



## Fair Use Policy

OneQode Pty Ltd

# **Fair Use Policy**

## **Background**

- A. Our Fair Use Policy applies to all users of the Network (including any wholesale customers or partners).
- B. This Fair Use Policy details:
  - (a) our standards for your use of our Services;
  - (b) your obligations and responsibilities for use of our Network and Infrastructure;
  - (c) acts which would constitute unfair, unacceptable or improper use of our Services; and
  - (d) the technological and procedural measures we have in place to protect the Network and Infrastructure, and provide efficient Services for all users.

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## **1. Collective Customer Contract**

### **1.1 Subordinate Policy**

- (a) This Billing Policy forms part of our broader Collective Customer Contract (CCC). The terms of the broader CCC shall apply to this policy.
- (b) This policy shall inherit the provisions of, and be considered as supplemental to, the Master Terms. This includes (but is not limited to) terms which relate to warranties, limitations of liability, indemnities, termination, suspension, assignment and various general terms.
- (c) This policy shall be considered as an extension of the Master Terms.

### **1.2 Wholesalers**

Where you are a Wholesale Customer and a Wholesale Agreement applies to you, you must:

- (a) ensure that both you and your users comply fully with this Fair Use Policy;
- (b) put in place policies, procedures and other internal mechanisms to actively monitor use and enforce the terms of this Fair Use Policy (and the wider CCC); and
- (c) ensure that any terms or agreements which govern your relationship with your customers pass on this Fair Use Policy with at least the same standards and restrictions as included in our Fair Use Policy.

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## **2. Restrictions and Acknowledgements**

### **2.1 Removals**

We may block, remove or otherwise restrict content when:

- (a) we, in our sole discretion, consider offensive, indecent, unlawful, or otherwise inappropriate, regardless of whether the content actually breaches any legal requirements;
- (b) we are directed to do so by law enforcement, intelligence or any other Regulatory Authority;
- (c) we consider that the material breaches the Intellectual Property rights of us or a third party;
- (d) we consider that the material breaches our policies in relation to Confidential Information set out elsewhere in the CCC; or
- (e) the content, in our view, represent spam (including in a manner defined under the *Spam Act 2003* (Cth)).

## **2.2 Provision of Information**

- (a) As stated elsewhere in the CCC, as a Carriage Service Provider, we have certain legislative obligations that we are unable to contract out of. These include the following:
  - (i) providing your IP address, data logs, metadata and other Personal Information (including passwords) to law enforcement or a Regulatory Authority, but only if compelled to by a valid legal instrument;
  - (ii) .

## **2.3 Polluting Traffic and Spam**

We may take steps to minimise spam and polluting traffic on the Services by a number of methods, including (but not limited to):

- (a) monitoring network traffic coming from your IP address;
- (b) limiting access to functionality or certain aspects of the Services; or
- (c) contacting you in relation to improper configuration or mail, proxy or self-hosted servers.

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# **3. Usage Conditions**

## **3.1 Your Use of the Services Generally**

You must be responsible with your use of the Services. Any reckless, irresponsible, dangerous or malicious action by you which threatens the Network, other users, third parties or the community at large will be considered a breach under this Fair Use Policy.

## **3.2 Consistently High Use**

- (a) Our consumer plans do not set maximum data usage 'limits' because we do not believe customers should need to worry about their data usage in this day and age. However, our provision of regular consumer Services without any 'hard limit' is provided on the understanding that:

- (i) you will not take advantage of this approach by downloading incredible amounts of data for hours, days or weeks on end;
- (ii) you will not take part in seeding large volumes of data in peer-to-peer networks (like BitTorrent or IPFS);
- (iii) you will not open a number of video feeds or streams at once for prolonged periods of time;
- (iv) (for residential plans) you will use the Services in a manner consistent with personal use in a residential environment; and
- (v) (for business plans) you will use the Services in a manner consistent with business use in a commercial environment.

(b) Where your use-case may infringe on the understanding in clause 3.2(a) above, you must contact us. We have several tailored plans which may be suitable, but come at an increased price (including our Business or Data Junkie plans).

(c) You acknowledge and agree that if, in our view and discretion, we deem you to be in breach of the understanding in clause 3.2(a) above, we may contact you and request that you either:

- (i) reduce your usage to accord with that of a regular consumer Service; or
- (ii) upgrade to a more suitable plan.

(d) Where you agree to 3.2(c)(i) and then continue your prior conduct, we will contact you again with another request. If you do not accord with that request, you agree that we may:

- (i) restrict your Service;
- (ii) suspend your Service; or
- (iii) terminate your Service;

without further notice to you. Where we suspend your Service, we will provide you with our requirements to have the suspension lifted.

### **3.3 Termination for Illegal Use**

Where we determine that you are using the Services for something which is illegal or in breach of any relevant codes, regulations or orders, we may (at our discretion) suspend or termination the Services immediately, without further notice to you. We will however notify after we take such an action. Where we terminate the Service under this clause, you release and indemnify us from all liability, damages or other ill effects suffered by you, your customers and any third parties.

### **3.4 General Responsibility**

You acknowledge and agree that:

(a) we are not responsible for your use (or misuse) of the Services;

- (b) you are responsible for the material that you access, publish, communicate or otherwise acquire through your use of the services;
- (c) where you wish to place any restrictions on the ability of end users to access certain material or websites through the Services (such as material which may be unsuitable for children), you must do that on your end (client side);
- (d) you will comply with all Third Party Terms for products, websites and services which you access through the Services;
- (e) you and any associated end users, customers or third parties will not use the Services in a manner which is considered Unfair Use, Unreasonable Use or Unacceptable Use (defined below).

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## 4. Definitions

In this Fair Use Policy (and elsewhere in the CCC):

**Unfair Use** means use of the Services which creates a risk to:

- (a) the stability and operation of the Network and Infrastructure;
- (b) the stability and operation of our Hardware, Products, systems or facilities used as part of the Network and Infrastructure;
- (c) our ability to supply the Service in a manner consistent with the CCC; or
- (d) the health or safety of us, our employees and agents, users (including you) and third parties.

**Unacceptable Use** means use of the Services to:

- (a) breach any laws or regulations;
- (b) infringe any person's Intellectual Property rights, including trademarks and copyright;
- (c) monitor data or traffic on any network or system if you do not have the authorisation of the owner of the network or system to do so;
- (d) interfere or disrupt the service, or any computer system access through it or any other person's use of it;
- (e) provide us with false, misleading or deceptive user information;
- (f) send unsolicited or unwanted commercial electronic messages to individuals or businesses;
- (g) gain improper access to another person's private or personal information;
- (h) distribute or make available indecent, obscene, offensive, pornographic, illegal or confidential material;
- (i) defame, harass or abuse any person;
- (j) obtain or attempt to obtain any unauthorized access to any computer, system or network; or
- (k) compromise the security or interfere with the operation of the service or any other computer, system or network.

**Unreasonable Use** means use of the Services in a manner or fashion which they were not intended to be used, for example:

- (a) committing fraud, or using the Service for fraudulent purposes;
- (b) reselling the Services to other third parties (unless your CCC permits it, such as where we have signed a Wholesale Agreement with you);
- (c) abnormal or excessive use of the Services; and
- (d) using the service for the purposes of arbitrage.