

# **MONTIMEDIA PTY LTD TERMS AND CONDITIONS OF USE**

## **1. Introduction**

1. This agreement contains the terms and conditions under which we provide services to you, for the purposes of section 479 of the Telecommunications Act 1997 (Cth) ("the Act").
2. This agreement does not describe the specific service that we will provide you, which details are contained in the application form and other documents agreed and signed when you purchased the service.
3. Specific agreements with you apply instead of the general terms of this agreement in the event of any inconsistency.
4. We may change this agreement, and charges, from time to time under the Act.
5. You may obtain this agreement in hard copy from our office at Shop 4, 11 Howe Street, Daylesford, Victoria 3460.

## **2. Definitions**

1. "we", "our" and "us" means Montimedia Pty Ltd ACN 120 552 203, its successors and assigns.
2. "you", "your" and "yourself" means the person or company who has purchased the service from us.
3. "notice" means any written notice that we send to you at the physical, postal or email address or fax number that you have supplied to us.
4. "service" or "services" means any of the services and advice that we provide to you under the terms of this agreement.
5. "third party" means any person or company who we engage to assist with provision of the service.
6. "this agreement" and "the agreement" means the terms and conditions of use stated here and on the application form and any other documents agreed and signed when you purchased the service from us.

## **3. Provision of service – our obligations**

1. We will provide the service to you subject to all necessary pre-service testing and power supply being fulfilled.
2. We will use our best endeavours to provide a fast and reliable service, however you acknowledge that we do not guarantee that the service will be uninterrupted or fault-free.
3. You acknowledge and agree that we do not guarantee the security of the Internet and that you are responsible for protecting your system and will install anti-virus protection software and other relevant software and that you will utilise password privacy measures.
4. You acknowledge and agree that we have no obligation to notify you of your level of use of the service.

## **MONTIMEDIA PTY LTD TERMS AND CONDITIONS OF USE**

### **4. Use of service – your obligations**

1. You agree to use the service according to the terms and conditions in this agreement as amended from time to time and that you are responsible for all use of the service.
2. You promise that you are over 18 years of age and agree to provide proof of age if requested.
3. We reserve the right to investigate your use of the service for illegal or unacceptable use and to terminate, restrict or suspend the service if we reasonably suspect a breach of clauses 4.4 and 4.5.
4. You agree to use the service for legal and acceptable use only and you promise not to use the service for any illegal or unauthorised use.
5. In particular you agree that you will not :
  - a) use the service for the transmission of any damaging or disruptive computer system, network, virus, worm or other malicious code;
  - b) breach any other person's or company's copyright or other intellectual property rights;
  - c) falsify or forge email addresses, conceal your identity, send unsolicited email or "spam", harass or cause any nuisance whatsoever using the service;
  - d) operate a web-site that offers for sale or use any illegal item or activity or that is advertised by way of unsolicited email or "spam" whether or not you originate the spam;
  - e) run an email server on a consumer grade service;
  - f) access, probe, scan or test another computer or network without authority.

### **5. Costs & payment**

1. You agree to comply with the terms of the Billing and Refund Agreement located on the [www.montimedia.com.au](http://www.montimedia.com.au) web-site.
2. You agree to pay all costs for the service by the date due on our monthly invoice in full and without any set-off or deduction, failing which we may terminate, restrict or suspend the service and any other services we provide to you immediately until all outstanding costs are paid.
3. In the event that you do not pay by the due date we may also charge a late payment fee and engage an agent to recover the debt owed by you and the costs of collection and we may report the debt to the relevant credit reporting agency.
4. We may terminate, restrict or suspend the service without notice if we reasonably believe that your use of the service may be a credit risk to us.
5. We reserve the right to change the costs for our service from time to time with 1 month's notice.

## **MONTIMEDIA PTY LTD TERMS AND CONDITIONS OF USE**

6. You acknowledge that we do not guarantee local call charge Internet access and you agree to pay for all costs associated with the use of the service, including transfer costs or penalties, dial-up charges, ADSL broadband and telecommunications costs and charges even if you were not the user of the service provided to you.
7. You agree to pay us for all costs payable to other suppliers in relation to the service we provide to you and for extra services such as "Voice Over Broadband" or "Fixed Line Services".
8. Unused time, data and included call allowances do not accumulate and carry forward from one invoice period to the next.
9. We reserve the right to use any credit card or direct debit details provided to us to accept payment of all outstanding costs.
10. We may set off any payment that we owe you against any payment that you owe us.
11. In the event that the service is terminated, restricted or suspended for default of payment you agree that you will continue to pay costs for the service as if the service were not terminated, restricted or suspended.

### **6. Termination**

1. You may terminate this agreement and cancel the service at any time by giving us one month's notice in writing and paying all costs due.
2. We will not refund any payment for any unused service upon termination.
3. We may terminate this agreement and the service immediately and without notice if you breach any term or condition of the agreement.
4. We may terminate this agreement and the service immediately and without notice if a third party on whom the service depends terminates their service.
5. We may terminate or assign this agreement and cancel the service at any time by giving you one month's notice in writing.

### **7. Liability & Indemnity**

1. You agree to indemnify us and keep us indemnified from and against any losses, damages, costs or expenses (including legal costs assessed on a solicitor-client basis) which we suffer or incur arising out of or in connection with any action or claim brought against us in relation to your use of the service.
2. You acknowledge and agree that we will not be liable for any loss or damage to you as a result of any interruptions, delays, faults or errors in the supply of the service.
3. Any terms, conditions or warranties which may be implied into this agreement are excluded or limited to the fullest extent permitted by law.
4. Any liability we may bear for breach of any implied term, condition or warranty will be limited to the repair or re-supply of the service and will be reduced or set-off the extent that such breach is caused by you or contributed to you.

## **MONTIMEDIA PTY LTD TERMS AND CONDITIONS OF USE**

5. Any liability we may bear for any loss, damage or expense suffered or incurred by you arising out of or in connection with this agreement is limited to the total fees you have paid to us in the twelve month period preceding the latest cause of action and does not include any future economic loss or damage to reputation.
6. We do not accept any liability to you or any other person or company for any act, omission, fault or defect of or caused by yourself or any other person or company.
7. We do not accept any liability for any force majeure or act or omission beyond our control.

### **8. Privacy**

1. We will use your personal and financial information for the purpose of providing the service and as required or permitted by law including the Privacy Act 1988 (Cth).
2. You authorise us to obtain, use, disclose and exchange your personal and financial information with other telecommunications companies, sub-contractors, credit agencies and other credit providers for the purpose of providing the service to you and performing and enforcing this agreement, including contacting you.

### **9. Dispute Resolution**

1. You agree to contact us immediately if you have any complaint in relation to the service and we will use our best endeavours to resolve any complaint or dispute.
2. In the event that we do not resolve your complaint or dispute you agree to attend a mediation with us and an independent mediator the cost of which you agree to share equally.
3. This agreement is governed by the laws of Victoria and you agree to submit to the jurisdiction of the courts and tribunals of Victoria.