



This Fair Use Policy applies to all services that you purchase from BVivid. This Fair Use Policy should be read in conjunction with our Standard Form of Agreement (SFOA).

## 1. General

- 1.1. This Fair Use Policy is designed to ensure that your use of the Services does not break any laws, hinder the efficient operation of our network, interfere with the rights of other customers, or interfere more generally with the rights of end users.
- 1.2. You are responsible for ensuring that you use of our Services complies with this policy. You are also responsible for any use of the Services by any user, including those users to whom you supply the service.
- 1.3. You should consult this policy regularly to ensure that your activities conform to the most recent version.
- 1.4. If there is an inconsistency between the Terms and Conditions of the SFOA, and this Fair Use Policy, this policy will apply.
- 1.5. If you become aware of any violations of this policy by other users you are required to immediately contact us.

## 2. Illegal Activity

- 2.1. You must not use the service for any activity that breaches any law or violates any local, state, federal or international law, order, regulation or industry code of practice.
- 2.2. Prohibited activities include (but are not limited to) posting, disseminating, or in some cases accessing, content which is unlawful, including:
  - (a) content which violates the copyright or other intellectual property rights of others. You assume all risks regarding the determination of whether material is in the public domain;
  - (b) content that defames, harasses or abuses anyone or violates their privacy;
  - (c) pyramid or other illegal soliciting schemes;
  - (d) any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature; or
  - (e) content that is or would be classified by the Classification Board as RC rated or otherwise considered illegal.

### 3. Security

- 3.1. You are responsible for any misuse of a service; this includes paying any costs (including call costs) associated with the misuse of a service.
- 3.2. Where BVivid incurs costs associated with a misuse of any service, you may be liable for the payment of these costs.
- 3.3. You agree to indemnify BVivid against the consequences of any misuse of a service by you.
- 3.4. You must take all practical steps to ensure that others do not gain unauthorised access to any service.
- 3.5. The service must not be used to obtain or attempt to obtain unauthorised access to any computer, system or network. If you do not have authorisation, prohibited activities include (but are not limited to):
- (a) accessing, monitoring or using any data, systems or networks;
  - (b) probing, scanning or testing the vulnerability of a system or network;
  - (c) breaching any security or authentication measures for a system or network;
  - (d) accessing the account or private information of any other person or entity;
  - (e) accessing any server in violation of any acceptable use policy of that server, including any attempt to do any of the things mentioned in paragraphs (a) to (e) above.
- 3.6. You must not:
- (a) use (or attempt to use) or distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or network probing tools;
  - (b) knowingly transmit or disseminate any information or software, which contains a virus or other harmful feature;
  - (c) use (or attempt to use) the service in a manner that may interfere with the technical operation of the service or any other computer, system, network or telecommunications services, including (but not limited to) denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to 'crash' a host; or
  - (d) interfere (or attempt to interfere) with the regular workings of our systems or network connections.
- 3.7. You are solely responsible for the security of any device you choose to connect to the service, including any data stored on that device.
- 3.8. We recommend against enabling file or printer sharing of any sort. We recommend

that any files or services you unauthorised access.

3.9. You must notify us immediately of any unauthorised or attempted unauthorised use of your service and any other breach or attempted breach of security.

#### **4. Risks of the Internet**

4.1. You bear all risk associated with the activities associated with accessing the Internet, and we do not have any liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such activities.

4.2. You may minimise the risk of accessing illegal or offensive content as well as managing use of the Internet by using a filtering solution. If requested, we will provide access to one or more of these filtering solutions at a reasonable cost to you as part of the service.

4.3. You are solely responsible for any content that you publish via websites, email, newsgroups, online forums or other publishing mediums accessed via the service.

4.4. You must take appropriate precautions to prevent minors from accessing or receiving any content you have published that may be inappropriate for them.

#### **5. SPAM**

5.1. In this Policy, "Spam" includes one or more unsolicited commercial electronic messages to which the Spam Act 2003 applies, and derivations of the word "Spam" have corresponding meanings.

5.2. This Policy prohibits you from using your Service to send Spam. If you breach this prohibition, BVivid may suspend or terminate your Service.

5.3. You agree that you will use your Service in compliance with the Spam Act 2003 and will not engage in practices which would result in a breach of the Spam Act. In particular, you agree that you will not use, attempt to use or allow your Service to be used to:

- (a) send, allow to be sent, or assist in the sending of Spam;
- (b) use or distribute any software designed to harvest email addresses;
- (c) host any device or service that allows email to be sent between third parties not under your authority or control; or
- (d) otherwise breach the Spam Act 2003 or the Spam Regulations 2004.

5.4. You agree to use your reasonable best endeavours to secure any device or network within your control against being used in breach of your Spam obligations by

third parties, including where appropriate:

- (a) the installation and maintenance of antivirus software;
- (b) the installation and maintenance of firewall software; and
- (c) the application of operating system and application software patches and updates.

## **6. Automated Applications**

If automated programs or programs that maintain a persistent connection to a remote service are used, they must only be used when you are physically present at the computer. These activities include (but are not limited to) automated file downloading, IRC 'bots', continuous streaming media and peer-to-peer file sharing applications.

## **7. Excessive Use**

You must use your Service in accordance with any download or capacity limits stated in the specific plan that you subscribe to for the use of that Service. We may limit, suspend or terminate your Service if you unreasonably exceed such limits or excessively use the capacity or resources of our network in a manner which may hinder or prevent us from providing services to other customers or which may pose a threat to the integrity of our network or systems.

## **8. Violation of Fair Use Policy**

8.1. If you, or someone with access (including unauthorised access) to a service, use the service in a way that we reasonably believe violates this policy, we may take any responsive action we deem appropriate.

8.2. Such actions may include (but are not limited to) the immediate suspension or cancellation of all or any portion of the service.

8.3. We may take any other legal or technical action we deem appropriate, including taking action against offenders to recover the costs and expenses of identifying them. If your use of the service causes a loss to third parties and we are required to pay compensation, we require you to reimburse us.

8.4. We are not obligated to regularly monitor your usage of the service however we reserve the right to monitor your use of the service to identify violations of this policy, and to protect our network, the other users of this service, and other Internet users.

8.5. We reserve the right to investigate any use of a service that we reasonably suspect violates this policy, including the gathering of information from the user(s) involved and

the complaining party, if any, and examination of transmissions and material on our servers and network. During an investigation, we may suspend the services in question or interrupt transmission.

- 8.6. In order to enforce this policy, you authorise us (or our agents) to cooperate with:
- (a) law enforcement authorities in the investigation of suspected criminal violations;
  - (b) system administrators at other Internet service providers or other network or computing facilities; and
  - (c) such cooperation may include us providing, for example, the username, IP address or other identifying information about a user.

8.7. Any failure by us to enforce this policy, for whatever reason, shall not necessarily be construed as a waiver of any right to do so at any time.

8.8. You agree that, if any portion of this policy is held invalid or unenforceable, the remaining portions will remain in full force and effect.

## **9. Unreasonable Use**

- 9.1. We consider your use of the service to be unreasonable if:
- (a) your usage of the service affects other customers' access to the network;
  - (b) you set up devices which may limit the ability for other customers to access the service; or
  - (c) we reasonably believe you have breached this Fair Use Policy.

9.2. If we consider, at our sole discretion, that you have made unreasonable use of the service, we may terminate the service, temporarily suspend the service, or ask you to change the way in which you use the service.

9.3. If we terminate the service, you are liable for any early termination payment to us.