree that the provision of services under the App requires that third parties have access to certain information, as described in FSS's privacy policy.
- (4) The User may remove (certain parts of the) Contributions via his or her Account, on the understanding that it is not possible to remove information if and insofar as the information has been shared with other Users of the Platform and/ or made public with the permission of User.
- (5) If you give permission via the App for the sharing of (certain parts of) the Contributions on to other Users of the Platform and/or social media, the information with which you provide FSS is shared with those parties in accordance with the permission given by you. The services of social media third parties are governed by the general conditions, privacy policies and cookie policies of the third parties in question. FSS cannot be held liable for the services of third parties and the general conditions, privacy policies and cookie policies by which they are governed.

Article 6 | Use of the App

- (1) The use of the App and Contributions published thereon is entirely at your own risk.
- (2) To make use of the App you yourself must arrange at your own expense for the device, software and Internet connection required for that purpose.
- (3) You warrant when using the App that: **a)** your use is authorized; **b)** you will at all times comply with the obligations under these Terms of Use and with all the legislation and regulations governing your use; and **c)** your use is in accordance with the intended purpose;

Article 7 | Prohibited activities

- (1) As a user of the App, you explicitly agree not to: **a)** systematically retrieve data or other content from the App to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from us; **b)** make any unauthorized use of the App, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses; **c)** circumvent, disable, or otherwise interfere with security-related features of the App, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the App and/or the content contained therein; **d)** interfere with, disrupt, or create an undue burden on the App or the networks or services connected to the App; **e)** decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the App; **f)** disparage, tarnish, or otherwise harm, in our opinion, us and/or the App; and **g)** use the App in a manner inconsistent with any applicable laws or regulations.

Article 8 | Privacy

- (1) We care about data privacy and security. FSS has drawn up a [privacy-and cookie policy](#) to inform Users about the manner in which FSS collects and processes personal information. FSS recommends that you review that our privacy-and cookie policy and use before the use of the App in order to make an informed decisions on the use of the App. By using the App you agree to be bound by our privacy-and cookie policy, which forms an integral part of these Terms of Use.

Article 9 | Disclaimer and liability

- (1) FSS does its utmost best of making the App available to the Users in optimal form. However, FSS does not warrant access to the App or the proper functioning of the App. The App is provided on an 'as is' and 'as available' basis. You agree that your use of the App will be at your own risk.
- (2) To the fullest extent permitted by law, we disclaim all warranties, express or implied, in connection with the App and your use thereof, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
- (3) To the fullest extent permitted by law, we will assume no liability or responsibility for any, errors, mistakes, or inaccuracies; any interruption or cessation of transmission to or from the App, any bugs, viruses or the like which may be transmitted to or through the App by any third party, and/or any errors or omissions in any content and materials or for any loss or damage of any kind incurred as a result of the use of any content made available via the App.
- (4) FSS cannot warrant that the App or any part thereof will be available at all times and without any breakdown, interruption, error or defect. FSS may at any time and its discretion change or terminate the information and the functionalities of the App in whole or in part, limit, suspend or terminate the use of the App, or remove information, files, data or materials, for any reason and at its discretion, without being liable towards the User in any manner.
- (5) FSS cannot warrant that the Content and functionalities offered, provided, and made available via the App by FSS are correct, complete and suitable void of wrongful content. FSS is not required to ensure that the Content and functionalities made available to the Users by FSS

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via the App remain available to the Users. However, If FSS changes the properties or functionalities of the App and such changes have noticeable consequences for the use of the App by the User, FSS will notify the User accordingly no later than fourteen days beforehand.

- (6) In all cases in which FSS would nevertheless be obliged to pay compensation for direct damages, FSS's liability for direct damages shall at all times be limited to the total amount paid by you for the use of the Services giving rise to the claim, which liability is at all times limited to a maximum amount of EUR 1,000,- (one thousand euro) per event, a series of successive events being regarded as one event.

Article 10 | Indemnification

- (1) You agree to defend, indemnify, and hold us harmless, including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees, from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: **a)** your Contributions; **b)** use of the App; **c)** breach of these Terms of Use; **d)** any breach of your representations and warranties set forth in these Terms of Use; or **e)** your violation of the rights of a third party, including but not limited to intellectual property rights.

Article 11 | Intellectual property rights and portrait rights

- (1) Unless otherwise indicated, the App is our proprietary property and all source code, databases, functionality, software, website designs, audio, video, text, photographs, and graphics on the Site (collectively, the "Content") and the trademarks, service marks, and logos contained therein (the "Marks") are owned or controlled by us or licensed to us, and are protected by copyright and trademark laws and various other intellectual property rights and unfair competition laws in Europe, foreign jurisdictions, and international conventions. The Content and the Marks are provided on the App on an "as is" basis. Except as expressly provided in these Terms of Use, no part of the App and no Content or Marks may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission.
- (2) We reserve all rights not expressly granted to you in and to the App, Content and the Marks.
- (3) No part of these Terms of Use is intended to transfer these intellectual property rights or to in any other manner to entitle the User to these intellectual property rights.
- (4) It is expressly prohibited to attempt to decode, change or alter the software used for the functioning of the App, to develop derivative works, in any other manner to infringe the copyrights by which it is governed or to frame, mirror or otherwise simulate the appearance or the function of the App. The User furthermore may not download, copy, alter or publish any data, information, files or other materials that the User has not placed in CT's digital environment via the App and may not use them for direct or indirect commercial purposes or for any other purpose that is not in line with the intended purposes of the App.

Article 12 | Third party services

- (1) If and to the extent, third-party services are offered via the App, those services are governed by the general conditions, privacy- and cookie policies of such third parties. If you decide to use third-party apps or services, that is entirely for your own account and risk.

Article 13 | Modifications

- (1) FSS may amend these Terms of Use. If you do not accept the amendments, you may terminate the use of the Apps by closing your Account and removing the App from your mobile device.

Article 14 | Miscellaneous

- (1) Our failure to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of such right or provision.
- (2) These Terms of Use operate to the fullest extent permissible by law.
- (3) In the event of a transfer of business, FSS may transfer the rights and obligations under these Terms of Use to a third party.
- (4) We shall not be responsible or liable for any loss, damage, delay, or failure to act caused by any cause beyond our reasonable control.
- (5) If any provision or part of a provision of these Terms of Use is determined to be unlawful, void, or unenforceable, that provision or part of the provision is deemed severable from these Terms of Use and does not affect the validity and enforceability of any remaining provisions.
- (6) You hereby waive any and all defenses you may have based on the electronic form of these Terms of Use and the lack of signing by the parties hereto to execute these Terms of Use.
- (7) Terms and expressions of law and of legal concepts as used in this Terms of Use have the meaning attributed to them under the laws of the Netherlands and these Terms of Use should be read and interpreted accordingly.

Article 15 | Governing law, complaints and disputes

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- (1) These Terms of Use are exclusively governed and construed in accordance with the laws of the Netherlands. Unless mandatory rules of law provide otherwise, the foregoing also applies if an obligation is performed in whole or in part in another country than the Netherlands or if the User involved is domiciled abroad.
- (2) In the event a dispute between the User and FSS cannot be resolved by mutual consent, the User is entitled to submit the dispute to the Disputes Committee via the ODR-platform (see: ec.europa.eu/consumers/odr/) or the competent Dutch court.

Article 16 I Contact

- (1) In order to resolve a complaint regarding the App or to receive further information regarding use of thereof, please contact us at: Support@cloudtimer.nl