

# Mon Gadget TERMS OF USE - October 1st, 2009

## Introduction

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE Mon Gadget SOFTWARE.**

By using the Mon Gadget software (the "Software"), you agree to the present Terms of Use.

The Terms of Use govern your use of the Software. If you do not agree to these terms of use, you may not use the Software.

**USE OF THE SOFTWARE IS PERMITTED FOR NON COMMERCIAL AND NON PROFESSIONAL USE ONLY, FOR COMMERCIAL OR PROFESSIONAL USE PLEASE CONTACT US**

## I. Description of the Software

The Software allows its user ("You") to :

- create their own widgets from any internet website including the **mongadget.com** website (hereinafter referred to as the "Site") ; and
- generate a dynamic installer (hereinafter referred to as the "Installer") for each widget via a link, your can send this link or the generated setup.exe (by putting it on your site or by email for example) to others in order for them to use your gadget.

The Software is distributed by Mon Gadget and can be downloaded on the Site.

Mon Gadget hereby grants You a free and non-exclusive licence to use the Software. However, Mon Gadget reserves the right to (i) terminate, at its sole discretion and without notice, the licence granted to You herein or (ii) modify its terms of use at any time, at its sole discretion and without prior notice.

Two types of widget can be created :

- dynamic widgets : while navigating on any internet website, the Software will enable You to select objects and create your own widget with these objects only. Whenever You open this widget on your PC, the Software will rebuild the said widget in such a manner that the content of your widget will vary according to the content of the source website;
- static widgets : while navigating on any website, the Software will enable You to select objects and create your own html page with these objects. Whenever You open this widget, the Software will automatically open the html page

The content of a widget created by You or any other user is also referred to as a gadget (hereinafter referred to as "Content").

The Software automatically put the Contents that you create in MyTooCool software's share zone (hereinafter referred to as the Share Zone), you agree here with the terms of use of MyTooCool software that you can retrieve on <http://www.mytoocool.com/tc.pdf>

The Installer will check on your system if MyTooCool software is already installed, if not it will install it and launch MyTooCool software, if already installed it will launch MyTooCool software. After installation is completed, the Installer will launch MyTooCool in such a way that only the created Content will be displayed, it will generate a program on your computer launching MyTooCool software the same way, so your Content will be displayed in first place but you will afterwards have access to all functionalities of MyTooCool software (please refer to <http://www.mytoocool.com>). Therefore the program itself is the MyTooCool software and by using it you agree with MyTooCool's terms of use as mentioned above.

## **II Content**

You understand that You can only post and share, in the Share Zone, Contents that You have created on and from the Internet.

You understand that you post and share your Content in the Share Zone under your sole responsibility and represent that you own all the rights to this Content, or have obtained the necessary authorisations in order to use and share said Content.

## **III Proprietary rights**

Mon Gadget retains exclusive ownership of all proprietary rights (including intellectual property rights) with respect to the Software and the Site excluding all Contents posted in the Share Zone. Under no circumstances shall download or use of the Software mean transfer of any ownership interest in the Software. It is not permitted to make any unauthorised use of the Software and/or the Site without written authorisation from Mon Gadget.

Mon Gadget does not claim any ownership of proprietary rights (including intellectual property rights) in any of your Contents or any Third Party Content, except for the gadgets posted and/or created by Mon Gadget.

Therefore, You remain the sole owner of any Content posted by You in the Share Zone and You accept full responsibility associated with such ownership.

## **IV Free Licence granted to Mon Gadget**

You expressly grant Mon Gadget the right to, directly and indirectly, use, reproduce, distribute, duplicate, copy or modify any of your Contents and/or any posted derivative works in connection therewith and/or any information provided while using the Software (such as friends' email address) for both commercial and non-commercial purposes without Mon Gadget being liable to any payment, indemnification or compensation of any kind to You. You understand that you may not request any payment from Mon Gadget for posted Contents and

You expressly grant Mon Gadget the right to manage posted Contents in the Share Zone. Such management may include reproducing, copying, publishing, distributing, modifying or removing said Contents.

You expressly grant Mon Gadget the right to reproduce trademarks, trade names, service marks, logos, domain names or any other identifying signs or images attached to such Contents.

These rights are granted to Mon Gadget free of charge and may be sublicensed by Mon Gadget at its sole discretion to its trading partners.

## **V Registration and Conduct**

You do not need to register to use the Software.

