



# **Gaming Server Deployment Terms**

## Background

- A. OneQode has a number of points of presence worldwide and provides services in each of those points of presence.
- B. These terms govern our provision of gaming server related services.
- C. By purchasing from us, you agree to be bound by the terms and conditions within these Terms and any other documents under reference.

**Note: Any capitalised terms you see which aren't defined in the text itself are defined in the Definitions at the end. Any ' tooltips' (the tips marked in blue - like this one) are for guidance only and don't form part of the terms of this Agreement.**

## Operative provisions

### 1. Agreement

**These Terms apply the moment you place or accept an order with us. We'll update these terms regularly and by using our Services, that's evidence of you continuing to agree with them.**

#### 1.1 Application

These Terms will commence once you begin using the Services and will continue:

- (a) for as long as you hold an Account with us;
- (b) for as long as you use the Services; or
- (c) until the date of termination in accordance with clause 22;

whichever occurs last.

#### 1.2 Continuing Agreement

- (a) We regularly update, upgrade and change our Services. These Terms are also regularly updated to keep up with our changing Services and any relevant legislation.
- (b) By using our Service, you are agreeing not only to the terms and conditions of the Terms as they stand, but will, by your continued use of the Service, also be considered by us as consenting to any updates or changes to our Terms as we publish them, both within the Portal and online at the Website.
- (c) You warrant to us that you will regularly check the Terms and ensure that you are satisfied with the terms. Where you're not, you must stop using our Services.

### 2. Our Services

**What the Services covered by these Terms do and our part in providing them.**

#### 2.1 Purpose

Our Services allow Clients to provision gaming Servers in our various PoPs and access our Network.

#### 2.2 Features

Through the use of our Services, Clients achieve a variety of goals, including (but not limited to):

- (a) provisioning Dedicated Servers within international and national PoPs;

- (b) provisioning Virtual Servers within international and national PoPs;
- (c) gaining access to our international carrier Network and leveraging it to provide functionality within the Servers;
- (d) co-locating with us at our PoPs; and
- (e) constructing Custom Servers and deploying them in our PoPs.

#### 2.3 Our Role

- (a) Our role in providing the Services is only to the extent we expressly detail. We don't perform any functions other than those expressly set out in these Terms.
- (b) Subject to Consumer Law, all Services are provided as-is and are non-refundable.

#### 2.4 Relationship

You acknowledge and agree that:

- (a) we may subcontract any of our obligations in relation to the Services to a third party (or multiple third parties) without notification to or consent from you; and
- (b) you have no authority to act for or bind us except as specifically provided in these Terms.

### 3. Licence to Use Services

**This clause applies to where you're using servers we own. To use our pre-built servers, we'll grant you a licence. That licence comes with some conditions - including following these Terms. We can limit your licence if you don't.**

#### 3.2 Licence

We grant to you a limited, non-transferrable, non-exclusive and revocable licence to use our Services, subject to these Terms and the individual requirements and limitations of any relevant Order.

#### 3.3 Licence Conditions

Our granting you a licence on terms detailed in clause 3.2 is subject to and conditional upon you:

- (a) successfully completing the Account Sign-Up (unless we have indicated that our provision of the Services is not contingent on this);
- (b) holding a valid Account with us;
- (c) complying with these Terms, Privacy Policy and any other applicable Additional Documents;
- (d) providing your consent to any relevant Order;
- (e) accepting these Terms as updated from time to time; and
- (f) complying with our reasonable directions in relation to the Services.

#### 3.4 Our right to suspend

We reserve the right to limit or suspend your license to use the Services if you breach any of your obligations in these Terms.

#### 3.5 Title

Unless we expressly agree otherwise in writing (and subject to clause 5 below), all Servers remain our property. You shall not be entitled to sell, transfer,

lease, charge, assign or deal in any other way with Servers we provide to you as part of the Services.

## 4. Servers as a Service

**This clause applies where you're obtaining dedicated or virtual Servers from us without any custom build or co-location. We'll provide you Servers and keep them running - what you do on your Server is your responsibility.**

### 4.2 Dedicated Servers

- (a) From time to time, you may place an Order to purchase a full, self-contained server environment from us (a **Dedicated Server**).
- (b) A Dedicated Server licence will typically entitle you to make sole use of a server 'unit' - a motherboard, central processing unit, random access memory and hard drive.

### 4.3 Virtual Servers

- (a) From time to time, you may place an Order to purchase a virtual server environment from us (a **Virtual Server**).
- (b) A Virtual Server does not exist on a full, self contained physical computer environment, but is rather a 'virtualised' environment using a percentage of the resources on any one server 'unit'.

### 4.4 Game Servers

- (a) From time to time, you may place an Order to purchase a game server environment from us (a Game Server).
- (b) A Game Server is a stand-alone server installation dedicated to one game. In most cases, you will not have the same systems-level access as a Dedicated Server or Virtual Server. Rather, access will be limited to the server management interface provided by that Game Server's management environment (or our implementation of it).
- (c) Should you require more granular control over your server environment, you should purchase a Dedicated Server or Virtual Server.

### 4.5 Servers Generally

- (a) We offer Servers with various specifications. You must check these specifications and ensure you are satisfied with them prior to purchasing a licence.
- (b) You may have to decide certain attributes of your Server prior to provisioning, including the desired operating system. In some instances (particularly where third party licences are required) choosing certain options may incur a delay.
- (c) You acknowledge and agree that:
  - (i) purchase of Dedicated Servers and Virtual Servers come with an elevated level of user responsibility;
  - (ii) apart from the initial operating system installation, you are in complete control of your Dedicated Server or Virtual Server environment for the term of the Service;
  - (iii) our responsibility to you is only to ensure that your Dedicated Server or Virtual Server

continues to function and you are provided with the level of Network Services you have purchased; and

- (iv) should you require any additional assistance outside of this responsibility, you will incur Out-of-Scope Fees.

## 5. Custom Servers

**This clause applies where we're building custom servers for you. Custom Servers are made to order and we need proper information from you. You may own your Servers after they've been paid for, but we'll retain an interest in them to ensure we're never left without fees paid.**

### 5.1 When This Clause Applies

This clause applies where you have placed an Order with us (usually after receipt of a tailored quote) for a custom server deployment - that is, you have requested that we source, construct and install your own Server(s) at our PoP(s) for you to access and manage (a **Custom Server**). This type of installation will always include both a Network Services and co-location component.

### 5.2 Treatment Under These Terms

For the purposes of these Terms, Custom Servers shall be considered Dedicated Servers and all relevant details which apply to Dedicated Servers shall apply to Custom Servers. Where there's any inconsistency between the terms relating to Custom Servers and Dedicated Servers, the terms which relate to Custom Servers shall apply to the extent of the inconsistency.

### 5.3 Scoping

- (a) Prior to drafting of a Quote, you must provide us with the details for the Custom Server deployments, including (but not limited to):
  - (i) required PoPs;
  - (ii) required specifications for the Custom Server(s);
  - (iii) amount of Servers;
  - (iv) date you require Servers to be operational by; and
  - (v) any other information which is relevant.
- (b) It is your responsibility to ensure that you have given us a correct scope of works and to ensure that any eventual Order accurately reflects your requirements.

