

Digimedia.NET Terms & Conditions

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ABN 19 082 786 301

Terms and Conditions

Definitions

The supply of Services under this agreement are provided by Digimedia Pty Ltd ACN 19 082 786 301 (In this agreement referred to as "our", "we", "us" or "Digimedia.NET"). "Service" means access to the world-wide computer network known as the Internet including information services, computer resources, disk storage and computer communication resources.

Denial-of-service attacks mean behaviour of the Customer that result in disruption of the ISP's service, disruption of other peoples Internet Access or their enjoyment of that Access, which includes but is not limited to computer viruses, IRC harassment, email bombardment, damage to Internet-connected resources and channel flooding.

Disconnection or Termination is the process of the ISP ceasing to provide the Internet Access and upon an event permitting or requiring the ISP to do so: (a) The account may be suspended until reinstated and in any event for not less than 14 days, during which time all incoming mail will be held pending reinstatement of the Users account. (b) If not reinstated within 14 days or such further period as the ISP may permit, the account will be closed, and the ISP will have no responsibility for email or other data sent to or previously held on a closed account.

Downtime means periods of unavailability or limited availability of the Internet Access.

Internet Access means connection to the global network of networks known as The Internet using software protocols supported by the ISP to connect the Customer's computer equipment to the ISP's network. This includes access to email and the World Wide Web, but not necessarily other services or access otherwise than from a dialup connection. In the event that the ISP limits the Internet Access to access via a dialup connection to email and the World Wide Web, the appropriate Account Limitations must be endorsed on the Special Conditions.

ISP means the Internet Service Provider referred to in the Application Form or Website, its successors and assigns.

Megabyte (MB) means one million bytes.
Gigabyte (GB) means one thousand megabytes.

Notice by e-mail shall be sufficient written notice, but at the discretion of either the Customer or the ISP, notice may also be sent by their choice of post, hand delivery or facsimile transmission. The ISP shall confirm receipt of email from the Customer where needed with prejudice. It is a condition of service that the Customer read their Digimedia.NET email account regularly, as this is the typical means of communication between Digimedia.NET and the Customer. All email correspondence from the

Customer to Digimedia.NET should be addressed to support@digimedia.com.au.

Regular Payment is the periodic charge due to the ISP from the Customer for the Customer Internet Access, excluding telephone charges payable to the telecommunications carrier. Telephone charges payable to the telecommunications carrier (such as Telstra, Optus, AAPT) are strictly the responsibility of the Customer. It is the responsibility of the Customer to verify with their Telephone Service Provider (Carrier) that they will only incur local phone call charges while using

Digimedia.NET's service.

Special Conditions means terms and conditions endorsed on the Application Form or Digimedia.NET Web Site which impose fees, charges, limitations and conditions on the provision of the Internet Access and include the Account Limitations and Special Terms.

Spamming means unsolicited bulk electronic messages sent by the Customer which in the reasonable opinion of the ISP constitutes a breach of acceptable use of the ISP's email, Usenet news or similar facilities.

Customer means the customer named in the Application Form, either completed online at the Digimedia.NET Web Site or on paper-based application form, or name given during manual telephone or email signup arrangements.

Usenet News means the hierarchy of newsgroups providing public messages on a variety of topics.

Web Hit means a request for any file from a Customer's web pages directory, including but not limited to any text, graphics, sound, animation or video file on any individual web page.

Digimedia.NET Web Site means the publicly viewable content and pages stored electronically which reside at the URL: "http://www.digimedia.com.au/" but not limited to the private "My Account" section therein, viewable only to individual customers of Digimedia.NET.

Attended Access is defined as interactive use of an established Internet connection by the Customer. Interactive use requires the physical presence of the Customer; in other words, attended access.

Agreement

This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the supply of the Service. The Customer agrees not to hold Digimedia.NET liable in respect to any loss or damage in business or personal matters as a result of any interruption or the quality of the Service.

Provision of Service

Digimedia.NET shall provide the customer with the Service. The Service shall be generally available 24 hours a day, seven days a week except for service maintenance times which Digimedia.NET shall advise to Customer from time to time via electronic mail. Digimedia.NET will provide the Customer with a Login Username and Unique Password, telephone number and other log-in information that is required to enable connection to the Service.

Changes

Digimedia.NET reserves the right to modify this AUP document periodically, with or without written or other notice. It is the Customer's responsibility to actively check this AUP document periodically.

