

.NET Messenger Service Terms of Use

THANK YOU FOR CHOOSING MICROSOFT!

1. CONTRACT FOR SERVICE.

This is a contract between you and Microsoft for use of the Microsoft .NET Messenger Service. We are Microsoft Corporation (located at One Microsoft Way, Redmond, WA 98052-6399) or, based on where you live, a Microsoft affiliate. We will refer to ourselves in this contract as either "Microsoft", "we" or "our." You are an individual person.

The Microsoft .NET Messenger Service includes any services, software, machines, support, content and other media, updates or upgrades. We refer to all of these in this contract as the "Service."

PLEASE NOTE THAT THIS CONTRACT LIMITS OUR LIABILITY AND WE DO NOT PROVIDE WARRANTIES FOR THE SERVICE. IT ALSO LIMITS YOUR REMEDIES. These terms are in Sections 9, 10 and 11 and we encourage you to review them carefully.

2. HOW WE MAY MODIFY THIS CONTRACT.

We may change this contract at any time. You must review this contract on a regular basis. You can find the most recent version of the contract at '<http://messenger.msn.com/Help/Terms.aspx>'. The changed contract is in effect right away. If you do not agree to changes in the contract, then you must stop using the Service. If you do not stop using the Service, then your use of the Service will continue under the changed contract.

3. HOW YOU MAY ACCESS AND USE THE SERVICE.

We provide the Service for your personal use. You may use the Service while you are at work, but you may not use the Service to conduct business without a separate written contract with Microsoft.

You are responsible for all activity associated with your Service account and password. You must notify Microsoft right away of any use of your Service account that you did not authorize or any breach in security known to you that relates to the Service.

Do not provide your Service account and password to third parties. You may not authorize any third party to access and/or use the Service on your behalf. You may also not use any automated process or service to access and/or use the Service such as a BOT, a spider or periodic caching of information stored by Microsoft. You may not use any software or services with Microsoft software or authorized third-party software which modifies or reroutes, or attempts to modify or reroute, the Service. You may also not use any software or hardware that reduces the number of users directly accessing or using the Service (sometimes called 'multiplexing' or 'pooling' software or hardware).

You may only use Microsoft software or authorized third-party software to sign into and use the Service. You can find a list of authorized third-party software at '<http://messenger.msn.com/Help/Authorized.aspx>'.

4. WHAT YOU MAY NOT DO WITH THE SERVICE.

The privacy, safety and security of our Service and the users of our Service are very important to us. You may not use the Service in any way that could harm the Service, other Service users, Microsoft or our affiliates. Some examples of harmful activity that we do not permit include:

- Trying to gain access to any account, computers or networks related to the Service without authorization.
- Disrupting accounts, computers or networks related to the Service.
- Obtaining or trying to obtain any data through any means from the Service, except if we intend to provide or make it available to you.
- Using access to the Service to obtain any data to design, develop or update unauthorized software that you use or provide to others to access or use the Service.
- Charging others to use the Service either directly or indirectly.

You may not use the Service in any way that is against the law. You may not use the Service to send or receive messages or materials that are inappropriate or violate the intellectual property rights of

Microsoft or others. Some examples of types of material and messages that we do not permit include:

- Using the Service to participate in pyramid schemes or chain letters.
- Using the Service to send, either directly or indirectly, any unsolicited bulk e-mail or communications or unsolicited commercial e-mail or communications.
- Defaming, abusing, harassing, stalking, threatening or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Creating a false identity for the purpose of misleading others.
- Sending or otherwise making available, any material protected by intellectual property laws unless you own or control the rights to such material or have received all necessary consents.
- Sending or otherwise making available any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software that may damage the operation of another's computer or property.
- Downloading any material sent by another user of the Service that you know, or reasonably should know, cannot be legally distributed in such manner.
- Using, downloading or otherwise copying, or providing to a third party (whether or not for a fee) any (i) directory of users of the Service, (ii) information about users of the Service; or (iii) Service usage information.
- Falsifying or deleting any author attributions, legal or other proper notices or proprietary designations or labels of the origin of source of software or other material contained in a file that is transferred.
- Violating any code of conduct or other guidelines which may be applicable to the Service.
- Using any portion of the Service to harvest or otherwise collecting information about others, including e-mail addresses.

5. PRIVACY.

If you are using MSN-branded software with the Service, please see the MSN Privacy Statement '<http://privacy.msn.com>' for notices about how we collect and use your information. If you are using any other software with the Service, please see the .NET Messenger Service Privacy Statement at '<http://www.microsoft.com/windows/messenger/privacypolicy.asp>' for notices about how we collect and use your information.

We consider your use of the Service, including the content of your communications, to be private. We do not routinely monitor your communications or disclose information about your communications to anyone. However, we may monitor your communications and disclose information about you, including the content of your communications, if we consider it necessary to: (1) comply with the law or to respond to legal process; (2) ensure your compliance with this contract; or (3) protect the rights, property, or interests of Microsoft, its employees, its customers, or the public.