### 5.4 Fulfilment, Construction and Other Goods-related Terms

- (a) Subject to any clauses to the contrary in these Terms, the purchasing of components and construction of Custom Servers shall be subject to the OneQode Terms of Trade as amended from time to time.
- (b) Where there is any inconsistency between these Terms and the OneQode Terms of Trade, these Terms shall apply to the extent of the inconsistency.
- (c) You must pay us for the construction of Custom Servers ahead of time. We will not commence ordering or provisioning of Custom Servers until payment has been made in full.

## 5.5 Handover

- (a) Upon completion of the provisioning/installation of a Custom Server, we'll provide you with confirmation that work is completed on our end (**Completion Notice**). Following the issuance of a Completion Notice:
  - (i) we'll request that you test the service and ensure it is functional;
  - (ii) we'll usually provide functionality within the Portal to give us feedback; and
  - (iii) we'll give you a timeframe by which, if we don't hear anything, we'll commence billing.
- (b) Where we don't provide you with a timeframe, we'll commence billing as soon as the relevant Services are provisioned.

## 5.6 Ownership of Servers

- (a) In some cases, we may allow you to request that you have ownership over Custom Servers we construct on your behalf. Where you have opted to pay us the full amount for the purchasing, construction and provisioning of Custom Servers, title in those Custom Servers will pass to you upon issuance of the Completion Notice.
- (b) Where you ship us Servers which are already owned by you, you retain title to those Servers.
- (c) Your title in the Custom Servers is subject to your continued payment of all Fees and Costs to us for any Services we provide - including other Services which are not covered by these Terms but are provided by the OneQode Group. In order to secure your payment obligations, for the period in which we provide Services, you:
  - (i) grant to us a Security Interest in respect of all goods sold, supplied, leased, bailed or otherwise provided or made available to you and any proceeds of same;
  - (ii) consent to us perfecting such Security Interest by registration on the PPSR, including as a Purchase Money Security Interest; and
  - (iii) undertake to us that you will do all things reasonably necessary or required by us to assist OneQode in perfecting the registration of the Security Interest on the PPSR; and
  - (iv) waive, to the extent permitted by the PPS Act, your right to receive any notice of a verification statement or any other notice we would otherwise be required to give under the PPS Act.
- (d) Where you default on your payment obligations to us for any Services we provide to you and such default meets the threshold for termination under the relevant Additional Document (or these Terms), we may, at our discretion:
  - (i) remove your Custom Servers from their place in our PoPs;
  - (ii) sell, destroy or otherwise dispose of the Custom Server;
  - (iii) assume title to the Custom Servers and deal with them as we see fit;

and you warrant to us that you will do all acts and things necessary to ensure that good title passes to us should the threshold in this clause 5.6(d) be met.

- (e) You indemnify us and warrant that you will hold us harmless for any acts or omissions on your behalf which do not accord with your obligations under this clause 5.6.

## 6. Co-location

We do offer co-location services for gaming in our PoPs, but this is more restricted than typical co-locations. By default, you'll use our Network and remote hands for anything to do with your co-location.

### 6.1 Gaming Co-location

- (a) For our Services covered under these Terms, you may subscribe for space inside a OneQode PoP but will not be permitted in-person access and will be required to use us for all remote hands tasks (a **Remote Colocation**). This is typically only applicable for Custom Servers - our Dedicated Servers and Virtual Servers already include a built-in colocation and power Fee in the overall Subscription cost.
- (b) Where you require co-location which allows you in-person access to a OneQode PoP, you must order a stand-alone co-location Service from the Portal. Our OneQode Co-location Terms will apply to any traditional co-location services.

### 6.2 Electricity Charges

- (a) We'll charge a recurring Fee for the electricity usage in a Remote Colocation. This Fee will typically be billed on a per-kW basis and will vary from PoP to PoP, in line with the changing power charges across locations and data centres.
- (b) We'll check electricity usage monthly and, where the usage of your equipment exceeds your allotted power draw of a Remote Colocation, we'll charge an additional Fee for at least 1kW of additional power at our then-current Fee rates. Any power draw will be rounded up to the next whole kW drawn.
- (c) If electricity costs increase, we may update our Fees and pass that Cost on at our discretion.

### 6.3 Remote Hands

- (a) Because of the confined nature of Remote Colocation under these Terms, your initial Order will typically only include a Fee for the initial setup of your Remote Colocation.
- (b) Where you require any further physical assistance at a PoP with your Remote Colocation (including your Custom Servers), our on-site technicians can be available to perform various tasks, including (but not limited to) the following:
  - (i) **Cabling.** Patching, plugging/unplugging cables, cross-connecting to other equipment in a OneQode rack and other cable-related tasks;
  - (ii) **Installation.** Additional equipment installation in rack, changing out equipment, augmenting already installed equipment;

- (iii) **Inspection.** Physical inspection of equipment, diagnostic work, provision of photos; and
- (iv) **Power cycling.** Power cycling equipment, hot swapping, plugging and unplugging equipment.
- (c) Assistance by our technicians will be considered an Out-of-Scope Service and will be charged at the Out-of-Scope Fee rates either listed in the Portal, an Additional Document or as advised by us from time to time.

## 6.4 Cross Connects

Cross connects to other companies at a location where we house our PoP may be possible, however you must request any cross connections from us directly. We will provide you with Fees for that cross connect on request. You must not engage directly with any third party lessor of a building in which a PoP is located without our express permission.

## 6.5 Network

Unless we otherwise agree, you must only use our Network for telecommunications services in relation to your equipment installed with your Remote Colocation under these Terms.

## 6.6 Removal of Equipment

- (a) Where you have a Remote Colocation, hold title to installed equipment and the relevant Services are terminated, you must, no later than seven (7) days after those Services are terminated, remove all equipment from the PoP.
- (b) Where you don't remove equipment within the requisite time, we may remove that equipment and hold it for an additional thirty (30) days. If you do not arrange to have the equipment removed from our custody by then, you agree that we can consider that equipment abandoned and title shall automatically pass to us.

## 6.7 Own Risk

- (a) All equipment in a Remote Colocation is stored at your own risk. We will not be liable for any damage, malfunction or other issues with your equipment in a Remote Colocation.
- (b) You will ensure that all Remote Colocation equipment is insured with a reputable insurer. You must also ensure that you have at least \$20M worth of public liability insurance cover for your company.

## 7. The Network

**You'll be using our Network as part of all Services. Use of our Network is governed by our wider Business Master Service Terms and any other relevant Network-related Additional Documents.**

### 7.1 MST to Apply

- (a) In the absence of any provisions to the contrary, use of our Network is governed by our Business Master Service Terms and any Additional Document which relates to the specific Network Service you are accessing.
- (b) You can find all relevant Additional Documents on our Website. It is your responsibility to read, consider and ensure you comply with all Additional Documents which may be relevant to

your Service and by using the Network, you warrant to us that you have done so.

## 8. Paying for the Service

**You agree to pay us for the Services. We can amend Fees at any time. We may use a payment system to get it done and that has its own terms.**

### 8.1 Fees

- (a) You will pay us any Fees which are required for any paid Service functionality you subscribe to from time to time.
- (b) All amounts and fees stated or referred to for the Services are:
  - (i) non-cancellable and non-refundable (subject to clause 19.1(d)); and
  - (ii) inclusive of GST, which shall be shown on our invoice(s) at the applicable rate.
- (c) You must register a valid payment method on the Portal (or provide us with details in another manner we specify) prior to the commencement of any Service.
- (d) We may amend the Fees at any time.