No Warranty; Limitation of Liability

Use of Digimedia.NET services and system and the Internet in general is at subscriber's sole risk. Digimedia.NET does not warrant that its services and system will be uninterrupted, error free, free from unauthorised intrusion, or that Digimedia.NET's services or system will meet any particular criteria of performance or quality; nor does Digimedia.NET make any

warranty as to the results or information obtained from use of its service or system or the Internet in general. Digimedia.NET's services and system are provided on an "as is", "as available" basis without warranties of any kind, either expressed or implied, including implied warranties of merchantability, fitness for a particular purpose, compatibility, security or accuracy, all of which warranties are hereby expressly disclaimed except to the extent any warranty cannot be disclaimed under applicable law. Under no circumstances shall Digimedia.NET be liable for any indirect, incidental, special or consequential damages, including, without limitation, loss of profits. Without limiting the foregoing, Digimedia.NET will not be liable for damages resulting from the use or inability to use all or any part of Digimedia.NET's system or services, reliance by any person on information obtained through Digimedia.NET's service or the Internet, deletion or loss of files or e-mail, viruses, any delay or failure of performance, or unauthorised access to records or files.

Indemnity

The customer agrees to indemnify and hold harmless Digimedia.NET, its directors, officers, shareholders, agents, employees and its other subscribers from any and all claims, liabilities, damages, or expenses, including but not limited to attorney fees, arising out of or resulting from any and all use of subscriber's account or the subscriber's Web Site whether or not authorised.

Charges

The charges for using the Service are detailed on the application form. No refunds are given unless Customer and Digimedia.NET agree. Digimedia.NET retains the right to alter these charges from time to time and the customer shall be given one month's written notice, by letter, facsimile or electronic mail, of any such alterations. The customer agrees to pay charges for installation, access and any other services. Should a credit card number expire or should Digimedia.NET otherwise be unable to debit valid charges to this credit card number, Digimedia.NET

may immediately and without notice withdraw Customer's access to the Service. Payment for small amounts may be charged immediately or deferred to the following month at the discretion of Digimedia.NET.

When paying by cheque, if the payment is dishonoured, Customer will forward Digimedia.NET payment plus an additional \$25 accounting fee immediately in order to keep their membership.

The Customer agrees to pay Digimedia.NET's reasonable attorney's fees and court costs, where permitted, in collecting the amount outstanding in the Customer's contract as stated by invoice.

Account Payment and Termination

Customers whose accounts are terminated for any of the above infractions are also responsible for the cost of labour to cleanup and respond to complaints incurred by Digimedia.NET. This includes any charges that external servers may have for relaying the material posted by the customer.

Charges must be paid on a timely basis to maintain Customer's membership privileges. Payments not made by the due date will result in the Customer's access being automatically suspended and a reconnection fee may apply.

Failure to use this account(s) does not relieve the Customer of payment obligations, except as specifically provided in this contract. In the event the Customer defaults on this contract, Digimedia.NET may suspend or revoke the Customer's membership privileges and the Customer may have to reapply for membership at the current Digimedia.NET new member rate.

Anniversary date

All accounts are renewable on the first of each month not when a client has joined.

Customer Responsibilities

The Customer agrees to provide telephone line, modem, computer and software as is necessary to access the Service.

The Customer agrees not to assign or otherwise transfer this Agreement or Customer's rights under it, delegate Customer's obligations or resell the Service.

The Customer is responsible for the selection and use of security features, non disclosure of personal log-in information and back up of any information.

The Customer is responsible for all use of the Service accessed through Customer's password. Disclosure or loss of log-in information that incurs charges or Service misuse is Customer's responsibility and should be reported to Digimedia.NET as soon as possible. The use of the Service is at Customer's sole risk and is entirely the Customer's responsibility. Digimedia.NET does not and cannot monitor or control the content and information accessed via the Service and Digimedia.NET shall not be held responsible in any way for any content or information accessed via the Service.

The Customer will not use the Service so as to interfere with or disrupt network users, services or equipment. Disruptions include, but are not limited to, distribution of unsolicited advertising, propagation of computer worms and viruses, using the network to make unauthorised entry to any other machine accessible via the Service, sending harassing or threatening electronic mail and forgery (or attempted forgery) of electronic mail messages and Usenet news postings. The Customer agrees to refrain from mass posting of messages to inappropriate Usenet newsgroups. The Customer agrees to refrain from mass, unsolicited e-mailings. The Customer agrees to post advertisements only where appropriate, and in venues that specifically encourage or allow advertising.

The Customer agrees to respect the conventions of the newsgroups, lists and networks to which the customer is posting, including rules more restrictive than, but not limited to, the above.

