

# Gemini Terms of Service

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**Gemini is hosted on Google's Service, "Google App Engine". Where there is any overlap between App Engine's Terms and Gemini's Terms, Gemini's Terms shall supersede.**

## 1. Your relationship with Gemini

- 1.1 Your use of Gemini's web site, documentation, related products and services (referred to collectively as the "Services" in this document and excluding any services provided to you by Gemini under a separate written agreement) is subject to the terms of a legal agreement between you and Gemini. "Gemini" means Gemini Online Game Service, whose principal Internet location is <http://geminionlinegs.appspot.com/>, and which is owned by WillyG Productions. This document explains how the agreement is made up, and sets out some of the terms of that agreement.
- 1.2 Unless otherwise agreed in writing with WillyG Productions, your agreement with Gemini will always include, at a minimum, the terms and conditions set out in this document. These are referred to below as the "Universal Terms" or simply the "Terms".

## 2. Accepting the Terms

- 2.1 In order to use the Services, you must first agree to the Terms. You may not use the Services if you do not accept the Terms.
- 2.2 You can accept the Terms by clicking to accept or agree to the Terms, where Gemini makes this option available to you in the user interface for any Service; or by actually using the Services. In the latter case, you understand and agree that Gemini will treat your use of the Services as acceptance of the Terms from that point onwards.
- 2.3 You may not use the Services and may not accept the Terms if (a) you are not of legal age to form a binding contract with Gemini, or (b) you are a person barred from receiving the Services under the laws of the United States or other countries including the country in which you are resident or from which you use the Services.

## 3. Provision of the Services by Gemini

- 3.1 Gemini is owned by WillyG Productions, an Affiliate that is itself a company providing services. Sometimes, the Affiliate will be providing the Services to you on behalf of Gemini itself. You acknowledge and agree that the Affiliate will be entitled to provide the Services to you.
- 3.2 Gemini is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that the form and nature of the Services that Gemini provides may change from time to time without prior notice to you.
- 3.3 As part of this continuing innovation, you acknowledge and agree that Gemini may stop (permanently or temporarily) providing the Services (or any features within the Services) to you or to users generally at Gemini's sole discretion, without prior notice to you. You may stop using the Services at any time, but note that this will terminate your agreement with Gemini.

- 3.4 You acknowledge and agree that if Gemini disables access to your account, you may be prevented from accessing the Services, your account details or any files or other content that is contained in your account.
- 3.5 You acknowledge and agree that while Gemini may not currently have set a fixed upper limit on the number of transmissions you may send or receive through the Services or on the amount of storage space used for the provision of any Service, such fixed upper limits may be set by Gemini at any time, at Gemini's discretion.

#### **4. Use of the Services by you**

- 4.1 In order to access certain Services, you may be required to provide information about yourself (such as identification or contact details) as part of the registration process for the Service, or as part of your continued use of the Services. You agree that any registration information you give to Gemini will always be accurate, correct and up to date.
- 4.2 You agree to use the Services only for purposes that are permitted by (a) the Terms and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).
- 4.3 You agree that you will not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services).
- 4.4 Unless you have been specifically permitted to do so in a separate agreement with Gemini, you agree that you will not reproduce, duplicate, copy, sell, trade or resell the Services for any purpose.
- 4.5 You agree that you are solely responsible for (and that Gemini has no responsibility to you or to any third party for) any breach of your obligations under the Terms and for the consequences (including any loss or damage which Gemini may suffer) of any such breach.

#### **5. Your passwords and account security**

- 5.1 You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Services.
- 5.2 Accordingly, you agree that you will be solely responsible to Gemini for all activities that occur under your account.

#### **6. Content in the Services**

- 6.1 You understand that all information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which you may have access to as part of, or through your use of, the Services are the sole responsibility of the person from which such content originated. All such information is referred to below as the "Content".
- 6.2 You should be aware that Content presented to you as part of the Services, including but not limited to advertisements in the Services and sponsored Content within the Services may be protected by intellectual property rights which are owned by the sponsors or advertisers who provide that Content to Gemini (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) unless you

have been specifically told that you may do so by Gemini or by the owners of that Content, in a separate agreement.

- 6.3 You agree that you are solely responsible for (and that Gemini has no responsibility to you or to any third party for) any Content that you create, transmit or display while using the Services and for the consequences of your actions (including any loss or damage which Gemini may suffer) by doing so.

## **7. Proprietary rights**

- 7.1 You acknowledge and agree that Gemini owns all legal right, title and interest in and to the Services, including any intellectual property rights which subsist in the Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You further acknowledge that the Services may contain information which is designated confidential by Gemini and that you shall not disclose such information without Gemini's prior written consent.
- 7.2 Unless you have agreed otherwise in writing with Gemini, nothing in the Terms gives you a right to use any of Gemini's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.
- 7.3 If you have been given an explicit right to use any of these brand features in a separate written agreement with Gemini, then you agree that your use of such features shall be in compliance with that agreement and any applicable provisions of the Terms.
- 7.4 Gemini acknowledges and agrees that it obtains no right, title or interest from you (or your licensors) under these Terms in or to any Content that you submit, post, transmit or display on, or through, the Services, including any intellectual property rights which subsist in that Content (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Unless you have agreed otherwise in writing with Gemini, you agree that you are responsible for protecting and enforcing those rights and that Gemini has no obligation to do so on your behalf.
- 7.5 You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) that may be affixed to or contained within the Services.
- 7.6 Unless you have been expressly authorized to do so in writing by Gemini, you agree that in using the Services, you will not use any trademark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos.