### 8.2 GST Wording

Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

### 8.3 Payment Gateway Provider - Stripe

- (a) We use the third party payment gateway provided by **Stripe** (<https://stripe.com/au>) for secure online payment transactions.
- (b) Payment for orders placed through this site may be made using the secure Stripe payment gateway or using an Stripe account, in any of the methods which they support from time to time.
- (c) Payments made through Stripe are subject to Stripe's own terms and conditions and privacy policy, links to which are provided on the Stripe checkout pages. For more information about Stripe or to see their current terms and conditions, visit the Stripe website (<https://stripe.com/au>).
- (d) Unless you expressly consent otherwise, we do not see or have access to any personal information that you may provide to Stripe, other than information that is required in order to provide the Service to you (eg, your name, email address and billing/postal address).
- (e) It is not necessary to have a Stripe account in order to make a purchase on this site. Stripe accepts all major credit and debit cards.
- (f) We may be unable to accept credit cards issued by banks outside of Australia in some cases. We do not charge additional transaction fees for paying by credit card, however Stripe may charge additional fees.
- (g) Except as expressly provided otherwise in these Terms, all amounts paid through this site are non-refundable.
- (h) While Stripe employs secure technology for transactions with our customers, we will not be responsible for any damages, including consequential losses (whether direct or

indirect), that may be suffered by a customer whose credit or debit card or bank account information is used in a fraudulent or unauthorised manner by any person other than us.

- (i) We may request further information from you, such as a copy of your credit card and/or other identification documentation, as part of our internal validation procedures. These procedures help protect bank and credit card account holders from online fraud.
- (j) Until your order has passed our internal fraud prevention checks, your order may remain on pending status. If further information is requested and you do not provide the requested information within such time as we consider appropriate (in our discretion), your order will be cancelled and, if your payment has been received, it will be refunded back to you.

## 9. Purchasing Services

**You can obtain Services through Orders - either on the Portal or directly with us. Once you've made an Order, it's binding on you. Our subscriptions are for you and no one else. You can also sign up for a trial (some of these are free) - all the same rules still apply.**

### 9.1 Quotes

- (a) A Quote or indication of a price issued by us is an invitation to treat, not a contractual offer.
- (b) A Quote is valid for 30 days from the date of issue.
- (c) We reserve the right to cancel or modify a Quote at any time before the you have accepted a Quote.
- (d) Accepted Quotes will be considered Orders following acceptance in writing.

### 9.2 Orders

- (a) To obtain Services, you must make an Order. Orders can be made by accepting a Quote, through the Portal or in some cases, directly with us outside of the Portal.
- (b) Any Order for Services made (including those of the nature listed in clause 9.3 below) from your Account are binding on you.
- (c) Timeframes for Orders vary based on a number of factors and the Services you have ordered from us.
- (d) You are responsible for ensuring the Orders are made with your permission, meet your required criteria, will be within a suitable timeframe and are in all cases, satisfactory to your requirements.
- (e) We may cancel an Order at any time without penalty prior to the provision of Services.
- (f) An Order may only be cancelled by you in accordance with these Terms.

### 9.3 Subscriptions

- (a) The default method for obtaining a licence for a Service is to Order a periodic subscription for a Fee (**Subscription**).

(b) Prices for Subscriptions will normally be listed on the Website and the Portal. We may change these listed prices at our discretion and without any notice.

(c) You may order Subscriptions through the Portal. Accounts with Subscriptions:

- (i) are for the named person/entity signing up for the Service only; and
- (ii) must not be shared for use with other people external to yourself/your organisation without express written approval.

(d) As part of the Account Sign-Up process, you may be asked to classify your Account type. You warrant to us that you will do this truthfully and that your classification will continue to be accurate. Where this is not the case, you will take all necessary steps to remedy this immediately.

(e) We may offer both fixed term Subscriptions and recurring monthly Subscriptions.

(i) **Fixed term Subscriptions** are for a fixed period pre-allocated by you. Your agreement to a fixed term is you guaranteeing to us that you will pay for the Subscription for that period. Cancellation within this fixed term period (for any reason) will not entitle you to a refund.

(ii) **Recurring monthly Subscriptions** are billed at regular monthly intervals. Cancellation of a monthly Subscription will take effect at the end of that monthly period.

(f) We may charge a pro-rata amount when you first subscribe to bring you in line with our monthly billing cadence.

### 9.4 Trials

- (a) From time to time, we offer trials to a Service (**Trials**).
- (b) These Trials are provided for the period we specify (and failing that, for a maximum of 14 days). Trials are provided on a one-time only basis and are not intended to be used consecutively.
- (c) Licences provided for Trial purposes are revocable by us at any time and at our complete discretion.
- (d) Where you have signed up for a Trial, you agree and warrant:
  - (i) you will not use any measures to gain access to the Service after the Trial without taking out a Subscription;
  - (ii) that you have no expectation that your data will be available after the Trial period without purchasing of a Subscription;
  - (iii) where you want to continue to use the Service after the Trial period, you will purchase a valid Subscription; and
  - (iv) we will under no circumstances be liable to you in any way for Services provided through a Trial - and you indemnify us from any and all damage we may suffer in relation to same.

## 10. Your Obligations

**You have a responsibility to do the right thing by us. This includes giving us clear instructions, protecting your systems, taking responsibility for things which are under your control and protecting our Intellectual Property.**

### 10.1 Positive Obligations

While these Terms apply, you must:

- (a) not to do anything which will have an adverse effect on us or the Services;
- (b) comply with any and all terms and requirements of the Services outlined in these Terms;
- (c) ensure that you use the Services in accordance with the Terms and any other requirements (such as our Privacy Policy);
- (d) ensure that you do not (in your use of the Services) breach any laws, regulations, policies or other legal instruments;
- (e) do all acts and things necessary to ensure that you do not breach these Terms; and
- (f) not publish or otherwise communicate any review of, or information about, the Services (which is not publicly available) to any third party without the prior written consent of us, except as specifically provided for in an agreement with us, including these Terms.

You will be responsible for the breach of any obligation in this clause except to the extent the breach is caused by our negligent act. The above obligations apply to any use of your Account, including use by any third party. You agree to be responsible for any breach of these Terms, including this clause 10.1, where that breach occurs through use of your Account, regardless of whether you actually committed the breach or not.

### 10.2 Restrictions

Except we expressly permit otherwise, you shall not:

- (a) access all or any part of the Services in order to build a product or service which competes with the Services;
- (b) take any action which imposes or may impose (in our judgement) an unreasonable or disproportionately large load on our, or our third-party providers', Infrastructure;
- (c) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services;
- (d) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means; or
- (e) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service;
- (f) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services);

- (g) otherwise take any action in violation of any guidelines, policies or supplemental documentation which shall be applicable to the Services from time to time;

and shall not permit any other person to do the above acts, howsoever related to you.

### 10.3 Fair Use

You shall not use, or permit any other person to use:

- (a) any method to circumvent the provisions of this agreement or to obtain Services in excess for those in which you have purchased or are allowed in the normal operation of the Service; and
- (b) any mechanism to exceed the amount of resources assigned to you (or conceal any such activities).

The Services are subject to our Fair Use Policy as published and amended from time to time.

