



# EYEDEA HOSTING

## STANDARD TERMS AND CONDITIONS

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### CALL FOR A CHAT

P. 1300 858 756  
F. 1300 858 731

### BRISBANE

Level 18, 333 Ann Street  
Brisbane QLD 4000  
[brisbane@eyedea.com.au](mailto:brisbane@eyedea.com.au)

### SUNSHINE COAST

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This agreement is to setup the terms and conditions of web hosting between Eyedea Media Makers ("us/we") and you ("The Client/Client").

By use of Eyedea Media Makers Web Hosting facilities you are agreeing to the following terms and conditions, if you do not agree with any part of these terms and conditions your sole and only course of action will be to discontinue use of Eyedea Media Makers (our/we) hosting services.

## **1. General Use**

1.1:- Our services may only be used for lawful purposes as outlined in the Acceptable Use Policy.

1.2:- You agree to indemnify and hold harmless Eyedea Media Makers in any legal action which arises as a result of your use of our services, without limitation or exception.

1.3:- Eyedea Media Makers makes no warranties or representations of any kind for the services being offered, including warranties of merchantability or fitness for any purpose. You agree not to hold Eyedea Media Makers responsible for any loss you suffer as a result of using our services, including but not limited to loss resulting from service delays and incomplete or interrupted service, regardless of cause. However, Eyedea Media Makers agrees that any complete service interruption in excess of 24 hours may justify a refund or credit to its customers for the appropriate or pro-rata amount, but that no further compensation will be made. Scheduled outages, account suspensions or server maintenance do not count towards our refund policy.

1.4:- You agree not to maliciously or intentionally interfere with the proper operation of the system or servers, including but not limited to defeating identification procedures, obtaining access beyond that which you are authorised for, and impairing the availability, reliability, or quality of service for other customers. You further agree not to interfere with the proper operation of other systems reachable through the Internet, including any attempt at unauthorised access.

1.5:- You agree that the security of your account or server is first and foremost your own responsibility. You further agree that if you believe the security of your account or server has been compromised in any way, you will notify Eyedea Media Makers immediately. You agree that if you become aware of misuse of your account or server, and do not notify Eyedea Media Makers, you will be held responsible for that misuse.

1.6:- You agree that any use outlined as Prohibited in the Acceptable Use Policy will cause your services to be terminated immediately and without warning, and that you will be held legally responsible for any and all damages to Eyedea Media Makers, both monetary and in reputation, as well as hourly labour or support fees for reading and replying the complaints which may arise.

1.7:- You agree that we have the right and responsibility to fully co-operate in any legal investigation regarding any aspect of our services, including services sold to you.

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1.8:- You agree to supply a current and truthful name, postal address, billing address and telephone number for our records. Eyedea Media Makers agrees not to sell or donate its mailing list to any other company or person.

1.9:- You agree that backup of files is your responsibility and that Eyedea Media Makers is in no way responsible for the loss of, or for saving or returning any data, files or directories stored on the server for/to the Client.

1.10:- Violation of any of the terms and conditions of this contract may result in the immediate termination of your services with Eyedea Media Makers, at our discretion. Criminal or civil prosecution may result in extreme cases.

## **2. Financial Arrangements**

2.1:- Client agrees to an annual contract. Accounts are yearly as agreed to, and signifies such agreement by acknowledgement in account setup form or subsequent written agreement. A month is considered to be a calendar month. All accounts are effective from 1st of the month and billing is calculated on a pro-rata basis, to simplify billing.

2.2:- Applicable fees for a domain name, web hosting account, plus setup charges (if applicable), and registration fees (where applicable), shall be due prior to account activation. With no exceptions.

2.3:- This agreement will automatically renew for successive yearly periods unless cancelled in writing at least thirty (30) days prior to the renewal date. Client will receive an invoice via email or post for hosting charges. Renewal prices are subject to change. Renewal of services by client indicates agreement to contract revisions and revisions to our Terms of Trade and Acceptable Use Policies.

2.4:- If an account is not paid in full within 14 days of the due date then we have the right to suspend your account (without notice) until all payments have been received. Accounts that remain unpaid over 30 days past the due renewal date will have their account suspended or cancelled at our discretion, without notice. No exceptions.

