

# 3DMedia.com and 3DMediaTube.com Terms of Use

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These Terms of Use ("Agreement") set forth the legally binding terms for your use of the 3DMedia Services. Use of the Site is also governed by the Privacy Policy, which is incorporated into this Agreement by this reference, and can also be found at <http://3dmedia.com/legal>. By using the 3DMedia Services, you agree to be bound by this Agreement, whether you are a "Visitor" (which means that you simply browse or use the Site, including through a mobile device, or otherwise use the 3DMedia Services without being registered) or you are a "Member" (which means that you have registered with 3DMedia). The term "User" refers to a Visitor or a Member. You are only authorized to access this Site or to use the 3DMedia Services, including materials and services contained in the Site if you agree to abide by all applicable laws and the terms of this Agreement. Please read this Agreement carefully and save it. If you do not agree to be bound by this Agreement and to follow all applicable laws, you should leave the Site and discontinue use of the 3DMedia Services immediately. If you wish to make use of the 3DMedia Services, read this Agreement and reaffirm your acceptance during the registration process.

This Agreement includes 3DMedia's policy for acceptable use of the 3DMedia Services and Content (as defined in Section 6.1 below) posted on or through the 3DMedia Services and your rights, obligations and restrictions regarding your use of the 3DMedia Services and Content posted on or through the 3DMedia Services. In order to participate in certain 3DMedia Services, you may be required to download software or content and/or agree to additional terms and conditions from 3DMedia. These additional terms are hereby incorporated into this Agreement.

3DMedia may modify or amend this Agreement without notice at any time and such modification will be effective upon posting by 3DMedia on the Site. Your continued use of the 3DMedia Services after 3DMedia posts a revised Agreement signifies your acceptance of the revised Agreement. It is therefore important that you review this Agreement regularly to ensure you are updated as to any changes.

Your 3DMedia profile and any Content that you upload to 3DMedia may be made available to other Users and you agree not to include any form of Prohibited Content, as outlined in Section 8 below. Notwithstanding the foregoing, you understand and agree that Content, information, materials, products or services provided by other 3DMedia Users (for instance, in their profile or images/videos) may, in whole or in part, be offensive, distasteful, unauthorized, impermissible or otherwise violate this Agreement, and 3DMedia assumes no responsibility or liability for any User Content. If you become aware of misuse of the 3DMedia Services by any person, please email [info@3dmedia.com](mailto:info@3dmedia.com) and include in your email a URL for the material in question.

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- 1. Eligibility.** Use of the 3DMedia Services and/or registration to be a Member for the 3DMedia Services ("Membership") is void where prohibited. You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service.
- 2. Term.** This Agreement, and any posted revision to this Agreement, shall remain in full force and effect while you use the 3DMedia Services. You may terminate your Membership at any time and for any reason. To terminate, send your request to [info@3dmedia.com](mailto:info@3dmedia.com). We will use our reasonable efforts to promptly terminate your account within a reasonable period of time. However, any Content you may have posted on a publicly-accessible portion of the 3DMedia Services may continue to be available following such termination. Even if you terminate your account, 3DMedia reserves the right, but not obligation, to maintain copies of your Content in perpetuity. 3DMedia may terminate your Membership at any time, without warning for any or no reason, with or without prior notice or explanation, and without liability.
- 3. Fees.** There are no fees at this time for using the services provided by 3DMedia. Notwithstanding the above, you acknowledge that 3DMedia reserves the right to change any portion of the 3DMedia Services, and to change any portion of the 3DMedia Services to a fee for service basis. You will be notified of any such new or additional charges prior to your use of the affected 3DMedia Services and incurring such fees. You will not be obligated to purchase such services or upgrade these services, but in such event you will not be able to use the affected services. You will not be obligated to upgrade this service. 3DMedia does not currently impose limitations on the amount of Content you may post to the 3DMedia Services; however, 3DMedia may impose such limits at any time in its sole discretion.
- 4. Password.** When you sign up to become a Member, you will also be asked to choose a password. You are entirely responsible for maintaining the confidentiality of your password. 3DMedia will not be liable for any loss or damage arising from your failure to keep your password and account confidential. You agree not to use the account, username, or password of another Member at any time or to disclose your password to any third party. You agree to notify 3DMedia immediately if you suspect any unauthorized use of your account or access to your password. You are solely responsible for any and all use of your account and password.
- 5. Use by Users.** The 3DMedia Services are for the personal use of Users. Commercial use of the 3DMedia Services is prohibited unless authorized by 3DMedia in writing. 3DMedia reserves the right to remove unauthorized commercial or other Content at its sole discretion. Illegal and/or unauthorized use of the 3DMedia Services, including collecting usernames, user id numbers, and/or email addresses of Users by electronic or other means for the purpose of sending unsolicited email or unauthorized framing of or linking to the Site, or employing third-party promotional sites or software to promote profiles for money, is prohibited. Commercial advertisements, affiliate links, and other forms of unauthorized solicitation may be removed from text, images, videos and/or Member profiles without notice or explanation and may result in termination of your use of the 3DMedia Services. 3DMedia reserves the right to take appropriate legal action for any illegal or unauthorized use of the 3DMedia Services.
- 6. Proprietary Rights in Content on 3DMedia.**