### 10.4 Our right to suspend

We reserve the right to limit or suspend the access of any individual or association to the Services if any individual or association is in breach of this clause 10.

### 10.5 Audit

If required by us, you will provide us reasonable access to your records, systems or hardware for the purposes of ensuring compliance with these Terms.

## 11. Privacy

**We'll keep your Personal Information private unless it's needed for us or our business. Where we're not sharing it to provide the Services directly (or if we're required by law), we'll de-identify it. Our Privacy Policy has all the nitty-gritty details.**

### 11.1 Privacy Policy

- (a) You agree and consent to our handling of Personal Information in accordance with our Privacy Policy.
- (b) We reserve the right to amend the Privacy Policy at any time.
- (c) We reserve the right to immediately terminate these Terms if you are in breach of this clause 11.

### 11.2 Privacy Obligations - OneQode

If Personal Information is disclosed to us in the course of us providing the Services, we agree that we will not:

- (a) sell the Personal Information to any third party in a form which has not been sufficiently de-identified so that it no longer represents information by which the Client could be personally identified by the third party; or
- (b) distribute or disclose identifiable Personal Information to any third party other than:
  - (i) to our personnel and/or related bodies corporate;
  - (ii) service providers who require the information in the provision of providing services to us;

who will only use the Personal Information for the purposes contemplated by these Terms.

### 11.3 Privacy Obligations – Client

If Personal Information is disclosed to you in the course of us providing the Services, you agree that you will not:

- (a) sell the Personal Information to any third party in any form; or
- (b) distribute or disclose Personal Information to any third party other than:
  - (i) to your personnel and/or related bodies corporate; or
  - (ii) service providers who require the information in the provision of providing services to you;

who will only use the Personal Information for the purposes contemplated by these Terms.

### 11.4 No Warranty

- (a) We make no warranties or guarantees that the manner in which we manage Personal Information is compliant with any foreign privacy laws and it is your sole and absolute responsibility to ensure you are compliant with any foreign privacy laws in your use of the Service.
- (b) In the event that you request changes to the Services in order to achieve compliance, you acknowledge and agree that you will be liable for all work performed by us.

### 11.5 The Privacy Act

For the purposes of this clause 11 the term *disclose* is to have the same meaning as defined in the *Privacy Act 1988* (Cth).

## 12. Intellectual Property

**Summary: We both own our pre-existing material - and the Service is ours. Anything we develop as part of the Services is ours, unless we agree that it will be yours. We'll both take steps to protect each other's Intellectual Property. If you're a company, we can also publish that you are our customer unless you tell us not to.**

### 12.1 Our Intellectual Property Rights

- (a) All title, ownership rights and Intellectual Property Rights, including copyright in relation to the Service is owned or used under licence by us. Nothing in this agreement transfers any Intellectual Property Rights to you.
- (b) Without our express prior written consent, you undertake that you will not and will not permit any person to:
  - (i) interact with our Intellectual Property or trade mark(s) (whether registered or not) that could cause any adverse effect to our ownership and/or rights to the intellectual property; or
  - (ii) copy or reproduce, or create an adaptation or translation of, all or part of the Service in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Service in accordance with these Terms;

(iii) incorporate all or part of the Service in any other webpage, site, application or other digital or non-digital format. For the avoidance of doubt, you may incorporate images of the Service into hard or soft copy documents for training or communication purposes;

- (iv) do anything that will infringe the Intellectual Property Rights of us or any third party; or
- (v) attempt to do any of the above.

### 12.2 Your Intellectual Property

Nothing in these Terms will transfer ownership of your Submitted Material to us.

### 12.3 Ownership of Intellectual Property

You agree that all Intellectual Property rights in:

- (a) the Services, Portal and any other material developed by us under these Terms; and
- (b) any improvements, modifications or enhancements to the Services and any other material developed by us in the course of providing the Services,

will vest in and are owned by us upon creation, even if based on your new feature request or user feedback.

### 12.4 Provide all assistance

You must execute all documents and do all things reasonably necessary to aid and co-operate in the prosecution of any actions brought by us under this clause.

### 12.5 Survival of Obligation

The operation of this clause survives the termination of these Terms.

### 12.6 Publicity Rights

For the term of these Terms, and subject to any ongoing right of revocation by notice, you grant us, and our contractors and agents, a non-exclusive licence to:

- (a) use your logo, trade marks and other branding rights to advertise or promote the Services;
- (b) publish general case studies describing your use of the Services in general terms for academic and promotional purposes; and
- (c) display, link to, or promote your business as part of our portfolio.

## 13. Operation of the Services

**Parts of our Services involve third parties. While we take steps to minimise errors, these things happen - and we may make changes to the Service where needed.**

### 13.1 Parts of the services controlled by third parties

You acknowledge and agree that the Services are often leveraging other services owned and controlled by third parties - including data centre leases and capacity. As such, you acknowledge that certain issues are out of our control, including (but not limited to):

- (a) internal rules and standards for host data centres;
- (b) service quality on connections not supplied directly by us;
- (c) actions by malicious, state-sponsored and hostile actors;
- (d) hardware and connectivity failure; and
- (e) data storage and backup.

Where you require mitigation for aspects which are not in our direct control, you will notify us of same.

## 13.2 Change of Services

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove items from, redesign, improve or otherwise alter the Services (including offering new Services) at our sole and absolute discretion.

## 13.3 Unintentional inaccessibility

- (a) From time to time, without notice, access to all or part of the Services may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to the Services as soon as practicable. Nothing in this agreement gives us any obligation or liability to you in any way whatsoever for unintentional inaccessibility save that which has been expressly set out here or in an Additional Document.
- (b) We make no guarantees as to the uptime or availability of the Services. While we may provide service level information and 'best effort' targets, these should not be viewed as guarantees or warranties to same.

## 13.4 Intentional inaccessibility

We reserve the right to make some or all of the Services inaccessible from time to time as is required for upgrades, maintenance and updates. We will use reasonable endeavours to provide you with advance notice of any inaccessible period but you accept that, particularly in the case of urgent fixes, this may not always be possible and we are not liable for any harm or damage you may suffer during an interruption.

## 13.5 Errors

- (a) You acknowledge and agree that there may be technical or administrative errors in the information in relation to the Services and the Portal.
- (b) We reserve the right to do any of the following, at our absolute discretion:
  - (i) correct any errors in the Service;
  - (ii) make the Services or Portal inaccessible to work on errors;
  - (iii) remove and/or replace parts of the Service;
  - (iv) move or re-organise data from one part of the Service to another; or
  - (v) any other act or thing reasonably necessary to ensure that errors are corrected and the Service continues to operate as intended.
- (c) We will endeavour to give you significant advance warning before any changes are made

and liaise with you to minimise impact however in some cases, we may not be able to do so.

## 13.6 Security Responsibilities

We will take reasonable steps to ensure that the Service is secure from unauthorised access consistent with generally accepted industry standards in our industry. For clarity, these obligations shall only include taking reasonable measures to:

- (a) secure our physical premises from unauthorised access;
- (b) restrict access to critical parts of Service infrastructure to employees, contractors and third parties who are required to have access;
- (c) implement DDoS protection in areas of our Network we deem appropriate; and
- (d) implement recommendations from advisors provided to us from time to time in relation to securing the Service and Services.

## 13.7 Publishing of Content & Service Data

Except as expressly permitted through these Terms, you must not publish, share or otherwise disseminate any content, data, graphs, visualisations or information provided to you through the Services outside the confines of a Service without our written permission.