Always use caution when giving out any personally identifiable information about yourself or your family.

6. CONTENT AND THIRD PARTY SITES AND SERVICES LINKS.

We may provide some content on the Service. Third parties may also provide some content. We are not responsible for any third party content you access with the Service. The Service may let you connect with third-party Web sites and Web services, which we call "links" and "tabs." If you use MSN software with the Service, you will only use software and services that we provide or configure for use with the MSN software. We provide these links and tabs as a convenience to you, but we do not control third-party links and tabs and are not responsible for them. You are solely responsible for your dealings with any third party related to the Service, including the delivery of and payment for goods and services.

7. SOFTWARE.

We may provide you with software to use with the Service. If you receive software from us, your use of that software is under the terms of the license that is presented to you for acceptance for such software. If there is no license presented to you, then we grant you the right to use the software only for the authorized use of the Service. We reserve all other rights to the software. Microsoft or its suppliers own the title, copyright, and other intellectual property rights in such software.

We may automatically check your version of the software. We may automatically download upgrades to such software to your computer to update, enhance and further develop the Service. Your license will terminate on the date your Service terminates. Your license will also terminate if Microsoft modifies the Service to no longer support such software. We may disable such software after the date the Service terminates.

You will not disassemble, decompile, or reverse engineer, any software or any machine included in the Service, except and only to the extent that such activity is expressly permitted by applicable law.

The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information, see www.microsoft.com/exporting.

8. PERFORMANCE AND USAGE DATA.

Microsoft may automatically upload performance and usage data for evaluating the Service and the software associated with the Service. Such data will not personally identify you. You may opt out of the automatic uploading of your usage data (but not performance data) as indicated in software associated with the Service.

9. MICROSOFT MAKES NO WARRANTIES.

MICROSOFT PROVIDES THE SERVICE "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE," AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT, ITS AFFILIATES, RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS AND/OR SUPPLIERS (EACH, A "MICROSOFT PARTY" AND COLLECTIVELY, THE "MICROSOFT PARTIES") MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED. THE MICROSOFT PARTIES DISCLAIM ANY AND ALL WARRANTIES OR CONDITIONS, EXPRESS, STATUTORY AND IMPLIED, INCLUDING WITHOUT LIMITATION (1) WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, ACCURACY, TITLE, QUIET ENJOYMENT, NO ENCUMBRANCES, NO LIENS AND NON-INFRINGEMENT, (2) WARRANTIES OR CONDITIONS ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE, AND (3) WARRANTIES OR CONDITIONS THAT ACCESS TO OR USE OF THE WEB SITES WILL BE UNINTERRUPTED OR ERROR-FREE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS CONTRACT.

10. LIABILITY LIMITATION; YOUR EXCLUSIVE REMEDY.

IN NO EVENT WILL ANY MICROSOFT PARTY BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM THIS CONTRACT OR YOUR USE OF THE SERVICE, EVEN IF SUCH MICROSOFT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION OF DAMAGES UNDER SECTION 10 IS INDEPENDENT OF YOUR EXCLUSIVE REMEDY AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) NEGLIGENCE, OR (4) ANY OTHER CAUSE OF ACTION, TO THE EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW. IF YOU ARE DISSATISFIED WITH THE SERVICE, YOU DO NOT AGREE WITH ANY PART OF THIS CONTRACT, OR YOU HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST ANY MICROSOFT PARTY WITH RESPECT TO THIS CONTRACT OR THE SERVICE, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE.

11. CHANGES TO THE SERVICE; ADDITIONAL LIABILITY LIMITATION.

WE MAY CHANGE THE SERVICE OR DELETE FEATURES AT ANY TIME AND FOR ANY REASON. WITHOUT LIMITING THE GENERAL NATURE OF SECTIONS 9 AND 10, THE MICROSOFT PARTIES ARE NOT RESPONSIBLE OR LIABLE FOR (1) ANY CONTENT, INCLUDING WITHOUT LIMITATION, ANY INFRINGING, INACCURATE, OBSCENE, INDECENT, THREATENING, OFFENSIVE, DEFAMATORY, TORTIOUS, OR ILLEGAL CONTENT, OR (2) ANY THIRD PARTY CONDUCT, TRANSMISSIONS OR DATA. IN ADDITION, WITHOUT LIMITING THE GENERALITY OF SECTIONS 9 AND 10, MICROSOFT IS NOT RESPONSIBLE OR LIABLE FOR (1) ANY VIRUSES OR OTHER DISABLING FEATURES THAT AFFECT YOUR ACCESS TO OR USE OF THE SERVICE, (2) ANY INCOMPATIBILITY BETWEEN THE SERVICE AND OTHER WEB SITES, SERVICES, SOFTWARE AND HARDWARE, (3) ANY DELAYS OR FAILURES YOU MAY EXPERIENCE IN

INITIATING, CONDUCTING OR COMPLETING ANY TRANSMISSIONS OR TRANSACTIONS IN CONNECTION WITH THE SERVICE IN AN ACCURATE OR TIMELY MANNER, OR (4) ANY DAMAGES OR COSTS OF ANY TYPE ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF ANY SERVICES AVAILABLE FROM THIRD PARTIES THROUGH LINKS. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN SECTIONS 9, 10 AND 11 OF THIS CONTRACT APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND ARE NOT INTENDED TO DEPRIVE YOU OF ANY MANDATORY PROTECTIONS PROVIDED TO YOU UNDER APPLICABLE LAW.