  - 6.1.** 3DMedia does not claim any ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, applications, or any other materials (collectively, "Content") that you post on or through the 3DMedia Services. By displaying or publishing ("posting") any Content on or through the 3DMedia Services, you hereby grant to 3DMedia and other Users a perpetual, non-exclusive, fully paid and royalty-free, worldwide, limited license to use, modify, delete from, add to, publicly perform, publicly display, reproduce and translate such Content, including without limitation distributing part or all of such Content in any media formats through any media channels. 3DMedia and/or other Users may copy, print or display publicly available Content outside of the 3DMedia Services, including without limitation, via the Site or third

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- 6.2.** You represent and warrant that: (i) you own the Content posted by you on or through the 3DMedia Services or otherwise have the right to grant the license set forth in this section, (ii) the posting and use of your Content on or through the 3DMedia Services does not violate the privacy rights, publicity rights, copyrights, contract rights, intellectual property rights or any other rights of or cause injury to any person, and (iii) the posting of your Content on the Site does not result in a breach of contract between you and a third party. You agree to pay for all royalties, fees, and any other monies owing any person by reason of Content you post on or through the 3DMedia Services.
- 6.3.** The 3DMedia Services contain Content of 3DMedia ("3DMedia Content"), including without limitation, text, graphics, software, video, pictures, information, logos, trademarks, service marks, designs, "look and feel" of the Site, trade dress and other materials. 3DMedia Content is protected by copyright, trademark, patent, trade secret and other laws, and 3DMedia owns and retains all rights in the 3DMedia Content and the 3DMedia Services. 3DMedia hereby grants you a limited, revocable, nonsublicensable license to reproduce and display the 3DMedia Content (excluding any software code) solely for your personal use in connection with viewing the Site and using the 3DMedia Services. You may not copy, modify, distribute, make derivative works of or otherwise exploit any 3DMedia Content, the Site or the 3DMedia Services without the prior written agreement of 3DMedia.

## **7. Content Posted.**

- 7.1.** 3DMedia may reject, refuse to post or delete any Content for any or no reason, including Content that in the sole judgment of 3DMedia violates this Agreement or which may be offensive, illegal or violate the rights of any person or entity, or harm or threaten the safety of any person or entity. 3DMedia assumes no responsibility for monitoring the 3DMedia Services for inappropriate Content or conduct. However, 3DMedia may choose to monitor such Content at any time, at its sole discretion. If at any time 3DMedia chooses to monitor the 3DMedia Services, 3DMedia nonetheless assumes no responsibility for the Content, no obligation to modify or remove any inappropriate Content, and no responsibility for the conduct of the User submitting any such Content.
- 7.2.** You are solely responsible for the Content that you post on or through any of the 3DMedia Services, and any material or information that you transmit to other Users and for your interactions with other Users.
- 7.3.** The 3DMedia Services are not a storage repository for your Content and You are encouraged to make your own back-up and archival copies of all such Content. 3DMedia will not be liable to you for any loss of any Content.

