

Cloudrails Terms of Use: Terms of Service

Welcome to Cloudrails (“we” or “us”), a peer-to-peer marketplace for outdoor sports equipment. These Terms of Service ("Terms") describe the terms and conditions that govern your use of and participation in Cloudrails services, including, but not limited to, our website, mobile device software applications (“App” or "Apps"), applications for third-party websites and services, and any other mobile or web services or applications offered related to Cloudrails (collectively the "Service"). For the purposes of these Terms and the agreements and policies related hereto, "you" means each person using the Service. All visitors, users, and others who access our website and/or Service, including you and any persons that you authorize to use your account, may be referred to in these Terms as the "User." By accessing or using the Service, you agree to be bound by these terms, as amended from time to time. If you do not agree to these Terms, you are prohibited from using or accessing our website or the Service.

1) Our Service; Member Accounts

Cloudrails provides a forum and service to connect owners of outdoor sports equipment (“Inventory”) interested in making their outdoor sports equipment available for rent or trade ("Listers") with individuals interested in renting or trading for said outdoor sports equipment ("Consumers"). In order to rent, trade or list Inventory on Cloudrails, you will need to establish a member account ("Account"). By providing your information to establish an Account, you give us permission to disclose certain pieces of your personal information to third parties for verification purposes, and to obtain additional information about you. Cloudrails may activate or terminate any Account in our sole discretion for any reason. You may not use another member's Account, permit anyone else to use your Account, or assign or otherwise transfer your Account to any other person or entity. When applying for and creating your Account, you must provide accurate and complete information, and keep such information updated and accurate throughout the term of these Terms. You are solely responsible for the activity that occurs on your account, and you must keep your account secure. You must notify Cloudrails immediately of any breach of security or unauthorized use of your Account. Neither Cloudrails nor Silent Drop LLC will be liable for any losses caused by any unauthorized use of your Account, including, but not limited to, losses suffered as a result of the unauthorized use of your Account in connection with any 3rd party activities. By providing Cloudrails your email address, you consent to our using the email address to send you Service-related email, including any notices required by law, in lieu of communication by postal mail. We may also use your information to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such messages, you may opt out. Opting out may prevent you from receiving messages regarding updates, improvements or offers.

2) Policies and Procedures; Rental Confirmations; Feedback.

When you use the Service to conduct a rental or a trade, you will be required to agree to a respective rental agreement or a trade agreement, or both at times. Each contract is an agreement between a lister and a consumer. Both consumers and listers are encouraged to submit feedback following the completion of each rental. We reserve the option to block you from any further use of the Service until you have submitted such feedback.

3) Service Rules

In using the Service or the App, you agree not to engage in any of the following prohibited activities:

1. copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping";

2. using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to the Cloudrails servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser except that Cloudrails grants the operators of public search engines revocable permission to use spiders to copy materials from Cloudrails.org for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials;
3. transmitting spam, chain letters, or other unsolicited email;
4. attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service;
5. using our website, App or Service in any manner to circumvent or secure a rental outside of the Service or to avoid fees payable to Cloudrails in connection with your use of the Service;
6. taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure;
7. uploading invalid data, viruses, worms, or other software agents through the Service;
8. collecting or harvesting any personally identifiable information, including account names, from the Service;
9. using the Service for any commercial solicitation purposes;
10. impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity;
11. interfering with the proper working of the Service;
12. accessing any content on the Service through any technology or means other than those provided or authorized by the Service;
13. or bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

Cloudrails may permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Service without notice and liability for any reason, including if in Cloudrails's sole determination you violate any provision of these Terms. Cloudrails also retains the right to remove or suspend listings for any reason, including a violation or suspected violation of these Terms. All aspects of the Service are subject to change or elimination at Cloudrails's sole discretion. Cloudrails reserves the right to interrupt the Service with or without prior notice for any reason. You agree that neither Cloudrails nor Silent Drop LLC will be liable to you for any interruption of the Service, delay or failure to perform.