2.5:- Eyedea Media Makers reserves the right, in its sole discretion, to deactivate the Client's account(s) upon an indication of credit problems including delinquent payments. In such case Eyedea Media Makers is not responsible for saving or returning any data, files or directories stored on the server for/to the Client.

2.6:- A reconnection fee of AU\$200 + GST applies to any domain being reinstated past the date of suspension or cancellation. The Client also agrees that any unpaid balance due thereunder shall bear interest at the rate of 10% compounded per annum, and that costs of collection, including Court costs and reasonable legal fees shall be added as principal amounts to such balance.

2.7:- Eyedea Media Makers reserves the right to decrease or increase charges at any time. Such increases may be advised at least one month prior to invoicing at our discretion.

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2.8:- Excess bandwidth or disc space fees will apply on accounts that exceed the data limits. See our Fees & Charges for more information on the excess fee rates.

### 3. Reselling

3.1:- A Client is not allowed to resell the storage and/or transfer services provided by Eyedea Media Makers unless the express permission of Eyedea Media Makers is sought and this permission is provided in writing.

### 4. Hardware, Equipment and Software

4.1:- Client is responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access the Eyedea Media Makers services. Eyedea Media Makers makes no representations, warranties or assurances that Client's equipment will be compatible with Eyedea Media Makers services.

### 5. Eligibility

5.1:- Client certifies that he or she is at least 18 years of age and has the authority of the company, group or individual they represent to agree to these terms and incur the associated costs.

### 6. Internet Etiquette

6.1:- Users of Internet and electronic forums should be considerate of the expectation and sensitivities of others on the network when posting material for electronic distribution. The network resources may not be used to impersonate another person or misrepresent authorisation to act on behalf of others or Eyedea Media Makers. All messages transmitted via Eyedea Media Makers service(s) should correctly identify the sender; users may not alter the attribution of origin in electronic mail messages or posting. Users must not attempt to undermine the security or integrity of computing systems or networks and must not attempt to gain unauthorised access.

6.2:- Due to the public nature of the Internet, all information should be considered publicly accessible, and important or private information should be treated carefully. Eyedea Media Makers is not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network Eyedea Media Makers or its customers may utilise.

6.3:- Use of distribution lists via unsolicited electronic mail or other electronic mailings is strictly prohibited. Eyedea Media Makers reserves the right to deactivate the Client's Server account(s) upon and indication of such activity. In such case Eyedea Media Makers is not responsible for saving or returning any data, files or directories stored on the server for/to the Client. Client hereby agrees to indemnify and hold harmless Eyedea Media Makers from any claim resulting

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from the Client's or another party's use of electronic mail service(s) on the Client's Server account(s).

## **7. Limited Liability**

7.1:- The Client expressly agrees that use of Eyedea Media Makers service is at Client's sole risk. Eyedea Media Makers, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, cannot warrant that the Eyedea Media Makers Server service will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of the Server service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the Eyedea Media Makers Server service, unless otherwise expressly stated in this Agreement.

7.2:- The Client hereby agrees that any material submitted for publication by Eyedea Media Makers through Client's account(s) will not contain anything leading to an abusive or unethical use of the server product(s) or the host server(s). Abusive or unethical materials and uses include, but are not limited to: pornography, obscenity, violations of privacy, computer viruses, any harassing and harmful material or uses, any illegal activity or material(s) advocating illegal activity, and any infringement of privacy or libel.

7.3:- The Client hereby agrees to indemnify and hold harmless Eyedea Media Makers from any claim resulting from Client's publication of material or use of those materials. Eyedea Media Makers may or may not give notice before deactivating the use of an account(s) which Eyedea Media Makers decides is an abusive or unethical use of, or a potentially illegal use of the Server account(s) or host server(s). In such case Eyedea Media Makers is not responsible for saving or returning any data, files or directories stored on the server for/to the Client. The Client hereby agrees to indemnify and hold harmless Eyedea Media Makers for any claim resulting from the submission of illegal materials.