## **8. License from Gemini**

- 8.1 Gemini gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to you by Gemini as part of the Services as provided to you by Gemini (referred to as the "Software" below). This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Gemini, in the manner permitted by the Terms.
- 8.2 You may not (and you may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Software or any part thereof, unless this is expressly permitted or required by law, or unless you have been specifically told that you may do so by Gemini, in writing.
- 8.3 Unless Gemini has given you specific written permission to do so, you may not assign (or grant a sub-license of) your rights to use the Software, grant a security interest in or over your rights to use the Software, or otherwise transfer any part of your rights to use the Software.

## **9. Content license from you**

- 9.1 You retain copyright and any other rights you already hold in Content that you submit, post or display on or through, the Services. By submitting, posting or displaying the content you give Gemini a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content which you submit, post or display on or through, the Services. This license is for the sole purpose of enabling Gemini to display, distribute and promote the Services and may be revoked for certain Services as defined in the Additional Terms of those Services.
- 9.2 You agree that this license includes a right for Gemini to make such Content available to other companies, organizations or individuals with whom Gemini has relationships for the provision of syndicated services, and to use such Content in connection with the provision of those services.
- 9.3 You understand that Gemini, in performing the required technical steps to provide the Services to our users, may (a) transmit or distribute your Content over various public networks and in various media; and (b) make such changes to your Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, services or media. You agree that this license shall permit Gemini to take these actions.
- 9.4 You confirm and warrant to Gemini that you have all the rights, power and authority necessary to grant the above license.

## **10. Ending your relationship with Gemini**

- 10.1 The Terms will continue to apply until terminated by either you or Gemini as set out below.
- 10.2 If you want to terminate your legal agreement with Gemini, you may do so by (a) notifying Gemini at any time and (b) closing your accounts for all of the Services that you use, where Gemini has made this option available to you. Your notice should be sent, in writing, to Gemini's email address that is made available in the appropriate documentation.
- 10.3 Gemini may at any time, terminate its legal agreement with you if:
- (A) You have breached any provision of the Terms (or have acted in manner which clearly shows that you do not intend to, or are unable to comply with the provisions of the Terms); or
  - (B) Gemini is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful); or
  - (C) The partner with whom Gemini offered the Services to you has terminated its relationship with Gemini or ceased to offer the Services to you; or
  - (D) Gemini is transitioning to no longer providing the Services to users in the country in which you are resident or from which you use the service; or
  - (E) The provision of the Services to you by Gemini is, in Gemini's opinion, no longer commercially viable.

## **11. EXCLUSION OF WARRANTIES**

11.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE."

11.2 IN PARTICULAR, GEMINI, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT:

- (A) YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS,
- (B) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR,
- (C) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, AND
- (D) THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED AS PART OF THE SERVICES WILL BE CORRECTED.

11.3 ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

11.4 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM GEMINI OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

11.5 GEMINI FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **12. LIMITATION OF LIABILITY**

12.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT GEMINI, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR:

- (A) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS;
- (B) ANY LOSS OR DAMAGE THAT MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:
  - (I) ANY CHANGES WHICH GEMINI MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES);

(II) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES;

(III) YOUR FAILURE TO PROVIDE GEMINI WITH ACCURATE ACCOUNT INFORMATION;

(IV) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.

12.2 THE LIMITATIONS ON GEMINI'S LIABILITY TO YOU ABOVE SHALL APPLY WHETHER OR NOT GEMINI HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

### **13. Other content**

13.1 The Services may include hyperlinks to other web sites or content or resources. Gemini may have no control over any web sites or resources that are provided by companies or persons other than Gemini.

13.2 You acknowledge and agree that Gemini is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products or other materials on or available from such web sites or resources.

13.3 You acknowledge and agree that Gemini is not liable for any loss or damage which may be incurred by you as a result of the availability of those external sites or resources, or as a result of any reliance placed by you on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such web sites or resources.

### **14. Changes to the Terms**

14.1 Gemini may make changes to the Universal Terms from time to time. You understand and agree that if you use the Services after the date on which the Universal Terms have changed, Gemini will treat your use as acceptance of the updated Universal Terms.

### **15. General legal terms**

15.1 Sometimes when you use the Services, you may (as a result of, or through your use of the Services) use a service or download a piece of software, or purchase goods, which are provided by another person or company. Your use of these other services, software or goods may be subject to separate terms between you and the company or person concerned.

15.2 The Terms constitute the whole legal agreement between you and Gemini and govern your use of the Services (but excluding any services which Gemini may provide to you under a separate written agreement), and completely replace any prior agreements between you and Gemini in relation to the Services.

15.3 You agree that Gemini may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on the Services.

15.4 You agree that if Gemini does not exercise or enforce any legal right or remedy which is contained in the Terms (or which Gemini has the benefit of under any applicable law), this will not be taken to be a formal waiver of Gemini's rights and that those rights or remedies will still be available to Gemini.

15.5 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.

15.6 The Terms, and your relationship with Gemini under the Terms, shall be governed by the laws of the State of Hawaii without regard to its conflict of laws provisions. You and Gemini agree to submit to the exclusive jurisdiction of the courts located within Hawaii to resolve any legal matter arising from the Terms. Notwithstanding this, you agree that Gemini shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

## **In Regular English...**

1. If you use Gemini, you automatically agree to these Terms.
2. Gemini is not responsible for any losses you may incur while using Gemini.
3. Gemini reserves the right to make any changes to Services, or to cease Services, at any time.
4. This section, entitled "In Regular English..." and its five subsections do not constitute as a summation of the full Terms of Service and do not in any way replace or supersede the Terms. They are here simply to give the main points of the Terms for anyone who actually cares.
5. Ooh, sarcasm in a Terms of Service Agreement. Is that legal?

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