The Service cannot be used by any individual or group of persons for any activities of an illegal or fraudulent nature, including any activities prohibited under the Australian Commonwealth Government Telecommunications Act 1989, or under other applicable Australian State and Commonwealth laws; and / or any unauthorised use of copyright material. Certain Internet content may contain material which the Customer may find inappropriate, offensive, inflammatory, or adult in nature. Digimedia.NET does not endorse such materials and disclaims any and all liability for their contents. The Customer hereby indemnifies Digimedia.NET in respect to any loss or damage action claim suit or proceeding against Digimedia.NET by any person arising out of the use of the Service by the Customer including but not limited to the transmission of any illegal and / or fraudulent material.

Security

The customer agrees to maintain a secure password to the account. Secure passwords are those that are between 6 and 15 characters long, contain upper and lower case letters and numbers or other characters, and cannot be found in direct or reverse order in a dictionary, without regard to the language of the dictionary.

Any program, utility, or file that can be used to allow unauthorised access or gain unauthorised information about a computer, network, or file is prohibited. Storage of these archived programs, software, utilities, or files in an archived format and only for personal use or personal download is acceptable. Removing such files from their archived or compressed state, attempts to run and/or attempting to compile or use such software is prohibited.

As information transmitted through the Internet is generally not confidential, Digimedia.NET does not guarantee the protection

of Customer's privacy. Customer will take all necessary measures (including changing Customer's password from time to time) to protect the secrecy of Customer's User Identification ("UserID") and/or password. Change of password over the phone will only be permitted and given to the authorised account holder. Verification of the identity of the account holder will be conducted as required by Digimedia.NET. Digimedia.NET is not liable for any loss suffered by Customer or any third party due to any wrongful or fraudulent use of Customer's account by Customer or any other person.

Where a UserID is necessary to access the Service, Customer will use only their own Customer UserID.

Customer does not acquire rights to any mailbox number, mailbox name, the UserID, IP address, circuit reference and any codes assigned to Customer by Digimedia.NET and Digimedia.NET reserves the right to change or re-assign the same to Customer at its sole discretion without being liable to Customer for any loss suffered by Customer.

Digimedia.NET will not perform system backups on information stored within its system. Digimedia.NET is not responsible or obligated to provide historical data or to assist Customer in downloading, faxing or reading to Customer any of Customer's electronic mails.

If at any time Digimedia.NET requests the Customer to reset Customer's password, Customer must immediately reset that password to a new password.

Customer must immediately notify Digimedia.NET of any unauthorised use of Customer's account or any other breach of security known to Customer. Liability of the Customer only ceases at the time of notice of an unauthorised or illegal account use.

Digimedia.NET is not responsible for Customer's personal files residing on Digimedia.NET. Customer is responsible for independent backup of his or her data stored on Digimedia.NET. Digimedia.NET reserves the right to delete Customer's personal files after one or both parties terminate agreement.

Monitoring

We support the free flow of information and ideas over the Internet and do not actively monitor use of the Services under normal circumstances.

Similarly, we do not exercise editorial control over the content of any Web site, electronic mail transmission, news group, or other material created or accessible over or through the Services, except for certain proprietary websites. However, in accordance with our Internet Service Agreement, we may remove any materials that, in our sole discretion, may be illegal, may subject us to liability, or which may violate this AUP.

Digimedia.NET may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Your violation of this AUP may result in the suspension or termination of either your access to the Services and/or your Digimedia.NET account.

Termination

This Agreement shall remain in place until it is terminated by either Customer or Digimedia.NET by giving 48 hours written notice. Upon a cancellation request the account becomes dismantled. No reconnection of the once cancelled account is possible and no refunds are given if an account is terminated prior to the anniversary date. Digimedia.NET reserves the right to terminate the Service without notice if Customer misuses or abuses the Service. What constitutes misuse or abuse of the Service is determined by Digimedia.NET.

Notices

All notices to be served on either party by the other shall be in writing and shall be sent by hand delivery, post or facsimile, or electronic mail to the parties hereto at their respective addresses as specified on the Agreement form.

Governing Law

This Agreement shall be governed by the laws in force in the State of Victoria and each party hereto submits to the exclusive jurisdiction of the Courts of that State.

Acceptable Use Policy / SPAM Policy

ACCEPTABLE USE POLICY 14/03/03

Digimedia Pty Ltd (the Company) provides its Customers (the Customer) with this Acceptable User Policy (AUP) in order to offer uninterrupted and faultless services. Please read this AUP in order to acknowledge what acceptable use of our services is. The Company reserves the right to suspend or terminate any of the Customer's Service(s) upon identifying of the Customer's contravention of any one or more of the following:

1 General

1.1 The Customer shall use the Specified Service provided in conjunction with the terms and conditions for the purposes of gaining access to the Internet and the services thereon.