7.4:- Under no circumstances, including negligence, shall Eyedea Media Makers, its officers, agents or anyone else involved in creating, producing or distributing Eyedea Media Makers Server service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use Eyedea Media Makers Server services; or that results from mistakes, omissions, interruptions, deletion or loss of files or data, errors, defects, delays in operation, or of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorised access to Eyedea Media Makers records, programs or services. Client maintains sole responsibility for data backups and restoration. Client hereby acknowledges that this paragraph shall apply to all content on Eyedea Media Makers services.

7.5:- Notwithstanding the above, The Client's exclusive remedies for all damages, losses and causes of actions whether in contract, tort including negligence or otherwise, shall not exceed the aggregate dollar amount which Client paid during the term of this Agreement and any reasonable attorney's fee and court costs.

7.6:- In the case of "Force Majeure" (as defined below), the Eyedea Media Makers will notify the Client at the earliest opportunity of the circumstances. "Force Majeure" will entitle either party to withdraw from their contractual obligations. The Client will remain liable for all costs incurred

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up to the occurrence of "Force Majeure".

"Force Majeure" means any event or thing outside Eyedea Media Makers reasonable control, which directly or indirectly causes Eyedea Media Makers Servers becoming unable in whole or in part to perform its obligations under this Agreement, and includes but is not limited to: (a) acts of God or the public enemy, national emergencies, asteroids or other space calamity (including but not limited to meteorological or astronomical disturbances), use of atomic weapons or nuclear fusion or fission, radioactive contamination, insurrection, riot, hostile or warlike action in peace or war, sabotage, receive earth station outage, earthquakes, tidal waves, hurricanes, snowstorms, rain fade, fires, floods, or electromagnetic radiation from the sun; (b) strikes, lockouts, labour disputes, work stoppages, embargoes or any other labour difficulties; (c) action or inaction by a government entity or agency; or (d) the unrelated action or inaction of a third party which is beyond Eyedea Media Makers reasonable control, which causes a delay or ultimately a failure to perform Eyedea Media Makers obligations under this Agreement.

7.7:- If any term of this agreement becomes illegal, irrelevant or unenforceable, the validity of the remaining terms of this agreement is unaffected.

## 8. Support

8.1:- Client agrees that Eyedea Media Makers is in no way responsible for support for editing or configuring of scripts, web pages, FTP transfer of files, problems that are the responsibility of the customer, or anything else that is not server specific related. Unless otherwise arranged with Eyedea Media Makers.

## 9. Indemnification

9.1:- The Client agrees that it shall defend, indemnify, save and hold Eyedea Media Makers harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees, ("Liabilities") asserted against Eyedea Media Makers, agents, its clients, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Client, its agents, employees or assigns. Client agrees to defend, indemnify and hold harmless Eyedea Media Makers against Liabilities arising out of (i) any injury to person or property caused by any products or services sold or otherwise distributed in connection with Eyedea Media Makers Server service; (ii) any material supplied by Client infringing on the proprietary rights of a third party; (iii) copyright infringement and (iv) any defective product which Client sold on the Server.

## 10. Termination

10.1:- This Agreement may be terminated by either party, without cause, by giving the other party thirty (30) days written notice. Notwithstanding the above, Eyedea Media Makers may terminate service under this Agreement at any time without penalty if Client fails to comply with the terms of this Agreement.

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10.2:- In the event that it becomes necessary for Eyedea Media Makers to enforce the terms of this agreement Eyedea Media Makers shall be entitled to all reasonable costs and expenses of such enforcement including collection fees, court costs, and attorney's fees.

Acknowledgement and acceptance of this agreement is required for an account to be setup at/by Eyedea Media Makers. By signing-up for hosting services you indicate that you have read and understand this service agreement in it's entirety and agree to be bound by it's content.

This Agreement constitutes the entire understanding of the parties. Any changes or modifications to this Contract thereto are agreed to by the both parties upon renewal of services.

The parties agree that this agreement shall be governed by and be interpreted according to the laws of the Commonwealth of Australia, and International laws enforceable by way of treaty. Any and all actions regarding or relating to this agreement shall be brought about in the State of Queensland, Australia.

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