

1. Overview

This Acceptable Use Policy forms part of our Agreement and sets out rules which apply to your use of Services we provide to you for connection to the internet and other publicly accessible data and information networks.

The Policy is designed to ensure that all Netmode Customers are able to enjoy high quality, safe, and secure use of our Services.

Your obligation to comply with this Policy includes your obligation to ensure that any person who you authorise or permit to use your Service also complies with this Policy.

Failure to comply with this Policy may result in us limiting, suspending, or cancelling your Service.

Upon cancellation of a Service for violation of this Acceptable Use Policy, we are authorised to delete any files, programs, data, email messages and other content associated with the Service.

2. DISCLAIMER

We disclaim all liability for, and do not accept any responsibility for, anything that may happen to you or your equipment, or any loss incurred by you as a result of, or in any way connected with the suspension or termination of your service by us under this Acceptable Use Policy.

This disclaimer of liability does not supersede or replace any other disclaimer or obligation expressly provided in any other part of your Agreement with us.

3. LIMITATION OF LIABILITY AND INDEMNITY

We accept no liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to a breach of this Acceptable Use Policy by you, and you agree to hold us harmless from any such claims by you or anyone else on a full indemnity basis.

4. SEVERABILITY

You agree that if any portion of this Policy is held invalid or unenforceable, that portion will be construed consistent with applicable Laws as near as possible, and the remaining portions will remain in full force and effect.

5. CHANGES

We may vary this Policy by posting the revised Policy on our website www.netmode.com.au.

We may also give notice to you of any variation by email to the email address provided by you. Continued use of your Service after such posting or notice will constitute your acceptance of the variation.

6. UNACCEPTABLE USAGE

If you engage in any conduct which could result in injury or damage to any person or property (including our network, systems and equipment), access to your Service may be restricted, suspended or cancelled without prior notice and without refund.

You must not use or attempt to use your Service to store, send, distribute or otherwise make available any content or material which:

- defames, harasses, threatens, abuses, menaces, offends or incites violence or hatred against any person or class of persons whether on grounds of gender, race, religion or otherwise;
- is prohibited or unlawful under any Law or classification system, or which is likely to be offensive or obscene to a reasonable person;
- is confidential, subject to copyright or any other rights of a third party (unless you have a lawful right to do so); or
- is otherwise illegal, fraudulent or likely to give rise to civil or criminal proceedings.

You must not use or attempt to use your Service to:

- store, send or distribute any viruses or other harmful programs, codes or other malicious software;
- hinder, restrict or interfere with the normal operation of our network, systems and equipment or that of any other person;
- access, monitor, use or control any other person's equipment, systems, networks or data (including usernames and passwords) without their knowledge or consent or to otherwise probe, scan or test the vulnerability of any such equipment, networks, systems or data;
- send, relay or otherwise distribute any electronic message, the contents or properties of which have been created, forged or altered for the purpose of impersonating, hiding or otherwise obscuring the original sender or source of that message;
- send or distribute unsolicited commercial electronic messages in breach of the provisions of the *Spam Act 2003* (Cth); or
- send or distribute any material or take any other action with the aim of overloading any network or system (including our network and systems).

You must not authorise, aid, abet, encourage or incite any other person to do or attempt to do any of the acts or engage in any of prohibited conduct described above.

You must use your Service in accordance with any download or capacity limits stated in your Agreement. We may limit, suspend or cancel your Service if you unreasonably exceed such limits or excessively use the capacity or resources of our network and systems in a manner which may hinder or prevent us from providing services to other customers.

7. SECURITY

You are responsible for:

- maintaining the security of your Service, including protection of account details, usernames and passwords against unauthorized use by a third party;
- all Charges incurred by you and third parties, whether or not you authorised such use of the Service, until such time as you notify us of any security breach regarding the service or of your confidential password, usernames or account details; and
- taking appropriate security measures such as installation of a firewall and use of antivirus software to protect your personal data, computer and other equipment from loss or damage.

8. COPYRIGHT

You must not use your Service to copy, reproduce, distribute or otherwise make available to other persons any content or material (including but not limited to music files in any format) which is subject to copyright or do any other acts in relation to such copyright material which would infringe the exclusive rights of the copyright owner under the *Copyright Act 1968* (Cth) or any other applicable law.

Commonwealth legislation allows copyright owners or their agents to direct us to remove copyright materials from our servers or to prevent users from accessing copyright materials.

We may take all necessary steps in order to comply with a notification from a copyright owner or their agent, including removing any content (including part or all of a website) from our servers, closing or suspending your account, filtering the internet content made available to you, or restricting access to a particular website. You acknowledge and agree that we may take these steps at any time and without notice to you.