## 13.8 Delivery of Support and Maintenance

We will provide support and maintenance services in respect of the Services via email or support ticket only and will endeavour to respond within 24 hours (if that time period falls on a Business Day) or otherwise as soon as possible thereafter.

## 14. Data

**We'll need information from you to provide the Services and make them work. The Services we provide are 'as is'.**

### 14.1 Privacy Policy & Other Terms

Where not specifically dealt with in these Terms, we will collect, store and use your data in accordance with our Privacy Policy and any other terms listed on our Website as updated from time to time.

### 14.2 Required Information

- (a) In your use of the Services, we may require Personal Information to:
  - (i) ensure we can appropriately interact with third-party applications;
  - (ii) comply with any applicable laws and regulations, including any anti-money laundering, counter-terrorism or know-your-customer (KYC) requirements.
- (b) The Personal Information you may be required to provide for the continued use of the Services may include (but is not limited to):
  - (i) Full name;
  - (ii) Company name;
  - (iii) Email address;
  - (iv) Postal and/or residential address;

- (v) Date of birth;
- (vi) Vendor email address;
- (vii) Payment details; and
- (viii) other more particular Personal Information.

#### 14.3 Use of Data

- (a) By using the Service and providing Submitted Material and Client data in your interaction with the Services, you understand, acknowledge and agree that we:
  - (i) may use that data as required to ensure you have the appropriate access and use of the Services;
  - (ii) may share data with any third parties to whom we rely upon in providing or running the Services - but only to the extent required;
  - (iii) may share data with any third parties whom you allow within the Services or your Account as an Integration;
  - (iv) may share data with any of our related bodies corporate in the OneQode Group; and
  - (v) may share data with our partners, affiliates and other associated third-parties, but only in a manner consistent with our Privacy Policy.
- (b) You grant us a revocable, non-restrictive, royalty free, transferable, assignable worldwide, fully paid, sublicensable license to use any data you provide to us in your use of the Services for the purposes listed in clause 14.3(a) and any other purposes listed in these Terms. This license shall survive the termination of these Terms.
- (c) For clarity, the above license in clause 14.3(b) does not affect your other ownership or license rights in the Submitted Materials, including the right to grant additional licenses in writing, unless otherwise agreed.
- (d) We reserve the right to access, preserve and disclose any information we believe is reasonably necessary to:
  - (i) provide the Services;
  - (ii) satisfy any applicable law, regulation, legal process or governmental request;
  - (iii) enforce these Terms, including investigation of potential violations;
  - (iv) detect, prevent, or otherwise address fraud, security or technical issues;
  - (v) respond to user support requests; or
  - (vi) protect the rights, property or safety of us, our users and the public;

however the privacy and quiet enjoyment of our Clients is a major priority and a key factor in making decisions around any of the above.

#### 14.4 Data Exporting

While the Services and Service may allow users to export certain aspects of the Submitted Material, nothing in these Terms should be construed as an entitlement to export Submitted Material from the Services at will.

#### 14.5 Client Acknowledgements

You acknowledge and agree that:

- (a) the Services may be subject to limitations, delays and other problems inherent in the use of communications facilities (such as network outages, congestion and hardware failures);
- (b) information we provide through the Service is for your use only;
- (c) we may perform periodic penetration testing on the Network and Infrastructure to satisfy our internal security standards;
- (d) information you request from us may not be available or may not be provided at the time of request, and we don't guarantee that any information provided will be comprehensive or complete;
- (e) unless otherwise agreed to in writing, you shall be responsible for the preservation of your data, including any Submitted Material. Even where we do provide backup services, you must also take measures to safeguard and secure your data. Unless agreed in writing, you acknowledge and agree that we shall have no responsibility to preserve any data and no liability for any data, including Submitted Material, which may be lost or unrecoverable; and
- (f) we will not be responsible for you having appropriate devices and internet connections to access the Services. We will not be responsible for any physical devices, internet connections, communications or anything else used to connect or access the Services.

#### 14.6 Service Limitations

The Service is:

- (a) provided on an 'as is' basis; and
- (b) not designed to perform any functions outside those expressly advertised.

### 15. Security

**You need to take care of your own digital security. We'll take measures to keep the Service secure too.**

#### 15.1 Sufficient Security

You shall use proper security measures in connection with your use of the Services. This shall include (but not be limited to) the following:

- (a) setting strong passwords and access control mechanisms;
- (b) safeguarding access to all logins and passwords (preferably with an industry-grade two-factor or hardware authentication system);
- (c) verifying the trustworthiness of persons with account access information; and
- (d) implementing any relevant procedures recommended by the Department of Industry, Innovation and Science (see - <https://www.business.gov.au/Risk-management/Cyber-Security>) and the Australian Cyber Security Centre (see - <https://www.acsc.gov.au/> and <https://cyber.gov.au/>) from time to time.

## 15.2 Notifiable Data Breaches

You shall notify in the manner specified in clause 26.1 within 48 hours if you learn of any security breaches relating to the Services. If the breach(es) could constitute a Notifiable Data Breach under Part IIIC of the Privacy Act 1988 (Cth), you shall notify us within 3 hours of the breach (suspected or confirmed) coming to your attention. You shall aid us fully in any subsequent investigation or legal action taken as a result of the breach.

## 15.3 Malicious Code

It is your responsibility to protect your systems and the areas of the Services which are under your control from Malicious Code.

## 15.4 Internet Services

You are responsible for the security of any and all internet connections used to access the Services and the security of any device on which the Services are accessed.

## 15.5 Cyber Attacks

While we may take reasonable measures to secure the Service and the infrastructure on which the Services run from cyber-attacks and Malicious Code, new attack vectors and exploits are created or used by malicious actors every day. By using the Services, you acknowledge that we cannot be expected to anticipate these new vectors but can only employ industry-standard measures to mitigate the risks. Where we are actively employing measures to combat cyber-crime and an exploit or data loss occurs, you agree to hold us completely harmless for any consequences of same.

## 15.6 Indemnity

You release and indemnify us for any claim, action or liability resulting from your failure to comply with this clause 15.6. You acknowledge that while we may secure the Service as part of the Services, we are unable to protect you from a failure to properly secure your systems and practice good digital hygiene.

## 16. Third Party Content and Services

Some of our Services are reliant on third party integrations. They'll get information from us just as we take information from them - this will likely include some of your data. Without this, we can't operate parts of our Services.

### 16.1 Accessing Linked Content and Services

- (a) The Services may permit you to link to or access other websites, services, executables or resources. When you access third party resources, you do so at your own risk. These other resources are not under our control, and you acknowledge that we're not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any link or integration to third party services does not imply our endorsement or any association between us and their operators.
- (b) You further acknowledge and agree that we will not be responsible or liable, directly or indirectly, for any damage or loss caused (or alleged to be caused) by or in connection with the use of or reliance on any such content,

goods or services available on or through any such website or resource.