4) User Content

Some areas of the Service may allow you to post feedback, comments, questions, images and other information ("User Content"). You are solely responsible for any User Content that you upload, publish, display, link to or otherwise make available (hereinafter, "post") on the Service, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content. You understand that neither Cloudrails nor Silent Drop LLC guarantees any confidentiality with respect to any User Content.

You agree not to post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal; (ii) may create a risk of any other loss or damage to any person or property; (iii) seeks to harm or exploit children by exposing them to inappropriate content, asking for personally identifiable details or otherwise; (iv) may constitute or contribute to a crime or tort; (v) contains any information or content that we deem to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, or otherwise objectionable; (vi) contains any information or content that is illegal (including, without limitation, the disclosure of insider information under securities law or of another party's trade secrets); (vii) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; (viii) contains contact or other information in an attempt to circumvent the Service or avoid fees in connection

with your use of the Service; or (ix) contains any information or content that you know is not correct and current.

You agree that any User Content that you post does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights (as defined below), rights of publicity and privacy. Cloudrails reserves the right, but is not obligated, to reject and/or remove any User Content that Cloudrails believes, in its sole discretion, violates these provisions.

For the purposes of these Terms, "Intellectual Property Rights" means all patent rights, copyright rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

Neither Cloudrails nor Silent Drop LLC takes any responsibility or assumes liability for any User Content that you or any other User or third party posts or sends over the Service. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content that you send, upload, download, stream, post, transmit, display, or otherwise make available or access through your use of the Service, is solely your responsibility. Neither Cloudrails nor Silent Drop LLC is responsible for any public display or misuse of your User Content. You understand and acknowledge that you may be exposed to User Content that is inaccurate, offensive, indecent, objectionable, or inappropriate for children, and you agree that neither Cloudrails nor Silent Drop LLC shall be liable for any damages you allege to incur as a result of such User Content.

5) Other Users

You are solely responsible for your interactions with other Cloudrails Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. Neither Cloudrails nor Silent Drop LLC shall have any liability for your interactions with other Users, or for any Users action or inaction, with respect to Rentals or the Service. You acknowledge that Cloudrails does not offer transportation services. Instead, the Service allows Consumers and Owners to transact deals directly with each other. Neither Cloudrails nor Silent Drop LLC guarantees the quality, safety, truth or accuracy of Rentals, User Content, or any services or transactions concluded and/or available that involve any usage of the Service.

If you have a dispute with one or more Users, you release Cloudrails and Silent Drop LLC (and our officers, directors, agents, subsidiaries, and employees) from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, within any territory in the universe, arising out of or in any way connected with such disputes or your use of the Services. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

6) License Grant

You retain all your ownership rights in your User Content. By posting any User Content on the Service, you expressly grant, and you represent and warrant that you have a right to grant, to Cloudrails and Silent Drop LLC, a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, publicly perform, publicly display, and make derivative works of all such User Content and your name, voice, and/or likeness as contained in your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with Cloudrails's and Silent Drop LLC's (and its successors and affiliates) business. You also hereby grant each User of the Service a non-exclusive license to access your User Content through the Service, and to use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Service and under these Terms.

7) Fees; Billing; Payments

Fee Schedule and Billing Policies. You agree to the fees and charges, terms of sale, payment and billing policies applicable to your use of the Service as stated in our Rental Contract and Trade Contract, and in the terms of service of any 3rd party payment facilitator incorporated into the Service's functionality. Cloudrails may add new services for additional fees and charges, or amend fees and charges for existing services, at any time in its sole discretion without notice to you. All fees and charges for your use of the Service are non-refundable, except as may be expressly stated in the respective contracts.