9. ACCESS TO INTERNET CONTENT

You are responsible for determining the content and information you choose to access on the internet when using your Service.

It is your responsibility to take all steps you consider necessary (including the use of filtering programs) to prevent access to offensive or obscene content on the internet by children or minors who you authorise or permit to use your Service.

To report offensive or illegal internet content, and to receive assistance with cyberbullying, you can contact the Office of the eSafety Commissioner at www.esafety.gov.au/complaintsand-reporting.

10. COMMUNICATING WITH OTHERS

You must not use, attempt to use or permit to be used your Service to make inappropriate contact with children or minors who are not otherwise known to you.

You are solely responsible for any content you publish, send or distribute (or permit to be published, sent or distributed) including, but not limited to, content you post on web pages, email, chat or discussion forums, bulletin boards, instant messaging, and any other publishing mediums via the Service.

Your failure to comply with these requirements may lead to immediate suspension or termination of your Service without notice.

11. CLASSIFYING CONTENT

You must not publish material that is or would potentially be classified by the Classification Board as RC rated or X18+ rated via websites, email, newsgroups or other publishing mediums accessible via the Service.

You must take appropriate precautions to prevent minors from accessing or receiving any content you have published that may potentially be unsuitable for them. This includes implementing a Restricted Access System in respect of content that is or would be classified by the Classification Board as MA15+ or R18+. You must also use appropriate warnings and/or labelling systems in respect of content which is likely to be considered unsuitable for children in accordance with relevant Law.

You must label or otherwise clearly identify any content you make publicly available via the Service in accordance with the applicable classification guidelines and the National Classification Code (issued pursuant to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth)) or any other industry code or content standard which applies to your use or distribution of that content.

12. COMPLYING WITH REGULATORY AUTHORITIES

Commonwealth legislation allows the Australian Communications and Media Authority (ACMA) to direct us to remove from our network and servers certain prohibited or potentially prohibited content or to prevent users from accessing certain content. You acknowledge and agree that we may take all steps necessary in order to ensure compliance with any relevant industry code of practice, or notification or direction from the ACMA, including removing any content (including part or all of a website) from our servers, blocking access to newsgroups, closing or suspending your account, filtering the content made available to you, or restricting access to a particular website. We may take these steps at any time and without notice to you. You must not hinder or prevent us from taking all steps necessary to comply with any direction from the ACMA or any law enforcement agency. We may recover the cost of such investigation if it is established you have misused the Service.

You acknowledge that we reserve the right to restrict, suspend or cancel your Service if there are reasonable grounds for suspecting that you are engaging in illegal conduct or where use of your Service is subject to any investigation by law enforcement agencies or regulatory authorities.

We are under no obligation to monitor transmissions or published content on the Service.

However, we have the right to monitor such transmissions or published content from time to time and to disclose that content to the appropriate authorities.

Cancellation of the Service

We are not responsible for forwarding or storing messages sent to any internet account that has been suspended or cancelled. Such messages may be returned to sender, ignored, deleted, or stored temporarily at our sole discretion.

13. Warranty

When using the Service to reproduce, publish, display, transmit or distribute your or third-party content, you warrant that the content complies with this Policy. You authorise us (or our nominees) to reproduce, publish, display, transmit and distribute such content as necessary for us to deliver the Services in a timely manner.

14. Definitions

Agreement means the agreement between you and us for the Services, comprising the terms stated in your Service Order Form, our Standard Form of Agreement, our Services Schedules, and our Schedule of Charges.

Charges means all charges incurred in respect of the Service(s) under this Agreement calculated in accordance with the pricing specifications set out in the Service Order Form.

Customer means a party that contracts with us for a Service, or who otherwise acquires a Service, or who seeks to do either of these.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.

Policy means this Acceptable Use Policy, the latest version of which is available on our website www.netmode.com.au.

Regulatory Authority means the Australian Communications and Media Authority (or any replacement agency or authority) and any other governmental body having regulatory oversight in connection with the Services.

Schedule of Charges means the list of administrative Charges payable in accordance with our Agreement.

Service Order Form means the form signed by us and you for any particular Service.

Services means the list of computer and net based functions provided by us to you as specified in a Service Order Form.

Services Schedules means the Schedules comprising part of this Agreement detailing terms and conditions specific to particular Services.

We, our and us means TasmaNet Pty Ltd ABN 61 111 240 978 trading as Netmode.

You and your means the Customer.