## 16.2 Third Party Integrations

- (a) In delivering the Services, we may offer augmented functionality through interfacing, providing or obtaining data, or otherwise co-operating with a third party and their software and/or services (**Integration**).
- (b) Several of the Integrations may have access to some Submitted Material, Personal Information and Client data. By using the Services, you expressly authorise us to provide any Submitted Material, Personal Information and Client data to Integrations for the purpose of providing the Services.
- (c) You acknowledge that the third parties who control the Integrations may:
  - (i) use Submitted Material, Personal Information and Client data to improve their services;
  - (ii) to the extent permitted by law, use, sell, license, distribute and disclose de-identified and/or aggregated Submitted Material, Personal Information and Client data; and
  - (iii) perform fraud screening, verify identities and verify Submitted Material, Personal Information and Client data for use across their network;

and agree to the Integrations performing all of the above functions.

- (d) While we offer the Integrations and may have agreements with the third parties to whom they relate, we only have control over the Integrations to the extent permitted by that particular Service.

## 17. Usage Restrictions

You won't do anything on the Services which is unlawful or could cause harm. Our Servers also provide access to certain countries which have traffic restrictions - so you must ensure you are only using it for the purpose you have told us and nothing else.

### 17.1 Gaming Traffic Only

- (a) The Services covered by these Terms are designed solely for use within the gaming industry and for gaming traffic.
- (b) By using the Services, you will have access to a premium, fit-for-purpose segment of the OneQode Network. In many cases, we have agreements with third parties whereby we are only permitted to service gaming traffic over certain areas of the Network. For this reason, you acknowledge and agree:
  - (i) if you were to use the Services to provide products or serve users who are not purely sending gaming or gaming-related traffic, you may put the overall Network in jeopardy;
  - (ii) if we were to lose access to certain parts of our supplier network, our losses would be substantial and damages would not be an adequate remedy against you;

- (iii) you will therefore not cause any products, services, executables or other programs to be hosted on the Services which are not:
  - (A) a server for a computer or video game; or
  - (B) a product or service which is not directly required for the operation of a computer or video game server.
- (c) For clarity, you are expressly prohibited from, and warrant that you will not, host, install or facilitate the connectivity of:
  - (i) virtual private networks (VPNs);
  - (ii) proxy servers;
  - (iii) instant messaging, video, voice or text communication applications or servers;
  - (iv) torrents or other peer-to-peer file sharing;
  - (v) Tor or onion routing;
  - (vi) any distributed Network designed to be inherently censorship resistant, censorship resilient or end-to-end encrypted; or
  - (vii) any other non-gaming traffic.
- (d) We may choose to waive some of the above provisions on case by case basis, but only through express and separate written consent from a director of OneQode.
- (e) Should you breach any of the restrictions in this clause 17.1:
  - (i) we may terminate all of your services immediately; and
  - (ii) you fully indemnify us from any and all loss, including Consequential Loss, from your breach.

## 17.2 Restrictions Generally

- (a) You must not submit or cause to be transmitted, routed or hosted on the Services any of the following:
  - (i) any material which:
    - (A) you don't own or have the right to use;
    - (B) is illegal, unlawful, improper, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful, or otherwise objectionable;
    - (C) infringes the Intellectual Property Right of a third party; or
    - (D) causes damage or injury to any person or property;
  - (ii) any confidential information of any third party which you have not obtained the express consent of the third party for;
  - (iii) would breach any privacy, security or anti-money laundering obligations, such as duties under the Privacy Law; or
  - (iv) any sensitive Personal Information or data which you do not wish for any employees of ours to have access to;

and we reserve the right, without incurring any liability to you, to disable your access to any

material that we consider, in our sole discretion, breaches the provisions of this clause (or, if we deem it necessary, the Services).

- (b) You grant us a non-exclusive, royalty free license to use any material supplied by you in connection with this clause 17.2 for our commercial and business purposes, including the commercial and business purposes of any of our associated bodies corporate.

## 18. Warranty

**The Service is provided 'as is' and we don't make any warranties or guarantees in relation to errors, interruptions or data accuracy.**

### 18.1 Exclusion of express warranties

Subject to our obligations in respect of the provision of the Services under these Terms, we make no warranties or guarantees:

- (a) the Services will be accessible at all times, uninterrupted or error free;
- (b) information provided through the Services is correct, up to date or without additional restrictions from a third party;
- (c) any of the technical information is without error or inaccuracy;
- (d) the Services are immune to unauthorised access or security breach; and
- (e) in respect of the retention of, or continued accessibility of, any data.

### 18.2 Warranties as to capacity

You warrant to us that:

- (a) you have full power and authority to execute Orders and observe and perform all of your obligations under these Terms;
- (b) you're not aware of any thing, matter or circumstance which may prevent you from fulfilling your obligations under these Terms; and
- (c) you're not insolvent and no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any of your affairs or material assets;

and will continue to warrant this as long as you use the Services.

## 19. Limitation of Liability

**We'll be liable to you as required by Australian Consumer Law. Because the Service is provided 'as is' and we're very open about its limitations, we won't be responsible for anything more than the legal requirements. If this doesn't suit, please don't use the Service.**

### 19.1 Consumer Law

- (a) You acknowledge and agree that we are not responsible for the conduct or activities of any other user of the Services.
- (b) If you are a consumer within the meaning of the Consumer Law, there are certain rights, such as the consumer guarantees, implied by the Consumer Law which cannot by law be excluded

**(Non-Excludable Conditions).** This clause is subject to those Non-Excludable Conditions.

- (c) Subject to the application of any applicable Non-Excludable Condition and to the maximum extent permitted by law, we:
  - (i) exclude from these Terms all guarantees, conditions and warranties that might but for this clause be implied into these Terms;
  - (ii) exclude all liability to you for any Costs, expenses, losses and damages suffered or incurred directly or indirectly by you in connection with these Terms, including using the Services, whether that liability arises in contract, tort or under statute; and
  - (iii) will not, under any circumstances, be liable to you for any Consequential Loss.
- (d) If our liability under these Terms cannot be lawfully excluded, to the maximum extent permitted by law, our liability for breach of any Non-Excludable Condition is limited:
  - (i) in the case of goods, to (at our option) the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired;
  - (ii) in the case of services, to (at our option) the supplying of the services again; or the payment of the cost of having the services supplied again.

## 19.2 Costs

Subject to clause 19.1, we exclude, and you agree to indemnify and hold us harmless from, all other liability to you for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by you in connection with the Terms, the Infrastructure and/or the Services. The limitation applies however the Costs are caused whether they arise in contract, tort (including by our negligence) or under statute.

## 19.3 Third Party Integrations

- (a) We make no guarantee as to the safety, security, merchantability, fitness, reliability or usability of any third party Integrations on the Services.
- (b) Where you suffer any damages, loss or injury due to the acts or omissions of an Integration, your sole and exclusive remedy is to pursue the owner of that Integration for those damages. You release and discharge us for all liability relating to any Integration, except to the extent where we have contributed to any damage, loss or injury.

## 19.4 Limitations Generally

- (a) Despite any other provision to the contrary, our total liability in connection with these Terms whether under contract or tort, will not in any circumstances exceed \$1,000.00 (AUD).
- (b) You indemnify us for any reasonable legal expenses we incur as a result of your breach of these Terms.

## 20. High Risk Activities

**We're providing 'standard' services based on the assumption that's all you need. If you're doing**

**something where any failure in the Services would have serious consequences, you need to let us know.**

### 20.1 Reliance not Permitted

Our Services aren't intended for use with High Risk Activities in their 'standard' form. You warrant to us that you won't use them for such (or allow any third party to do so) without getting our approval to do so first. We reserve the right to set additional conditions, costs or requirements on the Services prior to approving High Risk Activity use.