Payments. If you are a lister, you may set the respective fees for your Inventory as permitted by the Service; provided, if renting and not trading, that you must list your Inventory for a nominal value (i.e., you cannot list your Inventory for free if you are solely listing it for rental). When listing your Inventory, you will be required to enter your Paypal email address, and you agree you will not accept any other method of payment in connection with the usage of the Service except as otherwise outlined in the respective rental or trade agreement; you understand and agree you need an active Paypal account to receive funds in connection with normal usage of the Service. If you are a consumer, you will be required to pay the lister using your active Paypal account, and you agree you will not use any other method of payment in connection with the usage of the Service except as otherwise outlined in the respective rental or trade agreement; you understand and agree you need an active Paypal account to send funds to other Users in connection with normal use of the Service. Any and all payment disputes are to be addressed with Paypal or between Users; neither Cloudrails, nor Silent Drop LLC, has access to or facilitation with such payments. To ensure proper payment conditions, you are solely responsible for providing and maintaining accurate contact and payment information associated with your account. You agree to pay all applicable taxes or charges imposed by any government entity in connection with your participation in the Service.

8) Availability

Cloudrails uses reasonable efforts to ensure that our services are available 24 hours a day, 7 days a week. However, there will be occasions when our services may be interrupted for maintenance, upgrades, emergency repairs, failure of telecommunications links and equipment that are beyond the control of Cloudrails, or any other reason that may cause an interruption in the functionality of our services. You understand and agree that neither Cloudrails nor Silent Drop LLC shall be liable to you for any modification, suspension or discontinuance of any of our related services and/or our respective Apps. **YOU UNDERSTAND AND AGREE THAT ALL OF OUR SERVICES AND APPS ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND.** You are responsible for obtaining access to our services and any third party fees (such as Internet service provider or airtime charges) that you may incur.

9) Exclusive Ownership of Rights

Our digital properties contain proprietary and confidential information that is protected by intellectual property laws in applicable jurisdictions. You acknowledge and agree that information and materials presented by our digital properties are protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly permitted by applicable law or as authorized by us, you agree not to modify, sell, distribute, transmit, broadcast, publicly perform or create derivative works based on our digital properties, in whole or in part. Any commercial use of our digital properties, or any portion thereof, by you is strictly prohibited.

Cloudrails grants you a personal, non-transferable and non-exclusive right and license to use our digital properties on a computer or other Internet device; provided that you do not (and do not allow any third party to) copy, reproduce, distribute, reverse engineer or otherwise exploit any respective content, code, data or materials. You agree not to modify our digital properties in any manner or form, nor to use modified versions of such properties for any purpose. We do not grant any license or other authorization to any user to use our trade names, trademarks, service marks or other marks or logos or those of our partners without our separate express written agreement. Third party marks are the property of their respective owners.

Any questions, comments, suggestions, or materials submitted to us through our website will become the sole property of Cloudrails and Silent Drop LLC, both of which will own all rights in such

materials, and have the unrestricted right to use, publish and otherwise disseminate such information for any purpose, without attribution or compensation to you.

10) External Links

From time to time Cloudrails may provide links that will take you to third party websites. These links are provided for your convenience only. If you decide to access linked websites you do so at your own risk. Neither Cloudrails nor Silent Drop LLC endorses or takes responsibility for the content on other websites or the availability of other websites; you agree that neither Cloudrails nor Silent Drop LLC is liable for any loss or damage that you may suffer by using other websites.

11) Amendment

We reserve the right to amend these Terms from time to time without notice. Your continued use of our digital properties, including the Service and Apps, constitutes acceptance of any amendments, additions, or modifications to these Terms.

12) Eligibility

This Service is intended solely for people (18) years of age or older, and any registration, use or access to the Service by anyone under 18 is strictly prohibited. Cloudrails reserves the right to limit or restrict access by any person, in our sole discretion.

13) Privacy

We care about the privacy of our Users. Our Privacy Policy outlines how we use and safeguard your information. By using the Service, you are consenting to have your personal data collected, used, transferred to and processed in the United States.