## **8. Content/Activity Prohibited.** You must use the 3DMedia Services in a manner consistent with any and all applicable laws and regulations. The following are examples of the kind of Content that is illegal or prohibited to post on or through the 3DMedia Services. 3DMedia reserves the right to investigate and take appropriate legal action against anyone who, at 3DMedia's sole discretion, violates this provision, including without limitation, removing the offending Content from the 3DMedia Services and terminating the Membership of such violators. Prohibited Content includes, but is not limited to, Content that, at the sole discretion of 3DMedia:

- 8.1.** is patently offensive or promotes racism, bigotry, hatred or physical harm of any kind against any group or individual,
- 8.2.** harasses or advocates harassment of another person;

- 8.3. exploits people in a sexual or violent manner;
  - 8.4. contains nudity, excessive violence, or offensive subject matter or contains a link to an adult website;
  - 8.5. solicits personal information from anyone under 18;
  - 8.6. publicly posts information that poses or creates a privacy or security risk to any person;
  - 8.7. constitutes or promotes information that you know is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
  - 8.8. constitutes or promotes an illegal or unauthorized copy of another person's copyrighted work;
  - 8.9. involves the transmission of "junk mail," "chain letters," or unsolicited mass mailing, instant messaging, "spimming," or "spamming";
  - 8.10. contains restricted or password only access pages or hidden pages or images (those not linked to or from another accessible page);
  - 8.11. furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including, but not limited to making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
  - 8.12. solicits, collects or stores passwords or personal identifying information from other Users without their express written permission;
  - 8.13. involves commercial activities without prior written consent from 3DMedia such as solicitation of Users to purchase products or services, contests, sweepstakes, barter, advertising, or pyramid schemes;
  - 8.14. includes a photograph or video of another person that you have posted without that person's consent;
  - 8.15. provides support or resources or conceals or disguises the nature, location, source or ownership of support or resources to any organization designated by the United States government as a foreign terrorist organization;
  - 8.16. collects, stores or analyzes data about other Users;
  - 8.17. violates the privacy rights, publicity rights, defamation rights, copyrights, trademark rights, contract rights or any other rights of any person or
  - 8.18. otherwise violates these Terms.
  - 8.19. In addition to the above, You may not post or publish any 3D content that could be considered harmful, cause dizziness, and or otherwise be hazardous to other viewers. Users should first examine 3D content on proper display devices wearing proper eyewear, if applicable, to ensure its compliance with these Terms before posting any 3D content. 3DMedia shall not have any liability or responsibility for the creation or posting of such 3D content, whether created with other 3DMedia products or the products of any third party. It is up to the Users to ensure that non-harmful content is posted on the website. You hereby agree to indemnify and hold harmless 3DMedia from any posting by you of such 3D content.
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**11. Limitation on Liability.** IN NO EVENT SHALL 3DMEDIA, ITS AFFILIATES, LICENSORS OR PARTNERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE 3DMEDIA SERVICES, EVEN IF 3DMEDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE REMEDY FOR ANY FAILURE OF 3DMEDIA TO PROVIDE THE 3DMEDIA SERVICES AS SET FORTH HEREIN OR FOR ANY FAILURE OR ERROR OF THE 3DMEDIA SERVICE SHALL BE TO DISCONTINUE USE OF THE SERVICE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, 3DMEDIA'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO 3DMEDIA FOR THE 3DMEDIA SERVICES DURING THE IMMEDIATELY PRECEDING 12-MONTH PERIOD. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATED TO THESE TERMS OR YOUR USE OF THE 3DMEDIA SERVICES OR SITE MAY BE BROUGHT BY YOU MORE THAN 1 YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

**12. U.S. Export Controls.** The 3DMedia Services are hosted in the United States. Software available in connection with the 3DMedia Services (the "Software") is further subject to United States export controls. No Software may be downloaded from the 3DMedia Services or otherwise exported or re-exported in violation of U.S. export laws. Downloading or using the Software is at your sole risk.

**13. Disputes.** The Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina, without regard to its conflict of law provisions. You and 3DMedia agree to submit to the exclusive jurisdiction of the courts located within the State of North Carolina to resolve any dispute arising out of the Agreement or the 3DMedia Services.

**14. Indemnity.** You agree to indemnify and hold 3DMedia, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the 3DMedia Services, any breach by you of the terms of this Agreement and/or any breach of your representations and warranties set forth in this Agreement.

**15. Submissions/Feedback.** You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information regarding the 3DMedia Services or Site, including ideas for improvements or new functionality, provided by you to 3DMedia are nonconfidential and shall become the sole property of 3DMedia. 3DMedia shall own all exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use, publication and dissemination of all such information for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

**16. Other.** This Agreement is accepted upon your use of the Site or any of the 3DMedia Services and is further affirmed by you becoming a Member. This Agreement and 3DMedia's other policies on the Site constitutes the entire agreement between you and 3DMedia regarding the use of the 3DMedia Services. The failure of 3DMedia to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. If any provision of this Agreement is unlawful, void or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

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