To access and use the Software, you must be legally capable of entering into a binding agreement in your home country.

You understand that some Third-Party Content might be seen as offensive by some and might be inappropriate for individuals under the age of 18.

You also acknowledge that the activity of submitting or sharing your Content may involve risks of liability and You make certain that your Content (regardless of You being the Content's author or not) continuously conform (both when first submitted and throughout its availability in the Share Zone) to the present Terms of Use and all applicable laws. You understand that Mon Gadget does not exercise any control over submitted Contents and declines all responsibility or liability in relation to their communication to the other users.

You understand and agree that You are not authorised to post in the Share Zone any Content created from secured websites containing personal data and to which You log in by entering your own personal username and password. Mon Gadget declines all responsibility or liability in relation to such unauthorised posts in the Share Zone.

The Site does record the IP address of users that submit Contents and/or various references to them. Although, as a principle, such IP addresses are kept confidential and are never communicated to any third party, Mon Gadget reserves the right to make such information available to competent authorities upon request.

As a prerequisite to using the Software and navigating on the Site, You :

- a. agree not to submit, post, share or otherwise transmit any Content which is unlawful, obscene, harmful, threatening, defamatory or hateful or that contains objects or symbols of hate, or invades the privacy of any third party, or which is otherwise obnoxious;
- b. represent that you have the lawful right to submit, disclose, post, share or make accessible to the other users any of your Contents (your content shall not violate any of the confidentiality or fiduciary obligations you might have), which implies that You shall make certain that none of your submitted Contents infringe the intellectual or proprietary rights of any third party (including, but not limited to, copyrights, trademarks, service marks or patent rights) or violate the right of privacy or publicity of any public or non-public persons;
- c. agree not to interfere or attempt to interfere in any manner with the proper workings of the Software and/or Site nor engage in any conduct or post any content that would interrupt, destroy, limit or more generally harm the Share Zone and/or the Software, including by using viruses, malicious computer code, programs or files;

- d. agree not to reproduce, copy, sell, or commercially use in whole or in part, the Software and/or Site;
- e. agree not to adapt, translate, make available, distribute, vary, modify, disassemble, decompile, reverse engineer or combine the Software with any other software;
- f. agree to download the automatic updates each time you use the Software.

## **VI Responsibility and Warranty**

Mon Gadget shall not be held responsible for any direct or indirect damage or loss (including, but not limited to, loss of goodwill, profits, contracts, anticipated savings, data) suffered by any user or third party and related to the use, download and installation of the Software or to the use of the Site.

You accept that You will be held responsible for any direct or indirect damage or loss suffered by any user or third party as a result of the use of any of your posted Contents in the Share Zone.

You understand that the Software is delivered "as is" without warranty of any kind (continuity, quality of service, etc) from Mon Gadget. Indeed Mon Gadget will provide no guarantee of technical support services to You in connection with the Software and/or Site.

Mon Gadget is only bound by a best effort obligation to correct bugs or defaults of the Software and/or Site.

## **VII Relationship between You and Mon Gadget**

You and Mon Gadget are not legal partners or agents, but are independent contractors.

## **VIII Third Party Software**

The Software does include some third party software such as WAMP server distributed and available under the GPL licence. You hereby agree to comply with the terms of use of this licence.

Mon Gadget reserves the right to modify, change or replace such third party software without prior notice.

## **IX Entire Agreement**

The present Terms of Use constitute the entire agreement between You and Mon Gadget and shall supersede any prior agreement.

## **X Applicable law**

The present Terms of Use and your relationship with Mon Gadget are governed by the French laws.

## **XI About Mon Gadget**

“Mon Gadget” is the trade name for **NAÏS INFORMATIQUE & TELECOM** (the “Company”) within the scope of its activities consisting in distributing the Software and publishing the Site.

**NAÏS INFORMATIQUE & TELECOM** is a private limited liability company (a French *société à responsabilité limitée*) with a registered share capital of 18, 000.00 €, having its registered office at 4 rue Louis de Broglie, 22300 Lannion (France) and registered with the Guingamp Registry of Trade and Companies under registration number 483.913.513.

The Site’s director of publication is the Company’s managing director.

The Site is hosted by **OVH**, a simplified limited liability company (a French *société par actions simplifiée*) which has its registered office at 2 rue Kellermann, 59100 Roubaix (France).