14) Security

We have implemented commercially reasonable technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk and will hold harmless Cloudrails and Silent Drop LLC in the event of any damages you incur as a result of a security breach.

15) Indemnity

You agree to indemnify and hold harmless Cloudrails, Silent Drop LLC, and their subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data or content transmitted or received by you; (ii) your violation of any term of these Terms, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) your violation of any law, rule or regulation of the United States or any other country; (v) any claim or damages that arise as a result of any of your User Content or any that is submitted via your account; or (vi) any other party's access and use of the Service with your unique username, password or other appropriate security code. You will defend Cloudrails and Silent Drop LLC from and against any such claims at their request.

16) Disclaimer of Warranties

Our information and services are provided "as is" and for informational purposes only. Neither Cloudrails nor Silent Drop LLC makes any representations or warranties that any of our services will be suitable for your needs, are complete, timely, reliable, or free from errors, inaccuracies or typographical mistakes. Cloudrails and Silent Drop LLC disclaim all warranties, express or implied, including warranties of merchantability or fitness for a particular purpose or non-infringement of the rights of others. Neither Cloudrails nor Silent Drop LLC warrants that any of our digital properties will be free of errors or viruses, worms or other destructive or harmful code.

17) Limitation of Liability

IN NO EVENT SHALL CLOUDRAILS, SILENT DROP LLC, OR ANY ASSOCIATED DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, OR CONTENT OR SERVICE PROVIDERS (COLLECTIVELY, THE "PROTECTED ENTITIES") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM, OR DIRECTLY OR INDIRECTLY RELATED TO, THE USE OF, OR THE INABILITY TO USE, OUR DIGITAL PROPERTIES AND THE SERVICES OFFERED HEREBY, OR THE CONTENT, MATERIALS AND FUNCTIONS RELATED THERETO, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, OR OTHERWISE) EXCEED FIVE DOLLARS (\$5.00). THE ABOVE LIMITATION MAY NOT APPLY IN ALL JURISDICTIONS OR TO ALL USERS. IF YOU ARE NOT IN AGREEMENT WITH THE FOREGOING, YOUR SOLE REMEDY IS TO TERMINATE AND DISCONTINUE USE OF ANY OF OUR DIGITAL PROPERTIES.

Neither Cloudrails nor Silent Drop LLC makes any representations that the Service is appropriate for use in all locations of the universe. Those who access or use the Service do so at their own volition and are entirely responsible for compliance with all applicable laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government.

18) Governing Law

The Service and these Terms are governed by the laws of the State of New York without giving effect to any principles of conflict of laws. If any provision of these Terms of Use shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby. You agree any lawsuit arising from your use of any of our digital properties shall be brought exclusively in the venue of the Southern District of New York or any court in Nassau County, NY; Persons who choose to access our digital properties from other locations do so on their own initiative, and are responsible for compliance with respective local laws, if and to the extent local laws are applicable. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Contact

Any questions, comments or suggestions, including a report of any violation of these Terms, should be provided to us via email: info@cloudrails.org

DMCA Notice

Since we respect content owner's rights, it is Cloudrails's policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 ("DMCA"). If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Service, please notify Cloudrails's copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

- An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- Identification of the copyrighted work that you claim has been infringed; Identification of the material that is claimed to be infringing and where it is located on the Service;
- Information reasonably sufficient to permit Cloudrails to contact you, such as your address, telephone number, and, e-mail address;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law;
- A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to the following email:
info@cloudrails.org

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS FEES.

Please note that this procedure is exclusively for notifying Cloudrails and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with Cloudrails's rights and obligations under the DMCA, including 17 U.S.C. 512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, Cloudrails has adopted a policy of terminating, in appropriate circumstances and at Cloudrails's sole discretion, members who are deemed to be repeat infringers. Cloudrails may also at its sole discretion limit access to the Service and/or terminate the accounts of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.