1.2 The Customer shall use the Specified Service only for its own purposes and shall not make the use of the Specified Service available to any third party nor use it on behalf of or for the benefit of any third party.

1.3 The Customer shall not send, transmit, make available, copy, retransmit, broadcast or publish (whether directly or indirectly) in whatever form, any data, information, material or statement which infringes the intellectual property rights of any person or legal entity or the laws or statutory regulations or contractual rights or laws relating to defamation, contempt, blasphemy, infringement of privacy or personal data rights and any equivalent or related laws in any state or territory in which they are or may be accessed or made available.

1.4 The Customer shall not make use of the Specified Service for the purposes of attempting or establishing unauthorised access to or of facilitating a breach in the security devices of machines, resources or networks without

Sample of a daily log, indicating automatic reconnections

| POP | Tx | Rx | Logon Time | Duration | Modem | Disconnect |
|-----------|------|------|---------------------|----------|-------------|-------------|
| Melbourne | 0.15 | 0.24 | Thu 07 Feb 07:52:27 | 03:00:00 | 50667/26400 | sessTimeOut |
| Melbourne | 0.14 | 0.26 | Thu 07 Feb 04:51:43 | 03:00:00 | 50667/26400 | sessTimeOut |
| Melbourne | 0.19 | 0.37 | Thu 07 Feb 01:50:58 | 03:00:00 | 50667/26400 | sessTimeOut |

3 Abuse

3.1 Any use of Digimedia.NET system resources that disrupts the normal use of the system for other Digimedia.NET customers is considered to be abuse of system resources and is grounds for administrative intervention. Some examples of system abuse include spawning dozens of processes, consuming excessive amounts of memory or CPU for long periods of time.

3.2 Digimedia.NET reserves the right to collect damages (software, hardware & man hours) if any harm is done to Digimedia.NET which requires repair or reconfiguration of any kind.

3.3 The following use of the services is treated as abuse; and will result in immediate disconnection and/or legal action.

a. Using the Services to transmit any material (by email, uploading, posting, or otherwise) that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated there under.

b. Using the Services to harm, or attempt to harm, minors in any way.

c. Using the Services to transmit any material (by email, uploading, posting, or otherwise) that threatens or encourages bodily harm or destruction of property.

d. Using the Services to transmit any material (by email, uploading, posting, or otherwise) that harasses another.

e. Using the Services to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as "pyramid schemes," "Ponzi schemes," and "chain letters."

f. Adding, removing or modifying identifying network header information in an effort to deceive or mislead is prohibited. Attempting to impersonate any person by using forged headers or other identifying information is prohibited. The use of anonymous remailers or nicknames does not constitute impersonation. Using deliberately misleading headers ("munging" headers) in news postings in order to avoid Spam email address collectors is allowed.

the prior unequivocal consent of the lawful owner of that machine, resource or network.

2 Unlimited Use / time /hours

2.1 Sessions apply. The Customer may stay connected so long as they are actively using that connection. The customer can manually reconnect to gain access to the Internet immediately after a session time out. The customer must not reconnect to gain access to the Internet using "automatic" reconnection as defined below.

2.2 Automatic reconnection is defined as: "the use of a device and/or program for the purpose of redialing a modem to establish an Internet connection."

2.3 Automatic reconnection can be detected using server connection logs. If a regular pattern is detected that the customer's modem reconnects automatically during a 24-hour period a written warning notice will be issued to the Customer. Ignoring such notice will lead to immediate disconnection, until further notice.

2.4 Digimedia.NET maintains the right to terminate any Customer's connection following any extended period of inactivity as determined by Digimedia.NET.

2.5 Artificial generation of traffic for means of evading "idle timeouts", during but not limited to unattended access, such as pinging, bots, or automatic email checking, are expressly prohibited.

2.6 The Customer must not mistake an unlimited dial up modem connection to be the same as a permanent modem dial connection. A permanent dial up connection can be used continuously over 24 hours.

g. Using the Services to transmit any unsolicited commercial email or unsolicited bulk email. Activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email whether or not that email is commercial in nature are prohibited.

h. Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Digimedia.NET's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data.

i. Using the Services to transmit any material (by email, uploading, posting, or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the unauthorised copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorised transmittal of copyrighted software.

j. Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.

k. Reselling the Services without Digimedia.NET's authorisation.

l. Using the Services for any activity which adversely affects the ability of other people or systems to use Digimedia.NET Services or the Internet. This includes "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. It is the Customer's responsibility to ensure that their network is configured in a secure manner. A Customer may not, through action or inaction, allow others to use their network for illegal or inappropriate actions. A Customer may not permit their network, through action or inaction, to be configured in such a way that gives a third party the capability to use their network in an illegal or inappropriate manner.