### 20.2 Liability

Where we don't approve use for a High Risk Activity in writing, you agree to indemnify and hold us completely harmless for same, including for any claims or damages that result to you, us or a third party.

## 21. Open Source Software

**We'll be using Open Source Software as part of providing the Services, just like every other Service company. If you don't want us to, you can't use the Service.**

### 21.1 Open Source Software

You acknowledge that we use Open Source Software in some Services, and approve its use generally. Should you not wish for us to use any particular Open Source Software, you must inform us in writing. We'll inform you if it's critical or not and what alternatives exist. If you don't allow the use of certain software, we may be unable to provide the Services. You agree we won't be liable for issues with Open Source Software, provided we take measures to replace deprecated projects in a reasonable timeframe.

## 22. Termination

**You can terminate your Subscriptions through the Portal or by notifying us. These terms will continue to apply as long as you have an active Service.**

### 22.1 Subscription cancellation by Account Management

- (a) For Services you have commenced through the Portal, you may terminate them by cancelling your Subscription within the Portal. Your Service will be active for the rest of the Subscription period you are signed up for, and these Terms will continue to apply.
- (b) For Services you have commenced through a Quote and Order process, you may cancel those Services prior to the end of the Subscription period either by notifying us in writing or through the Portal (if permitted).
- (c) Where a Subscription is not cancelled before the next Subscription term, that Subscription may be automatically renewed and a new Subscription period for a Service will commence. You will then have to abide by the minimum term specified for that new Subscription period.
- (d) If you wish to cancel your Account, you must first cancel all of your services. These Terms will continue to apply to you until your Account has been terminated.

## 22.2 Immediate Termination by us for Default

We may terminate a Service or your Account immediately by notice to you if:

- (a) an Insolvency Event occurs in relation to you; or
- (b) you commit any breach of any of your obligations under these Terms.

## 22.3 Change of Mind

You acknowledge and agree that:

- (a) it is incumbent upon you to educate yourself in relation to the specifications of a Service prior to purchasing a licence;
- (b) you cannot terminate a Service earlier than your permitted Subscription end date due to a 'change of mind' or any other failure to properly consider Service details prior to purchase;
- (c) you indemnify us from any and all Costs we incur due to your breach of your agreement to this clause 22.3.

## 23. Effects of Termination

**After termination, you need to stop using the Services.**

### 23.1 Effects of Termination

- (a) On termination of a Service, any relevant licences will terminate and you must immediately:
  - (i) cease all activities related to that Service; and
  - (ii) do any further things as may be reasonably required us to protect our right, title and interest in the Services.
- (b) On termination of your Account, all relevant licences will terminate and you must immediately:
  - (i) cease all activities related to the Services; and
  - (ii) do any further things as may be reasonably required us to protect our right, title and interest in the Services.

## 24. Dispute Resolution

**Where there's a dispute, we'll both engage with the dispute process in good faith through our ticketing system. Once we've made a decision, you'll abide by it.**

- (a) Any dispute between you and a third party must be resolved on the basis of any agreements between those parties, or failing that, in good faith. We take no responsibility for, and will not take part in, any dispute involving Clients and third party except where that dispute relates directly to an issue with the Service or us.
- (b) In the event of any issue which relates directly to us or the Services, your sole and exclusive remedy is the following procedure:
  - (i) within seven (7) days of the issue, you must send a message to the support address [hello@oneqode.com.au](mailto:hello@oneqode.com.au) or, where the functionality exists, open a support ticket within the Portal;

(ii) you must detail your issue in writing in as much detail as possible;

(iii) we will then review your issue and seek your further input if needed; and

(iv) we will make a decision in relation to the dispute at our discretion and provide you that decision in writing.

(c) You agree that any decision we make is final and you will be bound by it. You indemnify us fully for any and all expenses we incur as a result of you failing to abide by our decision and continuing the dispute (including any subsequent legal proceedings).

(d) You agree that, where you breach the above clause 24(c) and continue the dispute after a decision has been made, you will first contact us and seek in good faith to arrange a mediation for the relevant issue.

## 25. Confidentiality

**We both need to keep each others' information confidential.**

### 25.1 Confidentiality Generally

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Notwithstanding any other provision of this clause, a party may disclose the terms of the Terms (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (d) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Terms, do not make public or disclose the other party's Confidential Information.

### 25.2 Breach notifications

A party must notify the disclosing party in writing, giving full details known to it immediately, when it becomes aware of any actual, suspected, likely or threatened:

- (a) breach by any person of any obligation in relation to the Confidential Information; or
- (b) theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.

### 25.3 Survival

The obligations under this clause 25 survive termination of the Terms.

## 26. General

**Some other general obligations for both of us which haven't been dealt with elsewhere.**

### 26.1 Notices

- (a) Any communication under or in connection with these Terms:

- (i) must be to the addressee as set out in **Error! Reference source not found.** from time to time or where the functionality exists, sent via a message or support ticket within the Portal; and
- (ii) must be in writing.
- (b) Either party may serve any communication on the other party by sending it to that party's email address or through the support ticket process. A communication by email will be taken to have been received by the addressee at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee.
- (c) If delivery is made after 5:00pm on a Business Day, it must be treated as received on the next Business Day.
- (d) For the purposes of the *Electronic Transactions Act 1999* (Cth), the *Electronic Transactions (Queensland) Act 2001* (Qld) and section 127 of the *Corporations Act*, the parties agree to send, receive and execute notices and documents electronically, and agree that any document signed electronically will be binding with the same effect as a physical signature.
- (e) In relation to any unforeseen event or downtime notices, it is sufficient for the purposes of these Terms that we provide information about such occurrences on our Website, the Portal or via email updates.

## 26.2 Unforeseen Event

We are not responsible for any loss arising out of any occurrences or condition beyond our control, including but not limited to acts of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware or other malicious code.

## 26.3 Assignment

- (a) You may only assign, encumber, declare a trust over or otherwise create an interest in your rights under this document with our consent.
- (b) We may assign, encumber, declare a trust over or otherwise create an interest in its rights under this document without your consent, and may disclose to any potential holder of the right or interest any information relating to this document or any party to it.

## 26.4 Amendment

We may amend these Terms from time to time at our complete discretion. We will provide notice on our website, the Service and/or via email of any changes we deem as 'major' to our Terms.

## 26.5 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing and registering this document.

## 26.6 Giving effect to this document

Each party must do anything (including execute any document) and must ensure that its employees and

agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

## 26.7 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## 26.8 Relationship

Nothing in these Terms is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties. Unless expressly stated in these Terms, no party may act as agent of or in any way bind another party to any obligation.

## 26.9 Warranties as to capacity

Each party represents and warrants to the other that:

- (a) it has full power and authority to execute these Terms and observe and perform all of its obligations herein;
- (b) it is not aware of any thing, matter or circumstance which may prevent it from fulfilling its obligations under these Terms; and
- (c) it is not insolvent and no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any of its affairs or material assets.

## 26.10 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

## 26.11 Inconsistency with other documents

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

## 26.12 Reliance

Neither party has entered into any contract under these Terms in reliance on or as a result of any

representation, promise, statement, conduct or inducement by the other otherwise than as set out in these Terms.