12. CUSTOMER SUPPORT.

Please consult the “help” section of the Service for how we may provide you with customer support (“Support”). Unless you have entered into a separate written support contract with Microsoft for the Service, however, we may terminate any Support we provide at any time.

Authorized third-party software that uses the Service is not supported by Microsoft. You should contact the provider of such software for support, if any.

13. TERMINATION OF SERVICE.

Unless you, or a third party on your behalf, have a separate written contract with Microsoft that modifies this contract, then we may terminate or suspend your Service at any time. Our termination or suspension may be without cause and/or without notice. Upon Service termination, your right to use the Service stops right away. ONCE THE SERVICE IS CANCELLED OR SUSPENDED, ANY DATA YOU HAVE STORED ON THE SERVICE MAY NOT BE RETRIEVED LATER.

14. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES.

If this contract is with Microsoft Corporation, then claims for breach of this contract will be subject to the laws of the State of Washington, without reference to conflict of laws principles. If this contract is with a Microsoft affiliate, claims for breach of this contract will be subject to the laws of the place of incorporation for such Microsoft affiliate, without reference to conflict of laws principles. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of your state of residence in the United States, or, if you reside outside the United States, under the laws of the country to which your use of the Service is directed.

If this contract is with Microsoft Corporation, you consent to the exclusive jurisdiction and venue of state or federal courts in King County, Washington, USA for all disputes relating to this contract or the Service. If this Contract is with a Microsoft affiliate, you consent to the exclusive jurisdiction and venue of the courts located in the place of incorporation for such Microsoft affiliate for all disputes relating to this contract or the Service. You cannot revoke this consent.

15. INTERPRETING THE CONTRACT.

All parts of this contract apply to the maximum extent permitted by applicable law. A court may hold that a part of this contract cannot be enforced as it is written. If this happens, then that part will be replaced by terms that most closely match the intent of the part that cannot be enforced. The rest of this contract will not be changed. This is the entire contract between us regarding your use of the Service. It supersedes any prior contract or statements regarding your use of the Service. If you have confidentiality obligations related to the Service, those obligations remain in effect (for example, you may have been a beta tester). The section titles in the contract do not limit the other terms of this contract.

16. ASSIGNMENT.

Microsoft may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other party. Any attempt by you to do so is void. Instead, you may terminate your Service. The other party may then establish a Service account and enter into a contract with us.

17. CLAIM MUST BE FILED WITHIN ONE YEAR.

ANY CLAIM RELATED TO THIS CONTRACT OR THE SERVICE MUST BE BROUGHT WITHIN ONE YEAR. THE ONE-YEAR PERIOD BEGINS ON THE DATE WHEN THE CLAIM FIRST COULD BE FILED. IF IT IS NOT, THEN THAT CLAIM IS PERMANENTLY BARRED. THIS APPLIES TO YOU AND YOUR SUCCESSORS. IT ALSO APPLIES TO US AND OUR SUCCESSORS AND ASSIGNS.

18. YOUR NOTICES TO MICROSOFT.

You may notify us by e-mail or postal mail. Your notices to us must be addressed as stated in the customer support or "help" area for the Service.

19. MICROSOFT'S NOTICES TO YOU; CONSENT REGARDING ELECTRONIC NOTICES.

We may give you any data regarding the Service in electronic form. We may provide such data to you via e-mail at the e-mail address you specified when you registered for the Service, by instant message to your account, or by access to a Microsoft web site. As long as you access and use the Service, you will have the necessary software and hardware to receive such notices. If you do not consent to receive any notices electronically, you must discontinue your use of the Service.

20. INTELLECTUAL PROPERTY NOTICES.

All contents of any Microsoft Web site related to the Service are: Copyright © 1999-2004 Microsoft Corporation and/or its suppliers, c/o Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052-6399 U.S.A. All rights reserved.

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The example companies, organizations, products, people and events depicted herein are fictitious. No association with any real company, organization, product, person, or event is intended or should be inferred.

Microsoft may have patents, patent applications, trademarks, copyrights, or other intellectual property rights covering subject matter in any Web pages that are part of the Service. Unless we have granted you licenses to our intellectual property in this contract, our providing you with such Web pages does not give you any license to our intellectual property. Any rights not expressly granted herein are reserved.

21. NOTICES AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT.

Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to Service Provider's Designated Agent. ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE. See Notice and Procedure for Making Claims of Copyright Infringement at "<http://www.microsoft.com/info/cpyrtInfrg.htm>".

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