4 Email

- 4.1 The Customer shall not make use of the Specified Service to facilitate and further the publication and distribution of chain letters, unsolicited commercial or bulk email.
- 4.2 The Customer shall not make use of the Specified Service to send or cause to be sent or forwarded either large numbers and/or large messages or a message irrespective of size at such frequency that it causes the recipient annoyance and/or causes the recipient's mailbox to become unable to cope with the volume of email traffic directed at it and disables said mailbox.
- 4.3 The Customer shall not make use of any Service to send or forward malicious messages and/or viruses to cause annoyance and/or disruption to another user's service.
- 4.4 The Customer shall not cause another user of a service provided to be subscribed to a mailing list or some other service without their prior express permission for that purpose.
- 4.5 The Customer shall not forge or create the use of a header and/or address to tend to show that a message originates from a machine or network other than that on which it does originate or that replies to a message are directed to a machine at which the Customer neither has a right nor permission to cause replies to be directed.

5 Usenet

- 5.1 The rules relating to email outlined above shall be equally applicable to Usenet postings.
- 5.2 The Customer shall not use the Specified Service to cause or further the excessive cross- and/or multi-posting of messages to newsgroups and/or bulletin board services.
- 5.3 Digimedia.NET considers "cross posting" to 10 or more groups within a two day sliding window to be excessive.
- 5.4 Digimedia.NET Customers may not cancel messages other than their own messages. A Customer may cancel posts forged in that Customer's name. We may cancel any postings which violate this AUP.
- 5.6 Commercial advertisements are off-topic in most newsgroups, especially regional groups not specifically named for such. The presence of such articles in a group is not indicative of the group's "intended" use. Please familiarise yourself with basic Usenet netiquette before posting to a newsgroup

6 Web space

- 6.1 The Customer shall not use its own personal website for the

use of corporate or business use.

- 6.2 The Customer shall not use unsolicited email messages or cause such to be used in order to draw attention to, promote or otherwise advertise its website.
- 6.3 The Customer shall not publish, hold or cause to be held or accessed via its website material that is of an illegal nature and/or contrary to the terms and conditions.

7 Enforcement

- 7.1 Non-enforcement of any section of this Agreement does not constitute consent and Digimedia.NET reserves the right to enforce this Agreement at its sole discretion.

Spam Policy

We support a view to zero tolerance on SPAM and network abuse. If we receive a legitimate complaint about a user engaging in the sending of SPAM email or any other form on network abuse then we will follow the steps below:

1. Upon receiving a legitimate complaint we will block the user from further access to the network.
2. As soon as feasible we will contact the user and pass on any evidence or material we have received about the complaint.
3. We may, at our discretion, re-enable network access for that user if requested to do.
4. We will log the CND of the offending user. This allows us to track offenders as they move between ISPs.
5. We may at our discretion block network access from the CND of repeat offenders.
6. If a blacklisted CND attempts to login, they will be automatically disconnected.
7. We may at our discretion unblock a blacklisted CND if requested to do so



Flat Rate Residential ADSL Fair Use Policy

This Fair Use Policy is introduced by our 3rd Party Carrier and therefore Digimedia.NET in accordance with clause 20.2 of the ADSL Supply Agreement. This policy will take effect from 1 June 2004.

The Digimedia.NET Residential DSL Service is delivered using network resources that are shared across all users. As set out in the Service Schedule, there is no explicit cap on the amount of data a user may download using the Service but the Service is oversubscribed and contention-based. As it is contention-based, the amount of bandwidth available for all users is limited, based on contention ratios that are applied. As such, all users must contend for the available bandwidth. In an ideal environment, all users would obtain an equal percentage of the available bandwidth and users would experience an equivalent percentage throughput experience.

Unfortunately, some users are able to work around the contention or simply take very significantly more data than the average user on which the contention ratio modelling has been done. Such users take a disproportionately greater share of the available bandwidth and, as a consequence, the majority of users suffer a diminished experience. The statistics show that 5% of users download 40% of the total data downloaded. These are our heaviest users. Unfortunately, they are having an adverse impact on the experience of other users.

As such, it has been decided to introduce this Fair Use Policy. If a user downloads more than the maximum Fair Use Amount, Digimedia.NET may without notice slow the user's rate to 64kbps until the end of the month in which the download exceeds the maximum fair use. The month will be based on the anniversary of the date on which the individual service was activated.