## 26.13 Consents

Where these Terms states that our consent or approval is required, we may:

- (a) give or withhold that consent or approval in our absolute discretion; and
- (b) give that consent or approval subject to conditions, unless these Terms expressly states otherwise.

## 26.14 Liability of Parties

If a party consists of more than one person:

- (a) an obligation of that party is a joint obligation of all of those persons and a several obligation of each of them;
- (b) a right given to that party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by that party is made by each of those persons.

## 26.15 Survival

The obligations set out under clauses 17, 10, 11, 12, 14, 19 and 25 survive termination of these Terms. Any other obligations which could reasonably be construed as having been intended to last after the termination of these Terms shall also survive their termination.

## 26.16 Execution

These Terms may be accepted by you checking an acceptance box or making any other affirmative action such that we may reasonably conclude that you have understood and accepted these Terms. Upon your acceptance, we warrant to agree to the terms of these Terms and you may consider your acceptance execution by us for same. Your use of the Services also constitutes your acceptance, and continued acceptance, of the Terms as updated from time to time.

## 26.17 Governing law

The laws of Queensland, Australia govern these Terms. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## 26.18 Additional Agreements

Your Services and relationship with us are also subject to a number of Additional Documents where relevant, including (but not limited to):

- (a) For the use of our Network and anything else not covered by these Terms or an Order, our Business Master Service Terms apply;
- (b) if you've purchased equipment from us, our OneQode Terms of Trade will apply.

All of the Additional Documents which may apply to your use of the Service (save any documents we've provided to you separately) may be found on our Website.

## 27. Interpretation

### 27.1 Definitions

Unless the terms and conditions of the Terms explicitly state otherwise, expressions used in the Terms have the following meanings:

**Account** means the Client's account to use the Services, including your account.

**Account Sign-Up** means the process through which a Client creates an account on the Service by entering the information requested by us and agrees to all terms, including (but not limited to) these Terms and the Privacy Policy.

**Additional Document** means any additional document, contract or policy, other than these Terms, which apply to the Services you are receiving from time to time.

**Business Day** means a day (other than a Saturday or Sunday) upon which banks are ordinarily open for business in Brisbane, Queensland, Australia.

**Business Master Service Terms** means our Business Master Service Terms as amended from time to time and available on the Website.

**Confidential Information** means information that is by its nature confidential, including but not limited to information relating to the:

- (a) personnel, policies, practices, clientele or business strategies of the parties;
- (b) Intellectual Property Rights of either party;
- (c) the terms of the Terms;

but does not include information:

- (d) already rightfully known to the receiving party at the time of disclosure by the other party; or
- (e) in the public domain (including information made publicly available via a mechanism in the Service by you) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Terms.

**Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss in relation to taxation or other punitive actions by a regulator, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

**Consumer Law** means the Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Cost** means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

**Client** means a company or individual who purchases Services from us under these Terms.

**Fair Use Policy** means the OneQode Fair Use Policy as amended from time to time and published on the Website.

**Terms or Platform Terms** means the terms and conditions set out in this document and agreed to by you, as amended from time to time.

**Fee** means any amount payable by you to us in connection with the Services, Subscription, Out-of-Scope Fees and these Terms generally.

**Insolvency Event** means in respect of a party:

- (a) the appointment of an administrator, a receiver or receiver and manager in respect of that party;
- (b) an application to a court or an order for the winding up of the party; or
- (c) the occurrence of anything analogous or having a substantially similar effect to any of the preceding events.

**Intellectual Property** means all intellectual property rights, patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, source and object code, products, programs, technology, hardware, data, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets), improvements, machines, techniques, methods, and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Intellectual Property Right** means all present and future rights conferred by statute, common law or equity in or in relation to Intellectual Property, including the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Malicious Code** means any code, program, script, software, file, thing or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including viruses, exploits, malware, logic bombs, denial of service attacks, flood or mail bombs, backdoors and other similar things or devices.

**High Risk Activity** means any use which, if any of Services were to fail, could result in death, serious injury or significant financial loss to any party, and includes (but is not limited to):

- emergency services;
- military and police services;
- critical communications infrastructure; or
- financial settlements and high-speed trading.

**Infrastructure** means all OneQode infrastructure housed in a PoP, including (but not limited to):

- (a) dedicated servers;
- (b) physical rack space;
- (c) cabling and panels;
- (d) optical equipment; and
- (e) all other equipment deployed by OneQode in a PoP.

**Network** means the OneQode Group international carrier telecommunications network.

**OneQode** means OneQode Pty Ltd ABN 35 637 271 937.

**OneQode Group** means the various companies and related bodies corporate to OneQode.

**Open Source Software** means any software where the code is available in an open, public repository. This includes software that, as a condition of its use, modification or distribution, requires that software, any modification to that software or any other software with which that software is combined or distributed be:

- (a) disclosed or distributed in source code or object code form;
- (b) licensed for the purposes of making modifications; or
- (c) redistributable,

to any third parties. However the key aspect of any Open Source Software is the public availability and auditability of all source code.

**Order** means any order for Services you place with us, whether directly, through the Portal or otherwise.

**Out-of-Scope Fees** means the fees charged for Out-of-Scope Services, which shall be calculated according to the rates which either provided in the relevant Additional Document, or as advised by us from time to time

**Out-of-Scope Services** means all services which are outside the scope for the Services you have purchased.

**Personal Information** has the meaning given to that term in the Privacy Act 1988 (Cth).

**PoP** means a point of presence in which OneQode offers Services and Infrastructure, either in its own facility or in a facility in which it has a standing agreement with a third party vendor.

**Portal** means the online portal through which you may place and manage orders, available at <https://oneqode.com>.

Privacy Law means:

- (a) the Privacy Act 1988 (Cth); and
- (b) any code registered under the Privacy Act 1988 (Cth) or Australian Privacy Principles.

**Privacy Policy** means our privacy policy which is available on our Website or as amended by us from time to time.

**Purchase Money Security Interest** takes the meaning given to it in the PPS Act.

**Quote** means the estimated price provided by OneQode to you in relation to goods or Services to be acquired.

**Servers** means computer servers such as Dedicated Servers and Virtual Servers, as the case may be.

**Service** means any service we provide to you under these Terms and includes the use of the Infrastructure.

**Submitted Materials** means any material including documents, information or data provided by you to us in connection with the Services.

**OneQode Terms of Trade** means our Terms of Trade as amended from time to time which govern the provision of goods generally, located at the Website.

**PPS Act** means the Personal Property Securities Act 2009 (Australia).

**PPSR** means the Personal Property Securities Register established under the PPS Act.

**Security Interest** has the meaning defined under the PPS Act.

**Unforeseen Event** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

**Website** means our website located at <https://oneqode.com>.

## 27.2 Interpretation

In these Terms:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of these Terms, and a reference to these Terms includes any schedule, exhibit or annexure to these Terms;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) references to payments to any party to these Terms include payments to another person upon the direction of such party;
- (j) all payments to be made under these Terms will be made through a third-party payment provider (such as Stripe) or by other immediately available funds;
- (k) the word "includes" in any form is not a word of limitation;

## Schedule 1

### Notices

#### Initial details

The addresses and numbers for service are initially:

#### OneQode

**Email:** [hello@oneqode.com.au](mailto:hello@oneqode.com.au)

Attention: Support

#### User

**Email:** As provided by user to OneQode

**Attention:** As provided by user to OneQode